



HONG KONG MONETARY AUTHORITY
香港金融管理局

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金管局資料簡介(3) HKMA Background Brief No.3

金融管理局的 授權及管治

MANDATE AND GOVERNANCE OF THE
HONG KONG MONETARY AUTHORITY

《金融管理局的授權及管治》是「金管局資料簡介」系列的第三份小冊子。金管局推出資料簡介系列，是為了闡明香港貨幣與銀行體系的運作。日後我們會繼續推出有關貨幣、銀行，以及金融基礎設施的小冊子。

本小冊子亦備有網上版本，讀者可於金管局網站查閱，網址為 www.hkma.gov.hk。

Mandate and Governance of the Hong Kong Monetary Authority is the third of a series of HKMA Background Briefs designed to explain the workings of Hong Kong's monetary and banking systems. Forthcoming background briefs will cover monetary, banking, and financial-infrastructure issues.

This booklet is also available on the HKMA website at www.hkma.gov.hk.



金管局
資料簡介(3)
HKMA
BACKGROUND BRIEF NO. 3

金管局資料簡介(3)
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Introduction

This booklet brings together the main laws, letters, delegations, terms of reference and other documents that determine the mandate and governance arrangements of the Hong Kong Monetary Authority (HKMA). Most of these documents are already in the public domain, but they are collected here to provide a convenient reference for specialist readers and the wider community. This booklet has been produced to promote public understanding of the mandate and governance arrangements of the HKMA, which we believe are of interest to the community given the importance of HKMA's work to the daily lives of the people of Hong Kong.

The HKMA, as Hong Kong's central banking institution, has four broad functions:

- maintaining the stability of the Hong Kong dollar
- promoting the safety of Hong Kong's banking system
- managing Hong Kong's official reserves
- maintaining and developing Hong Kong's financial infrastructure.

The HKMA was established on 1 April 1993 by merging the Office of the Exchange Fund with the Office of the Commissioner of Banking. To enable the establishment of the HKMA, the Legislative Council passed amendments to the Exchange Fund Ordinance in 1992 empowering the Financial Secretary to appoint a Monetary Authority and staff to assist him. The office of the Monetary Authority is known as the HKMA, and the Monetary Authority as the Chief Executive of the HKMA. However, in the laws and other documents relating to the responsibilities and functions of the HKMA, reference is almost invariably made to the Monetary Authority, and not to the HKMA.

The responsibilities of the Monetary Authority derive from the Laws of Hong Kong, which in turn derive from the Basic Law of the Hong Kong Special Administrative Region (SAR). The specific laws applicable to the Monetary Authority are the Exchange Fund Ordinance, the Banking Ordinance, the Deposit Protection Scheme Ordinance, the Clearing and Settlement Systems Ordinance and a number of other Ordinances.

The key ordinance in the governance of the HKMA is the Exchange Fund Ordinance, which sets out, among other things, the relationship between the Financial Secretary, who controls the Exchange Fund and appoints the Monetary Authority, and the Monetary Authority himself. The division of functions and responsibilities between the two under this and other ordinances is set out in an Exchange of Letters dated 25 June 2003. This

Exchange of Letters also discloses the delegations made by the Financial Secretary to the Monetary Authority under these Ordinances. These letters, and the delegations to which they refer, play an important part in defining the autonomy of the HKMA in its day-to-day work.

In his control of the Exchange Fund the Financial Secretary is advised by the Exchange Fund Advisory Committee (EFAC), which is established under the Exchange Fund Ordinance. Since many of the projects undertaken by the HKMA, and the operating and staff costs of the HKMA, are chargeable to the Exchange Fund, EFAC plays a central role in guiding and monitoring the HKMA.

EFAC is assisted in its work by five sub-committees, which monitor and advise on specific areas of the HKMA's work and make recommendations to the Financial Secretary through EFAC. Three of these sub-committees are technical in nature: these are the Currency Board Sub-Committee, the Investment Sub-Committee, and the Financial Infrastructure Sub-Committee. The other two – the Governance Sub-Committee and the Audit Sub-Committee – carry out oversight of the HKMA's work.

Two further advisory committees – the Banking Advisory Committee and the Deposit-Taking Companies Advisory Committee – are established under the Banking Ordinance to provide advice on matters relating to the Banking Ordinance.

The contents of this booklet present the mandate and governance arrangements for the HKMA as they stand in December 2006. The booklet will be reviewed periodically in the light of any major changes to the HKMA's mandate and governance arrangements. Questions or comments on this booklet may be addressed in the first instance to the Secretary of the Exchange Fund Advisory Committee (55/F, Two International Finance Centre, 8 Finance Street, Central, Hong Kong).

Joseph Yam

Chief Executive

Hong Kong Monetary Authority
December 2006

Section 1 Laws specifically applicable to the HKMA

The Basic Law

The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China was promulgated on 4 April 1990 and took effect on 1 July 1997. The Basic Law prescribes the systems to be practised in the Hong Kong SAR in order to ensure the implementation of the policies of the People's Republic of China regarding Hong Kong as elaborated by the Chinese Government in the Sino-British Joint Declaration on the Question of Hong Kong of 1984. Since the Basic Law was promulgated before the establishment of the HKMA in 1993, it contains no specific reference to the HKMA. Articles 109-113 of the Basic Law nevertheless apply directly to the responsibilities of the HKMA. These articles, which set out the broad principles for Hong Kong's monetary and financial systems, are extracted in this section.

Exchange Fund Ordinance (Cap. 66)

The Exchange Fund Ordinance establishes the Exchange Fund under the control of the Financial Secretary. According to the Ordinance, the Fund shall be used primarily for affecting the exchange value of the Hong Kong dollar. It may also be used for maintaining the stability and integrity of the monetary and financial systems of Hong Kong, with a view to maintaining Hong Kong as an international financial centre.

The Exchange Fund Ordinance is given in full in this section. The following sections are of particular relevance to the governance arrangements for the HKMA:

section 3, which establishes the Exchange Fund Advisory Committee under the chairmanship of the Financial Secretary

section 5A, which requires the Financial Secretary to appoint a Monetary Authority, sets out the functions of the Monetary Authority, and provides for the appointment of staff to assist the Monetary Authority in performing his functions

section 5B, which provides for the delegation of the Financial Secretary's powers under the Ordinance to the Monetary Authority

section 6, which provides for staff costs relating to persons employed in connection with the purposes of the Fund to be charged to the Exchange Fund

section 7, which provides for the auditing of the Fund.

