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Government Secretariat

Government of the Hong Kong
Special Administrative Region

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General Circular No. 8/2008

Governance of Government-owned or Funded Statutory Bodies

(Note: Distribution of this Circular is Scale C. It should be brought to the attention of Directors of Bureaux, Permanent Secretaries, Heads of Departments, Controlling Officers, Departmental Secretaries and all officers sitting on the governing body of government-owned or funded statutory organisations.)

Introduction

This Circular sets out the guidelines on the broad principles of a governance framework for government-owned or funded statutory organisations, for reference by Directors of Bureaux and Controlling Officers in the discharge of their role in the management and control of these organisations. This set of guidelines should be viewed as a supplement to the guidelines in **Financial Circular (“FC”) No. 9/2004** entitled “Guidelines on the Management and Control of Government Funding for Subvented Organisations”. As with FC No. 9/2004, where the guidelines in this Circular are in conflict with statutory provisions, statutory provisions should prevail.

2. While the scale and complexity of the governance framework is likely to vary from case to case depending on the size of the statutory organisations, the nature of their activities, and the statutory requirements set out in the Ordinances which establish them, Directors of Bureaux and Controlling Officers should seek to ensure that a proper governance framework is in place in the statutory organisations under their policy/funding control purview.

Scope

3. The scope of this Circular covers statutory organisations which are either owned or funded by the Government. For the purpose of this Circular, government-funded statutory bodies refer to statutory bodies which are under recurrent funding from the Government. Statutory bodies which receive only one-off capital injection or other forms of non-recurrent financial assistance from the Government are not included (e.g. Urban Renewal Authority; Federation of Hong Kong Industries) unless they are government-owned statutory corporations. Also not included are statutory bodies which are not government-owned or funded (e.g. Ocean Park Corporation; Employees Retraining Board).

4. Statutory bodies falling outside the scope set out in paragraph 3 above are not covered by this Circular. However, Bureaux and Departments are encouraged to make reference to the governance guidelines in this Circular, having regard to the circumstances in individual cases.

Essential elements of a governance framework for government-owned or funded statutory organisations

5. The Government attaches great importance to sound corporate governance and good management practice. Strengthening corporate governance of government-owned/funded statutory bodies will contribute towards overall efficiency and effectiveness of the public sector, and is an integral part of the Government's initiative to strengthen public sector management.

6. In drawing up the broad principles of a governance framework, we have made reference to the guideline on governance launched by the Hong Kong Exchanges and Clearing Ltd in 2005 - "The Code on Corporate Governance Practice" ("the Code")¹. The Code, which focuses on companies listed in Hong Kong, is drawn up on the basis of international best practices. In addition, we have also drawn reference from international guidelines on corporate governance for public sector organisations.

¹ The Code sets out the principles of good corporate governance with two levels of recommendations (a) code provisions which listed companies are required to comply; and (b) the recommended best practices. Issuers are expected to comply with, but may choose to deviate from, the code provisions. The recommended best practices are for guidance only.

7. A proper governance framework should have three key elements -

- (a) clarity of objectives and priorities;
- (b) clear delineation of accountability and clear division of responsibilities; and
- (c) robust internal control and reporting/monitoring systems.

8. The need for **clarity of objectives** is a principle consistent with the guideline in FC No. 9/2004 that the Controlling Officer should formally define the objectives that the Government expects to achieve with the funding. In addition, many of the key **internal control and transparency measures** that good governance requires are already covered in FC No. 9/2004. Apart from such general control measures, FC No. 9/2004 also encourages Controlling Officers to make use of tailor-made instruments, such as entering into a Memorandum of Administrative Arrangements or a similar instrument with each subvented organisation, having regard to the unique circumstances of each organisation concerned. Such tailor-made instruments set out the responsibilities of relevant parties in the delivery and monitoring of government-funded service and capital projects.

9. Good governance also requires **clear delineation of roles and responsibilities** between the Government, the governing body (“the Board”), and the Chief Executive Officer (“CEO”) and executive management of government-owned or funded statutory body. The broad principles commonly set out in the international governance guidelines is that the responsibility of the Government is to set a clear and consistent policy direction and to ensure that the organisation is operated in a transparent and accountable manner. International governance guidelines also consider it crucial for the Board to have a clear mandate. In this regard, the Board’s responsibility is to provide strategic direction and to oversee management performance, subject to the objectives set by the Government. In short, the Board assumes overall accountability for the statutory organisation’s performance. Besides, the roles of the Chairman of the Board and the CEO should be separate and should not be performed by the same person.

