

SUBMITTED ELECTRONICALLY

Date: 23rd August 2007

Dear Sir/Madam,

Re: Draft Code of Governance for Charities & Institutions of a Public Character (IPC)

HIM Governance is an independent governance services and solutions organisation, based in Singapore and operating throughout South-East Asia.

We welcome the opportunity to respond to consultation papers, and take a close interest in legislative and regulatory developments. The development of an environment conducive to both the sustained success of the charities sector and the protection of donors' and other stakeholders' interests is of paramount importance. Recent events have highlighted the need for a review of the corporate governance practises of the charities sector, and the Draft Code of Governance for Charities & Institutions of a Public Character (IPC) ("the Code") goes some way to addressing these concerns.

We include in our feedback some general comments on the Code and enforcement, and hope that these contextualise our comments in later sections.

I hope that you will consider our comments and will take them as constructive input to the continuing development of corporate governance in Singapore. If you would like to discuss our comments further, please contact David Smith in the first instance (+65 6287 1919, e-mail: david.smith@himgovernance.com.sg).

We address specific questions below. We understand that some or all of our comments may be made public.

Yours sincerely,

Tan Lye Huat
Chief Executive Officer,
HIM Governance Pte Ltd

General Comments

1. We believe that the Code should include, at the outset, a more complete set of general principles, rather than be limited to what is possible for the time being. These principles should form the basis of subsequent update and enhancements to the Code.
2. We note a significant emphasis on the work of the Board, and its inclusion and mix into aspects of Management. The Code should be careful not to over-extend the governance role of the Board into the Management of the charity. There should be a greater emphasis on the various roles of the Management and the Board, as well as a more in-depth discussion on the separation of Management and Board.
3. The draft Code includes a proliferation of terms such as “shall” in various guidelines. The “comply or explain” nature of the code would perhaps indicate that “should” is a more appropriate term.
4. Related to the “comply or explain” philosophy that is utilised, we would suggest that the final Code include a guideline on the nature of comply or explain, its underlying philosophies, as well as practical advice for organisations on how to implement in a “comply or explain” environment. This would reduce ambiguity that may exist over the nature of the Code, and mitigate the risk that organisations might not adequately explain where there are deviations, or understand that deviations are permitted under such a regime.
5. Furthermore, we are of the view that the Code is overly procedural and prescriptive in some places; we believe that, to the extent that they are deemed necessary, there is scope to remove some procedural aspects of the draft and replace them into a separate annex, or a different guidance document altogether. The Code should be focused on strong and broad principles, from which guidelines for practise should stem.
6. On a related point, we would like to comment that the ethos and structure of the Code would appear to be at odds with the notion of top-down governance from a Board perspective; there are some areas, as will be commented on, that could be removed into a secondary document; some areas could be subordinated within the document to reflect their placement in governance; some areas could be repositioned to stress their importance in governance; whilst others may need drawing out and expanding on to emphasise importance to Board governance.
7. Finally, we believe that guidelines should be labelled as such throughout the document, following on from General Principles, so as to provide greater clarity to readers.

Introduction and Guidelines

8. We are of the view that the introduction should make more reference to the moral ownership of the charity/IPC, and should be more explicit about the role the charity/IPC plays in the community with respect to these moral owners.
9. Whilst the tiered guidelines are of merit, we believe that a paragraph that promotes aspiration to high levels of corporate governance would be of use in the “Tiered Guidelines” section. This would serve to promote higher levels of corporate governance, whilst highlighting that good corporate governance is a constant process, rather than a static achievement.
10. Footnote 3 of page 3 states that “Large IPCs shall adhere to guidelines...”; we are of the view that, given the comply or explain nature of the documents, the terminology “Large IPCs shall *observe* guidelines...” might be preferable.
11. Finally, we believe that a page of definitions and abbreviations might provide a useful reference tool at the close of this section.

