



Our Ref.: C/CGC&PAIBC, M32103

20 December 2004

The Hon. Bernard Chan,
Chairman of the Panel on Financial Affairs,
Legislative Council Secretariat,
3rd floor, Citibank Tower,
3 Garden Road,
Central, Hong Kong.

Dear Mr. Chan,

**Proposal of splitting the post of the chairman of the SFC
into a chairman post and a chief executive officer post**

I am writing in response to your invitation to provide views on the subject proposal. We thank you for inviting the Hong Kong Institute of Certified Public Accountants' (HKICPA) views on this matter. Our comments below relate to issues of principle and are not intended, either explicitly or implicitly, to be a reflection on the existing operations of the Securities and Futures Commission (SFC) and its office bearers.

A. The proposal

The HKICPA supports the principle of splitting the post of the chairman of the SFC into the separate positions of chairman and chief executive officer (CEO), so as to distinguish the duties and functions of the chairman from the CEO and avoid the concentration of authority in one position. This is in line with good corporate governance practice and is one of the recommended best practices advocated by the HKICPA in the Institute's public sector corporate governance guide, entitled "**Corporate Governance for Public Bodies – A Basic Framework**", published in May this year. We have also advocated the same for a number of years in our recommendations for the private and listed company sectors.

As suggested in paragraph 9(b) of the paper from the Administration, splitting the posts would also be useful from the point of view of enabling the CEO to be able to consult the chairman on major issues. This view we also support and is one practised by the HKEx, another financial market regulator.

By way of background, the HKICPA's guide provides a basic framework of corporate governance principles and recommended best practices for public sector organisations. It is directed at governing boards of public sector bodies and aims to assist the governing board to understand fully its role and responsibilities and to discharge its responsibilities efficiently and effectively.

--- A printed copy of the [guide](#) is enclosed for your reference.



B. Chairman of the SFC

(i) Executive or non-executive

In order to avoid any confusion of roles and overlapping of responsibilities, both from the perspective of internal management and external perceptions, in our view, the chief executive should have line responsibility for all aspects of executive management of the SFC and the chairman should ideally be an independent non-executive member of the governing board.

(ii) Independence

We consider that it is important for any chairman of the SFC be, and to be seen to be, free from bias and independent from external influence, so as to preserve the integrity, reputation and image of the SFC as a credible and independent market regulator. In this regard, the Institute agrees with the requirements set out in paragraph 14 of the Administration's paper on the proposal, namely, that the chairman should not:

- be a director of any listed company in Hong Kong; or
- have any material interest in any principal business activity of, or be involved in any material business dealing with, a listed company, or any person or institution engaged in activities regulated by the SFC.

We are of the view that the above conditions should apply, not only during the chairman's tenure of the office, but also extend for a certain period after his term of office has ended.

(iii) Role of the chairman

The role and responsibilities of the chairman should be formally defined in writing to include responsibility for providing strategic direction to the board and effective leadership in implementing the board's work, so as to ensure that the governing board can successfully discharge its overall responsibility for the activities of the SFC.

It is noted that paragraph 8 of the Administration's paper sets out briefly the various responsibilities of the chairman. We would suggest that some of the responsibilities contained therein could be more clearly defined. Our observations are as follows:

8(b) setting agenda and establishing priorities

As regards "setting agenda", this could cover, (a) determining the agenda of board meetings or (b) defining the mission and strategic objectives/direction for the governing board and the organisation as a whole, or both (a) and (b). In our view, the chairman's role entails driving (a) and being a principal participant in (b). In relation to this item, therefore, we would suggest that the relevant responsibilities should be further clarified and elaborated upon.



8(c) *facilitating effective contribution of non-executive directors (NEDs)*

We consider that the chairman's role should include facilitating and encouraging a full and effective contribution to the board by all board members, including NEDs.

8(d) *representing the SFC publicly, in liaison with local and international financial institutions and other stakeholders*

We consider that one of the chairman's roles should be to ensure that the SFC communicates effectively with its stakeholders. As to whether the chairman or another person (e.g. the CEO) should be the public face of the SFC, this is, to some extent, a matter of style and of the personalities of the individuals involved. We would suggest that there is no need to adopt a hard and fast rule, although we acknowledge that the decision as to who represents the public face of the organisation, on which occasion, could well have a bearing on the issue of who, in the eyes of the public, should be held accountable for any major deficiencies. The question of the detailed allocation of roles of representation between the chairman and the CEO on different issues could be agreed between the chairman, the CEO and the governing board in due course.

In the light of the above, we believe that it would be helpful if the key responsibility of the CEO set out in paragraph 9(c) of the Administration's paper were to be more clearly-defined, so as to avoid any confusion or overlapping of the roles and responsibilities of the CEO and the chairman:

9(c) *developing and delivering the strategic objectives agreed with the governing board*

As we see it, there could be a conflict between the responsibilities referred to in paragraphs 8(b) and 9(c). The responsibility for "developing" the strategic objectives of an organisation should be the role of the governing board, whereas the CEO's responsibilities should include implementing the policies and achieving the strategic objectives determined by the board. Nevertheless, the CEO may also contribute towards the development of the strategic objectives.

We would like to draw your attention to **Section 6** of our public sector corporate governance guide – ***Organisational Structures and Processes***, in which the respective roles and responsibilities of the governing board, the functional board committees, the chairman, the non-executive members of the board and the executive management of the organisation are set out. The Panel on Financial Affairs may wish to make reference to the Institute's guide when considering the specific roles and responsibilities of the chairman and the CEO.

We would also recommend that, apart from having well-defined roles and responsibilities, the respective accountabilities of the chairman and the CEO should be established clearly. We suggest that the chairman should be accountable to stakeholders for the SFC's policy and management issues, whereas the CEO should be accountable to the governing board for the operation and performance of the SFC and the implementation of the board's strategy and policies.



(iv) Part-time or full-time

We are of the view that it is not necessary to define the chairman as either a “full-time” or a “part-time” chairman. The role and responsibilities of, and expectations on, the chairman should be specified clearly and in some detail and, thereafter, the incumbent should be given the flexibility to decide how much time is required to fulfil the requirements of the position.

It is essential that the chairman should have, not only the competence to undertake the prescribed role and responsibilities, but also sufficient time and dedication to devote to the SFC’s affairs and the ability to obtain the support and confidence of the governing board members.

C. Other matters

(i) Remuneration

In our view the non-executive chairman of the SFC should be adequately remunerated having regard, on the one hand, to the role and responsibilities of the position and, on the other hand, to the fact that he should be non-executive and not an employee of the SFC.

(ii) Identification of independent non-executive directors

As a general matter, those members of the governing board of public sector organisations that are regarded as being independent non-executive directors (INEDs), as opposed to being only NEDs, should be clearly identified in the organisations’ annual report and other appropriate external reports, and the criteria for assessing independence should be made clear.

We hope that you find our comments to be useful and constructive. If you have any questions on them, please contact the undersigned or Mr. Peter Tisman, Technical Director (Business Members and Specialist Practices) at the Institute.

Yours sincerely,

WINNIE C.W. CHEUNG
CHIEF EXECUTIVE & REGISTRAR
HONG KONG INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

WCC/PMT/ML
Encl.