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LegCo Panel on Financial Affairs

Meeting on 5 November 2001

Background brief on permanent accommodation for the Hong Kong Monetary Authority

The Hong Kong Monetary Authority (HKMA) currently occupies leased office premises of around 200 000 square feet (ft²) located mainly in Central and Quarry Bay. At the meeting of the Financial Affairs Panel (the Panel) on 11 January 2001, the Chief Executive of HKMA (CE/HKMA) informed members that with the approval of the Financial Secretary (FS), HKMA was negotiating with the owner and developer of Two International Finance Centre on the acquisition of its top floors (levels 77 to 88), and two auditorium floors (levels 55 and 56).

2. The subject was raised for discussion at the Panel meetings on 20 April 2001 at the knowledge that the acquisition of the office premises would be charged to the Exchange Fund, hence would not require the approval of the Finance Committee. A follow-up discussion was held at the Panel meeting on 3 May 2001. A list of the relevant papers and documents relevant to the subject is attached at the Annex.

3. In gist, members' major concerns about the matter are as follows-

- (a) the need for the purchase and its cost-effectiveness;
- (b) the legality of using the Exchange Fund to purchase permanent accommodation for the HKMA; and
- (c) issues about the accountability and transparency of the HKMA arising from the purchase.

Need and cost-effectiveness of the purchase

4. The total area of the space to be acquired in the new premises will be in the region of 340 000 ft², comprising 280 000 ft² office space and two additional floors of around 60 000 ft² for other facilities. HKMA's current accommodation is around 200 000 ft². Compared to HKMA's present office, the extra space to be acquired in the new premises is 140 000 ft².

5. According to CE/HKMA, HKMA may in the long term take on new duties relating to consumer protection for bank customers, supervision of the deposit insurance system and the Credit Reference Agency etc. The additional two floors (levels 55 and 56) would provide purpose-built conferencing facilities to enable HKMA to provide high quality venue for international conferences and seminars and to provide public access facilities, which would in turn enhance the transparency and accountability of HKMA's operation. Any space not to be used immediately would be let to suitable tenants, e.g. international financial institutions, at market rate. Given that it would take less than 20 years to recoup the cost of purchasing the premises from rental savings, the proposed office purchase is cost-effective. The purchase would also represent a profitable investment of the Exchange Fund.

6. At the meeting on 3 May 2001, the Panel noted that FS had signed a Memorandum of Understanding (MOU) on 28 April 2001 with the developer for the office purchase at a cost of \$3.699 billion, which would be charged to the Exchange Fund.

Legality of using the Exchange Fund to purchase the premises

7. Section 3(1) of the Exchange Fund Ordinance (EFO) (Cap. 66) stipulates that the primary purpose of the Exchange Fund is to maintain the stability of Hong Kong dollar. Members of the Panel therefore questioned whether the acquisition of HKMA's permanent accommodation could be related to this purpose. Members have serious doubt on whether "other staff costs" under section 6(a) of EFO could be interpreted to include "cost for accommodation of staff" and hence the cost for the purchase could be met by the Exchange Fund.

8. According to CE/HKMA, sections 3(1) and (1A) of EFO have provided FS with the power to use the Exchange Fund for purposes either directly or indirectly affecting the exchange value of Hong Kong dollar, and to maintain the stability and integrity of its monetary and financial systems of Hong Kong. Providing HKMA with accommodation and systems for its operation is consistent with these purposes.

9. In this respect, the Legal Adviser to the Legislative Council Secretariat (LA) advised that against the constitutional requirement that public expenditure has to be approved by the Legislative Council under the Basic Law and the fact that the use of the Exchange Fund to purchase office accommodation for HKMA, which is a government department, is no doubt public expenditure, the reliance on section 6(a) to justify charging that expenditure to the Exchange Fund would need very strong and compelling arguments. To simply argue that "staff costs" means staff-related costs and therefore cover the cost of accommodating staff may not be conclusive (LC Paper No. CB(1)1120/00-01 issued on 2 May 2001).

10. Members agreed at the meeting on 3 May 2001 that the issue should be reviewed upon receipt of the details of HKMA's legal advice for FS and the legal advice of the Department of Justice on the matter.

11. Subsequent to the meeting, the following papers/correspondence regarding the legality of using the Exchange Fund for the purchase have been issued to members -

- (a) Details of the advice of GC/HKMA on the matter (LC Paper No. CB(1)1312/00-01 issued on 23 May 2001).
- (b) Paper provided by LA for the Panel setting out his comments on the advice of GC/HKMA (LC Paper No. CB(1)1518/00-01 issued on 12 June 2001).
- (c) A summary of the advice of the Department of Justice provided by the Financial Secretary's Office (LC Paper No. CB(1)1829/00-01 issued on 19 July 2001).
- (d) Paper provided by LA for the Panel setting out his comments on the legal issues arising from the summary in (c) above (LC Paper No. CB(1)1935/00-01 issued on 31 August 2001).

12. On 3 September 2001, the Financial Secretary's Office informed the Panel that FS had taken further advice from the Department of Justice on the matter and on the strength of the advice and for the avoidance of doubt, FS had sought and received the approval for the purchase from the Chief Executive, under section 6(b) of the EFO (LC Paper No. CB(1)1958/00-01 issued on 4 September 2001).

