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**Bills Committee on
The English Schools Foundation (Amendment) Bill 2007**

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 29 June 2007**

The English Schools Foundation (Amendment) Bill 2007

Purpose

This paper summarizes the areas of concern of the Public Accounts Committee (PAC) on the governance of the English Schools Foundation (the Foundation) and its school administration, and the deliberations of the Panel on Education (the Panel) on the draft English Schools Foundation (Amendment) Bill 2007.

Background

2. The Foundation was established in September 1967 under the English Schools Foundation Ordinance (Cap. 1117) (the Ordinance), and is vested with the power, subject to the provisions of the Education Ordinance (Cap. 279), to own, manage, administer and operate within the territory schools offering, without regard to race or religion, a modern liberal education through the medium of English to boys and girls who are able to benefit from such an education. As at the end of the 2005-2006 school year, the Foundation operated 10 primary schools, five secondary schools and one special school, and its associate company, the ESF Educational Services Limited (ESL), operated three kindergartens. ESL will operate two new private independent schools as from the 2007-2008 school year. The schools directly operated by the Foundation receive a subvention from the Government, which has been frozen in 2000. The schools and kindergartens operated by ESL do not receive any subsidy from the Government.

PAC's areas of concern

3. In February 2005, PAC issued its Report No. 43 which covered, inter alia, the corporate governance and school administration of the Foundation. Amongst others, PAC expressed the following areas of concern -

Corporate governance of the Foundation

- (a) the Foundation and its schools had not adopted a high standard of corporate governance and had not exercised proper financial and administrative controls to achieve value for money;
- (b) the large size of the Foundation's membership, standing at 132, was not conducive to making decisions effectively;
- (c) the external members of the Foundation did not constitute a majority at any of the Foundation's four annual general meetings held in the 2000-2001 to 2003-2004 financial years;
- (d) large percentages of internal and external members failed to attend the Foundation's meetings;
- (e) the Foundation's existing arrangement for an internal auditor reporting directly to the Financial Controller was not sufficient to help the Foundation discharge its monitoring functions effectively;

Corporate governance of the Foundation's schools

- (f) with the exception of one school, the composition of school councils did not include alumni;
- (g) most school councils did not specifically set out their delegated decision-making powers;
- (h) some school councils did not participate in major school activities recommended by the Foundation; and
- (i) most schools did not require council members to declare their personal interests which might conflict with their roles.

4. The conclusions and recommendations of PAC concerning the corporate governance of the Foundation and its schools extracted from the PAC Report are in **Appendices I and II** respectively.

The Bill

5. The Bill was presented by Mr Abraham SHEK to the Legislative Council (LegCo) on 30 May 2007. It seeks to make changes to the governance structure of the Foundation and the administration of its schools.

6. The main proposals with regard to the re-structuring of the governance structure of the Foundation are as follows -

- (a) the supreme governing body will be a Board of Governors (the Board) (instead of the present Foundation membership) consisting of 26 voting members and one non-voting member who is the Chief Executive Officer (CEO). The majority (22 members) will be external members (non-employees) among whom two will be nominated by LegCo members from among themselves. Ten of them will be independent community representatives to be nominated by a Nominating Committee. Another 10 will be elected from among Chairmen of School Councils and among parents;
- (b) there will be five advisory committees advising the CEO; and
- (c) three standing committees under the Board shall be established to advise on auditing, remuneration and financial management matters respectively.

7. As regards school administration, the current arrangement for the establishment of a School Council for each school of the Foundation will be retained with enhanced participation of alumni and more clearly defined functions. Each school of the Foundation shall establish a parent teacher association comprising the parents of students of the school, its teaching staff and principal.

Deliberations of the Panel

8. The Panel discussed the draft Bill at its meeting on 22 March 2007. The major issues of concern raised by members are summarized below.

Board of Governors

9. Members noted that at the meeting of the Foundation on 8 June 2006, 27 of the 96 votes were against the proposed amendments to the Ordinance. They sought information on the persons who voted against the proposed amendments.

