

**For discussion on
13 February 2006**

Sexual Minorities Forum

**Review of the Corporate Governance of
the Equal Opportunities Commission**

Purpose

This paper sets out the Government's legislative proposal to enhance the corporate governance of the Equal Opportunities Commission (EOC) for Members' comments.

Background

2. The EOC is a body corporate established under section 63(1) of the Sex Discrimination Ordinance (Cap 480). It has perpetual succession and a common seal, and is capable of suing and being sued.

3. The main functions of the EOC are –
 - (a) to work towards the elimination of discrimination; and

 - (b) to promote equal opportunities.

4. The membership of the EOC include -

(a) a Chairperson; and

(b) not less than 4 or more than 16 other members.

All members of the EOC must not be public officers. At present, there are 14 members, including the Chairperson.

5. The Chairperson is appointed on a full-time basis and is remunerated. Other members of the EOC may be appointed on a full-time or part-time basis. At present, all other members of the EOC are appointed on a part-time basis and are not remunerated.

Review of Non-departmental Public Bodies

6. Under the Government's classification system for advisory and statutory bodies in the public sector, the EOC is a non-departmental public body. The review of the corporate governance of the EOC has been conducted in this context.

7. Non-departmental public bodies have the following characteristics

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(a) they play a role in the processes of Government, but is not part of a Government bureau or department;

- (b) they are not commercial enterprises, but they often operate on the basis of “prudent commercial principle”;
- (c) they provide specific services usually provided by a Government bureau or department, or they carry out specific functions usually carried out by a Government bureau or department; and
- (d) they enjoy a high degree of autonomy in its day-to-day operations; accordingly, they operate to a greater or lesser extent at arm’s length from the Government.

8. There are now 15 non-departmental public bodies, namely -

- (a) the Board of Directors of the Applied Research Council;
- (b) the Board of Governors of the Prince Philip Dental Hospital;
- (c) the Consumer Council;
- (d) the Council of the Hong Kong Academy for Performing Arts;
- (e) the Employees Retraining Board;
- (f) the Hong Kong Arts Development Council;

- (g) the Hong Kong Examinations and Assessment Authority;
- (h) the Hong Kong Housing Authority;
- (i) the Hong Kong Productivity Council;
- (j) the Hong Kong Tourism Board;
- (k) the Hong Kong Trade Development Council;
- (l) the Hospital Authority;
- (m) the Occupational Safety and Health Council;
- (n) the Vocational Training Council; and
- (o) the EOC.

9. All non-departmental public bodies are governed by a management board. However, there are two types of boards -

- (a) a management board which consists of a non-executive chairman and part-time members, supported by a chief executive officer who is the administrative head of the organization; and
- (b) a management board which consists of a full-time executive

chairman and part-time non-executive members, with the executive chairman also being the administrative head of the organization.

10. We have completed a review of the corporate governance of non-departmental public bodies. Of all these public bodies, only the EOC has an executive chairman. The others all have a non-executive chairman and a chief executive officer who is the administrative head of the organization. The “non-executive chairman and chief executive officer” model is clearly the norm of good corporate governance. It provides an effective system of checks and balances. The corporate governance of the EOC is not in line with this norm. To enhance the corporate governance of the EOC, its policy-making function should be exercised by a management board consisting of a non-executive chairman and members and its executive function should be exercised by a chief executive officer who reports to the board.

11. Other recent studies on the corporate governance of the EOC have also recommended the “non-executive chairman and chief executive officer” model for the EOC to ensure effective checks and balances and good corporate governance. One example is the study conducted by the Independent Panel of Inquiry on the EOC.

Independent Panel of Inquiry

12. Incidents relating to the EOC from October to December 2003 received considerable public attention. In May 2004, an independent panel

of inquiry was appointed to look into the incidents which had affected the credibility of the EOC and to make recommendations to restore its credibility.

13. In its report issued in February 2005, the Independent Panel of Inquiry has made 70 recommendations. Recommendation 15 states that –

“We recommend that the posts of EOC Chairperson and the Chief Executive Officer (CEO) should be separated, and that the post of CEO should be reinstated. It is desirable that the Chairperson be a non-executive position appointed on a part-time basis.”

We generally endorse this recommendation.

Proposal

14. The composition and structure of the EOC is set out in the Sex Discrimination Ordinance. The Ordinance will have to be amended if the composition of the EOC is to be changed.

15. To enhance the corporate governance of the EOC, it is proposed that the Sex Discrimination Ordinance be amended:

- (a) so that the Chairperson of the EOC is no longer an executive chairman, but a non-executive chairman;

- (b) so that a non-executive member of the EOC may be appointed to be the deputy chairman of the EOC;
- (c) so that a non-executive member may be designated to act as chairman of the EOC in the absence of the chairman and the deputy chairman;
- (d) to empower the Chief Executive to appoint a chief executive officer of the EOC; and
- (e) to make the chief executive officer an executive member of the EOC.

Way Forward

16. The Government will consult relevant bodies before taking the legislative proposal forward.

Advice Sought

17. Members are invited to comment on the above proposal.

Home Affairs Bureau

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