

26 October 2006

The Hon. Chan Kam-lam, SBS, JP
Chairman of the Legislative Council Panel on Financial Affairs
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mr Chan,

Rules on Post-Termination Employment of HKMA Staff

I refer to Mr Marvin Cheung's letter to the Panel dated 15 March 2006 and the discussion of this subject at the meeting of the Legislative Council Panel on Financial Affairs on 4 May 2006.

As Mr Cheung informed the Panel in his letter, the Financial Secretary invited the Governance Sub-Committee of the Exchange Fund Advisory Committee to review the HKMA's rules on the post-termination employment of staff in the light of the civil service arrangements, introduced on 1 January 2006, governing the taking up of outside work by directorate officers after ceasing active service. That review has now been completed and a revised policy, of which a copy is attached, has been approved by the Financial Secretary and adopted by the HKMA.

The rationale behind the revised policy is set out in the introductory section but I should like to highlight some aspects that were considered by the GSC in the course of its review.

The objectives of the review were to ensure that the rules

- (a) properly address real or potential conflicts of interest arising from a person's former duties at the 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 the 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 the HKMA.

The GSC noted that the employment and governance arrangements of the HKMA are different from those of the civil service. In particular

- (a) The HKMA recruits the majority of its staff from the private sector to ensure that it has the expertise and experience necessary to carry out its functions effectively. Many staff take up employment in the private sector after they leave the HKMA.
- (b) HKMA staff are subject to strict secrecy provisions under the Banking Ordinance, which prevent them from disclosing information obtained while exercising statutory functions under the Ordinance, and provide for criminal sanctions of up to two years' imprisonment for any breach. These restrictions apply indefinitely even after staff have left the HKMA.

The GSC felt that the present six-month control period, during which former HKMA staff at the rank of Senior Manager and above must seek permission to take up employment in Hong Kong, should be maintained, with some further elaboration on how it should operate, and that greater use should be made of the notice period to separate staff from sensitive duties before they leave the HKMA (and therefore before the control period begins): taken together, the notice period and the six-month control period provide for a period of up to 12 months in the case of staff at the level of Executive Director and above in which the HKMA may take measures or impose restrictions to address real or potential conflicts of interest when staff leave the HKMA. The GSC believes that this, in combination with the secrecy provisions referred to above, is sufficient to address the kind of conflicts of interest that might arise.

The GSC has taken into account the helpful advice of the Panel that the GSC should be involved in considering applications from senior staff for approval to take up employment after leaving the HKMA: the revised arrangements include provision for the approving authority to consider the advice of a panel comprising the Chairman and two other Members of the GSC in dealing with applications from Executive Directors and above. The GSC also concluded that it would be prudent to introduce restrictions on contacts between serving and former staff during the control period, subject to certain exceptions, together with procedures for dealing with any contacts that occur.

The GSC believes that the revised policy effectively addresses actual or potential conflicts of interest arising from HKMA staff taking up employment after they leave the HKMA, while taking into account the need of the HKMA to recruit suitable staff, and safeguarding the right of staff to pursue their chosen professions. We will, however, keep the implementation of the revised policy under careful review and propose adjustments should they become necessary in the light of experience.

The revised policy has been promulgated to all HKMA staff. A copy has also been sent to the Hong Kong Association of Banks with a request that Authorized Institutions be made aware of the revised policy and reminded of the statutory and other legal provisions that apply to former HKMA employees.

Finally, I would like to express the GSC's thanks for Members' interest in this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Cheng', with a large, sweeping initial 'C'.

