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**Panel on Constitutional Affairs**

**Background brief prepared by the Legislative Council Secretariat  
for the meeting on 15 June 2009**

**Proposal on separation of the posts of the Chairperson and the Chief Executive  
Officer of the Equal Opportunities Commission**

**Purpose**

This paper summarizes the discussions of the Panel on Home Affairs (the HA Panel) on the proposal to separate the posts of the Chairperson and the Chief Executive Officer (CEO) of the Equal Opportunities Commission (EOC).

**Background**

Organizational structure of EOC

2. Established under the Sex Discrimination Ordinance (SDO) on 20 May 1996, EOC is a statutory body responsible for the implementation of SDO, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance and the Race Discrimination Ordinance. EOC comprises the Chairperson and up to 16 members. The authority of appointment of the Chairperson and members rests with the Chief Executive who shall determine the remuneration and the terms and conditions of appointment of the Chairperson. Under section 1 of Schedule 6 of SDO, the Chairperson shall be appointed on a full-time basis whereas other members of EOC may be appointed on a full-time or part-time basis. The incumbent Chairperson, Mr Raymond TANG Yee-bong, has been appointed as the EOC Chairperson for five years, with effect from 12 January 2005.

3. The post of Chairperson is pitched at the rank equivalent to Point 8 on the Directorate Pay Scale of the Civil Service. EOC used to have a post of CEO which was pitched at the rank equivalent to Point 3 of the Directorate Pay Scale. In mid 2000, the Board of EOC endorsed a revised organizational structure under which -

- (a) the CEO post was deleted;

- (b) the post of the then Director (Administration) at Directorate Pay Scale Point 1 was upgraded to Director (Planning and Administration) at Directorate Pay Scale Point 2; and
- (c) the duties of the CEO were re-allocated to the Chairperson and the Director (Planning and Administration).

The structural changes could achieve a net annual saving of \$2.1 million and the CEO post was deleted in July 2000.

4. When the HA Panel received a briefing by EOC on its work at its meeting on 8 February 2002, some members expressed concern that deleting the post of CEO seemed to be contrary to the Administration's position that the functions and duties of the chairman and CEO of an organization should not be performed by one person. In response, Ms Anna WU, the then EOC Chairperson, explained that as the duties of CEO could be shouldered by herself and the Director of Planning and Administration of EOC, she preferred saving the resources for other purposes such as publicity, education and research work. Ms WU also considered that as the chairpersonship of EOC was a salaried position, she should take up administrative duties as well.

#### The Independent Panel of Inquiry on the Incidents Relating to EOC

5. Between October and December 2003, the following incidents relating to EOC had given rise to wide public concern –

- (a) the appointment and termination of the employment of Mr Patrick YU as the Director (Operations) by EOC;
- (b) the resignation of Mr Michael WONG as the EOC Chairperson; and
- (c) the publication of "six allegations" against EOC during the tenure of Ms Anna WU as the EOC Chairperson.

6. The Administration appointed the Independent Panel of Inquiry on the Incidents Relating to EOC (the Panel of Inquiry) in May 2004 to look into the incidents which had affected the credibility of EOC and to make recommendations to restore EOC's credibility. In its report issued in February 2005, the Panel of Inquiry made 70 recommendations. Recommendation 15 stated that -

"We recommend that the posts of EOC Chairperson and 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."