10. The Foundation explained that the persons who voted against the proposed amendments were mainly teachers of the Foundation's schools. The proposed amendments would reduce their right in terms of the number of representatives in the Board. Under the Bill, principals, teachers and support staff of the schools would have respectively one, two and one representatives in the Board.

11. Under the existing Ordinance, two LegCo Members elected from among themselves were members of the Foundation. Under the Bill, two members of the Board should be LegCo Members elected from among themselves. There was a suggestion to remove the LegCo representatives from the Board as no other school sponsoring bodies had LegCo representation in their governing structure.

12. The Foundation had no strong views on the matter, but pointed out that parents of students would prefer to have representatives from LegCo sitting on the Board.

School administration

13. As regards members' concern about the difference between the governance structure of the Foundation's schools and the school-based governance structure of aided schools under the Education Ordinance, the Foundation explained that the Foundation had followed the same principles of school-based management in proposing the governance structure at the school level. The Education and Manpower Bureau considered that the proposals of the Bill were not in conflict with the provisions on school-based management in the Education Ordinance. The Foundation also pointed out that there were significant differences between the schools operated by the Foundation and the local schools which were subject to the Education Ordinance. The Foundation was responsible for the management of its schools including their properties and finance.

14. Members noted that as at December 2006, the Foundation had implemented only about 60% of the recommendations made by the Independent Commission Against Corruption (ICAC) concerning staff recruitment and school administration. Members queried why the Foundation had not implemented all the proposals.

15. The Foundation explained that it accepted all the recommendations made by ICAC and had implemented about 60% of them as at December 2006. The implementation of some of the recommendations would take time. For instance, the development of a web-based budgeting financial control system for the 20 schools would involve tremendous system design and development works as well as staff training before the system could be implemented. Subject to the early enactment of the Bill, the Foundation envisaged that all the ICAC recommendations could be implemented by the end of 2007.

Financial management

16. Members were concerned about how the reform in the governance structure of the Foundation and its schools would improve the monitoring of the schools' daily operation, including administration and financial management matters. Members considered that the Foundation should conduct internal reviews on its financial and audit systems to facilitate early detection and rectification of any system irregularities and ensure system reliability and integrity in the long term.

17. The Foundation explained to members the various systems and measures in place to monitor the daily operation of the schools with emphasis on the administrative and financial aspects. Under the new governance structure, schools would be responsible for their own financial management and required to submit regular reports on their financial position to the Board and the CEO. Currently, the Foundation was developing a web-based financial management system to facilitate on-line monitoring of the financial operation and transactions in each school. Any significant or unreasonable spending by individual schools would be readily detected by the system. In addition, the Foundation had strengthened the internal audit functions as recommended by PAC, and established an Audit Committee to oversee the strategic issues as well as to examine the internal audit reports prepared by individual schools. The Audit Committee would also oversee the system reliability matters and recommend the appropriate timing for conducting reviews on system operation and application.

Provision of special and integrated education

18. Members appreciated the efforts made by the Foundation in providing special and integrated education for students with special educational needs (SEN). Members suggested that the Board and the School Councils should include parents of students with SEN. They also sought information on the progress of implementation of the recommendations of the review on SEN of students undertaken by the Foundation two years ago.

19. The Foundation explained that it had consulted parents on the inclusion of a representative of parents of students with SEN in the Board and individual School Councils, and agreed with parents' view that parent representatives in these bodies should be elected through open competition. The Foundation would encourage the Board and School Councils to admit people with an enthusiasm as well as substantial expertise in supporting students with SEN in learning. The Foundation had taken steps to implement the recommendations of the review on SEN of students and a number of measures to enhance the quality of integrated education for students with SEN. The Foundation had also formulated a policy on integrated education, and developed a system to assess the degree of inclusion of individual schools on the basis of feedback from teachers and parents.

Government subsidies

20. Members noted the concern of some parents about the lower level of Government subsidies to the Foundation's schools as compared with aided schools. There was a suggestion that the Foundation's schools should be subsidized on the basis of the average unit costs, as in the case of aided schools.