10. The key principles and broad features of a governance framework are set out below -

(I) Clarity of objectives

Controlling Officers should have a clear policy framework that defines the overall objectives and priorities for each statutory body under its

funding control purview, having regard to the prescribed objectives in the statute.

(II) Clear lines of roles and responsibilities between the Controlling Officer, the Board and the CEO

- (a) Bureaux should examine the need to set out in clear terms the division of roles and responsibilities between the Government, the Board and the CEO, if it is not already spelt out clearly in the governing legislation for the statutory bodies. Alternatively, it may form part of the funding control agreement, or via other means as deemed appropriate by the Bureaux.
- (b) The specific division of roles and responsibilities between the Controlling Officer, the Board and the CEO is likely to vary from case to case. This may already have been spelt out to a certain extent in the relevant ordinance. In drawing up the division of roles between the various parties, Bureaux should refer to any such detailed provisions in the statute to ensure that it is consistent with the Ordinance which establishes the organisation, whilst also giving due regard to the needs of the organisation and unique circumstances of each case.
- (c) The statement setting out the division of roles and responsibilities should include, amongst other things, the division of roles and responsibilities between the Controlling Officer, the Board chairman and the CEO; a statement of matters reserved for the Government (as owner of or primary source of funding for the organisation); and a system for delegating authority from the Board to the management with a statement of matters reserved for the Board.
- (d) In general terms, the broad delineation of roles and responsibilities between various parties is mapped out as follows -

Controlling Officer

- ◇ Controlling Officers are responsible and accountable for proper use of public funds; review and approval of corporate plans; ensuring adequate reporting and monitoring systems for internal control and transparency; providing broad policy direction to the organisation in accordance with the public mission as stated in the statute; assessing the ongoing relevance of the organisation's mandate and its effectiveness as a policy instrument.

- ◇ Controlling Officers are not accountable for the day-to-day administration and operations of the organisation. However, in reality, they will need to answer to the public for the organisation's activities and proper use of public funds.
- ◇ It is up to the individual bureau to consider, in collaboration with the Controlling Officer, whether the Controlling Officer should carry out some of the above duties in consultation with the Director of Bureau, and whether the division of role and responsibility between the Director of Bureau and the Controlling Officer should be explicitly spelt out.

The Board

- ◇ The Board should assume responsibility for the performance of the organisation and be held collectively responsible for its performance by directing and supervising the organisation's affairs, and for ensuring sound corporate governance, and that activities of the organisation are in line with their mandates and, in so far as the relevant Ordinance permits the Government to give guidance, the policy guidance from the Government.
- ◇ The Board is responsible for setting strategic direction to carry out the objectives of the statutory body; ensuring appropriate lines of accountability and transparency process; overseeing the CEO and senior appointments and their performance; agreeing with the CEO on appropriate levels of delegated powers; reporting on performance, quality assurance and value for money to stakeholders; and ensuring that the principal risks of the organisation are identified and appropriate systems to manage these risks are in place.
- ◇ The Board should ensure that the organisation's information systems and management practices including financial control, recruitment, remuneration and training, and procurement procedures are adequate.

CEO

- ◇ The CEO plays a pivotal role in planning, developing and managing the organisation. As head of the organisation, the CEO

reports to and is accountable to the Board for the management and performance of that organisation.

- ◇ The CEO should have line responsibility for all aspects of executive management. In general, the CEO's responsibilities include (a) developing strategy for and implementing it in pursuit of the organisation's public mission; (b) formulating and managing the organisation's programme of activities; (c) developing and implementing appropriate and effective internal control, financial planning, procurement and administrative/compliance procedures, which are the key elements of a governance framework, to ensure proper utilisation of resources and good management practices, for approval of the Board; (d) supervising the day-to-day operation of the organisation; (e) formulating the organisation structure and staffing requirement; (f) making recommendations to the Board on new initiatives; and (g) implementing the policy decisions of the Board and carrying out any other duties as directed or required by the Board.

- ◇ The division of responsibilities between the Board and the CEO should be clearly established and set out in writing.

- ◇ To enable the CEOs or senior management of these organisations to have a good understanding of the legislation, regulations and policies which are relevant to them for the control and management of public finances, under FC No. 9/2004 the Controlling Officers may set out such information in a tailor-made funding control instrument and update such information from time to time as necessary. Such arrangement, whilst not a mandatory requirement under FC No. 9/2004, may be made as deemed appropriate by the Controlling Officer.