In addition to the Exchange Fund Ordinance, a number of ordinances provide the legal basis for the HKMA to carry out its functions. These ordinances are not included in this collection of documents: they may be viewed on the Department of Justice website (www.doj.gov.hk).

Banking Ordinance (Cap. 155)

The Banking Ordinance confers on the Monetary Authority the responsibility and powers for regulating and supervising banking business and the business of taking deposits. Under the Ordinance, the Monetary Authority is responsible, among other things, for the authorization of licensed banks, restricted licence banks, and deposit-taking companies in Hong Kong.

Clearing and Settlement Systems Ordinance (Cap. 584)

The Clearing and Settlement Systems Ordinance provides a statutory regime for the Monetary Authority to designate and oversee clearing and settlement systems that are material to the monetary or financial stability of Hong Kong or to the functioning of Hong Kong as an international financial centre.

Deposit Protection Scheme Ordinance (Cap. 581)

Under the Deposit Protection Scheme Ordinance the Monetary Authority is charged with implementing the decisions of the Hong Kong Deposit Protection Board, and among other things, deciding whether compensation should be paid to the depositors of a failed scheme bank pursuant to the Ordinance.

A number of further ordinances confer powers or responsibilities on the Monetary Authority. Among these are the Monetary Statistics Ordinance, the Legal Tender Notes Issue Ordinance, the Crimes Ordinance, the Hong Kong Association of Banks Ordinance, and the Securities and Futures Ordinance.

*The Basic Law
of the Hong Kong Special Administrative Region
of the People’s Republic of China*

Chapter V: Economy

Section 1: Public Finance, Monetary Affairs, Trade, Industry and Commerce
(extract)

Article 109 The Government of the Hong Kong Special Administrative Region shall provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial centre.

Article 110 The monetary and financial systems of the Hong Kong Special Administrative Region shall be prescribed by law.

The Government of the Hong Kong Special Administrative Region shall, on its own, formulate monetary and financial policies, safeguard the free operation of financial business and financial markets, and regulate and supervise them in accordance with law.

Article 111 The Hong Kong dollar, as the legal tender in the Hong Kong Special Administrative Region, shall continue to circulate.

The authority to issue Hong Kong currency shall be vested in the Government of the Hong Kong Special Administrative Region. The issue of Hong Kong currency must be backed by a 100 per cent reserve fund. The system regarding the issue of Hong Kong currency and the reserve fund system shall be prescribed by law.

The Government of the Hong Kong Special Administrative Region may authorize designated banks to issue or continue to issue Hong Kong currency under statutory authority, after satisfying itself that any issue of currency will be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of the currency.

Article 112 No foreign exchange control policies shall be applied in the Hong Kong Special Administrative Region. The Hong Kong dollar shall be freely convertible. Markets for foreign exchange, gold, securities, futures and the like shall continue.

The Government of the Hong Kong Special Administrative Region shall safeguard the free flow of capital within, into and out of the Region.

Article 113 The Exchange Fund of the Hong Kong Special Administrative Region shall be managed and controlled by the government of the Region, primarily for regulating the exchange value of the Hong Kong dollar.

CHAPTER 66

EXCHANGE FUND

To make provision for the establishment and management of an exchange fund and as to the employment of its assets in Hong Kong.

(Amended 20 of 1948 s. 4; 17 of 1979 s. 2)

[6 December 1935]

1. Short title

This Ordinance may be cited as the Exchange Fund Ordinance.

(Amended 20 of 1948 s. 4)

2. Interpretation

In this Ordinance, unless the context otherwise requires—

“authorized institution” (認可機構) means a bank, a restricted licence bank or a deposit-taking company licensed or registered under the Banking Ordinance (Cap. 155); *(Added 12 of 1995 s. 2)*

“foreign exchange” (外匯) means all freely convertible currencies other than Hong Kong currency; *(Replaced 12 of 1995 s. 2)*

“freely convertible” (可自由兌換) with respect to a currency means that it may be traded on the international foreign exchange markets; *(Added 12 of 1995 s. 2)*

“legal tender notes” (法定貨幣紙幣)—

(a) means—

(i) currency notes issued in Hong Kong by the Financial Secretary pursuant to section 3(1) of the Legal Tender Notes Issue Ordinance (Cap. 65); and

(ii) bank notes issued in Hong Kong by a note-issuing bank in accordance with the terms and conditions (if any) to which its authorization (or deemed authorization) under section 3(2) of that Ordinance is subject; and

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(b) includes any bank notes which were legal tender pursuant to that Ordinance as in force immediately before the commencement of the Bank Notes Issue (Amendment) Ordinance 1995 (98 of 1995); (*Added 98 of 1995 s. 6*)

“Monetary Authority” (金融管理專員) means the Monetary Authority appointed under section 5A; (*Added 82 of 1992 s. 2*)

“note-issuing bank” (發鈔銀行) has the meaning assigned to it by section 2 of the Legal Tender Notes Issue Ordinance (Cap. 65). (*Replaced 98 of 1995 s. 6*)

(*Amended 98 of 1995 s. 6*)

3. Establishment, control and management of Exchange Fund

(1) There shall be established a fund to be called “the Exchange Fund” (外匯基金) which shall be under the control of the Financial Secretary and shall be used primarily for such purposes as the Financial Secretary thinks fit affecting, either directly or indirectly the exchange value of the currency of Hong Kong and for other purposes incidental thereto. The control of the Financial Secretary shall be exercised in consultation with an Exchange Fund Advisory Committee of which the Financial Secretary shall be ex officio chairman and of which the other members shall be appointed by the Chief Executive. (*Amended 12 of 1946 s. 2; 26 of 1983 s. 2; 82 of 1992 s. 3; 68 of 1999 s. 3*)

(1A) In addition to using the Fund for its primary purpose, the Financial Secretary may, with a view to maintaining Hong Kong as an international financial centre, use the Fund as he thinks fit to maintain the stability and the integrity of the monetary and financial systems of Hong Kong. (*Added 82 of 1992 s. 3*)

(1B) The Financial Secretary, in using the Fund for the purpose specified in subsection (1A), shall have regard to the primary purpose of the Fund. (*Added 82 of 1992 s. 3*)

(2) The Fund, or any part of it, may be held in Hong Kong currency or in foreign exchange or in gold or silver or may be invested by the Financial Secretary in such securities or other assets as he, after having consulted the Exchange Fund Advisory Committee, considers appropriate; and the Financial Secretary may for the account of the Fund— (*Replaced 25 of 1971 s. 2. Amended 8 of 1975 s. 2; 26 of 1983 s. 2; 12 of 1995 s. 3*)