7. The Administration endorsed the recommendation. The Administration also advised that the following recommendations relating to enhancing corporate governance would either require further consideration and/or involve legislative amendments. They were -

- (a) Recommendation 16 - To allow more flexibility in selecting the most suitable Chairperson for appointment, consideration should be given to amending the relevant legislation to remove the requirement for the Chairperson to be appointed on a full-time basis;
- (b) Recommendation 17 - The responsibilities of the Chairperson should be formally defined in writing and such responsibilities should be distinct from those of CEO;
- (c) Recommendation 18 - CEO should be an ex-officio executive member of the governing board of EOC, i.e. the Commission. CEO, if reinstated, should report to the Chairperson and be accountable to the Commission for the performance of the organization and the implementation of the Commission's policies;
- (d) Recommendation 19 - Pending the consideration of the structural changes recommended above, the powers and responsibilities of the Chairperson vis-à-vis the Commission, should be clearly defined. Specifically, the Commission should reserve strategic and other key matters, such as major decisions in relation to resources and senior appointments, for collective decision-making;
- (e) Recommendation 22 - The Government should review the remuneration package of the Chairperson in the context of the overall review of the advisory and statutory bodies. EOC should similarly review the remuneration package of CEO, if reinstated with an expanded function;
- (f) Recommendation 23 - In the context of the overall review of advisory and statutory bodies, the Government may consider the desirability and feasibility of establishing a nominating committee (comprising Government officials and representatives of key stakeholders) to assist in the appointments to EOC and other major boards and committees, and issuance of a press release after each key appointment attaching the appointee's detailed curriculum-vitae to demonstrate that his/her qualifications and experiences are impeccably linked to the work of EOC and hence eminently qualified for the position;
- (g) Recommendation 25 - To ensure stability and facilitate longer-term planning, the Chairperson should normally be appointed for a three-year term, renewable once for another term of not exceeding three years; and
- (h) Recommendation 30 - To enhance collective leadership, the Government may consider appointing a Deputy Chairperson, who could act as the Chairperson in his/her temporary absence or if the office of the Chairperson is vacant.

### Reviews conducted by EOC in 2004

8. Following the incidents relating to EOC in 2003, EOC initiated two internal reviews, i.e. the Organizational Review and the Human Resources Management Review which were completed in late 2004. Both reviews recommended, among other things, 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 would be able to maintain effective management of EOC's affairs even though in a part-time capacity.

### Review conducted by the Home Affairs Bureau

9. In response to the recommendations of the Panel of Inquiry to enhance the corporate governance of EOC, the Home Affairs Bureau (HAB), the then housekeeping bureau of EOC conducted a review of the corporate governance of EOC and 14 other non-departmental public bodies. According to the HAB review, all these non-departmental public bodies were governed by a management board. There were two types of boards -

- (a) a management board which consisted of a part-time chairman and part-time members, supported by a CEO who was the administrative head of the organisation; and
- (b) a management board which consisted of a full-time executive chairman and part-time non-executive members, with the executive chairman also being the administrative head of the organization.

Of all the 15 public bodies, only EOC had an executive chairman. According to HAB, a non-departmental public body with a non-executive chairperson and a CEO as the administrative head of the organization was clearly the norm of good corporate governance. It provided an effective system of checks and balances. As the corporate governance of EOC was not in line with this norm, HAB proposed to separate the posts of the Chairperson and CEO of EOC.

### **Deliberations of the HA Panel**

#### The Administration's proposal

10. The Administration consulted the HA Panel on the proposal to separate the posts of Chairperson and CEO of EOC at its meeting on 13 January 2006. The Administration advised the HA Panel that if the composition and structure of EOC was to be changed to enhance its corporate governance, SDO would have to be amended -

- (a) so that the Chairperson of EOC was no longer an executive chairman, but a non-executive chairman;
- (b) so that a non-executive member of EOC might be appointed to be the deputy chairman of EOC;
- (c) so that a non-executive member could be designated to act as chairman of EOC in the absence of the chairman and the deputy chairman;
- (d) to empower CE to appoint a CEO; and
- (e) to make CEO an executive member of EOC.

#### Issues and concerns raised by members

11. Some members expressed serious concern about the impact of the separation proposal on EOC and the public's perception of EOC's independence. They considered it inappropriate to compare the management structure of EOC with that of other public bodies which had very different nature of business, such as the Airport Authority and the Hong Kong Tourism Board. These members also considered that the Administration had failed to appreciate the unique nature and role of EOC in the protection of human rights, the independence of which was fundamental. They further queried whether the separation proposal should also be made applicable to the Office of The Ombudsman and the Office of the Privacy Commissioner for Personal Data ((PCO) which also did not have a management board.

