

(Translation)
LEGCO QUESTION NO. 5
(Oral Reply)

**"Subject to the actual answer
given at the Council Meeting"**

Asked by the Hon KWONG Chi-kin

Date of meeting : 14.12.2005

Replied by : Secretary for Home Affairs

Question

Recently, a former senior staff member of the Hong Kong Monetary Authority joined a private bank after having left service for six months. Regarding former senior staff of statutory regulators taking up outside work after leaving service, will the Government inform this Council:

- (a) of the present posts and numbers of senior staff of statutory regulators with remunerations equivalent to directorate civil servants, with a breakdown by institution;
- (b) whether statutory regulators impose any regulations on the taking up of outside work by the former senior staff mentioned in (a) after leaving service; if so, of the details of the regulations and whether they are the same as those currently adopted by the Government for directorate civil servants; if there are no regulations or they are different, the reasons for that; and
- (c) as the Government plans to implement from 1 January next year the modified policy and arrangements governing the taking up of outside work by directorate civil servants after leaving government service, whether the scope of such policy and arrangements will be extended to the senior staff of the regulators mentioned above; if not, the reasons for that and whether the Government will consider extending the scope?

Reply

Madam President,

(a) There are currently 46 statutory regulatory boards and bodies on the list of public sector advisory and statutory bodies (ASBs). They comprise :

- 28 regulatory bodies, each responsible for regulating an industry or a sector of the economy in Hong Kong;
- 13 registration boards, each responsible for regulating a profession or trade by way of registering entrants to the profession or trade;
- 3 licensing boards, each responsible for regulating the licensing of premises or equipment for a specific purpose or function; and
- 2 supervisory boards, each responsible for supervising and monitoring a specific activity or range of activities.

Among these 46 statutory regulatory boards and bodies, two have senior staff with remuneration packages comparable to those of directorate officers in the civil service. They are:

- Estate Agents Authority (EAA)
- Hong Kong Institute of Certified Public Accountants (HKICPA)

Another two regulatory boards and bodies have senior staff with

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scope of duties and responsibilities comparable to those of directorate officers in the civil service. They are:

- Mandatory Provident Fund Schemes Authority (MPFA)
- Securities and Futures Commission (SFC)

The post title and number of major management staff of the above four regulatory boards and bodies are at Annex 1.

The Hong Kong Monetary Authority (HKMA) is not a statutory body. The Financial Secretary has appointed the Monetary Authority (MA) in accordance with the Exchange Fund Ordinance to assist him in the performance of his functions under the Ordinance. Hence, HKMA is not included in the list of public sector ASBs. This notwithstanding, the post title and number of staff at the top four levels of the HKMA are listed at Annex 2.

- (b) With the exception of the HKICPA, the other three statutory boards and bodies (i.e. EAA, MPFA and SFC) and the HKMA have all imposed rules on the taking up of outside work by their major management staff after leaving service, though the rules are different from those currently adopted by the Government for directorate officers. Details of the rules and reasons for the three regulatory boards and bodies to impose rules different from those of the Government are set out in Annex 3. Information relating to the HKMA is set out in Annex 4.

To summarise, the reasons for the three regulatory boards and bodies to impose different rules include :

- the body is empowered by legislation to determine the remuneration, allowances and other terms and conditions of employment of their staff on their own (e.g. EAA);
- they are independent statutory bodies

The HKMA imposes different rules from those for the civil service because the terms and conditions of employment of their staff are different from those of civil servants.

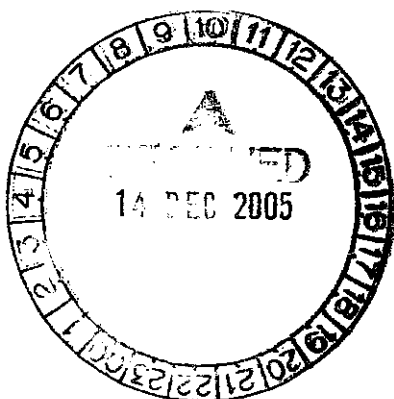
The HKICPA has not imposed any rules on the taking up of outside work by its directorate officers after leaving service. As pointed out by the Institute, it is an independent statutory body incorporated under the Professional Accounts Ordinance, and the Institute's Council is empowered under section 18(1)(b) of the Professional Accountants Ordinance to determine the terms and conditions of employment of its staff.

