

# **Application and Approval Mechanism for Collection of Other Charges by Private Schools**

## **Briefing Session**

**Education Bureau  
29 August 2023**

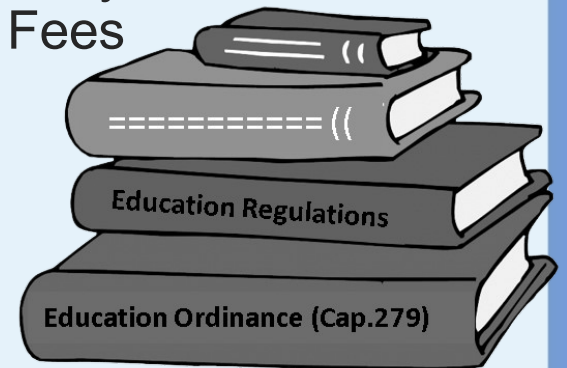
# Background

## *Operation of private schools*

- As self-financed establishments, some schools implement fund-raising schemes to secure sufficient funds to meet their financial needs for long-term school development.

## *Regulation 61(1) of Education Regulations (Cap. 279A)*

- No schools, without prior approval of the Permanent Secretary for Education, are allowed to charge or accept payment of any money or any school fees whatsoever other than the inclusive fees as printed on the Fees Certificate issued by EDB.



# **Background (Cont'd)**

## ***Transitional arrangement***

- A transitional arrangement was introduced for processing applications for the collection of other charges by private schools starting from the 2020/21 school year.
- All approvals given then will expire by the end of the 2024/25 school year.

## ***Application and approval mechanism for collection of other charges by private schools (the Mechanism)***

- [EDB Circular No. 15/2023](#) promulgating the implementation details of the Mechanism was issued on 22 August 2023.

# Scope

The Mechanism is formulated to regulate the collection of other charges.

## *Other charges*

- Capital Levies, debentures and nomination right fees

## *Purpose of collection*

- Long-term school development projects, including large-scale capital works and/ or non-works projects.



# Eligible Schools

Private primary and secondary schools\* offering full and formal curriculum

- (a) International schools;
- (b) Schools of the English Schools Foundation (ESF);
- (c) Private Independent Schools; and
- (d) Other private schools

\* Including their kindergarten sections under the same school registration without joining the Kindergarten Education Scheme.



# Four Key Principles



Schools are required to substantiate their adherence to the four principles in their applications.

# Four Key Principles (Cont'd)



## **1. Compliance**

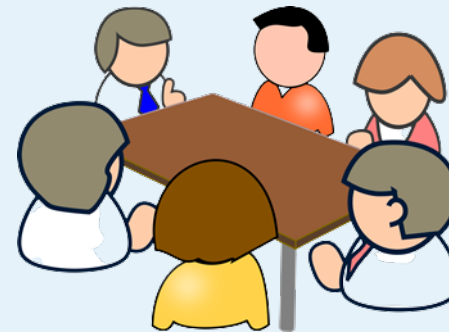
In operating their fundraising schemes for long-term school development, schools must ensure compliance with the

- Education Ordinance (Cap. 279)
- Education Regulations (Cap. 279A)
- Other relevant legislation where applicable, such as
  - Companies Ordinance (Cap. 622)
  - Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)
  - Securities and Futures Ordinance (Cap. 571)

# Four Key Principles (Cont'd)

## *2. School Governance*

- The school management committee should ensure that there is good governance in school operation.
- A long-term financial plan should be put in place so that school funds will be made available for deployment to meet future development needs.
- Any collection of other charges should be discussed and endorsed by the school management committee, with the involvement of parent representatives as appropriate.



# Four Key Principles (Cont'd)

## *3. Transparency*

- Schools should consult/ clearly inform key stakeholders, particularly parents, in advance of the following information of the collection of the other charges including but not limited to
  - Types and amount of the charges
  - Specific purposes and features of the charges
  - Name and particulars of the payee (such as registered address, business registration number)
  - Payment method
  - Redemption arrangements (if applicable)
  - Use of the proceeds
  - Payers' rights and interests
  - Agreement terms
- Concerns of payers, in particular parents, should be properly addressed to enable payers to make informed choices, including whether to enrol their children in the private school concerned and evaluate the risk factors involved before participating in the fundraising scheme.



# Four Key Principles (Cont'd)



## *4. Safeguard of Key Stakeholders' Interests*

- Schools should establish proper and adequate financial management mechanism to ensure that the proceeds of the other charges are properly spent.
- Both internal and external control systems should be formally established to bring all income and expenditure into proper account(s).
- Schools should report to the stakeholders, in particular parents, regularly (at least annually) on how the proceeds have been and/ or planned to be deployed for the specified purposes.