12. The Administration responded that during discussions of the EOC incidents by the Legislative Council (LegCo) in 2003-2004, the most frequent criticism expressed by Members was that the relevant EOC Chairperson had acted on his own without any safeguard to check his powers. In order to enhance the corporate governance of EOC and provide better checks and balances, EOC's policy-making function should be exercised by a management board consisting of a non-executive chairman and members and its executive function should be exercised by a CEO who reported to the board. As pointed out in the report of the Panel of Inquiry, various public organizations had already modernized their governance structure since the establishment of EOC, and it was both recommended in the report of the Panel of Inquiry as well as the reports of the two internal reviews conducted by EOC that the post of CEO be reinstated.

13. The Administration also explained that EOC was different from PCO and the Office of the Ombudsman in that it was the Commission to exercise the powers of EOC whereas for PCO and the Office of The Ombudsman, powers were vested in the Privacy Commissioner and The Ombudsman respectively. For EOC, all policies and decisions should be discussed and approved by the Commission, not by the Chairperson alone. However, the decision-making functions of PCO and the Office of The Ombudsman were exercised respectively by the Privacy Commissioner and The Ombudsman personally. For example, the Personal Data (Privacy) Advisory

Committee established under the relevant Ordinance only played an advisory role and could not exercise the powers vested in the Privacy Commissioner. As the separation proposal was aimed at strengthening the governance of an organization by its governing board, it was appropriate for EOC, but not for PCO or the Office of The Ombudsman.

14. Members had requested the Administration to explain why it had proposed to appoint a full-time executive EOC Chairperson when the Sex Discrimination Bill was drafted and why it had then come to a different view that the EOC Chairperson should be a non-executive position appointed on a part-time basis.

15. The Administration responded that the Administration and the Legislature had both considered that the appointment of an executive Chairperson was the best mode of governance for EOC when the legislative proposal for the establishment of EOC was discussed by LegCo. According to the Administration, the proposal for a full-time Chairperson was made having regard to the importance and complexity of the work of EOC and the fact that EOC would be going through pioneering times. With experiences gained in the past decade, the Administration had come to a view that this was, however, not the best mode of governance. The Administration reiterated that the separation proposal was put forward on the following grounds -

- (a) there had been calls for the Administration to enhance the checks and balances for the internal governance of EOC as there was concern whether there was over-concentration of power in the full-time executive chairperson;
- (b) experiences had proven that separating the role of chairperson from the executive arm of an organization was preferable, as seen from the composition of the governing boards of the Mass Transit Railway Corporation and Urban Renewal Authority; and
- (c) splitting the posts of the EOC Chairperson and CEO and reinstating the latter was recommended in the report of the Panel of Inquiry as well as in the reports of the two internal reviews conducted by EOC.

16. Members considered that an executive Chairperson who had the vision and leadership and possessed strong executive ability was of particular importance to EOC. Some members expressed concern that the separation proposal would result in a situation that EOC would become executive-led and the Chairperson being sidelined. They considered that the crux of the problem as reflected in the EOC incidents laid with the politicization of the appointment of EOC Chairperson, and the Administration should learn from the lesson. Referring to Recommendation 23 in paragraph 7(f) above, they expressed concern about the lack of transparency in the appointment process of the EOC Chairperson and members. They pointed out that it was a common practice in overseas places to establish nominating committees to assist in the appointments to important public bodies.