21. According to the Foundation, the Administration would discuss with it subvention matters after it had implemented the necessary reforms in governance and school administration.

Relevant papers

22. A list of the relevant papers on the LegCo website is in **Appendix III**.

Council Business Division 2
Legislative Council Secretariat
28 June 2007

Extract from the Public Accounts Committee Report No.43

Chapter 3

**Corporate governance and Headquarters administration
of the English Schools Foundation**

Conclusions and recommendations The Committee:

Corporate governance

- expresses concern that the Education and Manpower Bureau (EMB) has not ensured that the English Schools Foundation (ESF), which receives substantial recurrent government subsidies, adopt a high standard of corporate governance, whilst noting that the EMB only has a small representation on the Foundation and its Executive Committee (ExCom) and that the Government's policy is to not micro-manage;
- condemns the ESF Headquarters senior executive management for its failure to ensure that the ESF and its schools adopt a high standard of corporate governance and to exercise proper financial and administrative controls to achieve value for money in the operations of the ESF and its schools, as evidenced by the following:
 - (a) the administration of some ESF schools was conducted in a chaotic and negligent manner, and the school administration guidelines provided by the ESF were fundamentally inadequate, as revealed in Chapter 4 of the Committee's Report on the subject "School administration of the English Schools Foundation";
 - (b) the ESF's existing arrangement for an internal auditor reporting directly to the Financial Controller is not sufficient to help the Foundation discharge its monitoring functions effectively;
 - (c) the approval of the ExCom was not sought for extra payments made to two senior staff upon their leaving the ESF in the 2002-03 ESF financial year, and the minutes of the ExCom meeting which discussed issues concerning the termination of the employment of a senior staff member had not been entered in the ESF's minute books;
 - (d) prior approval had not been sought from the ExCom for the sale of four ESF staff quarters in June and July 2002;
 - (e) the ESF leased 10 staff quarters for its senior staff at a total annual rent of \$6.8 million, when it had 13 vacant ESF-owned Teaching-staff Grade quarters of an estimated total annual rental value of \$2.6 million;

- (f) the ESF had been paying the rates and management fees of leased staff quarters, as long as the monthly rent (excluding rates and management fees) of the quarters did not exceed the rent entitlement of the staff concerned;
 - (g) the ESF reimbursed a senior staff member for the expenses on treatment in a first-class ward at a hospital, when the staff member was only entitled to receive treatment in a second-class ward; and
 - (h) most of the ESF staff having an annual budget for entertainment expenses used up all, or a large portion of, their budgets. Of the total entertainment expenses reimbursed to staff in the 2002-03 ESF financial year, 77% were related to staff functions;
- expresses concern that the large size of the Foundation's membership, standing at 132, is not conducive to making decisions effectively;
 - expresses serious dismay that:
 - (a) the external members of the Foundation did not constitute a majority at any of the Foundation's four annual general meetings held in the 2000-01 to 2003-04 ESF financial years. As a result, when decisions relating to ESF staff benefits were required to be made at meetings of the Foundation, there might have been an over-reliance on the internal members; and
 - (b) large percentages of internal and external members failed to attend Foundation meetings;
 - expresses serious dismay and finds it unacceptable that the ESF's existing arrangement for an internal auditor reporting directly to the Financial Controller is not sufficient to help the Foundation discharge its monitoring functions effectively;
 - acknowledges that:
 - (a) the Foundation has approved the draft guidelines for restructuring the governance and management of the ESF, and a task force appointed by the ExCom has started work on the proposed restructuring. The major changes proposed include:
 - (i) separating the governance and management roles; and
 - (ii) replacing the Foundation by the ESF Council as the supreme governing body of no more than 25 members with a 2:1 ratio of external members to internal members; and