- (c) The Government will not make it mandatory for all statutory regulatory boards and bodies to adopt the modified arrangements (to be implemented as from 1 January next year) governing the taking up of outside work by directorate officers in the civil service after leaving government service. Of the existing 46 statutory regulatory boards and bodies, only four have senior staff comparable to

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directorate officers. The responsible bureaux which oversee these four statutory regulatory boards and bodies may, having regard to the functions of these bodies, review whether it is necessary for them to follow the Government's modified arrangements governing the taking up of outside work by directorate officers after leaving government service and, where the relevant legislation permits, ask the bodies concerned to review the existing arrangements governing the departure of directorate officers from service.

Thank you, Madam President.



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**Post Title and Number of Major Management Staff
of the Regulatory Boards and Bodies
in the "Advisory and Statutory Bodies" list**

Name of Body	Post Title	Number
Estate Agents Authority	Chief Executive Officer	1
	Director of Regulatory Affairs and General Counsel	1
	Director of Operations	1
	Director of Services	1
	Total	4
Hong Kong Institute of Certified Public Accountants	Chief Executive & Registrar	1
	Executive Director	2
	Head of Compliance & General Counsel	1
	Director, Specialist Practices	1
	Total	5
Mandatory Provident Fund Schemes Authority	Managing Director	1
	Executive Directors	4
	Heads	3
	Total	8
Securities and Futures Commission ¹	Chairman	1
	Executive Director	3
	Senior Director	7
	Chief Counsel	1
	Director	20
	Chief Information Officer	1
	Adviser	3
	Total	36

¹ The staffing and grading structure of the Commission are different from those of the civil service. The pay system of the Commission is not equivalent to that of the civil service and the remuneration of SFC staff is based on a "total cash package" concept with minimal fringe benefits. It is therefore not appropriate to equate senior officers of the Commission as civil service directorates. The information provided are the post and number of senior staff whose scope of duties and responsibilities are comparable to directorate grade in the Civil Service (as at 1 November 2005).

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**Post Title and Number of Staff at the Top Four Levels
of the Hong Kong Monetary Authority ("HKMA")**

Post Title	Number
Chief Executive Officer	1
Deputy Chief Executive	3
Executive Director	10
Division Head	27
Total	41

Note : The staffing and ranking structure of the HKMA are different from those of the civil service. The remuneration of HKMA staff is based on a "total package" concept with minimal fringe benefits. The HKMA offers no allowances such as housing allowance, annual leave passage allowance, local and overseas education allowance and school passage which are available to eligible staff in the civil service.

Regulations governing the Taking Up of Outside Work by Senior Staff of Regulatory Boards and Bodies in the “Advisory and Statutory Bodies” List after Leaving Service and the Reasons for Imposing Regulations Different from Those Currently Adopted by the Government for Directorate Civil Servants

1. Estate Agents Authority

(a) Details on the Regulations

- The Chief Executive Officer shall not take up employment of any nature with an estate agent company within four months immediately after the completion of his employment with the Estate Agents Authority.
- The three Directors shall not take up employment of any nature with an estate agency company within three months immediately after the completion of their employment with the Estate Agents Authority.

(b) Reasons for Imposing Different Regulations

The relevant regulations are determined by the Estate Agents Authority in accordance with the power granted by section 11 of the Estate Agents Ordinance¹, having regard to the specific circumstances of the Estate Agents Authority.

¹ Under section 11 of the Estate Agents Ordinance, the Authority may determine the remuneration, allowances and other terms and conditions of its employees.