Section One - Strategic Planning

12. We believe that the final paragraph of the General Principle should be amended to read as follows: “The vision and mission of the charity shall be clearly articulated, and the charitable work shall be carefully planned *and implemented/executed*”. This serves to place emphasis on outcomes rather than processes.

Section Two - Board Governance

13. The role of the Board is central to good corporate governance. Hence, we believe that a more appropriate document flow might include Section Two (Board Governance) being repositioned as Section One, and the current Section One (Strategic Planning) being repositioned as Section Two. This would emphasise the Board as the primary actor in the governance process; specifically, from the Board comes the strategic planning process.
14. In this section, a paragraph on the role and relationship of the Board in the governance process should be included for guidance and clarification.
15. The Council may wish to include statements on diversity in the Boardroom, to include racial, industry, gender, and talent diversity. This would ensure a balance of skills and traits in the decision making process, and would contribute to enhanced corporate governance and oversight.

16. Guideline 2.1.1 should include a more detailed consideration of independence. Further guidance should be provided as to what relationships might constitute a potential infringement on independence. Moreover, we believe that the wording of the guideline should be amended to read “~~...it is desirable that~~ the Board *should be* is wholly independent from the executive Management of the charity”, in order to stress the importance of independence.
17. We are of the view that, in Guideline 2.1.3, Board members should not be in a position to report to a Board member of the charity in the circumstances described. In such a situation, the Board member can be considered a staff of the charity, and should report to the appropriate executive.
18. We are of the view that the Council may wish to consider including term limits on Board members other than treasurers in the Code. Failing this, the Council should stress that Board members who have served a period of time greater than, say 10 years, be considered non-independent.
19. In Guideline 2.1.7, we would offer that the text should read “For agencies where Board *members* are elected...”.
20. We are of the view that Guideline 2.1.10 should be reclassified as “Enhanced”, rather than “Advanced”, given the importance of evaluation to the governance process. We would also suggest that such evaluations should as a minimum include the Board (and its effective functioning over the period of review), and individual directors.
21. We would suggest that the document encourage the assessment of Board committees (and their effective functioning over the period of review, measured relative to each committee’s Terms of Reference document), and Chairpersons of Boards and committees. This ensures that both the processes and personnel are reviewed adequately. Personnel without process (and vice versa) cannot ensure good corporate governance alone.
22. In Section 2.2, the Code should state that each committee listed should be established with an explicit and documented terms of reference.
23. Section 2.3 (title and accompanying text) should be altered so as to include “Board and Committee Meetings” so as to ensure best practise across all instruments of corporate governance.
24. The council may wish to state that attendance at Board and committee meetings (guideline 2.3.2) be disclosed in relevant documents, such as the annual report of the organisation. This would allow stakeholders to sufficiently consider the contributions made by each member.
25. We believe that Guideline 2.3.2 should be reclassified as “Basic” rather than “Enhanced”, given that adequate attendance at Board and Committee meetings is a basic requirement of good corporate governance.

Section Three - Conflicts of Interest

26. We have no comment to submit on this section.

Section Four - Programme Management

27. We believe that Guideline 4.4 should be reclassified as “Basic” rather than “Enhanced”, given the importance of evaluating the impact of programmes and their relevance to mission and objectives.

Section Five - Human Resource Management

28. We believe that Guideline 5.1.3 should be reclassified as “Basic” rather than “Enhanced”, given the importance of ensuring that only proper and qualified persons be recruited as staff of the organisation. For smaller organisations, screening could be provided and funded by a central body, such as a ministry or related unit. Currently, these guideline applies to only organisations with gross receipts of \$10million or greater. The importance of conducting background checks on persons who may handle or control such a sum of money is considerable, and should be a priority of the Council *vis-à-vis* this section of the Code. This would be achieved by reclassifying the guideline as “Basic”.

29. Guideline 5.1.5 should be rewritten to explicitly include the CEO, so as to provide guidance to organisations that this evaluation is of significant importance.

