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Panel on Financial Affairs
Meeting on 4 May 2006

Background Brief
on the policies on post-termination employment of senior executives
of the Hong Kong Monetary Authority and
the Securities and Futures Commission

Purpose

This paper sets out the rules on post-termination employment of senior executives of the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC). It also summarizes the major views and concerns expressed by Members on the subject at meetings of the Legislative Council (LegCo) and Panel on Financial Affairs (FA Panel).

Background

2. In early December 2005, a former Deputy Chief Executive of HKMA joined a private bank after leaving HKMA for six months. Given the public concern on whether any possible conflict of interest was involved, Hon KWONG Chi-kin raised at the LegCo meeting on 14 December 2005 an oral question on the regulations imposed by statutory regulators (including HKMA and SFC) on the taking up of outside work by their former senior staff after leaving service. Noting the Administration's reply to the oral question, some Members expressed concern on whether the current rules governing the post-termination employment of senior executives of statutory regulators could adequately avoid any real, potential or perceived conflict of interest. The FA Panel then decided to follow up the subject in respect of the relevant policies and rules of HKMA and SFC.

Rules on post-termination employment of senior executives of HKMA

Current rules

3. An employee of HKMA at the level of Senior Manager or above must obtain prior approval from the Chief Executive of HKMA (CE/HKMA), and in the case of CE/HKMA himself, to obtain prior approval from the Financial Secretary (FS), before he/she can -

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

in Hong Kong within the six months from the termination of his/her employment with HKMA. Before deciding whether to give approval, CE/HKMA needs to satisfy himself that there is no actual or potential conflict of interest between the new employment or occupation and the staff member's former duties in HKMA. CE/HKMA may, at his own discretion, impose a sanitization period up to the end of those six months and attach any reasonable conditions thereto. Any person aggrieved by CE/HKMA's decision may appeal to FS whose decision shall be final.

4. There are in addition a number of legal provisions governing the secrecy of certain types of information which staff may have obtained in the course of their work with HKMA, and the prevention of bribery, which apply to staff after they have left HKMA.

Review of current rules

5. The Governance Sub-Committee (GSC) of the Exchange Fund Advisory Committee (EFAC) is currently reviewing the rules on post-termination employment for HKMA staff in the light of the new arrangements introduced for the civil service on 1 January 2006, and taking into account the circumstances of HKMA. The objectives of the review are to ensure that the rules -

- (a) properly address real or potential conflicts of interest arising from a person's former duties at HKMA and his or her proposed new employment;
- (b) are practical, effective, and enforceable;

- (c) do not unreasonably restrict a person's right to earn a living in his or her chosen profession; and
- (d) do not impair HKMA's ability to attract high-quality staff or undermine the mobility of skills in the financial services and other sectors that are of benefit to furthering the objectives of HKMA.

6. GSC expects that the review will be completed by about mid-2006, when it will make recommendations to FS through EFAC.

Rules on post-termination employment of senior executives of SFC

Current rules

7. At present, sanitization requirements are applicable to Executive Directors (EDs) (including the Chairman)^{Note} of SFC. The current rules require the EDs (including the Chairman) to obtain prior permission in writing from a committee, comprising all EDs and Non-EDs 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 SFC in the period of 12 months before and/or six months after departure.

8. 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 have left SFC. SFC employees are also bound by the secrecy provisions as set out in section 378 of the Securities and Futures Ordinance (SFO) (Cap. 571) which impose statutory secrecy obligations on them.

Review of current rules

9. SFC is currently reviewing the existing arrangements in respect of post-termination employment of EDs, in order to eliminate conflicts while an outgoing ED works out his or her notice period and to lessen the perception of conflicts of the first six months after the ED's departure.

Major views and concerns expressed by Members at meetings of LegCo and FA Panel

10. The major views and concerns expressed by Members at previous meetings of LegCo and FA Panel are summarized as follows:

^{Note} According to section 2 of Part 1 of Schedule 2 to SFO, the Chairman of the Commission shall, by virtue of holding that office, be regarded as an executive director of the Commission.