17. The Administration responded that not many overseas countries had adopted the practice of establishing nominating committees. Such practice had been adopted in the United Kingdom (UK) for a short time only and whether or not it was the best way to identify suitable candidates for appointment to advisory and statutory bodies had yet to be proven. The Administration had collected the following preliminary information on overseas experience, and the human rights institutions in two out of the five jurisdictions included in the study had non-executive chairpersons -

- (a) the human rights institutions in UK and Northern Ireland both appointed non-executive chairpersons;
- (b) Canada and New Zealand both appointed full-time executive chief commissioners for human rights; and
- (c) the human rights institution in Australia appointed an executive president.

To enhance transparency, the Administration would issue a press release to announce new appointments to EOC with the background of the appointed Chairperson provided.

18. In response to the concern whether the post of the EOC Chairperson would become a part-time position, the Administration clarified that it was only proposing to amend SDO so that the Chairperson was no longer an executive chairman, but a non-executive chairperson. The Administration was not proposing that the post had to be a part-time position. Whether there was still a need for a full-time non-executive chairperson after EOC had reinstated the post of CEO could be further considered.

#### EOC's response to the separation proposal

19. The Chairperson of EOC expressed the view to the HA Panel that while it was the right direction to enhance its organisational structure, the impact of the proposal on the stability of EOC and staff morale had to be carefully considered. The post of CEO, if reinstated, would probably be the one who had the most frequent contacts with the stakeholders and, theoretically, CEO might participate even more than the Chairperson in the work to promote human rights and equal opportunities. The respective role and functions of the Chairperson and CEO had to be made clear if the proposal was to be implemented.

#### Follow-up action to be undertaken by the Administration

20. The Panel requested the Administration to provide a paper to explain the justifications for the separation proposal, an analysis of the merits and demerits of the proposed split of posts, how the functions and powers between the EOC Chairperson and CEO would be separated, and to give a detailed analysis of the policy implications of the proposal before introducing the relevant legislative amendments into LegCo.

21. The Administration agreed at that time to provide a paper on the proposal for consultation with the HA Panel, after it had collated the views received from EOC and the relevant bodies. It also undertook to provide a timetable to the HA Panel in due course.

22. In April 2007, the Administration advised the HA Panel that since EOC would be the implementing agent for the Race Discrimination Bill (RDB) which was being scrutinized by LegCo, that was not the appropriate time to examine the separation proposal. The Administration would consider looking into the matter in light of the implementation of RDB (which was enacted in July 2008).

### **Latest development**

23. The Constitutional and Mainland Affairs Bureau became the housekeeping bureau of EOC since July 2007. In March 2009, the Director of Audit published Report No. 52, Chapter 3 of which covers a review of the EOC activities. On corporate governance, Audit has noted that there has been a lack of progress after the meeting of the HA Panel held in January 2006. Audit has recommended that the Secretary for Constitutional and Mainland Affairs should expedite action to take the matter forward and bring it to a satisfactory conclusion. The relevant Administration's response (paragraphs 2.13 of Chapter 3 of the Audit's Report) is reproduced in **Appendix I** for members' reference.

### **Relevant papers**

24. Members may wish to refer to the minutes of the relevant meetings of the Panel as well as the relevant papers provided by the Administration and EOC as set out in **Appendix II**. Soft copies of these documents are available at the website of the Legislative Council at <http://www.legco.gov.hk>.