(Christopher Cheng)
Chairman, Governance Sub-Committee
of the Exchange Fund Advisory Committee

Policy and Procedures on Post-Termination Employment of HKMA Staff

A. Introduction

1. This circular sets out the policy and procedures on post-termination employment of HKMA staff: it incorporates, with certain modifications, the established policies and practices on this subject, draws attention to the relevant legal provisions, and clarifies procedures for avoiding conflicts of interest. This circular replaces all previous rules relating to post-termination employment. With the exception of the control period set out in Part D, which applies to staff at the level of Senior Manager and above, the policy and procedures set out in this circular apply to all HKMA staff. The rules in this circular apply to all forms of termination, whether initiated by the employer or by the employee.
2. One of the aims of the HKMA in its employment policy is to be able to employ suitably qualified staff so that it can carry out its policy objectives effectively and respond flexibly to changing work priorities. The HKMA recruits most of its staff from the private sector and, while it hopes that staff will look on their employment with the HKMA as a career, it is inevitable that some staff will leave for the private sector. A degree of mobility between the private sector and the HKMA, and the transfer of expertise and experience between the two that it entails, is also conducive to maintaining the stability and integrity of the financial system of Hong Kong, which is one of the HKMA's main policy objectives. The HKMA's terms and conditions of employment therefore take into account the fact that some HKMA staff will be employed by the HKMA for only a part of their career: in particular, and in contrast to the civil service, staff are not employed on pensionable terms.
3. It is vital to the credibility and effectiveness of the HKMA that employees who move from the HKMA to other organisations are not placed in actual or potential conflicts of interest. Generally speaking, the situations that might place HKMA employees (or former employees) in positions of actual or potential conflicts of interest fall into the following categories:

while in the HKMA during the notice period:

- access to confidential or commercially sensitive information within the HKMA that might be of value to a future employer
- involvement in decisions or policy formulation by the HKMA that might specifically benefit a future employer
- involvement in a statutory, supervisory, contractual or other form of direct relationship between the HKMA and a future employer

in new employment after having left the HKMA:

- employment on projects or assignments connected with former responsibilities in the HKMA
- employment in work that involves lobbying, or similar forms of contact with, former colleagues in the HKMA.

Staff are reminded that statutory or other general legal provisions apply to employees or former employees of the HKMA who abuse either their position in the HKMA or confidential information they may acquire while working for the HKMA. These provisions, which apply to staff at all levels and are not subject to any time limit, are summarised in Part B below. All HKMA staff should ensure that they are familiar with them.

4. To help prevent or reduce potential conflicts of interest, exit-management arrangements apply to all staff during the notice period prior to termination of employment with the HKMA: these are set out in Part C below. The aim of these arrangements is to ensure that there is an appropriate time lapse between involvement in any sensitive work within the HKMA and commencement of employment with any organisation that may have a substantial direct relationship with the HKMA.
5. A control period of six months is applicable to staff at the Senior Manager level and

above. During this period approval is required to take up certain forms of employment within Hong Kong. These arrangements, which are set out in Part D, are intended to provide further safeguards for staff in the senior ranks against possible conflicts of interest and the inappropriate use of confidential information that the HKMA should protect, while at the same time avoiding restrictions on a person's freedom of choice of occupation or ability to earn a living. Although the control period applies to Senior Managers and above, all staff should be aware of the rules governing contacts with former employees who are subject to the control period: these rules are set out in Part E.

B. Statutory and other legal provisions

6. Staff are reminded of the following legal provisions, which, among other things, provide safeguards against conflicts of interest.

Banking Ordinance

7. Section 120 of the Banking Ordinance (extracted at Annex A) requires HKMA staff to preserve and aid in preserving secrecy of information obtained while exercising functions under the Banking Ordinance. The secrecy provisions apply to all HKMA staff, regardless of rank, and continue to apply to them after they have ceased to work for the HKMA. Breach of these provisions is a criminal offence punishable by a fine or imprisonment. Any person (individual or corporate) who aids, abets, counsels or procures any person to contravene section 120 also commits an offence and is subject to the same criminal penalties.
8. The Monetary Authority's approval is required under section 71 of the Banking Ordinance for appointments to certain positions in authorized institutions (AI). Consideration will be given to withholding or withdrawing such approval in the case of former employees of the HKMA who are in breach of section 120 of the Ordinance, or whose fitness or propriety is in any other way brought into doubt. The Monetary Authority may also take supervisory action against an AI and/or its officers if they have encouraged or assisted a former HKMA employee in breaching

these secrecy provisions.