(a) buy or sell such currency, foreign exchange, gold, silver, securities or assets accordingly; and (*Added 12 of 1995 s. 3*)

(b) after having consulted the Exchange Fund Advisory Committee, enter into any financial arrangement that he considers appropriate for the prudent management of the Fund. (*Added 12 of 1995 s. 3*)

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(3) Without restricting the generality of the powers of the Financial Secretary under subsections (1) and (1A) but subject to subsection (4), the Financial Secretary may borrow for the account of the Fund either in Hong Kong or elsewhere, on the security of the general revenue. (*Replaced 12 of 1995 s. 3*)

(3A) There shall be credited to the Fund the value of—

- (a) any coinage issued under or by virtue of the Coinage Ordinance (Cap. 454);
- (b) any legal tender note referred to in paragraph (a)(i) of the definition of “legal tender notes”;
- (c) any proceeds of sale of such coinage after it has ceased to be legal tender. (*Replaced 98 of 1995 s. 7*)

(4) The aggregate amount of borrowing under subsection (3) outstanding at any one time shall, subject to subsection (5), not exceed fifty thousand million dollars, or, if held in foreign exchange, the equivalent at the current rate of exchange. (*Added 25 of 1971 s. 2. Amended L.N. 150 of 1971; L.N. 125 of 1972; L.N. 56 of 1980; L.N. 173 of 1980; L.N. 363 of 1980; L.N. 388 of 1981; L.N. 64 of 1987; 12 of 1995 s. 3*)

(5) The Legislative Council may from time to time, by resolution proposed, with the approval of the Chief Executive in Council, by a designated public officer required and directed by the Chief Executive to attend a sitting of the Legislative Council for that purpose, determine some other amount to be the amount which the aggregate amount of such borrowings outstanding at any one time shall not exceed. (*Added 25 of 1971 s. 2. Amended 16 of 1984 s. 2; 12 of 1995 s. 3; 68 of 1999 s. 3*)

3A. Power to require accounts to be opened, maintained and operated

(1) The Financial Secretary may by notice in writing served on an authorized institution require that institution to open an account with the Monetary Authority for the account of the Exchange Fund and to maintain and operate such account on such terms and conditions as he considers appropriate having regard to the purposes for which the Exchange Fund is required to be or may be used under section 3(1) and (1A).

(2) The Financial Secretary may at any time by notice in writing served on an authorized institution add to or vary the terms or conditions imposed on it under subsection (1), in any manner which is not inconsistent with the fulfillment of the purposes for which the Exchange Fund is required to be or may be used under section 3(1) or (1A).

(3) Any authorized institution aggrieved by any requirement imposed on it under subsection (1) or by any addition or variation made under subsection

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(2) may appeal to the Chief Executive in Council against such requirement, addition or variation. (*Amended 68 of 1999 s. 3*)

(4) The Chief Executive in Council may determine an appeal under this section by confirming, varying or reversing the requirement, addition or variation against which the appeal was lodged. (*Amended 68 of 1999 s. 3*)

(5) A notice under this section may be served on an authorized institution by leaving it at or sending it by post to its principal place of business in Hong Kong.

(*Added 12 of 1995 s. 4*)

4. Certificates of indebtedness

(1) The Financial Secretary is authorized to issue to any note-issuing bank, to be held as cover for legal tender notes (other than such notes referred to in paragraph (a)(i) of the definition of “legal tender notes”), a certificate of indebtedness in the form in the Schedule and to require such bank to pay to him for the account of the Fund the face value of the notes so issued, or the equivalent in such foreign exchange and at such rate of exchange as may be determined by the Financial Secretary, to be held by the Fund principally for the redemption of such notes and may be used for such purposes in the event of a note-issuing bank being wound up in Hong Kong or elsewhere. (*Replaced 4 of 1951 Schedule. Amended 26 of 1983 s. 3; 16 of 1984 s. 3; 58 of 1993 s. 3; 98 of 1995 s. 8*)

(2) The Financial Secretary may employ the funds paid to him in accordance with subsection (1), for the purchase of foreign exchange or gold or otherwise in accordance with the provisions of section 3(2) or for the reduction of the amount of the indebtedness of the Government as recorded in the register maintained by the Monetary Authority under subsection (4) by payments either in Hong Kong dollars or the equivalent in such foreign exchange and at such rate of exchange as may be determined by the Financial Secretary. (*Replaced 4 of 1951 Schedule. Amended 16 of 1984 s. 3*)

(3) The Financial Secretary may apply the proceeds of the sale of foreign exchange or gold for Hong Kong currency in accordance with section 3(2) to the reduction of the amount of the indebtedness of the Government as recorded in the register maintained by the Monetary Authority under subsection (4). (*Amended 12 of 1946 s. 2*)

(4) The Monetary Authority shall establish and maintain a register of all certificates of indebtedness issued by the Financial Secretary and of all payments made to the Financial Secretary pursuant to subsection (1) and all payments made by the Financial Secretary for the reduction of the amount of the indebtedness of the Government pursuant to subsection (2) or (3). (*Added 12 of 1995 s. 5*)

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(5) A document purporting to be a copy of a register maintained by the Monetary Authority under subsection (4) (or any part thereof) or, where such register is maintained otherwise than in a legible form but is capable of being reproduced in a legible form, a document purporting to be such a reproduction (or a reproduction of any part thereof) and purporting to be signed by the Monetary Authority shall be admissible in any judicial proceedings and shall be deemed to have been signed by the Monetary Authority and the facts recorded thereon shall be deemed to be established, in the absence of evidence to the contrary. (*Added 12 of 1995 s. 5*)

(*Amended 12 of 1995 s. 5*)

4A. (*Repealed 64 of 1987 s. 31*)

5. Preservation of limits on note issue

Nothing in this Ordinance shall empower any note-issuing bank to issue notes in excess of any maximum limit laid down in any Ordinance or charter governing the issue of such notes, and in issuing certificates under section 4 the Financial Secretary shall take into account such maximum limits.

(*Replaced 4 of 1951 Schedule. Amended 7 of 1978 s. 3; 12 of 1995 s. 6*)

5A. Appointment of Monetary Authority

(1) The Financial Secretary shall appoint a person to be the Monetary Authority on such terms and conditions as he thinks fit.

