

**LEGISLATIVE COUNCIL
PANEL ON CONSTITUTIONAL AFFAIRS**

**Separation of the posts of Chairperson and Chief Executive Officer
of the Equal Opportunities Commission**

Purpose

This paper seeks Members' views on the options for separating the posts of the Chairperson and the Chief Executive Officer (CEO) of the Equal Opportunities Commission (EOC).

Background

2. Under section 63 of the Sex Discrimination Ordinance (SDO), the Chief Executive shall appoint to be members of the Commission a Chairperson and not less than 4 or more than 16 other members. The EOC Chairperson shall be appointed on a full-time basis. SDO does not contain any specific provision on the establishment of a CEO post, although section 64(2)(d) provides that the EOC may employ such persons as it thinks fit to carry out any matter relating to the performance of its functions or the exercise of its powers.

3. At its inception in September 1996, the EOC was established with a full-time Chairperson (pitched at a level equivalent to D8 of the civil service) who had executive responsibility for the overall operation and management of the EOC. At the same time, there was a CEO (pitched at a level equivalent to D3 of the civil service) whose role was more on overseeing standards, coordination and administration. The CEO did not have the authority on a number of operational matters, such as discontinuing complaints and conciliation cases.

4. In mid-2000, the EOC Board endorsed a revised organisational structure to streamline the EOC's management structure. A major change was to delete the post of the CEO, on the basis that the Chairperson was in fact responsible for the overall operation and management of the EOC and there was a certain degree of overlapping responsibilities with the CEO. The structural changes achieved a net annual saving of \$2.1 million. The post of the CEO was deleted in July 2000. The responsibility of the CEO post was then shared between the Chairperson and the Director (Planning and Administration).

EOC Review in 2004

5. In 2004, the EOC completed a review of its role and organisational and management structure, and another review of its human resources management policies, procedures and practices. Both reviews recommended that the CEO post should be reinstated. As to whether the Chairperson should be a part-time position, the first review indicated that further consideration was required. The second review indicated that, with the assistance of a full-time CEO, the Chairperson, serving in a part-time capacity, should be able to maintain effective management of the EOC's affairs.

Recommendation of the Independent Panel of Inquiry in 2005

6. The Independent Panel of Inquiry on the Incidents Relating to the EOC (the Independent Panel), appointed by the Secretary for Home Affairs in May 2004 issued a report in February 2005, which contained the following recommendation (Recommendation 15) -

“We recommend that the posts of EOC Chairperson and the Chief Executive Officer (CEO) should be separated, and that the post of CEO should be reinstated. It is desirable that the Chairperson be a non-executive position appointed on a part-time basis.”

The Administration's proposals in 2006

7. In January 2006, the Home Affairs Bureau (HAB) submitted proposals to the Home Affairs Panel of the Legislative Council (LegCo) to enhance the corporate governance of the EOC, after reviewing the corporate governance of similar public bodies. The Administration was of the view that the model of “non-executive chairman and chief executive officer” was the norm of good corporate governance and could provide effective checks and balance. It proposed that the SDO should be amended –

- (a) so that the Chairperson of the EOC is no longer an executive chairman, but a non-executive chairman;
- (b) so that a non-executive member of the EOC may be appointed to be the deputy chairman of the EOC;
- (c) so that a non-executive member may be designated to act as chairman of the EOC in the absence of the chairman and the deputy chairman;
- (d) to empower the Chief Executive to appoint a chief executive officer of the EOC; and
- (e) to make the chief executive officer an executive member of the EOC.

8. As to whether the Chairperson should be appointed on a full-time basis (or not), the Administration was of the view that this issue could be further considered after the post of CEO was reinstated.

9. At the meeting of the Home Affairs Panel on 13 January 2006 when the proposal was discussed, some Members expressed strong reservations. The following were some of the concerns expressed –

- (a) the EOC was a very important human rights institution. Due to this unique nature, it was crucial to assess what form

of structure would help the EOC perform this important function, rather than just comparing its structure with that of other public bodies;

- (b) the separation proposal might result in a situation under which the EOC would become executive-led;
- (c) it would be important for the EOC to continue to have a Chairperson who had the vision and executive authority; and
- (d) the Administration should be mindful of any possible public perception that the separation proposal might undermine the EOC's independence in carrying out its functions.

The Administration has not taken forward the proposals in view of the reservations expressed.