General confidentiality provisions

9. Obligations of confidentiality to an employer by an employee in receipt of information that is clearly confidential in nature are recognised by the courts, which have powers to enforce such confidentiality obligations even after employment has been terminated.

Prevention of Bribery Ordinance

10. Under the Prevention of Bribery Ordinance it is, among other things, a criminal offence for a public servant to solicit or accept any office, employment or contract in return for giving official favours. For the purpose of the Prevention of Bribery Ordinance all HKMA employees are public servants.

C. Exit management

11. The standard period of notice of termination for staff at the Executive Director level and above is 6 months, for staff at the Division Head and Senior Manager level 3 months, and for staff at all other levels 1 month. It is the HKMA's policy to make the fullest use necessary of the notice period to ensure that the departing employee is separated from sensitive duties or duties that might place him or her in a conflict of interest in any future employment.
12. Immediately after notice of termination has been given, whether by the employee or the employer, H(HR) (or ED(CS) in the case of EDs and above) will discuss with the employee's supervisor and with the employee an exit-management plan to determine
 - which of the employee's duties, if any, should be assigned to other staff during the notice period
 - what kinds of information, whether in written form or at meetings or through

access to information systems, should be withheld from the employee during the notice period

- the work plan, including any accumulated leave to be taken, of the employee during the notice period
- the succession plan, including any acting or doubling-across arrangements, for the post to be vacated.

The departing employee and other members of the management team should, as appropriate, be consulted on the formulation of the exit management plan, and a brief note of the main elements of the plan should be put on file.

13. In certain cases, where all or most of the departing employee's duties are sensitive, the employee may need to be removed from his or her main duties altogether and placed on special duties of a non-sensitive nature. In these cases, H(HR) (or ED(CS) in the case of DHs or above) will, in consultation with senior management as appropriate, make the necessary arrangements for these special duties (which may include duties to be performed outside of the HKMA's main offices) and for the employee's original duties to be taken up temporarily by other staff until a permanent replacement is found.
14. H(HR) (or ED(CS) in the case of DHs or above) will, as soon as possible after a member of staff has given or received notice of termination, recirculate this circular to the member of staff and remind him or her of the policy and rules in the circular.

D. Control period for staff at the Senior Manager level and above

15. An employee or former employee of the HKMA at the level of Senior Manager or above must obtain the prior approval of the Monetary Authority, or, in the case of the Monetary Authority, the Financial Secretary, before he or she may
 - (a) enter business on his or her own account;
 - (b) become a partner of a partnership;

- (c) become a director of a company; or
- (d) become an employee, whether or not on a full-time basis

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

16. In determining whether approval should be given in the case of Executive Directors and above, the Monetary Authority (or, in the case of the Monetary Authority, the Financial Secretary) shall consider advice from a panel composed of the Chairman and two other Members (to be drawn by rota from a pool appointed by the Financial Secretary) of the Governance Sub-Committee of the Exchange Fund Advisory Committee.

17. Approval is not required if the employment is with
 - (a) any of the organisations listed in **Annex B**;
 - (b) the Hong Kong SAR Government or Judiciary;
 - (c) any non-commercial regional or international organisation;
 - (d) the Central Authorities; or
 - (e) any charitable, academic or other non-profit-making organisation not primarily engaged in commercial operations.

18. In determining whether approval should be given, the approving authority will take into account
 - (a) the nature of the relationship, if any, between the organisation in question and the HKMA, and the nature and degree of involvement, if any, in that relationship by the applicant during his or her employment with the HKMA;
 - (b) whether any involvement in a relationship established under (a) was such that it might present an actual or potential conflict of interest for the applicant in his or her new occupation;
 - (c) whether separation from sensitive duties during the period of notice of termination has been sufficient to remove or minimise any actual or potential

conflict of interest identified under (b); and

(d) whether, for any other reason, it would be against the public interest for approval to be granted.