(2) 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) The Financial Secretary may appoint, on such terms and conditions as he thinks fit, persons to assist the Monetary Authority in the performance of the functions of the Monetary Authority specified in subsection (2).

(4) Notwithstanding subsection (2)(b) and (c), the Monetary Authority and persons appointed to assist him under subsection (3) shall be regarded, for all purposes, as employed in connection with the purposes of the Fund.

(5) In this section “functions” (職能) includes powers and duties.

(*Added 82 of 1992 s. 4*)

CAP. 66 *Exchange Fund***5B. Delegation to Monetary Authority**

(1) The Financial Secretary may delegate to the Monetary Authority the powers and duties conferred or imposed on the Financial Secretary under this Ordinance.

(2) A delegation or a subdelegation under this section—

- (a) shall not preclude the Financial Secretary from exercising the power or performing the duty;
- (b) may be conditional, qualified or limited as the Financial Secretary thinks fit;
- (c) may be to a person performing the functions of the Monetary Authority for the time being; and
- (d) may be amended by the Financial Secretary.

(3) The Financial Secretary may include in a delegation under this section power to subdelegate the powers and duties delegated on such terms and to such person or to any person of a class or description, as may be specified by him.

(Added 82 of 1992 s. 4)

6. Charges on Fund

There shall be charged to the Fund—

- (a) the emoluments payable to, and other staff costs relating to, the persons employed in connection with the purposes of the Fund, including the investment thereof, and also including any appropriate share of such emoluments or staff costs in respect of the services of public officers so employed as part of their duties:

Provided that the number of appointments and the emoluments of such staff have been approved by the Financial Secretary; *(Replaced 26 of 1983 s. 4)*

- (aa) any expenses incurred in the issue and maintenance in circulation of any coinage issued under or by virtue of the Coinage Ordinance (Cap. 454); and *(Added 26 of 1983 s. 4. Amended 81 of 1994 s. 7)*
- (b) any incidental expenditure which the Chief Executive may approve as necessary for the due performance of the duties laid upon the Financial Secretary and the Advisory Committee in connection with the operation of the fund. *(Replaced 44 of 1936 s. 3. Amended 12 of 1946 s. 2; 20 of 1948 s. 4; 68 of 1999 s. 3)*

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7. Audit of Fund

The accounts of all transactions of the Fund shall be audited at such times and in such manner as the Chief Executive may from time to time direct.

(Amended 44 of 1936 s. 3; 26 of 1983 s. 5; 68 of 1999 s. 3)

8. Transfer from the Fund

Where the Financial Secretary is satisfied that such transfer is not likely to affect adversely his ability to fulfill any purpose for which the Exchange Fund is required to be or may be used under section 3(1) or (1A), he may, after consulting the Exchange Fund Advisory Committee, and with the prior approval of the Chief Executive in Council, transfer from the Fund to the general revenue or to such other fund or funds of the Government as may be authorized by the Chief Executive in Council any sum or part of any sum in excess of the amount required to maintain the assets of the Fund at 105% of the total obligations of the Fund for the time being outstanding and may for the purpose of any such transfer realize any of the assets of the Fund.

(Replaced 12 of 1995 s. 7. Amended 68 of 1999 s. 3)

SCHEDULE

[s. 4(1)]

HONG KONG

EXCHANGE FUND ORDINANCE

(Chapter 66)

Certificate of Indebtedness

This certificate issued under the Exchange Fund Ordinance (Chapter 66) represents indebtedness of the Hong Kong Government without interest to
.....
for the amount shown as such in the register of the Monetary Authority maintained under section 4(4) and is redeemable at any time at the option of the Financial Secretary at its face value or the equivalent in such foreign exchange and at such rate of exchange as may be determined by the Financial Secretary.

This certificate may be held up to the above-mentioned amount as cover for bank notes lawfully issued in Hong Kong.

HONG KONG,

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Monetary Authority.

(Replaced 26 of 1983 s. 6. Amended 16 of 1984 s. 4; 82 of 1992 s. 5; 12 of 1995 s. 8)

Section 2 Functions and responsibilities in public finance and monetary and financial affairs

In June 2003 a series of statements and letters were published setting out the division of responsibilities and functions in monetary and financial affairs and public finance among senior government officials. These documents were drawn up following recommendations made in the International Monetary Fund's Financial System Stability Assessment for Hong Kong issued in the same month and were published in the interests of transparency. The documents consist of

- a statement by the Chief Executive of the Hong Kong SAR on 27 June 2003 on the responsibilities of the Financial Secretary and the Secretary for Financial Services and the Treasury
- a statement by the Financial Secretary on 27 June 2003 setting out his policy objectives in relation to the financial system, the status of Hong Kong as an international financial centre, and public finance
- an Exchange of Letters on 25 June 2003 between the Financial Secretary and the Monetary Authority setting out the division of functions and responsibilities in monetary and financial affairs between the two officials
- a further letter on 25 June 2003 from the Financial Secretary to the Monetary Authority specifying the monetary policy objective and the structure of the monetary system for Hong Kong.

Among these documents, the Exchange of Letters between the Financial Secretary and the Monetary Authority is one of the key texts in the governance arrangements for the HKMA. The Letters specify that the Financial Secretary is responsible for determining the monetary policy objective and the structure of the monetary system of Hong Kong; the further letter from the Financial Secretary of 25 June 2003 specifies that these should be currency stability defined as a stable exchange value at around HK\$7.80 to one US dollar maintained by Currency Board arrangements. The Monetary Authority is on his own responsible for achieving the monetary policy objective, including determining the strategy, instruments and operational means for doing so. He is also responsible for maintaining the stability and integrity of the monetary system of Hong Kong.

The Financial Secretary, assisted by the Secretary for Financial Services and the Treasury, has responsibility for policies for maintaining the stability and integrity of Hong Kong's financial system and the status of Hong Kong as an international financial centre. In support of these policies, the Monetary Authority is responsible, among other things, for

- promoting the general stability and effective working of the banking system
- promoting the development of the debt market, in co-operation with other relevant bodies
- matters relating to the issuance and circulation of legal tender notes and coins
- promoting the safety and efficiency of the financial infrastructure through the development of payment, clearing and settlement systems and, where appropriate, the operation of these systems
- seeking to promote, in co-operation with other relevant bodies, confidence in Hong Kong's monetary and financial systems, and appropriate market development initiatives to help strengthen the international competitiveness of Hong Kong's financial services.

The Exchange Fund is under the control of the Financial Secretary. The Monetary Authority, under delegation from the Financial Secretary, is responsible to the Financial Secretary for the use of the Exchange Fund, and for the investment management of the Fund.