Accountability and transparency of HKMA

13. Some members have also expressed the view that there is insufficient control over the operation of HKMA under the present legislation and lack of transparency in the management and control of the Exchange Fund. It is therefore necessary to conduct a comprehensive review on the structure and operation of HKMA. In this respect, CE/HKMA has informed members that the Administration has plans to further clarify the policy objectives, the mandates, the authority, and the governance and accountability arrangements of HKMA to ensure that it is able to discharge its functions effectively and professionally.

List of papers and correspondence relevant to the purchase of permanent accommodation for Hong Kong Monetary Authority (HKMA)

Appendix	Paper reference/ Date of issue to members	Author/ Type of document	Purpose
(1)	CB(1)905/00-01 28.3.2001	HKMA Information paper for Panel	Setting out the current position and reasons for the office purchase
(2)	CB(1)994/00-01(01) (Only Chinese version is available) 10.4.01	Hon Albert HO (on behalf of Members of Democratic Party) Letter to Financial Secretary	Setting out the concerns of Members of Democratic Party
(3)	CB(1)1022/00-01(01) (Only English version is available) 18.4.01	Financial Secretary (FS) Letter to Panel Chairman	Affirming the legality of using the Exchange Fund for the office purchase, quoting section 6(a) of the Exchange Fund Ordinance
(4)	CB(1)1022/00-01(02) 18.4.01	HKMA Letter to Panel Clerk	Providing information on the current rental payable by HKMA for its existing offices and the intended arrangements for the spare new office space
(5)	CB(1)1038/00-01(01) (English version issued on 19.4.01) (Chinese version issued on 27.4.01 vide CB(1)1120/00-01)	Legal Adviser to the Legislative Council Secretariat (LA) Letter to CE/HKMA	Setting out his observations on the legal issues raised in FS's letter (CB(1)1022/00-01(01))
(6)	CB(1)1038/00-01(02) 19.4.01	Chief Executive of HKMA Letter to Panel Chairman	Providing a copy of his <i>Viewpoint</i> article entitled "Permanent Accommodation for the HKMA"
(7)	CB(1)1051/00-01(01) (English version issued on 19.4.01) (Chinese version issued on 27.4.01 vide CB(1)1120/00-01)	General Counsel to HKMA Letter to LA	Responding to the issues raised in LA's letter dated 18.4.2001 (CB(1)1038/00-01(01))

Appendix	Paper reference/ Date of issue to members	Author/ Type of document	Purpose
(8)	CB(1)1120/00-01/LS93/00-01 (English version issued on 2.5.01) (Chinese version issued on 4.5.01 vide CB(1)1155/00-01)	LA Paper for Panel	Setting out his views on the interpretation of section 6(a) of the Exchange Fund Ordinance
(9)	Attachment to CB(1)1290/00-01 (Only English version is available) 18.5.01	Financial Secretary's Office Letter to Panel Clerk	Confirming that in the light of Panel members' suggestion, FS had invited the Department of Justice to give their view on the matter
(10)	Attachment to CB(1)1290/00-01 (For items a & b, only English version is available) 18.5.01 (For item c, Chinese version issued on 15.6.01 vide CB(1)1551/00-01)	HKMA Letter to Panel Clerk	Providing the following documents- a. legal advice by GC/HKMA dated 9.4.01 b. further legal advice by GC/HKMA dated 27.4.01 c. a response of GC/HKMA to the points raised by LA dated 18.5.01
(11)	CB(1)1312/00-01 (English version issued on 23.5.01) (Chinese version issued on 24.5.01 vide CB(1)1331/00-01)	LA Letter to the General Counsel to HKMA	Pointing out the inaccuracies in GC/HKMA's note dated 27.4.2001 in respect of the telephone conversation between LA and GC/HKMA
(12)	CB(1)1348/00-01 (Only English version is available) 25.5.01	GC/HKMA Letter to LA/LegCo	Responding to LA's letter (CB(1)1312/00-01)

Appendix	Paper reference/ Date of issue to members	Author/ Type of document	Purpose
(13)	CB(1)1518/00-01/LS121/00-01 (English version issued on 12.6.01) (Chinese version issued on 17.8.01 vide CB(1)1892/00-01)	LA Paper for Panel	Setting out his comments on the legal advice of GC/HKMA
(14)	CB(1)1829/00-01 (English version issued on 23.7.01) (Chinese version issued on 30.7.01 vide CB(1)1847/00-01)	Financial Secretary's Office Letter to Panel Clerk	Providing a summary of the Department of Justice's advice on the legality of charging the expenditure for the office purchase to the Exchange Fund
(15)	CB(1)1935/00-01/LS153/00-01 31.8.01	LA Paper for Panel	Setting out his comments on the legal issues arising from the summary of the legal views of the Department of Justice as set out in the letter from Financial Secretary's Office
(16)	CB(1)1958/00-01 (English version issued on 4.9.01) (Chinese version issued on 12.9.01 vide CB(1)1990/00-01)	Financial Secretary's Office Letter to Panel Clerk	Informing members that FS had sought and received the approval from the Chief Executive for the purchase under section 6(b) of the Exchange Fund Ordinance.

* The above papers are attached at Appendices (1) to (16).