19. The approving authority will attach the following conditions, which may apply to all or part of the control period, to any approval given under these rules

(a) a requirement that, subject to certain exceptions, the former employee should not communicate with serving HKMA staff during the control period on any matter related to the latter's official duties; and

(b) a requirement that the former employee should not deal with any matter in his or her new employment that has been the subject of statutory action by the HKMA, and with which he or she has been involved while employed by the HKMA.

20. Other conditions may also be applied depending on the circumstances of individual cases.

21. Where approval is not given the reasons for disapproval shall be communicated to the applicant, subject to any legal restrictions or other considerations of confidentiality.

22. An employee or former employee who is aggrieved by any decision made by the Monetary Authority under these rules may appeal to the Financial Secretary.

23. Employees or former employees whose future employment plans require approval under these rules are encouraged to make their applications for approval as early as possible during or before the control period and to provide sufficient information to enable the approving authority to consider the application fully. A list of the information that should be included in the application may be obtained from H(HR). Applications and the application process will be handled in strict confidence.

E. Communication between HKMA staff and former HKMA employees during and after the control period

24. Conditions imposed on former HKMA staff during the control period in Part D will include restrictions on contact with serving HKMA staff. Exceptions may be made for

- (a) communication that is required for the exercise by HKMA staff of any statutory function or responsibility;
- (b) communication that is conducive to achieving the objectives of the HKMA, for example the reporting by the former employee of a regulatory breach; and
- (c) communication with HR staff related to the former staff member's employment with the HKMA.

25. Subject to these exceptions, staff should not contact or communicate with any former HKMA employee subject to the control period on any subject relating to the staff member's official duties. If such contact is initiated by the former employee, whether or not it is covered by exceptions, it should be recorded in writing and reported by the member of staff to his or her DH, or in the case of a DH the relevant ED, who should inform H(HR) or ED(CS). H(HR) or ED(CS) will determine, in consultation with the Legal Office, whether the reported contact conflicts with any condition imposed on the former employee during the control period and advise the Senior Management on what actions should be taken. Questions about whether or not a communication is official should be addressed to H(HR) or ED(CS).

26. Social contacts between former employees and serving HKMA staff are not restricted but staff should exercise discretion in accepting social invitations from former HKMA employees who are subject to a control period, and be alert to any approach or communication in a social setting that is related to their official duties. Any communications related to official duties should be treated in accordance with the reporting procedures in paragraph 25.

27. Any member of staff who has reason to believe that a former HKMA employee, of

whatever rank and whether or not within the control period set out in Part D, may be in breach of the secrecy or other relevant provisions of the Banking Ordinance, or of any other laws referred to in Part B above, or is aware of any circumstances involving a former employee that may give rise to a conflict of interest should notify his or her supervisor, who should make the case known to ED(CS). ED(CS) will then seek advice from the Legal Office and directions from the Senior Management on the action to be taken.

28. A list of the names of former employees currently under a control period will be maintained by H(HR) on a database accessible to all HKMA staff. A list of the names of former employees of the HKMA, stating the departments in which they have served, shall be maintained by H(HR) on a database accessible to all staff at the level of Division Head and above.

120. 公事保密

(1) 每名本款適用的人士，除因根據本條例行使任何職能或因施行本條例的條文而有需要外——（由 1987 年第 64 號第 26 條修訂）

- (a) 對於他在根據本條例行使任何職能時獲悉與任何人的事務有關的一切事宜，均須保密與協助保密；
- (b) 不得將該等事宜傳達他人，但與該等事宜有關的人除外；及
- (c) 不得容受或准許任何人取用由本款適用的人所管有、保管或控制的任何紀錄。