The responsibilities and functions set out in the Exchange of Letters, and in the other documents in this section, reflect the existing arrangements and derive from the Basic Law and Hong Kong legislation, including the Exchange Fund and Banking Ordinances. One aspect of the Exchange of Letters between the Financial Secretary and the Monetary Authority is, however, worth drawing particular attention to for the emphasis it places on the operational independence of the HKMA. Disclosure is made in the Letters of the details of the delegation of statutory powers from the Financial Secretary to the Monetary Authority. The Financial Secretary makes an undertaking to disclose publicly, within three months and giving reasons, any exercise by himself of those delegated powers or any overriding of the Monetary Authority in his exercise of the delegated powers.

Responsibilities of the Financial Secretary and the Secretary for Financial Services and the Treasury

Articles 106 to 113 of the Basic Law of the Hong Kong Special Administrative Region (HKSAR) set out, among other things, the responsibilities of the Government for the public finance and monetary and financial affairs. This document aims to delineate the responsibilities of the Financial Secretary (FS) and the Secretary for Financial Services and the Treasury (SFST) in these areas. FS and SFST are accountable to the Chief Executive in discharging these responsibilities.

2. In this connection, FS shall be responsible for the following areas-

- (a) the monetary system;
- (b) the Exchange Fund;
- (c) the public finance;
- (d) the financial system; and
- (e) the status of Hong Kong as an international financial centre.

3. As regards the first two of these, FS shall be responsible for determining the monetary policy objective and the structure of the monetary system of Hong Kong, and shall exercise control over the Exchange Fund as provided for in the Exchange Fund Ordinance (Cap. 66). As also provided for in that Ordinance, FS has appointed the Monetary Authority (MA) to assist him in the performance of his functions under the Ordinance. For the purpose of clarity and transparency, FS will further define the relationship between him and MA in discharging his responsibilities in these two and other relevant areas.

4. As regards the public finance, the financial system and Hong Kong's status as an international financial centre, FS shall be responsible for determining the policy objectives at a macro level. SFST shall be responsible for formulating specific policies to achieve such objectives and for overseeing their implementation through the regulatory authorities and other organisations as appropriate.

5. SFST is thus the Principal Official who has primary responsibility for ensuring the effective discharge of our responsibilities in the three areas set out in paragraph 4 above. In performing this function, he shall liaise and consult with other relevant parties within and outside the Government. As the custodian of policies in these

Functions and responsibilities in public finance and monetary and financial affairs

areas, SFST is expected to bring to FS’s attention any matters which come to his attention and which necessitate any action on FS’s part pursuant to statutory powers vested in FS or otherwise. In exercising such powers, FS would seek the advice of SFST as he deems appropriate.

6. SFST has a specific responsibility for the efficient functioning of our financial system. Where this requires regulation, the regulatory authorities shall exercise their powers and discharge their functions independently in accordance with the respective statutes. SFST is expected to safeguard that independence. Where the law requires them to consult, or seek approval from, FS, SFST is expected, if requested by FS, to advise him.

7. SFST shall, in accordance with traditional practice, after seeking FS’s policy guidance as appropriate and approval by the Chief Executive in Council, be responsible for introducing legislative proposals into the Legislative Council in respect of all five areas referred to in paragraph 2, with the exception set out in paragraph 8 below.

8. FS shall have responsibility for the preparation of the Government’s budget, assisted by SFST, his staff and such other officials as FS deems appropriate. This responsibility will include the introduction of the Appropriation Bill into the Legislative Council. Thereafter, the day-to-day management of the public finance shall be the responsibility of SFST.

9. Under the Interpretation and General Clauses Ordinance (Cap.1), the term “Financial Secretary” means both FS and SFST, unless there is a contrary intention in the relevant legislation. In the interests of transparency and for the avoidance of doubts, there is a need to set out the circumstances where SFST may exercise statutory powers vested in FS by virtue of this particular provision. In this regard, the Government’s intention is that only those statutory powers and functions relating to the public finance, including those provided under the Public Finance Ordinance (Cap. 2) and the Financial Secretary Incorporation Ordinance (Cap. 1015), may be exercised and performed by SFST. This is essentially the same as the position before 1 July 2002, when such powers and functions were exercised and performed by the former Secretary for the Treasury. This will enable SFST, inter alia, to give administrative directions and instructions for the control and management of the public finance and to make changes to the approved estimates of expenditure, subject to such conditions, exceptions and limitations as may be specified by the legislature.

10. In the other areas for which SFST has primary responsibility, notwithstanding the broad definition of FS which includes SFST in Cap. 1, FS should reserve to himself all powers and functions, which have not been specifically delegated. However, as mentioned above, he would look to SFST for advice as he deems appropriate in exercising such powers or performing such functions.

Chief Executive

27 June 2003

Policy Objectives in Financial Affairs and Public Finance

This document sets out the Financial Secretary (FS)'s policy objectives at a macro level in relation to the financial system, the status of Hong Kong as an international financial centre and the public finance.

Financial system

2. The role of the financial system is to promote economic well-being through financial intermediation, i.e., the channelling of savings into investment, and the provision of a financial infrastructure for effecting financial transactions. Given the externally oriented nature of Hong Kong's economy, the openness of its financial markets and Hong Kong's status as an international financial centre, the financial system of Hong Kong should operate in line with international standards. In promoting the effective performance of this role by the financial system, the Government should adopt a free market approach and keep its involvement in the financial system to the minimum, except where the private interests of financial market participants do not align with the public interests, or where the infrastructure is a public good that it may not be possible or appropriate to provide through the market, for reasons of competitive fairness or commercial viability.

3. The Government should formulate specific policies to promote the efficient functioning of the financial system in the following manner -

- (a) Policies concerning financial infrastructure should aim to mitigate risks, increase efficiency and enhance market transparency and liquidity, thus supporting the safety and soundness of the financial system.
- (b) Policies concerning financial intermediation should aim to promote the stability, integrity, diversity and efficiency of the financial system.
- (c) Policies concerning the regulatory regime should aim to provide a regulatory framework that promotes the stability of the financial system, provides an appropriate measure of protection to users of financial services and facilitates competition, and is consistent with the standards and practices of major international financial centres.