# Application

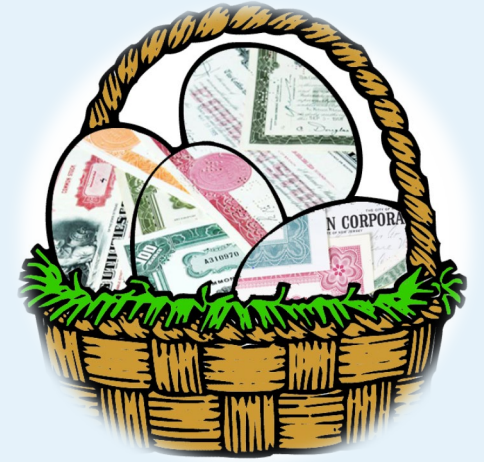
With effect from the date of the issuance of EDBC No. 15/2023 (i.e. 22 August 2023), all applications will be handled in accordance with the requirements of the Mechanism.



## *Types of applications include*

- (a) collecting new charges;
- (b) revising the amount and/or terms and conditions of the approved charges, including a change of payee; or
- (c) continuing to collect the same approved charges upon expiry of the validity period of approval (Approval granted under the transitional arrangement will expire by the end of the 2024/25 school year or earlier).

# Application (Cont'd)



## *Basis of “one scheme”*

- No matter how many other charges are involved in a school’s fundraising scheme, all the other charges collected by a school is considered as “one scheme”. Therefore,
  - Even if a school applies for collection of one new charge or revision to one approved charge, the school has to submit an application to include all the existing approved charges in it.
  - The application will be handled holistically on the basis of “one scheme”, and the expiry date of approval to all the other charges in the application, if approved, will all fall due on the same date.

# Application (Cont'd)

## *Applications period*

Applications may be submitted all-year round.

### Payee: School

To submit the applications at least 6 months before the start date of the proposed collection

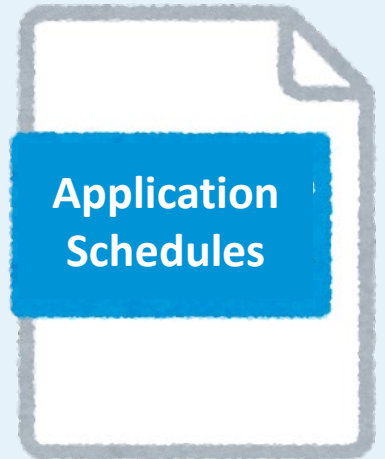
### Payee: Related Party

To submit the application at least 9 months before the start date of the proposed collection

# The Application Schedules

Schools should complete all relevant schedules and annexes

- Schedule 1 – Declaration Form
- Schedule 2 – Basic Information
- Schedule 3 – Essential Information Required
  - Annex 1 – Templates for Annual Reporting to Stakeholders
  - Annex 2 – Information on Debentures/ Nomination Right Fees



# **Example of evidence/ supporting document – disclosed to stakeholders**

- Records of consultation/ discussions/ communication with relevant stakeholders e.g. meeting notes, student admission brochure, student acceptance letter, school webpage, payment notice issued or contract between the school and the payers with the name and particulars of the payee specified, etc.
- Report to payers on the use of the proceeds.
- Repayment schedule (if applicable) of the charge(s) to payers.
- The Agreement between the school and the payee with relevant terms and conditions on the principal-agent relationship (if applicable); and/ or the document(s) informing payers of the terms and conditions of the Agreement/ the other charges provided to payers.

## **Example of evidence/ supporting document – to EDB only**

- Relevant notes of meetings of the school management committee, with a list of membership.
- Relevant agreement and/ or statements on the issue made by the school/ payee of the charge(s) in the audited accounts, if there is a going concern, insolvency issue and/ or any qualification.
- Documentary proof to illustrate the relationship between the payee and the school.

