

**Comments on the Proposal of Splitting the Post of the Chairman of SFC
into a Non-Executive Chairman Post and a CEO Post**

by

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1. In view of principles of good corporate governance for public-sector organizations and in line with the international trend, as a concerned scholar and advocator of corporate governance, I **strongly support** the Administration's above proposed amendments to the SFO (Chp.571) by large in order to strengthen SFC's internal governance practice in terms of openness, independence, integrity, checks and balances, and accountability.
2. I **agree with most of the rationale putting up by the Administration** (LC Paper No. CB(1)177/04-05(01)). The proposal would make SFC a more credible, effective and independent regulator. Although SFC has been doing a good job and the proposal does not reflect the existing governance practice of SFC, there is a **clear need for us to continually enhance our regulatory structure and the effective functioning of SFC** in order to meet the future challenges. It is always too late to start new changes after scandals occurred or damages made. Further, as the major market regulator, the **SFC should also set exemplary standard** for other regulators (such as HKMA, OCI, OTA) to follow.
3. Hong Kong does not have to follow other countries' practice blindly but we need to give good reasons to turn down good CG principles for public sector as drawn up by relevant local and international organizations (e.g. Cadbury Committee, Nolan Committee, Commonwealth Foundation, HK-SCCLR, IFAC, HKICPA). Direct comparison with experience of overseas regulators may not be much useful as they have very different legal and market environment. **Hong Kong should find its own path and directions.**
4. Having said that, and while agreeing with the specific role of the non-executive chairman and the CEO as suggested in the Administration's paper, I **do not agree** with the Administration that **cost-saving** is one of the main reasons to keep the chairmanship be non-executive. Cost-saving may be a possible consequence of the

new arrangement, but **effectiveness should be the overriding rationale**. I insist the chairmanship must be non-executive (but not necessarily part-time) as this would separate clearly the function of the chairman and CEO. People taking up the non-executive chairman post should be treated mainly as an honorary public assignment, not as a paid job (although the actual pay can be negotiated depending on the profile and financial needs of the appointee). **Honorary appointment increases the chance of recruiting the most competent and independent candidate.**

5. Although there are worries about the sources of suitable candidates for the chairman post, I believe there are many such qualified candidates in the community, such as early retired professionals, senior civic servants, judges, academics, etc. The most important criterion for such appointment is that the appointee is **capable and could spend sufficient time** on the job. Being **'non-executive' would give more freedom and flexibility** to the appointee and could attract more suitable nominees. In some real cases that I know, a non-executive chairman of a public sector entity always spends an amount of time comparable to a full-time executive.
6. The appointment of the non-executive chairman of SFC should not be just a political appointment by the Chief Executive from among its narrow electorates. A **world-wide search** committee could be set up to headhunt the most qualified persons to fill the new post.
7. To minimize unnecessary interventions to the current works of SFC and the incumbent Chairman, I suggest we introduce the new changes when the current contract of the full-time Chairman expires. There is **no need to be rush** and this could avoid many unnecessary guessing of the Government's other unstated intentions behind the proposal.
8. In the longer run, there seems a need to further restructuring the governing body of SFC by separating executive directors (making major decisions) from senior management (running daily businesses). This would further enhance checks and balances between the board and the management.

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