



英基學校協會
ENGLISH SCHOOLS FOUNDATION

APPENDIX 26

43B • Stubbs Road • Hong Kong
Tel: (852) 2574 2351 Fax: (852) 2838 0957
香港 • 司徒拔道 • 四十三號 B
電話 (852) 2574 2351 圖文傳真 (852) 2838 0957

10 December 2004

Ms Dora Wai
Public Accounts Committee
Legislative Council Building
8 Jackson Road
Central
Hong Kong

By Fax 2537 1204 and Post

Dear Ms Wai,

**The Director of Audit's Report on the
Results of Value for Money Audits (Report No. 43)**

**Chapter 4 : Corporate Governance and
Headquarters Administration of the English Schools Foundation**

Please find attached the Draft Guidelines for the Restructuring of the Governance and Management of the ESF which has been approved by members at the Foundation Meeting on 9 December 2004.

A Chinese translation of the paper will be provided in due course.

Yours sincerely,

John Bohan
Acting Secretary and Chief Executive
English Schools Foundation

Att

cc Secretary for Education and Manpower
Chairman, English Schools Foundation
Secretary for Financial Services and The Treasury (Attn : Mr Manfred Wong)
Director of Audit
Ms Gloria Ng

APPROVED BY MEMBERS
AT
THE ESF FOUNDATION MEETING ON 9 DECEMBER 2004

DRAFT GUIDELINES FOR THE RESTRUCTURING OF
THE GOVERNANCE AND MANAGEMENT OF THE ESF

Introduction

Initially, it was thought prudent to make changes in the margins and thus avoid the long and tedious process of seeking legislative amendments to the Ordinance. But after detailed considerations this was not a possible option given that quite fundamental and sweeping changes have to be made. Since we are to go through a legislative process at any rate it will be by far better to effect changes that are far ranging and in line with best practice.

The constitutional underpinning of the ESF is the special ordinance from the government of the HKSAR. This Ordinance covers the following:

- The name and registered office of the organisation
- Its mission and purpose
- The rights and duties of members
- The election and replacement of the governing body
- The functions and powers of the governing body
- The appointment and removal of officers
- The procedures for members' meetings, the preparation of accounts
- The management of its schools
- Form of contract
- The formation of committees

Anthony and Young had this observation to make of non-profit organisations:

Although the governing body supposedly represents the interests of the general, or in some cases, that part of the public that has provided major financial support, it frequently is insufficiently informed about major issues facing the organization and its decisions therefore are not always optimal...The absence of profit measures, the tendency to be service organizations and the differences in top management structure result in a tradition of inadequate management controls.

This observation is especially germane to the ESF in view of the debacle in the past year and the recommendations made in the Audit Report. These aside, changes in the political landscape, an increasingly competitive environment, the new approaches to education, the mounting demand for greater transparency, quality and accountability are additional factors that drive the need for a restructuring of its governance and management.

The most fundamental change to be effected is the separation of governance and management roles. This draft will therefore address these issues separately.

Guiding principles for the restructuring of governance

Governance processes and structures should:

1. Drive probity, efficiency and effectiveness
2. Ensure compliance with statutory and regulatory requirements
3. Provide proper stewardship for assets and resources
4. Ensure the proper and effective use of funds, both public and private
5. Follow a policy of openness and transparency in dissemination of decisions made
6. Focus on strategic planning rather than micromanaging
7. Make provisions for risk management and control
8. Demonstrate accountability
9. Require a proper code of conduct in the performance of public service

The governance structure and functions

A. The ESF Council

Role: The Council is the supreme governing body of the ESF.
It will replace the current Foundation.

Composition: No more than 25 members with a clear majority of lay members external to the ESF with a ratio of 2:1.

Guidelines for the membership:

1. Each of the members elected or nominated should serve on an ad personam basis. They should serve as trustees rather than the representative of any constituency.
2. The members will sign a code of conduct and undertake to abide by it.
3. There should be an appropriate mix of old and new members, staggered terms for 25% of members.
4. Each member apart from the ex-officio members should not serve more than two consecutive terms each lasting for three years.
5. The membership should have a range of expertise, knowledge and skills taking into account the needs of the ESF at a particular time. At the time of election or appointment the Council should provide a list of the members and their expertise to serve as a guide in this process.
6. There should be a register of members' interest.
7. The staff members elected should not concurrently hold office in staff associations.
8. The members of Council will elect a chairman, vice-chairman and treasurer from amongst its lay members.
9. The Council should review its effectiveness every six years and the results of the review be published in the ESF annual report.

B. The Nomination Committee

The Committee shall have no more than 20 members consisting of nominations from the Joint Council of Parent Teacher Association and the Management Committee. The members shall nominate the 3-5 lay members of Council.

C. Committee Structure

There shall be number of Standing Committees of Council this may include an Audit Committee, Management Committee, Academic Committee, Staff Council and the Joint Council of Parent and Teacher Associations. There should be a balance between the need for participation by various stakeholders and the size as well as the number of committees.

The Council may, as when necessary, appoint task forces, steering groups etc. to perform specific functions.

The management structure and functions

Senior Management Team

Role: To be responsible for the day to day running of the schools, to implement the strategies and policies approved by Council, to advise Council on matters relating to any aspects of the ESF. This will be headed by the Chief Executive.

The Chief Executive Advisory Group

Role: To advise the CE and the SMT on issues relating to management.

The School Management Structure

This will remain essentially unchanged apart from the administrative procedures that will need to be put in place on the recommendations of the ICAC and the Audit Report.

Incidentals

To reflect their roles more accurately the Secretary should be re-titled Chief Executive and the Financial Controller the Director of Finance.

Implementation process and timeline

Approval of the draft guidelines by ExCom – November 2004

Approval of the draft guidelines by the Foundation – December 2004

Appointment of a task force by ExCom, the task force will be charged with the task to work out the details of the restructuring in consultation with the CE designate – December 2004 to January 2005

Approval of the draft details by ExCom – February 2005

Open consultation of the draft – February to April 2005

Task Force to make the necessary amendments based on the results of the consultation – May 2005

Approval of the draft by ExCom – June2005

Approval of the draft by the Foundation at an extraordinary meeting – July 2005

Drafting of the necessary amendments to the Ordinance and the Regulations -- ??

Seek legislative amendments to the Ordinance in the form of a private member's bill if appropriate -- ??

Implementation and the drafting of the Standing Orders --??

List of References

1. *A Guide for Effective Audit Committees*. Hong Kong Society of Accountants, 2002
2. *Corporate Governance for Public Bodies: A Basic Framework*. Hong Kong Society of Accountants, 2003
3. *Fit for Purpose: A review of governance and management structures at The University of Hong Kong*, 2003
4. *International Corporate Governance: Text, Readings and Cases* Robert Tricker, 1994
5. *Management Review of the University of Hong Kong*. University Grants Committee, 1999
6. *Non-statutory Guidelines on Directors' Duties*, Companies Registry, HKSAR Government
7. *OECD Principles of Corporate Governance 2004*
8. *Report of the Committee on the Financial Aspects of Corporate Governance (Cadbury Committee) 1992*