Status of Hong Kong as an international financial centre

4. An international financial centre is a place where financial institutions from many different jurisdictions come together to carry out financial intermediation of an international dimension. The Government should seek to maintain and enhance Hong Kong's status as a major international financial centre. Towards this end, the Government should -

- (a) maintain an appropriate economic and legal environment for an open, fair and efficient market, including through ensuring that Hong Kong's laws continue to provide a level playing field;
- (b) further enhance the international competitiveness of Hong Kong's financial services through promoting international financial intermediation and attracting foreign savings to Hong Kong;
- (c) develop payment, clearing and settlement systems to facilitate the safe and efficient conduct of international and cross-border financial activities in Hong Kong; and
- (d) strengthen corporate governance standards with a view to fostering international confidence in our financial markets.

Public finance

5. The Government should maintain sound and stable public finance and foster a fiscal environment conducive to continued economic growth and success. Towards this end, the Government should -

- (a) follow the principle of keeping expenditure within the limits of revenues in drawing up its budget, and strive to achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of Hong Kong's gross domestic product;
- (b) ensure that resources available are deployed appropriately and used cost-effectively in providing services that best meet the needs of the community;
- (c) maintain a policy of low taxation, as well as an effective revenue collection

and protection system, to provide sources of government finance in support of economic and social development;

- (d) improve the efficiency, quality and cost-effectiveness of the Government’s central support services; and
- (e) manage the Government’s estate cost-effectively and efficiently.

6. It should be stressed that the above do not represent an exhaustive list of objectives to be pursued in relation to financial affairs and public finance. Nor should they be taken as static goals. As the market evolves, these objectives may need to be reviewed to ensure that they remain relevant and appropriate to Hong Kong.

Financial Secretary
27 June 2003

中華人民共和國
香港特別行政區政府
財政司 司長
梁錦松



Antony Leung
Financial Secretary
Government of the Hong Kong
Special Administrative Region
of the People's Republic of China

25 June 2003

To: The Monetary Authority

Functions and Responsibilities in Monetary and Financial Affairs

This letter sets out the division of functions and responsibilities in monetary and financial affairs between the Financial Secretary and the Monetary Authority.

Legal Framework

2. The Exchange Fund Ordinance establishes the Exchange Fund under the control of the Financial Secretary. The Fund shall be used primarily for affecting the exchange value of the Hong Kong dollar. The Financial Secretary may also use the Fund for maintaining the stability and the integrity of the monetary and financial systems of Hong Kong, with a view to maintaining Hong Kong as an international financial centre. The Financial Secretary's control of the Exchange Fund shall be exercised in consultation with the Exchange Fund Advisory Committee (EFAC).

3. The Banking Ordinance provides the Monetary Authority with the legal basis for the regulation and supervision of banking business and the business of taking deposits.

4. Section 5A of the Exchange Fund Ordinance provides the authority for the Financial Secretary to appoint a person to be the Monetary Authority and specifies the functions of the Monetary Authority. 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 Ordinance. The Monetary Authority is a person appointed under the Ordinance. The office of the Monetary Authority is known as the Hong Kong Monetary Authority and the Monetary Authority as the Chief Executive of the Hong Kong Monetary Authority.

5. Under this legal framework, the division of functions and responsibilities in monetary and financial affairs between the Financial Secretary and the Monetary Authority is set out below.

Monetary Policy

6. The Financial Secretary shall be responsible for determining the monetary policy objective and the structure of the monetary system of Hong Kong. The Monetary Authority shall on his own be responsible for achieving the monetary policy objective, including determining the strategy, instrument and operational

means for doing so, and for maintaining the stability and integrity of the monetary system of Hong Kong.

Stability and Integrity of the Financial System

7. The Financial Secretary, assisted by the Secretary for Financial Services and the Treasury, shall be responsible for policies for the maintenance of the stability and integrity of the financial system of Hong Kong.

8. In support of these policies, the Monetary Authority shall be responsible for:

- (a) providing a measure of protection to depositors and promoting the general stability and effective working of the banking system through the regulation of banking business and the business of taking deposits, and the supervision of Authorized Institutions as provided for in the Banking Ordinance;
- (b) determining on his own prudential policies, and standards and guidelines relating to the regulation of banking business and the business of taking deposits;
- (c) considering and proposing reforms of the law relating to the regulation of banking business and the business of taking deposits;
- (d) co-operating with other relevant authorities in the supervision of business conducted by Authorized Institutions (other than banking business or the business of taking deposits);
- (e) the development of the debt market in co-operation with other relevant authorities and organisations;
- (f) matters relating to the issuance and circulation of legal tender notes and coins;
- (g) promoting the safety and efficiency of the financial infrastructure through the development of domestic wholesale and retail payment, clearing and settlement systems involving Authorized Institutions and, where appropriate, the operation of these systems; and
- (h) other operations and schemes as appropriate.

Maintenance of the Status of Hong Kong as an International Financial Centre

9. The Financial Secretary, assisted by the Secretary for Financial Services and the Treasury, shall be responsible for policies for the maintenance of the status of Hong Kong as an international financial centre.

10. In support of these policies, the Monetary Authority, when discharging his responsibilities for maintaining the stability and integrity of the monetary and financial systems of Hong Kong, shall, in co-operation with other relevant authorities and organisations, seek to promote:

- (a) the development of payment, clearing and settlement systems to facilitate the safe and efficient conduct of international and cross-border financial activities in Hong Kong;
- (b) confidence in Hong Kong's monetary and financial systems through active participation in international financial and central banking forums; and
- (c) appropriate market development initiatives that help strengthen the international competitiveness of Hong Kong's financial services.

Exchange Fund

11. The Exchange Fund shall be under the control of the Financial Secretary, as provided for in the Exchange Fund Ordinance.

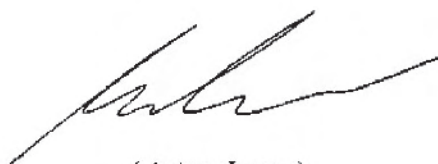
12. The Monetary Authority, under the delegated authority of the Financial Secretary and within the terms of the delegation, shall be responsible to the Financial Secretary for the use of the Exchange Fund, and for the investment management of the Exchange Fund.

Delegation of Powers

13. In order that the Monetary Authority has the necessary statutory powers, in addition to those already vested in him, to perform the functions and responsibilities set out in this letter, the Financial Secretary has delegated certain of his powers to the Monetary Authority. The delegations (excluding information that the Financial Secretary considers, after consultation with the Monetary Authority, to be market sensitive) are set out at Annex. If the Financial Secretary has chosen to override the Monetary Authority by giving him instructions, or has himself exercised those powers delegated to the Monetary Authority, the Financial Secretary shall disclose publicly why he has chosen to do so, unless he considers, after consultation with the Monetary Authority, that such disclosure is prejudicial to the stability and integrity of the monetary and financial systems of Hong Kong. Such disclosure shall be made within three months of the giving of such instructions or the exercising of such powers delegated to the Monetary Authority.