(2) 第 (1) 款適用於現在或曾經是——

- (a) 公職人員；
- (b) 獲金融管理專員授權的人；
- (c) 認可機構的顧問；（由 1995 年第 49 號第 36 條代替）
- (d) 認可機構的經理人；（由 1995 年第 49 號第 36 條代替）
- (da) 根據第 53G(5) 條獲委任的人；（由 1995 年第 49 號第 36 條增補）
- (e) 根據第 117(2) 條獲委任的人；及

120. Official secrecy

(1) Except as may be necessary for the exercise of any function under this Ordinance or for carrying into effect the provisions of this Ordinance, every person to whom this subsection applies— (*Amended 64 of 1987 s. 26*)

- (a) shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that may come to his knowledge in the exercise of any function under this Ordinance;
- (b) shall not communicate any such matter to any person other than the person to whom such matter relates; and
- (c) shall not suffer or permit any person to have access to any records in the possession, custody or control of any person to whom this subsection applies.

(2) Subsection (1) shall apply to any person who is or has been—

- (a) a public officer;
- (b) a person authorized by the Monetary Authority;
- (c) the Advisor of an authorized institution; (*Replaced 49 of 1995 s. 36*)
- (d) the Manager of an authorized institution; (*Replaced 49 of 1995 s. 36*)
- (da) a person appointed under section 53G(5); (*Added 49 of 1995 s. 36*)
- (e) a person appointed under section 117(2); and

(f) 憑藉 (b)、(c)、(d) 或 (e) 段而為本款適用的人所僱用或協助該人的人，且根據本條例行使或曾根據本條例行使任何職能的人。

(3) 如認可機構的經理人根據《稅務條例》(第 112 章) 第 51 條須遵從提交報稅表及資料的通知，則第 (1) 款不適用。(由 1995 年第 49 號第 36 條代替)

(4) 任何根據第 47、50、55 或 117 條進行審查或調查的過程中行使任何職能的人，或任何收到根據第 47、50、55、56、59、63 或 64 條呈交的報告、申報表或資料的人，均無須向任何法院交出任何簿冊、帳目或其他文件，或向法院洩露或傳達他在根據本條例行使他的職能時所獲悉的任何事宜或事情，但在任何罪行的檢控過程中或在由原訟法庭根據第 122 條清盤的過程中有此需要的，則屬例外。(由 1992 年第 67 號第 9 條修訂；由 1998 年第 25 號第 2 條修訂)

(5) 第 (1) 款不適用於——

- (a) 以撮要形式將多間認可機構提供的類似資料作資料披露，而該撮要的擬定方式是足以防止可從該撮要中確定與任何某間認可機構業務有關的詳情的；
- (b) 目的是為提起任何刑事法律程序或在其他方面就任何刑事法律程序(不論是否根據本條例)而披露資料；
- (c) 由本條例引起的任何其他法律程序的有關事宜；
- (d) 應律政司司長的要求，向警方或廉政公署披露與任何刑事投訴的正當調查有關的資料；(由 1997 年第 362 號法律公告修訂；由 2003 年第 1 號第 3 條修訂)
- (e) 目的是為提起任何紀律程序或在其他方面就任何紀律程序而由金融管理專員披露資料，而該紀律程序是與認可機構或前認可機構的核數師或前核數師(無論該核數師或前核數師(視屬何情況而定)是否根據第 50、59 或 63 條獲委任)行使其專業職責有關的；(由 1990 年第 43 號第 9 條代替。由 1992 年第 67 號第 9 條修訂)
- (f) 由金融管理專員向行政長官、財政司司長、獲財政司司長委任以調查公司事務的審查員、任何擔任認可法定職位的人或任何由財政司司長為本

(f) a person employed by or assisting a person to whom this subsection applies by virtue of paragraph (b), (c), (d), or (e), who exercises or has exercised any function under this Ordinance.

