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**Paper for the Subcommittee to Study the Proposed
Accountability System for Principal Officials and Related Issues**

**Functions and Roles of Policy Secretaries in Ordinances relating to
the Monetary Authority and the Securities and Futures Commission**

At the meeting of the Subcommittee on 21 May 2002, while discussing conflict of interests and review of advisory and statutory bodies and other public bodies, members requested information on the functions and roles of policy secretaries in relation to the Monetary Authority and the Securities and Futures Commission.

Monetary Authority

(A) Under the Exchange Fund Ordinance (Cap. 66)

2. Under section 5A of the Ordinance, the Monetary Authority is a person appointed by the Financial Secretary. As specified in the section, the Monetary Authority shall -

- (a) assist the Financial Secretary in the performance of his functions under this Ordinance;
- (b) perform such functions as the Financial Secretary may direct; and
- (c) perform functions imposed on or assigned to the Monetary Authority by any other Ordinance.

3. Section 5B of the Ordinance provides that the Financial Secretary may delegate to the Monetary Authority the powers and duties conferred or imposed on the Financial Secretary under the Exchange Fund Ordinance, but a delegation shall not preclude the Financial Secretary from exercising the powers and duties delegated.

4. Administratively, the Monetary Authority is the Chief Executive of the organization known as the Hong Kong Monetary Authority. The persons assisting the Monetary Authority is also appointed by the Financial Secretary.

5. In view of the functions of the Monetary Authority specified in the Ordinance, it would seem that the exact scope of the functions and powers of the Monetary Authority would mainly be determined by the Financial Secretary.

(B) Under the Banking Ordinance (Cap. 155)

6. The Banking Ordinance Contains more specific provisions on the functions and roles of the Monetary Authority in the regulation of banks ("authorized institutions"). Under section 7 of the Ordinance, the principal function of the Monetary Authority under the Ordinance is to promote the general stability and effective working of the banking system. However, the section does contain six specific functions of the Monetary Authority, such as to be responsible for supervising compliance with the provisions of the Ordinance, and to take all reasonable steps to ensure that all authorized institutions etc. are operated in a responsible, honest and business-like manner.

7. In the performance of his functions under the Banking Ordinance, the Monetary Authority is required to consult the Financial Secretary in various situations, such as:

- (a) in section 22, the Monetary Authority may, after consultation with the Financial Secretary, propose to revoke the authorization of an authorized institution on certain grounds;
- (b) in section 24, in any case where the powers of the Monetary Authority become exercisable under section 22, the Monetary Authority may, after consultation with the Financial Secretary, suspend the authorization of an authorized institution on certain conditions;
- (c) in section 25, where the powers of the Monetary Authority become exercisable under section 22, the Monetary Authority may, after consultation with the Financial Secretary, suspend the authorization of an authorized institution for a period not exceeding 6 months. A suspension may be renewed by the Monetary Authority, after consultation with the Financial Secretary;
- (d) in section 52, where an authorized institution is in financial difficulties, or is carrying on its business in a manner detrimental to the interests of its depositors or potential creditors etc., the Monetary Authority may, after consultation with the Financial Secretary, give the institution various directions;
- (e) in section 82, the Monetary Authority may, after consultation with the Financial Secretary, publish guidelines specifying business practices which should not be engaged in by authorized institutions because such business practices will or may cause the soundness of the financial position of authorized institutions to be dependent upon the soundness of the financial position of a single party;
- (f) in section 118D, the Monetary Authority may, after consultation with the Financial Secretary, propose to revoke the approval of an approved money broker on grounds specified in the Twelfth Schedule to the Banking Ordinance.

8. Apart from requirements to consult, the Banking Ordinance also contains provisions which require the Monetary Authority to make reports to the Financial Secretary. The requirements reflect a kind of supervisory role of the Financial Secretary in relation to the Monetary Authority. The provisions are as follows:-

- (a) in section 9, the Monetary Authority is required to prepare and furnish to the Financial Secretary an annual report on the working of the Banking Ordinance and on the activities of his office during the preceding year. The report may set out any measures that the Monetary Authority considers necessary for improving the working of the Ordinance and of the activities of his office. In addition to the annual report, the Monetary Authority is also required to, at such times as he considers necessary, report to the Financial Secretary on improvements that he considers to be desirable in the operation and management of his office. The Monetary Authority is also required to make reports to the Chief Executive upon a request from the latter on any matter relating to the working of the Banking Ordinance or the activities of Monetary Authority's office;
- (b) in section 99, where an authorized institution contravenes the capital adequacy requirement, it shall forthwith notify the Monetary Authority who shall in turn notify the Financial Secretary;
- (c) in section 117, if it appears to the Monetary Authority that it is in the interests of depositors or in the public interest that an inquiry should be made into the affairs, business or property of that institution he may make a report to that effect to the Financial Secretary. The Financial Secretary, on receipt of the report, may appoint a competent person to report to him and the Monetary Authority on the state and conduct of the affairs, business and property of the authorized institution.

Securities and Futures Commission

9. The functions of the Securities and Futures Commission are specified in section 4 of the Securities and Futures Commission Ordinance (Cap. 24). In particular relevance to the Financial Secretary, the Commission has the function to advise the Financial Secretary on all matters relating to securities, futures contracts, property investment arrangements and securities margin financing; and to report to the Financial Secretary the occurrence of any dealing in relation to securities which it reasonably believes or suspects to be an insider dealing.

10. Under the Ordinance, the Commission is required to make various reports to the Financial Secretary on its affairs, and the Financial Secretary may also require various information to be provided by the Commission. The relevant provisions are as follows:

- (a) in section 12, the Commission is required to send a report on its activities during a financial year to the Financial Secretary who shall cause a copy to be laid on the table of the Legislative Council;
- (b) in section 16, the Commission is required to submit the statement of the accounts for audit by auditors appointed with the approval of the Financial Secretary, and to send a copy of the auditor's report and a copy of the statement of accounts to the Financial Secretary. The Financial Secretary shall then cause a copy of the auditors' report and a copy of the statement of accounts to be laid on the table of the Legislative Council;
- (c) in section 13, the Commission is required to furnish such information to the Financial Secretary as he may specify with respect to the policy it is pursuing or proposes to pursue.

11. On the other hand, the Financial Secretary has certain influence over the Commission. This could be seen that in section 5 of the Ordinance which requires the chairman to consult Financial Secretary before exercising a casting vote.

12. The supervisory role of the Financial Secretary in relation to the Commission could also be seen in his supervision over the following financial aspects of the Commission:

- (a) in section 8, the Commission may only borrow with the approval of the Financial Secretary;
- (b) in section 17, the Commission may invest funds in such manner as the Financial Secretary shall approve; and
- (c) in section 52, the Commission shall consult the Financial Secretary the levy, fees or charges payable to the Commission.

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