14. This letter shall be made public in the spirit of transparency and to further enhance the credibility of policies and efficiency of operations in monetary and financial affairs. Any future changes to the contents of this letter, and any additional delegations or changes to existing delegations (excluding information that the Financial Secretary considers, after consultation with the Monetary Authority, to be market sensitive), shall also be made public.

15. Please acknowledge receipt of this letter and signify your understanding of and agreement to the contents therein by signing and returning the duplicate of this letter to me.



(Antony Leung)
Financial Secretary

c.c. Secretary for Financial Services and Treasury

To: The Financial Secretary

I acknowledge receipt of this letter and understand and agree to the contents therein,



(Joseph Yam)
Monetary Authority

Annex

**Statutory Powers Delegated by
the Financial Secretary (FS) to the Monetary Authority(MA)**

Ordinance	Delegated Powers
Exchange Fund Ordinance	<p>Section 3(1) Specifically to conduct HK\$/US\$ transactions, subject to limits determined from time to time by FS, and to carry out money market operations.</p> <p>Section 3(1A) the exercise of which is subject to section 3(1B)</p> <p>Section 3(2), except FS' powers of approval of the type of securities and other assets in which the Exchange Fund may be invested</p> <p>(FS also delegates to MA his powers under section 3(1), (1A) and (2) insofar as borrowings for the account of the Exchange Fund are concerned)</p> <p>Section 3A(1) and (2)</p> <p>Section 4(1) except FS' powers to determine the foreign exchange and the rate of exchange applicable in that subsection</p> <p>Section 4(2) except FS' powers to determine the foreign exchange and the rate of exchange applicable in that subsection</p> <p>Section 4(3)</p> <p>Section 5A(3) subject to condition that MA's delegation is in respect of officers below the rank of executive directors subject to the constraints of the annual budgets of the HKMA</p>

Functions and responsibilities in public finance and monetary and financial affairs

Ordinance	Delegated Powers
	Section 6(a) subject to condition that MA may only approve appointments and terms and conditions which do not exceed the charge on the Exchange Fund in respect of the same in the HKMA's budget
Legal Tender Notes Issue Ordinance	Section 3(5) subject to condition that MA is satisfied that the amendments proposed in relation to a particular bank will be in accordance with the relevant legislation/constitutional documents of the bank
The Hong Kong Association of Banks Ordinance	Section 12(1)

Monetary Policy Objective

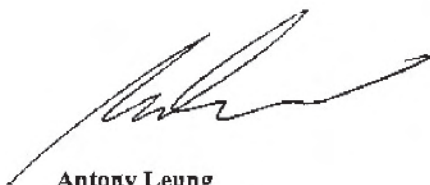
Monetary Authority

My letter to you dated 25 June 2003 sets out the division of functions and responsibilities in monetary and financial affairs between the Financial Secretary and the Monetary Authority. In particular, paragraph 6 of that letter specifies that:-

The Financial Secretary shall be responsible for determining the monetary policy objective and the structure of the monetary system of Hong Kong. The Monetary Authority shall on his own be responsible for achieving the monetary policy objective, including determining the strategy, instrument and operational means for doing so, and for maintaining the stability and integrity of the monetary system of Hong Kong.

2. In accordance with this, I hereby determine that the monetary policy objective of Hong Kong shall be currency stability, defined as a stable external exchange value of the currency of Hong Kong, in terms of its exchange rate in the foreign exchange market against the US dollar, at around HK\$7.80 to US\$1. I hereby also determine that the structure of the monetary system shall be characterised by Currency Board arrangements, requiring the Hong Kong dollar monetary base to be at least 100 per cent backed by, and changes in it to be 100 per cent matched by corresponding changes in, US dollar reserves held in the Exchange Fund at the fixed exchange rate of HK\$7.80 to US\$1.

3. As Monetary Authority you shall on your own be responsible for achieving the monetary policy objective within the structure of the monetary system I have both determined herein. I shall be happy to continue to receive periodic reports from you, as is currently the practice, in the form of the monthly Reports on Currency Board Operations submitted to the Exchange Fund Advisory Committee and subsequently published, on how the monetary policy objective is being achieved.



Antony Leung
Financial Secretary
25 June 2003

Section 3 Cross-sector co-ordination and co-operation

Forums for co-operation

In view of the increasing linkages across markets and their importance to financial stability, the Hong Kong SAR Government has strengthened the framework for managing and co-ordinating cross-sector issues in recent years. This has been achieved mainly through the establishment of the Council of Financial Regulators (CFR) chaired by the Financial Secretary, and the Financial Stability Committee (FSC) chaired by the Secretary for Financial Services and the Treasury.

The CFR focuses on cross-sector regulatory matters with a view to minimising regulatory gaps or duplications. The FSC is responsible for monitoring the functioning of the financial system and any events or developments with cross-sector and systemic implications. The Monetary Authority sits on both Committees. The terms of reference and membership of the two Committees, which are set out in this section, are published on the Government's website.

Memorandums of Understanding

The HKMA works closely with the other financial regulatory authorities in the supervision of authorized institutions' (Als) activities of common concern.

With the Securities and Futures Commission

Following the implementation of the Securities and Futures Ordinance, the role of the HKMA as front-line supervisor of Als' securities activities has been reinforced with new responsibilities and powers. The HKMA signed a revised Memorandum of Understanding with the Securities and Futures Commission in December 2002 to strengthen the supervisory co-operation in the supervision of Als' securities activities.

With the Insurance Authority

As Als have become more active in selling insurance products to customers, the Monetary Authority has improved his supervisory co-operation with the Insurance Authority in relation to the insurance business of Als. These efforts are set out in the Memorandum of Understanding between the two regulators in September 2003.

With the Mandatory Provident Fund Schemes Authority and other regulators

Mandatory Provident Fund intermediaries are, according to their industry sector, supervised by the Monetary Authority, the Insurance Authority and the Securities and Futures Commission. To ensure consistency in supervisory approach, it has been agreed among the various regulators that the Mandatory Provident Fund Schemes Authority should be the lead regulator and co-ordinator. A Memorandum of Understanding was first signed among the four regulators in October 1999, which was later revised in December 2003, to ensure conformity in regulatory approach and minimise gaps and duplication of regulatory work.