Recent developments

10. In Chapter 3 of Report No. 52 of the Director of Audit, which was tabled at LegCo on 22 April 2009, regarding the proposal of separation of the posts of the Chairperson and the CEO, Audit recommended that the Secretary for Constitutional and Mainland Affairs (SCMA) should expedite action to take the matter forward and bring it to a satisfactory conclusion (paragraph 2.12 of Chapter 3 of the Report). SCMA has accepted the recommendation, and has undertaken to take forward the matter and bring it to a conclusive stage. In the process, we will take into account any further views expressed by LegCo Members and the relevant quarters of the community.

Overseas experience

11. We have conducted a comparison of the organisational structure of overseas human rights institutions. A summary of the findings is at **Annex**.

12. In brief, the practice of these human rights institutions varies –

- (a) in the case of the UK, the commission has two separate posts under the statute, i.e. Chairman and Chief Executive. The Chairman is a part-time non-executive position;
- (b) in the case of New Zealand, the commission has two separate posts under the statute, i.e. Chief Commissioner and General Manager. The Chief Commissioner is a full-time executive post, responsible for supervising the General Manager on administrative matters; and
- (c) in the case of Canada and Australia, the respective law governing the commission does not provide for separate posts of chairperson and chief executive. Both the Chief Commissioner in Canada and the President in Australia are executive positions. However, according to their respective organisational charts, the former supervises a Secretary General of the Commission, while the latter supervises an Executive Director of the Commission.

Options and Assessments

13. We consider that there are three possible options for taking forward the issue, as summarized below –

- (a) status quo, i.e. a full-time executive Chairperson and no CEO;
- (b) a part-time non-executive Chairperson and a full-time CEO; and
- (c) a full-time executive Chairperson and a full-time CEO.

Option (a): A full-time executive Chairperson and no CEO

14. This option, which maintains the status quo, would cause the least changes to the structure of the EOC. Many of the administrative issues identified in the Audit Report could actually be tackled by review and revisions of the mechanism, guidelines and procedures of the administration of the EOC.

15. On the other hand, this option would not be in line with the expectation and calls from some sectors of the community for improvements in EOC's governance structure and separation of the posts. It would not provide EOC with an additional post of CEO who would be able to provide input in enhancing the EOC's internal administration.

Option (b): A part-time non-executive Chairperson and a full-time CEO

16. Option (b) is the proposal put by the HAB to the Home Affairs Panel in 2006. It is in line with the recommendation of the Independent Panel in 2005 as well as previous internal reviews of the EOC. It is also in line with the practice for some other public bodies in Hong Kong.

17. Under this option, the CEO would relieve the Chairperson from executive functions. This would address the concern in some quarters regarding an over-concentration of power in the Chairperson. A part-time non-executive Chairperson may be seen as more independent from the CEO and the staff. He or she would focus more on the core statutory and regulatory functions of the EOC and oversees the work of the CEO. This would facilitate the EOC in strengthening its corporate governance.

18. On the other hand, there have been concerns that this option may undermine the powers of the Chairperson and that the EOC would become executive-led. As the Chairperson would be part-time and non-executive, it may result in over-concentration of power in the CEO.

Some have also expressed worries that the option may affect public confidence on the independence of the EOC, as mentioned in paragraph 9 above. Moreover, as the Chairperson and other Members of the Committee are all part-time, it is doubtful whether sufficient attention would be given to the operational matters of the EOC regarding various anti-discrimination ordinances.

Option (c): A full-time executive Chairperson and a full-time CEO

19. Option (c) would be similar to the organisational structure of the EOC before the CEO post was deleted in July 2000. Under this option, the Chairperson, together with other Members of the Committee, will devote most of their time and attention to performing their statutory role as the enforcement agent of the various anti-discrimination ordinances, whilst the CEO will be responsible for the internal administrative and management matters of the EOC. Thus, there will be a clear delineation of duties and responsibilities of the two full-time posts. As the Chairperson would be a full-time executive position, he or she would also be able to put in greater efforts in strengthening the administration of the EOC, with support from the CEO.

20. On the other hand, from the corporate governance point of view, there may still be some overlapping of the two posts in administrative duties. As the Chairperson would be executive, he or she may not be seen as independent in supervising the work of the CEO. Moreover, since all other staff will report to the CEO who reports to the Chairperson, this would raise the question as to whether the desired effect of enhancing checks and balance internally can be achieved.

