

Ref : LM (2) to LD/HKMA Pt. 15

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Via Fax : 2868 2813 (3 pages)

Dear Mr Ma,

**LegCo Panel on Financial Affairs  
Special Meeting on 20 April 2001**

Thank you for your letter of 18 April addressed to Mr Yam which we discussed on the telephone yesterday. Mr Yam has asked me to reply.

- (a) I am not personally aware of any statements made by the Administration on the objectives served by enacting section 6. Section 5A of the Exchange Fund Ordinance (“EFO”) empowers FS to appoint MA and persons to assist him on such terms as FS thinks fit. Section 5A(4) provides that such persons are to be regarded

*“for all purposes, as employed in connection with the purposes of the Fund.”*

This links with section 6 which provides that

*“There shall be charged to the Fund -*

- (a) *the emoluments payable to, and other staff costs relating to, the persons employed in connection with the purposes of the Fund,...*”

Therefore, under section 6(a) all categories of staff costs relating to the MA and his staff are to be met out of the Fund.

- (b) Under section 3(1) of the EFO, the Exchange Fund is a discrete Government fund. HKMA’s office rental has been accounted for as

recurring expenditure on the Exchange Fund's accounts which are audited under section 7 of the EFO.

- (c) The only "staff costs" which may be incurred are those set out in section 6(a), i.e., "*emoluments payable to, and other staff costs relating to, the persons employed in connection with the purposes of the Fund, including the investment thereof ....*" (etc.). Expenditure that is staff-related can take a variety of forms including the cost of accommodating staff and their equipment – the cost of providing appropriate physical space from which they can conduct operations designed to achieve the purposes for which they have been employed. Staff training, to provide officers with the necessary information and skills to discharge their functions would be another example. The cost of travel and accommodation for officers who must attend meetings connected with their duties overseas would be another. I am sure you could add to this list. The point is that these costs relate to staff but are not emoluments, i.e. profits or gains arising in the hands of the staff from their employment. Section 6(a) draws the same distinction.
- (d) Section 6(a) contains the proviso that emoluments and other staff costs shall be charged to the Fund only where FS has approved the appointments and the emoluments relating to the same. The "other staff costs" are those which flow from those appointments. There are no words in the subsection which provide expressly or by implication that such costs flowing from those appointments must be greater or less than the sum expended on emoluments. The subsection is silent over what period of time such a comparative valuation should be made and one would have expected such guidance if such relativities were an issue.
- (e) When literally construed it is my opinion that subsection 6(a) relates to "emoluments" and "other staff costs (etc.)". It is therefore difficult, applying general principles of statutory interpretation, to say why section 6(b) should be concerned with the same expenditure. Further, the "incidental expenditure" referred to in section 6(b) is limited by reference to expenditure relating to the performance of duties under the EFO by two specified categories of person, the FS and the individual members of the Exchange Fund Advisory Committee ("EFAC") who advise him in relation to the control of the Fund under section 3(1). Neither the FS nor EFAC members are persons appointed to assist MA under section 5A(4). They are not "staff". It therefore appears appropriate and consistent with section 6(a) to have a provision, such as section 6(b), which is separate from that dealing with staff costs, which provides for the expenses relating to FS and EFAC. It also seems logical that the CE should be the authorising authority in relation to those senior individuals.

- (f) To the extent FS has referred to the purchase of accommodation for staff as “administrative expenses”, one must assume that this is short hand. I do not think it is unreasonable to describe expenditure on staff costs as administrative in nature but in any event, such informal usage of the expression does not affect the interpretation of section 6(a).
- (g) The charging of “staff costs” to the Exchange Fund is mandatory under section 6(a). However, it goes without saying that such costs should be incurred reasonably and in good faith. The FS routinely seeks the advice of EFAC in relation to the overall control of the Fund. I am instructed that on this occasion, he sought advice from EFAC on the pros and cons of this acquisition in the process of forming his opinion on the subject. I am instructed that EFAC is particularly well-qualified to give objective advice in this area given its members’ understanding of the market, the objectives the Fund is designed to achieve and the limitations there are on resources.

I trust this note answers the points you have raised. However, if I can assist further, please do not hesitate to contact me.

Yours sincerely,

S M Gannon  
General Counsel