# Report to payers on the use of the proceeds

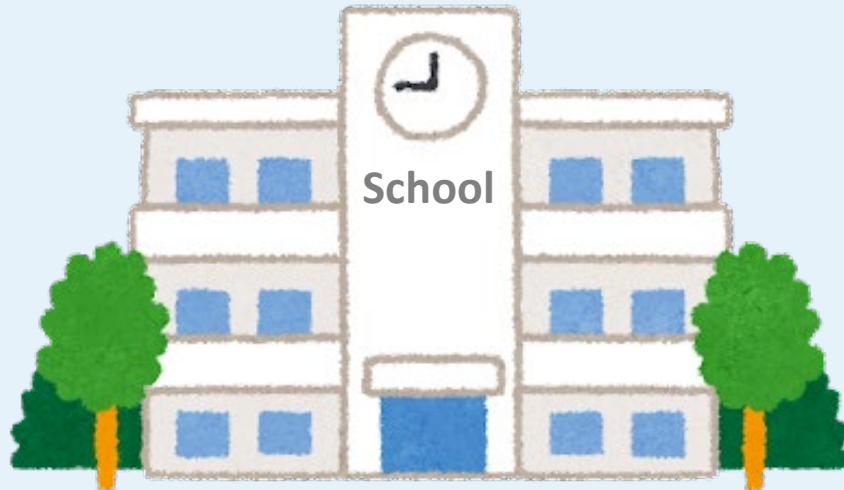
Name and intended purpose/ use of the charge	Estimated amount required for the specified intended purpose/ use (HK\$)	Accumulated amount of the charges collected (HK\$)	Amount utilised (HK\$)	Amount remaining (HK\$)	Estimated amount to be collected for the intended purpose/ use (HK\$)	Expected time of completion for achieving the specified intended purpose (by end of 20xx/xx School Year)
	(a)	(b)	(c)	(d) = (b) - (c)	(e) = (a) - (b)	(f)
<b>e.g. (A) Annual Capital Levy</b> <i>for large-scale emergency repair works of school premises, e.g. spalling concrete</i> <i>(Note: ongoing small scale repair/ maintenance, such as repair/ replacement of facilities/ equipment within school premises, should be covered by school fees)</i>	5,000,000	500,000	-	500,000	4,500,000	2030/31
<b>e.g. (B) Personal Debenture</b> <i>for construction of a new teaching block</i>	300,000,000	100,000,000	90,000,000	110,000,000	100,000,000	2034/35
<b>e.g. (C) Corporate Debenture</b> <i>for construction of a new teaching block</i>		100,000,000				
<b>e.g. (D) Gold Debenture</b> <i>for repayment of loan for construction of the existing school building(s)/ premises</i>	1,000,000,000	300,000,000	300,000,000	-	700,000,000	2030/31

# Repayment schedule (if applicable) of the charge(s) to payers

Name of Charge	<i>e.g. (B) Personal Debenture (Refundable)</i>		
As at ___ / ___ / ___, the repayment amounts are as follows:	(\$)	(\$)	(\$)
(1) at end of the 20xx/xx (i.e. the next year)			
(2) at end of the 20xx/xx (i.e. the year after next)			
(3) at end of the 20xx/xx (i.e. 2 years after next)			
(4) at end of the 20xx/xx (i.e. 3 years after next)			
(5) at end of the 20xx/xx (i.e. 4 years after next)			
(6) at end of the 20xx/xx (i.e. 5 years after next)			
Total			

# The Payee

Schools should serve as the payee of the other charges as far as practicable.



What if not?



# The Payee (Cont'd)

If schools appointed an agent (i.e. the payee) to collect / manage / handle the other charges on behalf of the School,

the school should



- justify that the payee is an organisation that establishes /maintains /manages /operates or carries on the school
  - ensure that the agent has credibility, financial stability and capable senior management
  - perform due diligence on the agent prior to appointing it when necessary.
- The school shall remain wholly liable to the payers and be responsible for all acts and omissions of the payee as if they were their own.
  - Contractual Agreement between the school and the payee shall be required.



The statement shall be stated in the contract with the Payees / Terms and Conditions of the Other Charges / admission leaflet for the applicants.



# The Payee (Cont'd)

- Independent professional legal/ financial advice shall be sought on whether the Contractual Agreement (the Agreement) has included all essential items as required by EDB.
- Name of the solicitor(s)/ lawyer(s)/ financial advisor(s) has to be stated in Schedule 1.
- The school and the payee shall not, without the payers' prior notice, rescind or vary the Agreement so that the payers' right under the Agreement or under relevant terms therein is altered or extinguished.

Let's go through  
the major items~



# Contractual Agreement

Items to be included are as follows:

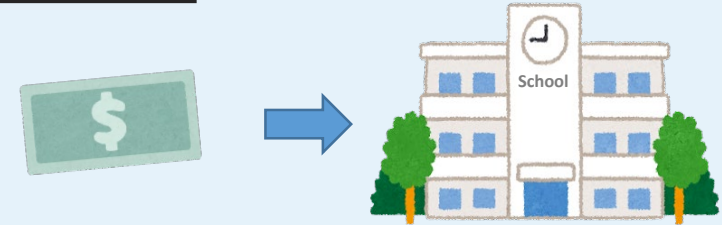
## *Basic items*

- Define the “Other Charges”.
- Explain the principal-agent relationship between the school and the payee, their roles and respective governance structure.
- State the rights, duties, obligations and liabilities of the school and the payee.
- The payee shall obtain approval from the school to sub-contract any of its duties under the Agreement in relation to the other charges.

