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21 January 2005

Clerk, Public Accounts Committee
(Attn: Ms Dora WAI)
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

[Fax No. 2537 1204]

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**

Thank you for your letter of 18 January 2005. As requested, I append below Audit observations and recommendations regarding the recent information provided by the former Chairman of the English Schools Foundation (ESF) relating to the extra payments made to three senior staff leaving the ESF referred to in paragraphs 4.29 to 4.34 of Chapter 4 of the Director of Audit's Report No. 43.

Staff A

As stated in paragraph 4.30 of the Audit Report, the extra payment made to Staff A upon his leaving the ESF had been approved by the Executive Committee of the Foundation. This approval was recorded in the Executive Committee's minutes of meeting. Audit considers this arrangement a good practice.

Staff B

As stated in paragraph 4.30 of the Audit Report, Audit could not find records of the Executive Committee's decisions regarding the extra payment made to Staff B upon his leaving the ESF. In his email of 17 January 2005, the former Chairman of the ESF commented that "The Secretary was wrong not to have this minuted at one of the Executive meetings". It is not clear whether this extra payment had been approved by the Executive Committee. Audit observations and recommendations on this case are stated in paragraphs 4.31 and 4.32 of the Audit Report respectively.

Staff C

As stated in paragraph 4.30 of the Audit Report, Audit could not find records of the Executive Committee's decisions regarding the extra payment made to Staff C upon his leaving the ESF. At the Public Accounts Committee's public hearing on 10 January 2005, the Acting Chief Executive of the ESF provided some new information relating to the departure of Staff C. In addition, the Secretary for Education and Manpower provided the Committee with some related information vide his letter of 11 January 2005. The salient points of this additional information included:

- (a) on 7 January 2005, the former Chairman of the ESF told the Acting Chief Executive of the ESF in a telephone conversation that the Executive Committee of the ESF met on 23 June 2003 before the cessation of Staff C's service;
- (b) according to the minutes of the Executive Committee meeting held on 23 June 2003 provided by the former Chairman of the ESF to the Acting Chief Executive of the ESF on 7 January 2005:
 - (i) the meeting was attended by seven members of the Executive Committee, including the Chairman, the Vice Chairman, the Treasurer, the Chairman of the Management Committee, the Education and Manpower Bureau (EMB)'s representative, the Chairman of the Staff Council, and the Chairman of the Academic Committee;
 - (ii) the meeting resolved that the employment of Staff C be terminated; and
 - (iii) the meeting also resolved that the former Chairman of the ESF be authorised to deal with such termination including but not limited to discussion with Staff C, giving the relevant notice, agreeing on the terms of cessation at the former Chairman's discretion and generally all such acts as would be necessary to effect the termination;
- (c) the minutes of the Executive Committee meeting held on 23 June 2003 had not been entered in the ESF's minute books. The Acting Chief Executive of the ESF said that this was the reason why Audit and he himself were not aware of this Executive Committee meeting; and

- (d) the former Chairman of the ESF told the Acting Chief Executive of the ESF that he had circulated the minutes of the meeting held on 23 June 2003 to all who attended the meeting.

In his letter of 18 January 2005 to the Committee, the Secretary for Education and Manpower said that:

- (a) the minutes of the Executive Committee meeting held on 23 June 2003 had not been provided to members who attended the meeting;
- (b) the EMB became aware of the extra payment made to Staff C when an anonymous letter was issued to the press several months after the departure of Staff C;
- (c) in February 2004, the former Chairman of the ESF included the minutes of the Executive Committee meeting held on 23 June 2003 as one of the enclosures in his submission to the EMB; and
- (d) according to the minutes of the Executive Committee meeting held on 27 June 2003, the former Chairman of the ESF advised the meeting that Staff C had resigned on 26 June 2003 with immediate effect. However, the terms of cessation of Staff C's service were not included in the minutes of meeting.

Audit considers it unacceptable that the minutes of the Executive Committee meeting held on 23 June 2003 have not been entered in the ESF's minute books. As stated in Regulation 2.3 of the Regulations of the English Schools Foundation:

"Minutes of the proceedings of every meeting of the Foundation, Executive Committee, Standing Committee, School Council or any committee shall be entered in a book kept for that purpose and after confirmation signed by the chairman of such meeting or of the following meeting, and shall when so entered and signed be prima facie evidence of the facts therein stated."

So far, there is no evidence which shows that the contents of the minutes of meeting held on 23 June 2003 provided by the former Chairman of the ESF were agreed by all members attending the meeting. Even if there is such evidence, Audit considers it unacceptable that:

- (a) the Executive Committee authorised the former Chairman of the ESF to agree with Staff C the terms of cessation at his discretion without seeking its final approval (see paragraph 4.31 of Chapter 4 of the Director of Audit's No. 43); and
- (b) the former Chairman of the ESF did not report at the subsequent Executive Committee meeting the extra payment made to Staff C.

In the light of the new Audit observations, in addition to Audit recommendations in paragraph 4.32 of Chapter 4 of the Director of Audit's Report No. 43, Audit recommends that the ESF should:

- (a) enter all minutes of Executive Committee meetings in its minute books; and
- (b) refrain from delegating to any person the authority to agree on the terms of cessation of a senior staff member without the final approval of the Executive Committee.

Yours sincerely,



(Patrick LEUNG)
for Director of Audit

c.c. Secretary for Education and Manpower
Permanent Secretary for Education and Manpower
Chairman, English Schools Foundation
Acting Secretary and Chief Executive, English Schools Foundation
Secretary for Financial Services and the Treasury
(Attn: Mr Manfred WONG)