

ESL OPERATING FRAMEWORK

March 2011

1. Overview / Background

1.1 Establishment

ESL is a company limited by guarantee established under the Companies Ordinance (Cap.32) and is a registered charity. The original Memorandum of Association was registered on 31 August 1994 and the company began its operations as a corporation on 6 September 1994. The Articles of Association were amended in September 2005. ESL was set up to provide kindergarten education, language classes and extra-curricular activities. It also operates two Private Independent Schools, Renaissance College in Ma On Shan and Discovery College in Discovery Bay.

1.2 Relationship with ESF

The relationship between ESF and ESL was reviewed in detail by Mayer Brown JSM and KPMG at the request of the ESF Board meeting on 11 May 2010. The review considered the relationship from operational, legal and accounting perspectives and concluded that the current structure is acceptable from a risk control perspective, and that there would be no tangible benefit from changing the existing arrangements.

The review opined that ESF has de facto control of ESL, making ESL effectively a subsidiary of ESF.

1.3 Purpose of the Operating Framework

The Operating Framework sets out the principles underlying the relationship between ESF and ESL and describes the way in which the two parties shall operate, including the responsibilities one has for another.

2. General Principles

2.1 Policies and Procedures

The operational policies and procedures of ESF are applied in common to ESL; its members and directors are bound by the ESF Code of Conduct and the ESF Professional Code applies to all staff in ESF and ESL. Where, of necessity, policies and procedures differ, for example, admissions to the kindergartens and PI schools, a separate policy and set of procedures is established.

2.2 A non-subvented Separate Legal Entity

ESL is a registered charitable entity exempt from tax under section 88 of the Inland Revenue Ordinance. None of its private independent schools, kindergartens, or after-school Language and Sports programmes receives any government subvention for its daily operations.

2.3 Financial Independence

ESL's financial accounts are kept independent of those of ESF. ESL relies on ESF to provide the following support services: educational advice, admissions, HR, finance & procurement, facilities development and information technology. ESF charges ESL an annual management and administration fee for the provision of such services. The fee is set at \$3.5 million for 2010/11 and is determined by the proportion of time employees at ESF Centre spend on ESL matters during the year.

Other ESF-administered expenditures which are charged back to the individual schools or sections whenever such proportional costs can be reasonably determined include (but are not limited to):

- induction and training costs,
- insurance premiums (medical and general),
- professional and legal expenses,
- repairs and maintenance,
- rental of ESF-owned premises,
- IT operations and website management, and
- stationery and supplies.

2.4 Financial Relationship with ESF

ESL maintains its own set of accounts separate from ESF. A set of ESF consolidated accounts will be produced annually to show the combined financial position of the two organizations.

The legal structure of ESL means that no dividend or bonus can be payable to ESF. The Directors of ESL may, however, make donations to schools for school activities.

3. Governance

The governance of ESL is vested in its members who represent ESF stakeholder groups, and, indirectly in the Board of Governors of ESF through the Board's appointment of members to ESL. Representation from parents derives from the appointment of members from the Committee of School Council Chairmen. The management of ESL is vested in the Directors who are appointed by the members

3.1 ESL Members

The Articles of Association of ESL state that the maximum number of company members is 20 and the minimum is 4. Ordinary members must be appointed from the ESF Executive Committee (now the Board) with 2 coming from the Management Committee (now the Committee of School Council Chairmen). Honorary Members may be appointed by the Directors but have no voting rights.

Currently, there are 4 ESL Ordinary members who are members of the ESF Board of Governors and 2 ESL Ordinary members who are members of the Committee of School Council.

The members of ESL receive no remuneration for the duties they perform.

3.2 ESL Directors

The management of ESL is vested in the Directors of whom there must be not less than 2 and no more than 12. The Directors are appointed by the members at the Annual General Meeting and must retire at the Annual General Meeting each year.

Although there is no formal requirement, in practice four Directors are drawn from the Senior Management Team of ESF and the Chief Executive Officer of ESF has been elected Chairman.

The Directors of ESL receive no remuneration for the duties they perform.

3.3 Reporting

Regular reporting on the operations of ESL takes place during the year:

- i. Monthly financial reports of ESL are reviewed by the Directors.
- ii. The COO reports to the Directors on the operations of ESL, excluding the PI schools every two months, or monthly as required.
- iii. The COO provides an operational report to the members twice a year and to the ESF Board twice a year.
- iv. The annual audited accounts are posted on the ESF website (www.esf.edu.hk) and submitted to the EDB each year. Annual returns are filed to the Companies Registry.
- v. The performance of the PI schools is reviewed by the Senior Management team of ESF and the Education Team in the same way as ESF schools, the PI schools pay ESF for this service.

4. Operations

4.1 Policies and Procedures

The Policies and Procedures which govern ESF schools also apply to ESL operations. Where, of necessity, policies and procedures differ, for example admissions to the kindergartens and PI schools, a separate policy and set of procedures is established.

4.2 Private Independent Schools

4.2.1 Development and Operating Agreement

Pursuant to a Development and Operating Agreement (the "Agreement") dated 23 August 2006 between ESL and ESF, ESF has undertaken to construct, fit out and complete Renaissance College ("RCHK") and Discovery College ("DC") in order for the Company to operate RCHK and DC. The two primary-cum-secondary schools have a student capacity of 2,100 and 1,300 respectively. The original construction costs of the PI schools were funded jointly by ESF and the government. ESL is required to pay ESF all the Government capital grants received by it in respect of RCHK and ESF will bear any construction cost over and above the Government capital grants received for RCHK and DC. All additional capital expenditures of the two schools in respect of the school buildings, furniture and equipment are fully funded and owned by ESF.