30. We believe that Guideline 5.1.8 should be reclassified as “Enhanced” rather than “Advanced”, given the importance of continuing education and training to the efficiency and effectiveness of the organisation. We recognise, however, that smaller entities may have difficulty meeting such a requirement, and as such do not recommend it be reclassified as “Basic”.

31. We believe that Section 5 should include a statement that encourages the organisation to develop a whistle-blowing policy. This could be applied to the “Basic” section, and could include the development of a generic paper by a central body, such as a ministry or related unit. That body could also provide an anonymous telephone line/comment box to be used as appropriate by whistle-blowers.

Section Six - Financial Management and Monitoring

32. We believe that the General Principle should include a more explicit reference to (financial and non-financial) Risk Management, and that this be continued throughout the Section. This could include guidelines making reference to financial limits/controls; internal controls; and other non-financial risk Management issues.
33. We do not believe that sub-section 6.3 is relevant to corporate governance (inasmuch as it is a Management-linked logistical/procedural issue), and should be removed. It may be appended to another relevant document such as the IPC charter, or other such guidance.
34. Notwithstanding our comments above, we believe that guideline 6.3.5 is overly prescriptive. In order to ensure maximum efficiency of reserves, and to ensure that public donations need not be a primary source of receipts, the Council should make reference to the ability of organisations with substantial reserves to make investments as suitable. We acknowledge that this might not be suitable for all, and stress the need for professional and suitably qualified financial advisors.

Section Seven - Fund-Raising

35. We believe that the focus of the document on Board-level corporate governance might be better communicated were sub-section 7.1.2 to be removed. It may be appended to another relevant document such as the IPC charter, or other such guidance.
36. We believe that the focus of the document on Board-level corporate governance might be better communicated were guideline 7.3.2 to be removed. It may be appended to another relevant document such as the IPC charter, or other such guidance.
37. We believe that the focus of the document on Board-level corporate governance might be better communicated were sub-sections 7.5.2 to 7.5.5 (inclusive) to be removed. They may be appended to another relevant document such as the IPC charter, or other such guidance.
38. We believe that the focus of the document on Board-level corporate governance might be better communicated were sub-section 7.6.3 to be removed. It may be appended to another relevant document such as the IPC charter, or other such guidance.
39. With regard to the guidelines contained within sub-section 7.7, we believe that an additional guideline should be included in the "Basic" section, echoing the details contained within guideline 7.7.3 (Enhanced), but with less provisions and more general statements of principle. This ensures that smaller charities/IPC's are aware of the issues that surround joint-ventures, and take some steps to mitigate risk and aid planning.

Section Eight - Disclosure and Transparency

40. As a general comment pertaining to Section Eight, we would stress that communication with stakeholders is a two-way process; currently, emphasis in this section is placed on communication to stakeholders, with little emphasis given to consultation and dialogue with stakeholders and moral owners. Maintaining an effective dialogue with stakeholders is central to maintaining relevance and effectiveness, for charities/IPC, and greater detail should be added to this section to this effect.
41. With regard to guideline 8.1.3, we would reiterate our comments made in this document with regard to the non-binding nature of disclosure of this document, as compared to the regulatory backing that the Singapore Code of Corporate Governance (2005) (contained within rule 710 of the SGX-ST Listing Rules. Nonetheless, we welcome the encouragement (albeit one we believe should be backed by legislative requirement) of organisations to issue explicit compliance statement, and believe that such unambiguous statements assist stakeholders in assessing the governance of a charity/IPC without hindrance/obfuscation.
42. We are of the view that guideline 8.1.5 be amended so as to encourage full disclosure of the top 3 executives, to explicitly include both pecuniary and non-pecuniary emoluments. Given the importance of disclosure of remuneration in a sensitive sector, charities/IPC should be encouraged to be as transparent as possible in this way.

Section Nine - Public Relations and Corporate Communications

43. We have no comment to submit on this section.