- (a) The current rules governing the post-termination employment of senior executives of HKMA and SFC are not comprehensive for the purpose of avoiding conflict of interest. For example, the six-month sanitization period which may be imposed on senior executives of HKMA is considered too short;
- (b) In connection with item (a) above, reference should be made to the improvement measures introduced by the Administration on 1 January 2006, which are finalized after consultation and detailed consideration. In particular, former directorate civil servants at D4 or above (or equivalent) will be subject to a minimum 12-month sanitization period so as to forestall real or potential conflict of interest and/or negative public perception by instituting a 12-month break between the officer's government duties and outside work;
- (c) All senior executives at the levels of ED and Deputy Chief Executive of HKMA should be required to obtain prior approval from the Governance Sub-Committee (instead of CE/HKMA as required under the current arrangement) before taking up new employment within the control period; and
- (d) Noting the four objectives of the review of the rules of HKMA (paragraph 5 above), a Member considers that the objectives of the review should be confined to that adopted by the Administration in conducting the review of the policy governing post-service employment of former directorate civil servants, i.e. to ensure that former directorate civil servants will not enter into business or take up employment which may constitute conflict of interest (real, potential or perceived) with their former government duties or cause negative public perception embarrassing the Government and affecting the image of the civil service.

Recent developments

11. In response to the request of the FA Panel, GSC, HKMA and SFC provided information on the policies on post-termination employment of their senior executives and relevant cases in the past three years. Their written replies were issued to members in March 2006, as follows:

- (a) Reply dated 15 March 2006 from the Chairman of GSC (LC Paper No. CB(1)1092/05-06(02) issued on 16 March 2006);
- (b) Reply dated 27 March 2006 from CE/HKMA (LC Paper No. CB(1)1183/05-06(02) issued on 28 March 2006); and

- (c) Reply dated 27 March 2006 from the Commission Secretary of SFC (LC Paper No. CB(1)1186/05-06(03) issued on 28 March 2006).

12. Noting the written replies from GSC, HKMA and SFC, the FA Panel agreed at its meeting on 3 April 2006 that the subject be scheduled for discussion at the Panel meeting on 4 May 2006.

References

- 13. A list of relevant papers is in **Appendix**.

Council Business Division 1
Legislative Council Secretariat
28 April 2006

**Policies on post-termination employment of senior executives
of the Hong Kong Monetary Authority and
the Securities and Futures Commission**

List of relevant papers
(Position as at 28 April 2006)

Meeting	Paper	LC Paper No.
<p><u>Council meeting on 14 December 2005</u></p> <p>Oral question raised by Hon KWONG Chi-kin on former senior staff of statutory regulators (including HKMA) taking up outside work</p>	<p>Hansard – <i>Question No. 5</i></p>	<p align="center">—</p>
<p>FA Panel meeting on 6 February 2006</p>	<p>Letters dated 15 December 2005 and 5 January 2006 from Clerk to Panel to CE/HKMA</p>	<p>CB(1)806/05-06(05) and (06)</p>
	<p>Reply dated 27 January 2006 from CE/HKMA</p>	<p>CB(1)806/05-06(07)</p>
	<p>Minutes of meeting</p>	<p>CB(1)1178/05-06 (Agenda Item IV)</p>
<p>FA Panel meeting on 4 May 2006</p>	<p>Letter dated 9 February 2006 from the Clerk to Panel to the Chairman of the Governance Sub-Committee</p>	<p>CB(1)1092/05-06(01)</p>
	<p>Reply dated 15 March 2006 from the Chairman of the Governance Sub-Committee</p>	<p>CB(1)1092/05-06(02)</p>

Meeting	Paper	LC Paper No.
	Letter dated 7 March 2006 from the Clerk to Panel to CE/HKMA	CB(1)1183/05-06(01)
	Reply dated 27 March 2006 from CE/HKMA	CB(1)1183/05-06(02)
	Letter dated 9 February 2006 from the Clerk to Panel to the Chairman of SFC	CB(1)1186/05-06(01)
	Letter dated 7 March 2006 from the Clerk to Panel to the Chairman of SFC	CB(1)1186/05-06(02)
	Reply dated 27 March 2006 from the Commission Secretary of SFC	CB(1)1186/05-06(03)