(3) Subsection (1) shall not apply if the Manager of an authorized institution is required to comply with a notice to furnish returns and information under section 51 of the Inland Revenue Ordinance (Cap. 112). (Replaced 49 of 1995 s. 36)

(4) No person who exercises any function in the course of an examination or investigation under section 47, 50, 55 or 117 or who receives reports, returns or information submitted under section 47, 50, 55, 56, 59, 63 or 64 shall be required to produce in any court any book, account or other document whatsoever or to divulge or communicate to any court any matter or thing coming under his notice in the exercise of his functions under this Ordinance, except as may be necessary in the course of a prosecution for any offence or of a winding-up by the Court of First Instance under section 122. (Amended 67 of 1992 s. 9; 25 of 1998 s. 2)

(5) Subsection (1) shall not apply—

- (a) to the disclosure of information in the form of a summary of similar information provided by a number of authorized institutions if the summary is so framed as to prevent particulars relating to the business of any particular authorized institution being ascertained from it;
- (b) to the disclosure of information with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Ordinance or otherwise;
- (c) in connection with any other legal proceedings arising out of this Ordinance;
- (d) to the disclosure of information to the police or the Independent Commission Against Corruption, at the request of the Secretary for Justice, relevant to the proper investigation of any criminal complaint; (Amended L.N. 362 of 1997)
- (e) to the disclosure of information by the Monetary Authority with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by an auditor or former auditor of an authorized institution or former authorized institution, whether or not the auditor or former auditor, as the case may be, was appointed under section 50, 59 or 63; (Replaced 43 of 1990 s. 9. Amended 67 of 1992 s. 9)
- (f) to the disclosure of information by the Monetary Authority to the Chief Executive, the Financial Secretary, an inspector appointed by the Financial Secretary to investigate the affairs of a company, a person holding an authorized statutory office or

段的目的是授權的公職人員披露資料，而金融管理專員認為——（由 1993 年第 96 號法律公告修訂；由 1997 年第 362 號法律公告修訂；由 1999 年第 68 號第 3 條修訂；由 2002 年第 106 號法律公告修訂）

- (i) 為符合存款人或潛在存款人的利益或公眾利益，如此披露資料是適宜或合宜的；或
 - (ii) 該項披露會使接獲資料者行使其職能或會協助接獲資料者行使其職能，且如此披露資料並不是違反存款人或潛在存款人的利益或公眾利益的；（由 1991 年第 95 號第 40 條代替）
- (fa) 由金融管理專員向證監會披露關於——
- (i) 任何註冊機構進行某類受規管活動的資料；或
 - (ii) 任何認可機構作為中介人的有聯繫實體所進行的收取或持有中介人客戶資產的業務的資料；上述中介人、有聯繫實體及客戶資產分別為《證券及期貨條例》(第 571 章) 附表 1 所指者；（由 2002 年第 6 號第 12 條增補）
- (g) 由金融管理專員向認可機構或前認可機構的核數師，或向前核數師披露資料，為使金融管理專員或協助金融管理專員根據本條例履行其職能；（由 1990 年第 43 號第 9 條代替。由 1991 年第 95 號第 40 條修訂）
- (gaa) 由金融管理專員向《存款保障計劃條例》(第 581 章) 第 3 條所設立的香港存款保障委員會披露資料，以使該委員會能夠根據該條例行使其職能或協助該委員會如此行使其職能；（由 2004 年第 7 號第 55 條增補）
- (ga) 以下的資料披露——
- (i) 向根據《外匯基金條例》(第 66 章) 第 5A(3) 條獲委任職位的人披露資料；及
 - (ii) 如該項披露使該人或會協助該人協助金融管理專員執行該條提述的任何職能；（由 1995 年第 49 號第 36 條增補）
- (h) 在符合第 (5D) 款的規定下，由金融管理專員在得到以下的人同意後披露資料——

any public officer authorized by the Financial Secretary for the purposes of this paragraph where, in the opinion of the Monetary Authority— (*Amended L.N. 96 of 1993; 68 of 1999 s. 3; L.N. 106 of 2002*)

