

**Extracts from the minutes of the meeting
of the Financial Affairs Panel held on 4 December 2000**

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Overseas duty visit

(LC Paper No. CB(1) 225/00-01(01))

2. Members noted the captioned information paper prepared by the Secretariat and agreed that the Panel should conduct an overseas duty visit to New York and London to study the regulatory regimes and market operations of these two leading international financial centres, as well as to establish direct links with regulatory bodies and market players in these places. They agreed to submit a paper to the House Committee for a bid for funds for the visit which was tentatively scheduled for early April 2001.

II Information Papers issued since last meeting

(LC Paper No. CB(1) 216/00-01 -- Publicity material on the Mandatory Provident Fund System;

LC Paper No. CB(1) 244/00-01 -- Progress report on review of public finances)

3. Members noted the captioned information papers issued since the last meeting.

III Date of the next meeting and items for discussion

(LC Paper Nos. CB(1) 225/00-01(01) and (02))

4. The Chairman reminded members that the next meeting of the Panel would be held on 11 January 2000 at 2:30 pm to discuss the following items:

- (a) Briefing by the Chief Executive of the Hong Kong Monetary Authority;
- (b) Review of the Growth Enterprise Market listing rules; and
- (c) Strategic Change Plan for the Company Registry.

(Post-meeting note: At the request of the Administration, item (b) had been deferred to a latter meeting of the Panel.)

5. The Chairman also informed members that at the invitation of the Hong Kong Exchanges and Clearing Limited (HKEx), a visit to HKEx had been scheduled for 18 January 2001 at 11:00 am. Members would be informed of the details in due course.

IV Banking (Amendment) (No. 2) Bill
(LC Paper No. CB(1) 255/00-01(04))

6. The Deputy Chief Executive, Hong Kong Monetary Authority (DCE/HKMA) briefed members on the proposed amendments to the Banking Ordinance (BO) (Cap. 155) in the Banking Amendment (No. 2) Bill.

Approval requirement for appointment of senior management of authorized institutions

7. Dr David LI said that the Hong Kong Association of Banks objected to the proposal to seek HKMA's approval for appointments of senior management of authorized institutions (AIs). The Association considered that the proposed approval requirement was an encroachment on the power of AIs. Mr Albert HO queried the need to introduce such a proposal which would bring significant changes to the existing supervisory framework for AIs and expressed concern about checks over HKMA's power in this respect.

8. In response, DCE/HKMA explained that the current approval requirement, which only covered the appointment of directors or chief executives of AIs, had presented a significant gap in the supervisory framework over AIs. Due to the trend that important responsibilities of AIs were increasingly delegated to the senior management, aside from the directors and chief executives of an AI its senior management also played a role in shaping the organization and making major decisions. Moreover, because of the development of matrix management, heads of key functional divisions in local branches of many foreign AIs were appointed by their headquarters and not by their directors or chief executives in Hong Kong. The new approval requirement would ensure that the appointed senior management of AIs was fit and proper. Furthermore, the amendment would bring the supervisory framework for AIs more in line with that of the Securities and Futures Commission (SFC) for securities intermediaries under which the responsible officers of intermediaries would require approval by SFC. DCE/HKMA also said that a "manager" under BO covered senior management who had specific statutory responsibility to manage the AI prudently and who was subject to the penalty provisions applied to directors and chief executives. However, the current definition of "manager" was outdated. It did not cover certain individuals who exercised important managerial functions. The definition therefore needed to be amended so that it can be used as a yardstick for determining which level of senior management should be subject to HKMA's approval. The proposed new definition of "manager" in the Bill should capture those "persons who were principally responsible" for the conduct of key business activities or functions of an AI, such as heads of retail banking, corporate banking, internal audit, risk management etc.

9. As regards the concern about checks on HKMA's power in this respect, DCE/HKMA stressed that HKMA had no intention to interfere with the appointment decisions of AIs. The proposal aimed at raising the level of corporate governance in the banking industry and ensuring that each AI was being managed by able individuals. He stressed that only under very rare circumstances, such as when it appeared that the

individual was manifestly unfit for the position he was appointed to, would HKMA disapprove the appointment. HKMA believed that the approval system could assist AIs in the appointment of their senior management by providing information which they might not have. HKMA would examine the knowledge, experience, skills, competence etc. of the person and check his previous record kept with HKMA to ensure that he was fit and proper for the appointment. He added that AIs aggrieved by HKMA's disapproval decisions could seek appeal and judicial review as appropriate.

10. On Mr NG Leung-sing's concern that the requirement might cause operational difficulties and increase administrative workload for AIs, DCE/HKMA advised that a provisional approval mechanism and grandfathering arrangement for existing managers would be introduced to minimize the administrative burden on AIs. A person appointed in writing by an AI to be a manager would be deemed to have been given the provisional consent of HKMA until such time that his appointment was formally approved or rejected by HKMA. A person who was a manager of an AI immediately prior to the commencement of the relevant section of the Bill would be deemed to have the consent of HKMA to take up such a position and no approval would be required when he was transferred to another managerial position within the same AI. Approval would be required when the same person was appointed to the senior management of another AI.

11. Noting that the approval requirement was in line with the practice adopted by the Financial Services Authority (FSA) in the United Kingdom (UK), members enquired about the practices in other major international financial centres. DCE/HKMA said that regulatory regimes varied from jurisdiction to jurisdiction because of their unique circumstances. The Financial Services and Markets Act recently enacted in UK provided that those persons who had significant influence over a bank's affairs should be subject to the approval of FSA. The proposal was also consistent with the "Guideline on Enhancing Corporate Governance in Banking Organizations" issued by the Basel Committee on Banking Supervision in September 1999.

Internet advertisement for deposits

12. Responding to Mr SIN Chung-kai's view that the scope of amendment relating to advertisements for deposits should be sufficiently broad to cover advertisements published through new technological means, DCE/HKMA advised that the definition of "advertisement" would be amended to cover different forms of advertising including those made orally or produced mechanically, electronically, optically, manually, or by any other means of technology. The new definition would be consistent with that to be adopted in the Securities and Futures Bill. The policy intention was that internet advertisements, wherever they originated, should be subject to regulation if they were targeted at Hong Kong people. HKMA would issue guidelines setting out the factors to be taken into account when considering whether an advertisement of an overseas financial service provider was targeted at members of the public in Hong Kong.

13. On whether telecommunications companies, internet content providers and

internet service providers should be subject to regulation, DCE/HKMA said that it was proposed that service providers which acted merely as a conduit of information to facilitate the dissemination of promotion materials, or which provided website hosting service and could prove that they did not exercise control over the content of the advertisements, would not be liable for the offence under the provision. As regards consultation with the telecommunications service industry on the proposed amendment, DCE/HKMA said that while HKMA had not formally consulted the industry, those service providers which HKMA had contact with in the context of the study group set up to examine issues related to electronic banking had been informed of the proposal. These service providers agreed to the proposal.

Control over AI's places of business

14. Referring to the trend that an increasing number of AIs had set up separate offices to engage in securities business, Mr Henry WU asked for a comparison between regulation of these establishments under the existing supervisory framework and the current proposal to enhance HKMA's control over an AI's places of business.

15. In response, DCE/HKMA advised that under the existing framework, an AI could conduct securities business in a branch office where other banking services were provided. With the proposed expansion in the definition of "local branch" to cover the lending activities of an AI, and the introduction of the concept of "local office" which captured other sales and service functions of an AI, HKMA could have better control over an AI's places of business and could promote a level playing field between the securities arms of AIs and licensed securities intermediaries.

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