(III) Internal control and transparency

- (a) In accordance with the Public Finance Ordinance (Cap. 2), Controlling Officers are responsible and accountable for the proper use of public funds under their control. Controlling Officers should satisfy themselves that an effective system is in place to safeguard the proper use of public funds.

- (b) FC No. 9/2004 contains a wide range of measures, which the Controlling Officer may use to carry out their roles and

responsibilities in managing and controlling Government funding for subvented organisations and perform their funding control responsibility to ensure public money is used properly and cost-effectively.

(c) Controlling Officer should see to it that -

- (i) there is a system to set and agree on specific objectives;
- (ii) annual corporate plans/business plans are prepared on a timely basis;
- (iii) an established mechanism is in place to set and agree on performance targets and to evaluate performance against these targets;
- (iv) an appropriate system of cost control and monitoring is in place for ensuring prudent budgetary practices and discipline;
- (v) audited financial accounts are submitted to the Government on a timely basis;
- (vi) rules and procedures on human resource management are in place to observe the principle of fairness and transparency;
- (vii) procurement policy is transparent, fair and cost-effective; and
- (viii) the Director of Audit has unhindered access to the records and accounts of a subvented organisation.

Controlling Officers should refer to FC No. 9/2004 for details of each of the above measure. Controlling Officer should see to it that any deviation from the guidelines is justified and publicly defensible.

Measures to ensure that members of governing bodies and CEOs of government-funded organisations effectively perform their roles and responsibilities

11. Although subvented organisations are not government departments and the government rules and regulations are not directly applicable to them, they have the same duty to ensure the proper use of public funds, having regard to the economy, efficiency and effectiveness in discharging their functions. To help the CEOs and senior management of these organisations to have better understanding of the legislation, regulations and policies which are relevant to them for the control and management of public finances, Controlling Officers may conduct training programmes and deliver resource kits. Alternatively, Controlling Officers may include the relevant information in a tailor-made funding control instrument and update such information as necessary.

12. While the government representative on the board often acts as a link between the Government and the publicly-funded organisation, sound corporate governance does not and cannot solely rely on the presence of the government representative. The role of government representatives, in common with other members of the governing body, is to pursue the objects and public mission as stated in the statute which establishes the individual statutory organisation. Government representatives, together with all other board members, are collectively responsible for the overall performance of the statutory body. Clear stipulation on the division of roles and responsibilities between various parties will serve to assist government representatives in the discharge of their duties. Bureaux should clearly state the intended roles of the government officials when appointing them to sit on the governing board of the organisations under their policy/funding control purview.

Appointment of non-official members to the Board

13. Non-official members on the Board are expected to attend and participate in meetings of the Board, undertake diligent analysis of all proposals placed before the Board, and make recommendations and decisions in line with the statutory objectives of the organisation. They have a responsibility to ensure that the organisation is operating efficiently, effectively and legally towards achieving its objectives.

14. To enable non-official Board members to be fully aware of their role and responsibilities, Bureaux should set out in the letter of appointment for each incoming Board member the terms of appointment, their duties under the relevant legislation, and their fiduciary duties under common law. Bureaux should also take measures to assist them in performing their roles and responsibilities effectively.

15. Bureaux should ensure that the governing body of the statutory organisations under their policy/funding control purview is made up of individuals with the necessary expertise and time to help the Board discharge its functions properly.

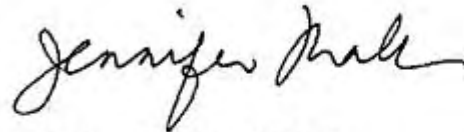
Need for review to ensure adequacy over time

16. The responsibility for administering the guidelines promulgated in this Circular rests with the relevant Directors of Bureaux. Directors of Bureaux are requested to bring this Circular to the attention of their Controlling Officers and review from time to time the governance framework and the checks and balances in the system to ensure their adequacy over time.

17. Departmental Secretaries are required to re-circulate this Circular to Directors of Bureaux and Controlling Officers once a year, to draw attention to Directors of Bureaux and Controlling Officers to the importance of having a sound governance framework in place for the statutory organisations under their policy/funding control purview.

Enquiries

18. For enquiries on the guidelines in this Circular, please contact Miss Winnie Wong, Assistant Director of Administration, at 2810 3503.

A handwritten signature in black ink, appearing to read "Jennifer Mak". The signature is fluid and cursive, with a long horizontal stroke at the end.

(Miss Jennifer Mak)
Director of Administration

c.c. Judiciary Administrator
Law Officer (Civil Law)