- (i) it is desirable or expedient that information should be so disclosed in the interests of depositors or potential depositors or the public interest; or
 - (ii) such disclosure will enable or assist the recipient of the information to exercise his functions and it is not contrary to the interests of depositors or potential depositors or the public interest that the information should be so disclosed; (*Replaced 95 of 1991 s. 40*)
- (fa) to the disclosure of information by the Monetary Authority to the Securities and Futures Commission relating to—
- (i) the carrying on of a regulated activity by a registered institution; or
 - (ii) the carrying on by an authorized institution of the business of receiving or holding client assets, within the meaning of Schedule 1 to the Securities and Futures Ordinance (Cap. 571), of intermediaries, within the meaning of Schedule 1 to that Ordinance, of which the institution is an associated entity within the meaning of Schedule 1 to that Ordinance; (*Added 6 of 2002 s. 12*)
- (g) to the disclosure of information by the Monetary Authority to an auditor of an authorized institution or former authorized institution, or to a former auditor, for the purpose of enabling or assisting the Monetary Authority to discharge his functions under this Ordinance; (*Replaced 43 of 1990 s. 9. Amended L.N. 276 of 1990; 95 of 1991 s. 40*)
- (gaa) to the disclosure of information by the Monetary Authority to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (Cap. 581) for the purpose of enabling or assisting the Board to exercise its functions under that Ordinance; (*Added 7 of 2004 s. 55*)
- (ga) to the disclosure of information—
- (i) to any person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66); and
 - (ii) where such disclosure will enable or assist such person to assist the Monetary Authority in the performance of any of the functions referred to in that section; (*Added 49 of 1995 s. 36*)
- (h) subject to subsection (5D), to the disclosure of information by the Monetary Authority with the consent of—

- (i) 金融管理專員從該人取得或接獲資料的該人；及
- (ii) 如該資料並非與該人有關的，則為與該資料有關的人；或 (由 1991 年第 95 號第 40 條增補)

(i) 已在本條或第 121 條不禁止的情況下披露資料，或已因本條或第 121 條不禁止的目的而披露資料，以致公眾人士可以得到上述資料的該等披露資料。(由 1991 年第 95 號第 40 條增補)

(5A) 就第 (5)(f) 款而言，“認可法定職位”(authorized statutory office) 指——

- (a) 《保險公司條例》(第 41 章) 所指的保險業監督；(由 1989 年第 10 號第 65 條修訂)
- (b) 證監會；或 (由 1989 年第 10 號第 65 條代替。由 2002 年第 6 號第 12 條修訂)
- (c) 《強制性公積金計劃條例》(第 485 章) 第 6 條所設立的強制性公積金計劃管理局。(由 1989 年第 10 號第 65 條廢除。由 1998 年第 4 號第 7 條增補)
- (d) (由 1989 年第 10 號第 65 條廢除)
(由 1988 年第 68 號第 2 條增補。由 1998 年第 4 號第 7 條修訂)

(5B) 立法會可藉決議修訂第 (5A) 款。(由 1988 年第 68 號第 2 條增補。由 1999 年第 68 號第 3 條修訂)

(5C) 金融管理專員可就依據第 (5)(b)、(c)、(d)、(e)、(f)、(fa)、(gaa) 或 (ga) 款披露資料一事附加條件，並須就依據第 (5)(g) 款披露資料一事附加條件，即——(由 1995 年第 49 號第 36 條修訂；由 2002 年第 6 號第 12 條修訂；由 2004 年第 7 號第 55 條修訂)

- (a) 獲披露資料的人；或
- (b) 從 (a) 段提述的人處取得或接獲 (不論直接或間接) 資料的人，

兩者均不得在無金融管理專員的同意下，向任何其他人士披露該等資料。(由 1991 年第 95 號第 40 條增補)

(5D) 第 (5)(h) 款的施行不得規定金融管理專員在任何民事法律程序中就任何民事法律程序，披露任何其依據該款可披露或已披露的資料。(由 1991 年第 95 號第 40 條增補。由 1993 年第 94 號第 28 條修訂)