# Contractual Agreement (Cont'd)

## *Handling of Cash Proceeds*

- The cash proceeds should be transferred to the school; or
- If the payee will manage the cash proceeds,
  - it shall make every effort to segregate the proceeds from its own assets, e.g. keeping them in a separate bank account;
  - it shall undertake to apply the proceeds only for such purposes as specified in the application submitted by the school;
  - there should be proper authorisation process as endorsed by the school management committee for money withdrawal, i.e. only the designated person(s) shall withdraw the cash proceeds, and for the specified purposes only; and
  - it shall ensure its compliance with the terms of the other charges and the requirements imposed by the EDB on the school.



# Contractual Agreement (Cont'd)

## *Transparency and annual reporting*

- The payee shall agree that the school will disclose the terms of the Agreement to the payers.
- The payee shall provide all necessary information of the Other Charges at least on an annual basis for school to report to relevant stakeholders at least annually.
- The payee shall inform the school without delay should there be going concern/ insolvency issue and/ or any qualification in the audited account of the payee.



# Contractual Agreement (Cont'd)

## *Remedies*

- Provide remedies or damage clauses to the Payers or their assignees or successors in title in case the school/ payee causes any loss to the Payers, e.g.
  - there is a change of operator of the School/ Payee.
  - the school/ payee ceases operation.
- EDB should be informed of the remedial measures as soon as possible.



# Contractual Agreement (Cont'd)

## *Standard clauses*

Schools are reminded to seek professional advice on the standard clauses about:

- termination of the Agreement
- avoidance of conflict of interest
- declaration of any potential conflict of interests
- compliance with all applicable laws, including the Contract (Rights of Third Parties) Ordinance (Cap.623)

Anything else?



(Note: the above are not essential items required by the EDB)

# Validity Period

No retrospective approval will be granted.

## *Payee is the school itself*

- The validity period of approval is normally six school years, effective from the proposed school year.

## *Payee is not the school*

- EDB will critically scrutinise the supporting documents substantiating the relationship between the school and the payee.
- A shorter validity period of approval may be granted, depending on the relationship between the school and the payee.
- Approval will **NOT** be granted if the relationship between the school and the payee is not supported with sufficient justifications.

# Examples of Documentary Proof to illustrate the Relationship between the Payee and the School

## Example 1

### Service Agreement (SA)



- The Payee is the party (i.e. SSB) entering into the SA with the Government; or
- The Payee is the incorporated company referred in the SA with sole object of operating the only campus that the School has.

## Example 2

### Article of Association (AoA)



- The Payee is incorporated under the Companies Ordinance; and its AoA shows that one of the objects is to establish / maintain / manage / operate / carry on the specific school(s)



For any other relationships between the School and the Payee with full justification and supporting documents, the EDB would consider the application on individual merits.



# Validity Period (Cont'd)

Administrative Arrangement	Payee: <u>School</u>	Payee: <u>Third Party</u>
Processing Time	6 months	9 months
<p><b>Validity Period</b></p> <p>(a) for schools applying for renewal of previously approved charges without proposing any changes, the new approval will extend the previous validity period for six or four school years, <u>from the end of the validity period</u>.</p> <p>(b) for schools proposing revision to previously approved charges or submitting a new application, the new approval will be valid for six or four school years, <u>effective from the school year of the proposed collection</u>.</p>	<p>6 school years</p> <p><u>e.g.</u> Current approval: till the end of the 2024/25 school year New approval: till the end of the 2030/31 school year</p> <p>6 school years</p> <p><u>e.g.</u> Effective school year of the proposed collection: 2024/25 school year New approval: till the end of the 2029/30 school year</p>	<p>6 or 4 school years</p> <p><u>e.g.</u> Current approval: till the end of the 2024/25 school year New approval: till the end of the 2030/31 or 2028/29 school years</p> <p>6 or 4 school years</p> <p><u>e.g.</u> Effective school year of the proposed collection: 2024/25 school year New approval: till the end of the 2029/30 or 2027/28 school years</p>

# Important Notes

*Schools should pay heed to the following once their applications are approved:*

- (a) Under no circumstances should the proceeds of the approved other charges be diverted to other operational uses such as staff salaries or regular maintenance of school premises which should be covered by tuition fees;
- (b) The approval should always be conspicuously exhibited together with the Fees Certificate issued by EDB at a prominent position in the school;

## **Important Notes (Cont'd)**

- (c) A fresh application seeking EDB's prior approval is required if there is any change to the amount and/ or terms and conditions of an approved charge, including a change of payee, or if the school wishes to continue to collect the approved charges upon expiry of the validity period of approval; and
- (d) Should any irregularities be found or a breach of the terms and conditions of the approved charges be substantiated, EDB may withdraw the approval already granted.

# Q&A

# Thank You

Please refer to the **EDB Circular No. 15/2023** for the details.

Please refer to the **EDB webpage** for the latest version of the documents before making an application.



QR Code:



Url:

<https://www.edb.gov.hk/en/student-parents/sch-info/fees-charges-in-sch/private-sch/index.html>