In consideration for the provision of the school buildings, furniture and equipment by ESF, ESL agrees to pay an annual fee to ESF based on student enrolment. The total fee to be paid to ESF within 20 years from the commencement of the DOA of each school

will be equivalent to the funds ESF invested into the construction of the schools and a return of HIBOR plus 1%. The fee also serves to provide a steady stream of revenue to ESF in the future.

4.2.2 Governance

Section 4 (3) of the Ordinance states that the Foundation may delegate to a body corporate that is controlled by the Foundation (“controlled body corporate”) such matters in connection with its objects as it thinks fit including the ownership, management, administration or operation of any school or the provision of any educational service, and a reference in the Ordinance to the Foundation shall, unless the context requires otherwise, be construed as including a reference to any such controlled body corporate. ESL is therefore treated, for governance purposes, in the same manner as ESF schools and is subject to the provisions of the ESF Ordinance.

The PI Schools are represented on the ESF Committee of School Council Chairmen, Committee of Parents, Committee of Principals, Committee of Teaching Staff, and Committee of Support Staff.

4.3 Kindergartens

ESL currently operates 4 kindergartens (Tsing Yi, Abacus, Wu Kai Sha, and Hillside), with individual student capacities ranging from 176 to 352. The kindergartens are represented on the ESF Committee of Principals, Committee of Teachers, and Committee of Support Staff.

4.4 Language and Sports Sections

- i. ESL operates after-school language and sports programs in ESF and ESL schools. ESL rents school classrooms and facilities for these activities and pays a standard rental for such facilities. The standard rentals are reviewed annually. In the case of swimming pools, individual rentals are agreed directly with each school.
- ii. At two schools, SIS and KGV, ESL manages the external rental of the schools’ sporting facilities on behalf of the school. Instead of paying rental for the hire of the sports facilities at these two schools, financial compensation takes the form of an income agreement. The revenue derived from the rental of the schools’ sports facilities plus the revenue from ESL’s sports activities run at the school are shared on a split percentage basis between ESL and the school under this agreement. The income agreement is reviewed each year.
- iii. ESL is the preferred provider to schools for the after-school activities in the areas in which it operates, i.e. specified sports and languages. Schools may not rent their facilities to third party organisations which are direct competitors of ESL, or where those facilities have been requested by ESL, without approval from their School Council.
- iv. ESL has priority in renting schools facilities for these after-school activities and schools are strongly advised not to encourage open and direct competition for an activity that ESL provides at the school.

- v. An ESF policy document, “Relationship between ESL and Schools – Rental of Facilities for Out-of-School Activities” sets out the policy on the rental by ESL of school facilities. The ESF/ESL Schools Relationship Manual sets out the operational arrangements for the rental of the facilities. Both of these documents are reviewed and updated annually.
- vi. ESL Sports provides in-school sports coaching to schools on request, including the Schools Swimming Programme. ESL charges schools for the provision of these coaching services. Similar arrangements can be made for the provision of language teaching, if requested.
- vii. From time to time, ESL may add or remove activities that it runs using school premises.

4.5 Administration office (Cigna Tower)

ESL maintains a head office, currently located in 5/F Cigna Tower, 482 Jaffe Road, Causeway Bay, Hong Kong. The following functions are located in the Administrative Office:

- i. ESL management – the Chief Operating Officer, the Heads of Languages and Sports, the Financial Analyst and the Office and Administration Manager.
- ii. The ESL Customer Service Administration team – undertake administration related to enrolment and provide services for students on the sports and language programmes
- iii. Full-time Language teachers and Sports coaches
- iv. Hot-desk facilities for hourly language teachers and sports coaches.

4.6 ESL Systems

ESL maintains a number of systems to support its operations.

- i. The Information Management System (IMS) is a bespoke system to administer the Sports and Language programmes.
- ii. ESL email – ESL maintains a separate email platform from ESF, but its address book is integrated with that of ESF.
- iii. ESL website – ESL maintains a separate website from ESF, www.esf.org.hk

Operational IT support for ESL is outsourced currently to Top Cat, an independent operator.

The ESF crisis management plans incorporate all ESL systems.

4.7 Fees and budgeting process

Tuition fees are set separately for each of the PI schools and kindergartens, making reference to new initiatives in the year, adjustments to staff salaries and benefits, CPI changes, specific cost structure of the schools, and other market conditions. The PI schools are not subvented and their school fees are reviewed annually, taking into consideration the changes in their operating costs, the development needs of the schools and the fee levels of schools offering similar curriculum.

Course fees of Language and Sports sections are set primarily with reference to the market and staff costs.

The annual budgeting process is conducted by the Finance Department in conjunction with the COO's office. Input is gathered from the individual schools and section heads. Approval of the budget by the Directors takes place in May/June each year.

5. Support services

ESL benefits from a number of central support services, including:

- Education (strategic planning, assessment, reporting, CPD, admissions)
- HR management and support (recruitment, contracts, remuneration and benefits, systems support)
- Finance (budgeting, reporting, internal control and monitoring, billing, payroll, payments, banking, procurement, systems support)
- Facilities Development (major repairs and maintenance)
- IT (planning, systems support, data management, infrastructure)
- Communications (website management, marketing and fundraising, ESF/ESL wide communication)

A management and administration fee is charged to ESL each year (see 2.2).

6. Compliance

6.1 Internal audit

The operations of ESL are part of the Internal Audit Department's scope of work.

6.2 Code of Conduct

Code of conduct is imbedded in the Policies and Procedures of ESF/ESL. See 4.1.