2. **Mandatory Provident Fund Schemes Authority ("MPFA")**

(a) Details on the Regulations

- Prior approval must be obtained if a staff member, within six months after leaving the service of the MPFA, wishes to take up work in Hong Kong that may constitute a conflict of interest with that of the MPFA. The work concerned may include the taking up of business/employment in the following forms:
 - (i) entering into a business on his/her own account;
 - (ii) becoming a partner of a partnership;
 - (iii) becoming a staff of another organization, whether or not on a full time basis; or
 - (iv) being engaged or interested, whether as principal, agent, consultant or otherwise, in any business.

- The approving authorities are as follows:
 - Managing Director/Executive Director: the Management Board
 - All other staff: the Managing Director

- Furthermore, the Memorandum on Conditions of Service signed by staff joining the MPFA imposes contractual obligations not to disclose knowledge/information obtained in the course of performing his/her duties at the MPFA.

- Similarly, the confidentiality provision under the MPFSO (section 41) binds any person who obtains information in the exercise or performance of functions conferred or imposed by or under the MPFSO. Any person who at any time, without lawful authority, contravenes the section commits an offence and is liable on conviction to a fine.

(b) Reasons for Imposing Different Regulations

The regulations are different from those of the Civil Service because the MPFA is a separate statutory body established under the MPFSO. The MPFA Management Board, with members appointed by the Chief Executive of HKSAR, is the governing body responsible for determining MPFA's policies.

3. Securities and Futures Commission ("SFC")

(a) Details on the Regulations

- At present, sanitization requirements are applicable to Executive Directors (including the Chairman)². The current rules require the Executive Directors (including the Chairman) to obtain prior permission in writing from a committee, comprising all Executive Directors and Non-Executive Directors except the officer concerned, for an employment during a six-month post-termination period if the activities of the new employment have been the subject of any of the statutory functions of the SFC in the period of 12 months before and/or 6 months after departure.
- In addition, there is a "Confidentiality" clause in the employment agreement which requires SFC employees, including all directorate staff, to maintain secrecy of confidential information even after they leave the Commission. SFC staff are also bound by the secrecy provisions as set out in section 378 of the Securities and Futures Ordinance (Cap. 571) which impose statutory secrecy obligations on them.

(b) Reasons for Imposing Different Regulations

SFC is an independent statutory body. Its staff are not civil servants and are employed on different terms and conditions. The regulations on the taking up of outside work by Government for directorate civil servants are therefore not applicable to the Commission. In developing its policies on regulating the taking up of outside work by its former staff including directorate staff after they leave SFC, the Commission has already considered market practice and similar arrangements of other relevant organizations.

² According to Section 2 of Part 1 of Schedule 2 of the Securities and Futures Ordinance, the Chairman of the Commission shall, by virtue of holding that office, be regarded as an executive director of the Commission.

Regulations on the Taking up of Outside Work by Staff at the Top Four Levels of the Hong Kong Monetary Authority (“HKMA”) after Leaving Service and The Reasons for Imposing Different Regulations from Those Currently Adopted by the Government for Directorate Civil Servants

(a) Details on the regulations

An employee of the HKMA at the level of Senior Manager to Deputy Chief Executive must obtain prior approval of the Monetary Authority (i.e. Chief Executive/HKMA), and in the case of the Monetary Authority he must obtain the approval of the Financial Secretary, before he/she can-

- enter business on his/her own account;
- become a partner of a partnership;
- become a director of a company; or
- become an employee of another organisation/corporation/firm, whether or not on a full time basis

in Hong Kong within six months from the termination of his/her employment with the HKMA.

(b) Reasons for Imposing Different Regulations

The HKMA employs staff on terms different from those of the civil service in order to attract personnel of the right experience and expertise so that it can discharge its responsibilities effectively. As far as the policies and arrangements on post-termination employment are concerned, its objective is to avoid conflict of interest after taking into account relevant factors such as market practice and similar arrangements of other relevant organizations.