

# Research on the Construction of “Soft Law” System of Social Governance in Hong Kong--Take the Governance and Internal Control Guidelines of Ngos as an Example

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**Abstract:** The social governance system in Hong Kong is relatively mature. The HKSAR Government has established and improved the governance structure of the government, the non-governmental organization, social groups, voluntary organizations and other multi-faceted entities working together to govern, a relatively complete “Soft Law” governance framework has been formed, effectively ensuring that Hong Kong’s social governance bodies continue to participate in social governance activities in a healthy, orderly and efficient manner, and playing an important role in promoting the overall prosperity, stability and progress of the HKSAR. Taking the “Soft Law” as an example, this paper analyzes the main ideas and characteristics of the “Soft law” mechanism construction in Hong Kong’s social governance, so as to clarify the core and key points of the “Soft Law” construction in Hong Kong, with a view to modern social governance “Soft law” mechanism to provide useful inspiration and reference.

## 1. Introduction

This paper takes the guide of “Governance and internal control of non-governmental organizations” in Hong Kong as an example, analyzes and studies the main characteristics of the “Soft law” mechanism construction in Hong Kong under the guidance of the government, and sums up the core key points of the “Soft Law” construction in Hong Kong, with a view to modern social governance “Soft Law” mechanism building to provide useful experience for reference.

## 2. Governance Change of Non-Governmental Organisations in Hong Kong

In the area of social governance, non-governmental organizations in Hong Kong are mainly involved in the development of society, with emphasis on the role of non-governmental organization in social welfare. In the early days of Hong Kong, the government and non-governmental organizations in Hong Kong carried out relief activities for social welfare undertakings, including relief work. In the 1960s and 1970s, governments began to fund voluntary agencies by establishing a system of discretionary funding. Mainly as an alternative source of funding for the agency to make up the difference in its operations. In the 1980s, government funding was replaced by a standard cost support system, known as accountability, in which the actual operating costs of an organisation were used as a support standard to increase accountability. In 2000, the government changed its funding management system to a lump sum grant (LSG) system. Under this institution, the government no longer sets resource cost controls on staffing, pay levels and targets for individual expenditure items, but only aggregate amounts, in the form of lump sum grant. Agencies have the flexibility to deploy funds but must maintain an efficient and high level of service with limited resources. Since then, the government (mainly Hong Kong Social Welfare Department) and ngos have jointly developed and launched the funding and service agreements (FSA) and service quality standards (sqss), which were fully implemented in 2002, to verify and assess the performance of ngos and enhance their accountability. These become binding

documents for governments (funders) and non-governmental organization (service operators) . At the same time, government investment also maintained at a high level. In recent years they have accounted for more than 20% of total social welfare expenditure and more than 1/4 of total economic assistance funds.

### **3. “Soft Law” Guidelines on Governance and Internal Control in Non-Governmental Organizations**

In collaboration with the non-governmental organization in the development of social governance and social services, the Hong Kong government and regulators have issued a series of “Work guidelines” in the form of informal legal instruments, “Practice manuals” and “Reference guides” to complement the implementation of laws and regulations and improve the system of governance rules for non-governmental organizations, in order to achieve the government’s role of advocating co-governance. This kind of “Soft law” mechanism has its own characteristics, clear functions and practical effects, and plays a guiding role of laws and regulations in practical operation, it has realized the effective interaction and coordination at the level of formal laws and regulations, government “Soft law” and non-governmental organizations “Soft Law”. As “Law is never abstract, only in the interaction between society and law can we truly understand the law and find the vitality of the law.”[1] Hong Kong’s “Soft Law” mechanism has realized the development value in the frequent interaction between the rule system. Taking the “Corruption prevention guide-governance and internal control of non-governmental organisations”(the “Guide”) as an example, it has the typical characteristics of the “Soft law” system that the government (the regulator) constructs in the form of industry guidelines, as a representative of the “Soft Law” system in Hong Kong, it has the following characteristics:

#### **3.1 Respectfully the High Degree of Autonomy in Institutional Governance**

The relevant regulatory authorities fully respect the independent right of self-management of non-governmental organizations, and formulate “Guidelines” for their work on the basis of non-mandatory principles, the guidelines clearly state that “Ngos, regardless of their size, enjoy a high degree of autonomy in their day-to-day operations.” [2]. The Hong Kong government, including relevant regulators, such as the independent commission against corruption, has advised rather than imposed or meddled in the governance of ngos. It embodies Hong Kong’s governance concept of maintaining a high degree of independence and flexibility in the autonomous activities of non-governmental organizations. [3] This idea runs through every aspect of the government’s “Soft Law” system, for example, in the NGO Board Reference Guide, the Social Welfare Department clearly states that “It is the responsibility of the Social Welfare Department to work with the NGO Board to meet the challenges of the new subvention system. But this does not mean that the social welfare department will point the finger and “Teach” the NGO boards what to do and how to do it. In fact, many NGO boards have taken the initiative to establish effective principles and procedures to guide their operations. The role of SWD is to facilitate the exchange of information, experience and best practices on corporate governance among ngos. In simple terms, our role is to support, not dictate.” [4] This a practical expression of consultation between the government and non-governmental organizations, to serve the objectives of open, transparent, efficient and accountable social responsibility, and to enhance joint efforts based on policies that improve the most beneficial governance structures.

#### **3.2 A Responsibility-Oriented Work Guide**

Although the non-governmental organization has a high degree of management autonomy, but because of its own special significance, it is still subject to the supervision of the relevant organizations. The guidelines also affirm the need to strengthen the self-governance of ngos, which receive substantial recurrent funding from the government and other sponsoring groups, [5] such as the Hong Kong Jockey Club, to provide the public with a wide range of social, medical and nursing services. They are still subject to government funding requirements in the development of

performance indicators, service quality standards and internal controls for key functions such as procurement and auditing. The main source of the HKSAR's responsibility for strengthening the supervision of non-governmental organizations is: first, non-governmental organizations receive a large amount of regular government funding, and in order to ensure that the funds allocated can really be used for reasonable "Standard" expenditures, non-routine risks in the use of funds do not occur and it is necessary to "Guide" non-governmental organizations. Another important obligation is for non-governmental organizations to take part in social and medical, educational, psychological and recreational undertakings. They should fully strengthen their own governance and shoulder their responsibilities to the society.

### **3.3 Adhere to General Guidelines Rather Than Specific Guidelines**

The "Guidelines" aim to provide general guidance on governance and internal control of non-governmental organisations (ngos) . They do not provide a means of addressing issues or problems that may arise in various circumstances. The interpretation of the relevant legislation in the "Corruption prevention guide" is of a general and general nature. It is intended to be introduced to non-professionals in plain language and is not a substitute for the original legislative provisions. "Guidelines" are meant to provide general procedures and rules for good governance, not to guide specific issues such as how to do the work and how to do it. It reflects the orientation of the "Guidance" appointing authority, which only grasps the rules and guidelines such as principles and procedures, and does not directly interfere in specific affairs, thus guaranteeing the flexibility and autonomy of non-governmental organizations in perfecting the governance structure. "Guidelines" often combine the hard laws and regulations of the relevant government to form a "Soft law" mode with strong operation supported by "Hard Law", which is easy to implement and bring into effect.

### **3.4 Full Agreement under the Mechanism of Consultation and Discussion**

One of the important attributes of "Soft Law" is that its enforcement effect is not guaranteed by force, but depends on the participants' identification and trust of the common will under the negotiation mechanism, therefore, this can be seen as a "Soft law" authority of the embodiment. Hong Kong's non-governmental organization "Soft Law" rules are also being established under such a consultative mechanism. The final formation of the "Guidance" is based on the premise of focusing on the common goal, and the basis for all parties concerned to communicate and negotiate to reach consensus has been completed, for example, the ICAC has consulted the Social Welfare Department, the Department of Health, The Hong Kong Council of Social Service and some major non-governmental organizations in advance, and after repeated consultations, a consensus has been reached. A reliable basis for guidance.