## Response from the Administration

2.13 The **Secretary for Constitutional and Mainland Affairs** accepts the audit recommendation. He has said that:

- (a) the CMAB will take forward this matter and bring it to a conclusive stage;
- (b) in view of the strong reservations expressed by some LegCo Members in January 2006, the Government had withheld action on the separation proposal;
- (c) in the light of the audit recommendation, the CMAB has reviewed the relevant considerations, including the reservations expressed by LegCo Members in January 2006. The following are valid concerns:
  - (i) the EOC is a very important human rights institution. Due to this unique nature, it is 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;
  - (ii) the separation proposal may result in a situation under which the EOC would become executive-led;
  - (iii) it would be important for the EOC to continue to have a Chairperson who has the vision and executive authority; and
  - (iv) the CMAB should be mindful of any possible public perception that the separation proposal may undermine the EOC's independence in carrying out its functions;
- (d) as for operational considerations, there is no indication that the EOC has faced fundamental difficulties in its operations under its current structure. The EOC has been performing its functions steadily in the elimination of discrimination and promotion of equal opportunities;
- (e) in terms of governance, the major policies and decisions of the EOC are not made by the EOC Chairperson alone, but discussed and approved by the EOC Board collectively. The existing checks and balances system within the EOC has generally served its functions; and
- (f) LegCo Members had expressed some clear reservations previously about the separation proposal. In taking forward discussions on this matter, the CMAB will take into account any further views to be expressed by LegCo Members and the relevant quarters of the community.

## List of relevant documents

**Proposal on separation of the posts of the Chairperson and  
the Chief Executive Officer of the Equal Opportunities Commission**

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
Panel on Home Affairs	21 March 2005	<p>Equal Opportunities Commission's (EOC) paper entitled "EOC Work Review of 2004 and Future Work Plans" [LC Paper No. CB(2)773/04-05(01)]</p> <p>Administration's paper entitled "Appointment of Chairperson of EOC" [LC Paper No. CB(2)777/04-05(01)]</p> <p>Minutes of meeting on 4 February 2005 [LC Paper No. CB(2)1081/04-05]</p> <p><a href="#">Report of the Independent Panel of Inquiry on the Incidents Relating to EOC</a></p> <p>Background brief on "Termination of the employment of the Director (Operations) designate by EOC and other related incidents" prepared by Legislative Council Secretariat [LC Paper No. CB(2)1003/04-05(01)]</p> <p>Administration's paper entitled "Recommendations made in the Report by the Independent Panel of Inquiry on Incidents Relating to EOC" [LC Paper No. CB(2)1083/04-05(07)]</p> <p>EOC's response to the recommendations made in the Report by the Independent Panel of Inquiry on Incidents Relating to EOC [LC Paper No. CB(2)1083/04-05(08)]</p> <p>Minutes of meeting [LC Paper No. CB(2)1468/04-05]</p>
	20 October 2005	<p>Minutes of meeting [LC Paper No. CB(2)761/05-06]</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
	13 January 2006	<p data-bbox="826 248 1422 322"><a href="#">Report of the Independent Panel of Inquiry on the Incidents Relating to EOC</a></p> <p data-bbox="826 365 1422 600">Administration’s paper entitled “Implementation of recommendations in : (a) the Report of the Independent Panel of Inquiry on the Incidents Relating to EOC; and (b) two other internal review reports of EOC” [<a href="#">LC Paper No. CB(2)786/05-06(01)</a>]</p> <p data-bbox="826 683 1422 792">Administration’s paper entitled “Interim Report No. 15 - Review of the Corporate Governance of EOC” [<a href="#">LC Paper No. CB(2)786/05-06(02)</a>]</p> <p data-bbox="826 882 1422 1151">EOC’s paper entitled “Implementation of recommendations made in the Report of the Independent Panel of Inquiry on the Incidents Relating to EOC and the recommendations made in two other reports of the internal reviews conducted by EOC” [<a href="#">LC Paper No. CB(2)786/05-06(03)</a>]</p> <p data-bbox="826 1240 1422 1509">Background brief on “Implementation of the respective recommendations of the Independent Panel of Inquiry on the Incidents Relating to EOC and the two internal reviews conducted by EOC” prepared by Legislative Council Secretariat [<a href="#">LC Paper No. CB(2)786/05-06(04)</a>]</p> <p data-bbox="826 1599 1422 1666">Minutes of meeting on 13 January 2006 [<a href="#">LC Paper No. CB(2)1012/05-06</a>]</p>
	13 April 2007	<p data-bbox="826 1722 1422 1832">List of follow-up actions [<a href="#">Appendix II to LC Paper No. CB(2)1493/06-07</a>]</p>