- (b) the ESF has set up an audit committee, the Chairman of which is appointed by the ExCom from amongst external members with audit, financial and accounting experience. The audit committee will report to the ExCom;
- recommends that the ESF should:
- (a) conduct a review on the role of the Foundation Office including the need for its continued existence;
 - (b) adopt measures to ensure that external members will constitute a majority at each of the respective meetings of the Foundation and the ExCom;
 - (c) issue reminders to the related organisations if the attendance rates of their representatives at Foundation meetings are low;
 - (d) amend the Regulations of the English Schools Foundation to the effect that ESF staff members of the ExCom would abstain from voting on matters concerning ESF staff benefits at its meetings;
 - (e) consider repealing section 10(2) of The English Schools Foundation Ordinance so that subsidiary legislation in the form of regulations made under the Ordinance is required to be published in the Gazette and tabled in the Legislative Council;
 - (f) ensure that its internal audit office is staffed by well qualified and experienced personnel reporting directly to the audit committee; and
 - (g) require its internal audit office to prepare annual audit programmes, to be approved by the audit committee, for conducting reviews covering major and high-audit-risk activities of the ESF, including the ESF Educational Services Limited;

Extract from the Public Accounts Committee Report No. 43

Chapter 4

School administration of the English Schools Foundation

Conclusions and recommendations The Committee:

- acknowledges that the objective of the audit review is to examine the administration of English Schools Foundation (ESF) schools, and the Committee has therefore focused on matters pertaining to that objective rather than the quality of education provided by ESF schools;

Overall audit observations

- expresses serious dismay that:
 - (a) there were chaos and negligence in the administration of some ESF schools; and
 - (b) the school administration guidelines provided by the ESF were fundamentally inadequate and that some schools had not taken more initiative to ensure propriety and to achieve value for money in their operation;
- acknowledges that:
 - (a) the ESF is revising the Schools' Circulars/Administrative Memoranda to help schools deal with various administrative matters;
 - (b) the ESF will provide adequate support to schools in implementing its guidelines through more systematically programmed seminars and school visits; and
 - (c) the newly created audit committee of the ESF will oversee the programme of internal audits;

Corporate governance of schools

- expresses serious concern that:
 - (a) with the exception of one school, the composition of school councils did not include alumni;
 - (b) most ESF school councils had not specifically set out their delegated decision-making powers; and

- (c) some school councils did not participate in major school activities as recommended by the ESF, e.g. councils of most schools did not participate in formulating staff development policies and plans (11 councils) and in setting targets and priorities for curriculum development (8 councils);
- expresses dismay that:
 - (a) the council of one school did not hold any meetings during a period of 23 months when the post of Chairman of the school council was vacant; and
 - (b) most schools did not require council members to declare their personal interests which might conflict with their roles;
- acknowledges that:
 - (a) more alumni may be invited to join school councils once alumni lists are complete;
 - (b) each school council will itemise delegated decision-making powers, and a bi-annual agenda item will be initiated by ESF representative to review the delegated powers of the school council;
 - (c) the ESF will rewrite the roles of school council members so as to encourage them to participate actively in significant school activities;
 - (d) sub-committees will be set up to help school councils fulfil their roles and responsibilities more effectively;
 - (e) the ESF has issued letters to school councils reminding them of the minimum requirement of meetings and encouraging them to meet six times a year; and
 - (f) school council members will be required to declare their personal interests which may conflict with their roles, and declaration registers have been prepared to record the interests of the members;

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List of relevant papers

Meeting	Date of meeting	Minutes/Paper	LC Paper No.
Legislative Council	3.3.2004	Hon Emily LAU Wai-hing raised an written question on "Auditing Accounts of English Schools Foundation"	Official Record of Proceedings Pages 77 - 78
Panel on Education	13.12.2004	Paper provided by the Administration on "Review of the subvention arrangement for the English Schools Foundation"	CB(2)210/04-05(01)
Panel on Education	22.3.2007	Minutes of meeting (Item V)	CB(2)1546/06-07
		Paper provided by The English Schools Foundation	CB(2)1333/06-07(02)
		Extracts from Chapters 3 and 4 of the Public Accounts Committee Report No. 43 dated February 2005	CB(2)1358/06-07(02)
		Letter from the English Schools Foundation to Ms Audrey EU dated 7 May 2007	CB(2)1812/06-07(01)