## **4. "Soft Law" the Organization Construction Related Ponder**

### **4.1 Focus on the Direction of Development of the "Responsive" Approach**

The development of "Responsive" law requires the improvement of order rules based on demand, "Responsive rather than open or adaptive, to demonstrate a responsible and therefore differentiated and selective ability to adapt." [6]. Especially in the grass-roots governance environment, multi-subject participation in the actual needs of co-governance. In order to adapt to the change of "Social governance", efforts should be made from many aspects. In the concept of action, in order to realize the transformation from management to service, all social administrative departments are the departments that serve the masses, and all social administrative work is the work that serves the interests of the masses, it is necessary to shift from the unified management system of the government in the past to a diversified and coordinated governance system between the government and various social subjects, and to promote a positive interaction between government governance and social self-regulation and residents' self-governance, we should change from control and regulation to guarantee by law, comply with the requirement of governing the country by law in an all-round way, take the spirit of rule of law as the guide, solve the difficult problems by legal means,

and promote the construction of the society under the rule of law with the legalization of social governance.

#### **4.2 Pay Attention to the Construction of “Soft Law” to Embody the Public Authority**

Although “Soft Law” is a form of expression of regulation, it is not a clear form of regulation in the formal law of the state, but it is based on the collective will to achieve consensus through consultation and consensus, it embodies the collective public character of a certain significance. The formulating subjects of “Soft Law” are pluralistic, some “Soft Law” comes from the policy and method of administrative organization, and some “Soft Law” comes from the consensus of non-governmental organizations. Some “Soft Law” comes from the consultation of interest groups, and some “Soft Law” comes from the common rules established by a certain cooperation. Therefore, we say that “Soft law” does not embody the public power of the national judicial official channels, but it also embodies the public nature of the collective will. Therefore, in the process of constructing the “Soft Law” mechanism, the consultation mechanism is fully used to establish the recognized authority in order to realize the practical effect of the “Soft Law” rules.

#### **4.3 Focusing on the Principle of Non-Compulsion**

In response law, coercion is replaced in the legal system by various systems of obligations that encourage self-reliance. Purpose takes the place of compulsion, and then occupies the central position in the formation of the social order ruled by law. Its typical characteristics include: problem-centered decentralized management instead of imperative management, encouraging consultation, sharing decision-making and justifying decision-making, regarding consent as a test of rationality, [7] and so on. One of the most obvious differences between “Soft Law” and national law is that it can not be enforced by the state force. Specifically, “Soft Law”, because it does not have the nature of public power, and is based on consultation and consensus, reflects the “Soft” nature relative to national law. The binding force of “Soft Law” comes from the agreement and promise of the members of the “Community”. As soft law is affirmed by the members of these communities, once soft law is put on the table as an agreement or promise, then it becomes a tangible institution. This system may have the entire public body collective to carry on the restraint to its member, or some stronger public body to carry on the restraint to the member collectively. [8]

#### **4.4 Pay Attention to Relative Procedural Safeguards**

“Soft Law” has the flexibility in the running procedure because of the pluralism of its main body and the strict procedure of non-judicature. However, it does not mean that “Soft law” does not have procedural requirements. On the contrary, “Soft Law” has rules guiding nature and must embody the procedural and serious nature of the rule mechanism. However, the procedural nature of “Soft Law” mainly serves the convenience of solving substantive problems, so it does not necessarily require the same strict procedural requirements as national legal system. Therefore, the procedural nature of “Soft Law” is always characterized by conciseness, convenience and direct disposal. In fact, the formal “Soft Law” in the study often has a complete procedural structure, similarly, for the construction of “Soft law”, “Procedural justice” is also an important source of “Soft Law” authority.

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