21. However, as compared with Option (b), this option has the advantage that the EOC would continue to have a full-time executive Chairperson who would be better placed to lead the EOC in enhancing its core functions. Under the anti-discrimination ordinances, the functions and powers of the EOC rest with the Commission which comprises the Chairperson and other members. As the Chairperson has a heavy

responsibility, there are sound reasons to maintain the Chairperson as a full-time position. This option would also address the concern over Option (b) that the conversion of the Chairperson to a part-time position may undermine the EOC's independence.

22. Since the Chairperson would remain as a full-time post, no legislative amendments are required. This option can be implemented within a relatively short timeframe.

Way forward

23. The EOC is a very important human rights institution. To take the matter forward, we consider it important that the EOC should have an appropriate structure that would help perform its statutory functions. The structure should help enhance corporate governance. At the same time, the EOC should continue to have a Chairperson who is committed and has the necessary executive authority to lead the Commission. We should also be mindful of the need to ensure that any changes to the structure should not undermine the EOC's independence and avoid any such public perception.

24. We would like to seek the views of the LegCo Members and the public regarding the way forward on the governance structure of the EOC. Members are invited to comment on the options as set out in paragraphs 13 to 22 above.

25. At a special meeting on 13 May 2009, Members of the EOC requested the government to examine the issues in detail the proposal to separate the positions of the Chairperson and CEO as soon as possible. In parallel, we are consulting the EOC on the three options set out in paragraphs 13 to 22 above. We will take a final view on this matter in the light of views expressed by LegCo Members and the EOC.

Constitutional and Mainland Affairs Bureau
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**Structures of overseas human rights institutions
in the United Kingdom, Canada, Australia and New Zealand**

The structures of the overseas human rights institutions vary. Information on the structures of four overseas human rights institutions are summarized below –

Country	The UK	Canada	Australia	New Zealand
Name of institution	Equality and Human Rights Commission	Canadian Human Rights Commission	Australian Human Rights Commission	Human Rights Commission
Year of establishment	2007	1977	1986 (changed its name in 2008)	1977
Empowering legislation	Equality Act 2006	Canadian Human Rights Act	Human Rights and Equal Opportunity Commission Act 1986	Human Rights Act 1993
Membership of the Commission	Not less than 10 and no more than 15 Commissioners. One Commissioner is appointed as Chairman. In addition, the chief executive of the Commission (appointed by the Commission) is a Commissioner <i>ex officio</i> .	A Chief Commissioner, a Deputy Chief Commissioner, and no less than three or more than six other members.	A President and five Commissioners.	A Chief Commissioner, a Race Relations Commissioner, an Equal Employment Opportunities Commissioner and up to five other part-time Commissioners.

Country	The UK	Canada	Australia	New Zealand
Provision of an executive head separate from the head of the Commission under law	<p>Yes.</p> <p>The Commission appoints a chief executive, who is a staff of the Commission.</p> <p>The chief executive may not be appointed as Chairman of the Commission.</p>	<p>Not provided for in the law.</p> <p>(According to the organisational chart of the commission, there is a Secretary General, reporting to the Chief Commissioner)</p>	<p>Not provided for in the law.</p> <p>(According to the organisational chart of the commission, there is an Executive Director reporting to the President)</p>	<p>Yes.</p> <p>The Chief Commissioner appoints a General manager after consultation with the Commission. The General manager is an employee of the Commission, supervised by the Chief Commissioner for the administration and other activities of the Commission.</p>
Full-time or Part-time head of the Commission	<p>Not stipulated in the Equality Act 2006, but the current Chairman, Trevor Philips, is part-time and is a broadcaster /journalist serving as Head of Current Affairs in a TV station.</p>	<p>Full-time.</p>	<p>Can be full-time or part-time.</p>	<p>Full-time.</p>

Country	The UK	Canada	Australia	New Zealand
<p>Whether the head of the Commission is an executive position, and his / her role.</p>	<p>Not stipulated in the Equality Act 2006. According to website of the Commission, the Chairman is non-executive. The Chairman presides over meetings of the Commission, and performs functions specified in his terms of appointment or assigned by the Commission.</p>	<p>Yes. The Chief Commissioner is the chief executive officer of the Commission and has supervision over and direction of the Commission and its staff and shall preside at meetings of the Commission.</p>	<p>Yes. The functions of the Commission on inquiry, conciliation and complaints handling are performed by the President. The President is responsible for managing the administrative affairs of the Commission. He/she presides at meetings of the Commission.</p>	<p>Yes. The Chief Commissioner chairs the Commission and responsible for the matters of administration of the Commission. He/she ensures that activities undertaken by the Commission are consistent with the strategic direction and other determinations of the Commission, and allocates spheres of responsibility among Commissioners.</p>