(6) 任何人——

- (a) 違反第 (1) 款；
- (b) 協助、教唆、慫使或促使任何人違反第 (1) 款；或
- (c) 明知依據第 (5) 款披露資料一事已附加第 (5C) 款提述的條件，而違反該條件，或協助、教唆、慫使或促使任何人違反該條件，(由 1991 年第 95 號第 40 條增補)

即屬犯罪——

- (i) the person from whom the information was obtained or received; and
 - (ii) where the information does not relate to such person, the person to whom it relates; or (Added 95 of 1991 s. 40)
- (i) to the disclosure of information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section or section 121. (Added 95 of 1991 s. 40)

(5A) For the purposes of subsection (5)(f), “authorized statutory office” (認可法定職位) means—

- (a) the Insurance Authority under the Insurance Companies Ordinance (Cap. 41); (Amended 10 of 1989 s. 65)
- (b) the Securities and Futures Commission; or (Replaced 10 of 1989 s. 65)
- (c) the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485). (Repealed 10 of 1989 s. 65. Added 4 of 1998 s. 7)
- (d) (Repealed 10 of 1989 s. 65)

(5B) The Legislative Council may, by resolution, amend subsection (5A). (Added 68 of 1988 s. 2. Amended 4 of 1998 s. 7)

(5C) The Monetary Authority may attach a condition to any disclosure of information made pursuant to subsection (5)(b), (c), (d), (e), (f), (fa), (gaa) or (ga), and shall attach a condition to any disclosure of information made pursuant to subsection (5)(g), that neither— (Amended 49 of 1995 s. 36; 6 of 2002 s. 12; 7 of 2004 s. 55)

- (a) the person to whom the information has been disclosed; nor
- (b) any person obtaining or receiving the information (whether directly or indirectly) from the person referred to in paragraph (a), shall disclose that information to any other person without the consent of the Monetary Authority. (Added 95 of 1991 s. 40)

(5D) Subsection (5)(h) shall not operate to require the Monetary Authority to disclose in or in relation to any civil proceedings any information which he may disclose, or has disclosed, pursuant to that subsection. (Added 95 of 1991 s. 40. Amended 94 of 1993 s. 28)

(6) Any person who—

- (a) contravenes subsection (1);
- (b) aids, abets, counsels or procures any person to contravene subsection (1); or
- (c) knowing that the condition referred to in subsection (5C) has been attached to a disclosure of information made pursuant to subsection (5), contravenes, or aids, abets, counsels or procures any person to contravene, that condition, (Added 95 of 1991 s. 40)

commits an offence and is liable—

- (i) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
- (ii) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。 (由 1997 年第 4 號第 27 條修訂)

(7) 第 (5)(a)、(e) 及 (g) 款適用於核准貨幣經紀及前核准貨幣經紀和就該等經紀而適用，一如其分別適用於認可機構及前認可機構和就該等機構而適用一樣，而本條例其他條文須據此解釋。 (由 1997 年第 4 號第 17 條增補)

(由 1990 年第 3 號第 46 條修訂；由 1992 年第 82 號第 20 條修訂)

- (i) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. (*Amended 4 of 1997 s. 27*)

(7) Subsection (5)(a), (e) and (g) shall apply to and in relation to approved money brokers and former approved money brokers as it applies to and in relation to authorized institutions and former authorized institutions respectively, and the other provisions of this Ordinance shall be construed accordingly. (*Added 4 of 1997 s. 17*)

(*Amended 3 of 1990 s. 46; 82 of 1992 s. 20*)

**Organisations referred to in section 17(a) of the Policy and Procedures on
Post-Termination Employment of HKMA Staff**

The Securities and Futures Commission
The Office of the Commissioner of Insurance
The Mandatory Provident Fund Schemes Authority
The Hong Kong Deposit Protection Board
The Hong Kong Mortgage Corporation Limited
Hong Kong Note Printing Limited
The Hong Kong Institute for Monetary Research
Hong Kong Interbank Clearing Limited
Exchange Fund Investment Limited