The full texts of these Memorandums of Understanding may be found on the HKMA's website. A summary of each of them is given in this section.

Council of Financial Regulators

Terms of Reference

With the objective of contributing to the efficiency and effectiveness of regulation and supervision of financial institutions, the promotion and development of the financial markets and the maintenance of financial stability in Hong Kong, the Council of Financial Regulators shall

- facilitate cooperation and coordination among its members;
- share information and views on regulatory and supervisory issues and important trends in the financial system, particularly those which may have a cross-sectoral impact;
- minimize duplication or gaps in the regulation and supervision of financial institutions, paying close attention to the need to keep regulatory costs to a minimum;
- review international developments in financial sector regulation and to draw lessons for Hong Kong;
- discuss regulatory and supervisory issues relating to individual financial institutions that may have a cross-sectoral impact; and
- oversee trends, issues and developments which may have implications for financial stability in Hong Kong.

Membership

Chairman: Financial Secretary

Members: Representatives from –

Hong Kong Monetary Authority
Securities and Futures Commission
Office of the Commissioner of Insurance
Mandatory Provident Fund Authority
Financial Services and the Treasury Bureau

Financial Stability Committee

Terms of Reference

Bearing in mind the importance of financial stability to Hong Kong, the Financial Stability Committee shall

- a) monitor on a regular basis the functioning of the financial system of Hong Kong, including the banking, debt, equity, insurance and related markets;
- b) deliberate on events, issues and developments with possible cross market and systemic implications, and where appropriate, formulate and co-ordinate responses; and
- c) report regularly, and at any time where necessary, to the Financial Secretary covering matters in (a) and (b) above.

Membership

Chairman: Secretary for Financial Services and the Treasury

Members: Representatives from –

Hong Kong Monetary Authority
Securities and Futures Commission
Office of the Commissioner of Insurance

Summary of the Memorandum of Understanding between the Securities and Futures Commission and the Hong Kong Monetary Authority

This Memorandum of Understanding (MoU) aims to achieve the following objectives:

- (a) to replace and supersede the previous MoU, signed on 23 October 1995 between the Securities and Futures Commission (SFC) and the HKMA, in view of the new regulatory regime implemented under the Securities and Futures Ordinance and the Banking Ordinance as amended by the Banking (Amendment) Ordinance 2002;
- (b) to set out the roles and responsibilities of the SFC and the HKMA under each major functional aspect of the new regulatory regime, as well as the arrangements between the SFC and the HKMA in relation to the exchange of relevant information and notification or referral of relevant matters;
- (c) to achieve the regulatory objective that all intermediaries carrying out regulated activities in Hong Kong are subject to consistent regulatory measures, irrespective of whether they are supervised by the SFC or the HKMA;
- (d) to strengthen co-operation between the SFC and the HKMA.

According to this MoU, the HKMA's responsibilities include, but are not limited to, the following:

- (a) to consult the SFC on the merits of applications by authorized institutions to be registered to carry on a regulated activity and to advise the SFC whether it is satisfied that the applicant is fit and proper to be so registered;
- (b) to give or refuse to give consent to individuals to be executive officers of registered institutions;
- (c) to maintain a register of individuals who perform any regulated function in any regulated activity for or on behalf of a registered institution and to make such register available for public access;

- (d) to consult the SFC regarding guidelines it proposes to make or issue under the Banking Ordinance, in so far as such guidelines apply to registered institutions in relation to the carrying on of their regulated activities;
- (e) to be responsible for the day-to-day supervision of the carrying on of regulated activities by registered institutions;
- (f) to look into complaints relating to registered institutions that it receives, whether referred by the SFC or not;
- (g) to refer to the SFC those complaints against authorized institutions that appear to relate to the SFC's functions under the Securities and Futures Ordinance;
- (h) to notify the SFC, keep it informed, and forward a copy of investigation report to the SFC together with a covering letter to the SFC stating the HKMA's conclusions if the HKMA opens a case for investigation;
- (i) to make recommendations to the SFC on the SFC's exercise of its disciplinary powers over an executive officer, or any other individual whose name appears in the register maintained by the HKMA;
- (j) to consult the SFC before withdrawing or suspending any consent given to a person to be an executive officer of a registered institution, or removing or suspending the name of a person from the register maintained by the HKMA.

This MoU was signed on 12 December 2002.

Summary of the Memorandum of Understanding between the Monetary Authority and the Insurance Authority

This Memorandum of Understanding (MoU) sets out the framework agreed between the Monetary Authority (MA) and the Insurance Authority (IA) for strengthening co-operation on the supervision of entities or financial groups in which the two regulators have a common regulatory interest.

For institutions or financial groups that may be of supervisory concern to both the MA and the IA, the two regulators will endeavour to ensure that there are no gaps in regulatory supervision and to eliminate unnecessary duplication of supervisory effort. They will, to the extent permitted by applicable laws, disclose relevant information to the other party to assist it to exercise its statutory functions effectively.

According to this MoU, the MA's responsibilities include, but are not limited to, the following:

- (a) to monitor whether authorized institutions have adequate internal control systems, procedures and guidelines to ensure that their staff members engaged in insurance agency or brokerage business are fit and proper, and whether the conduct of such staff members complies with the code of conduct and other relevant conduct requirements;
- (b) to include the insurance subsidiaries of authorized institutions in his consolidated supervision of the authorized institutions concerned to ensure that the authorized institutions have adequate internal controls, risk management systems and corporate governance structure to identify, measure, monitor and mitigate the risks arising from the business operations of their insurance subsidiaries;
- (c) to act as the co-ordinator in the cases of local financial groups where an authorized institution has a subsidiary that is an authorized insurer;
- (d) to share any regulatory concerns or adverse findings discovered during the on-going supervisory processes following the information sharing mechanism;

- (e) to make available to the IA the relevant data and information to facilitate high-level, off-site monitoring of activities that are of common supervisory interest to the HKMA and the IA;
- (f) to notify the IA as soon as the enforcement or disciplinary action on a regulated entity or its staff becomes probable;
- (g) to forward to the IA any complaints that require its advice or action;
- (h) to liaise, consult and co-operate with the IA as far as possible on the form and content of guidelines and codes which cover topics of common concern to ensure consistency;
- (i) to assist in providing training for staff of the IA on relevant topics as appropriate.

This MoU was signed on 19 September 2003.

Summary of the Memorandum of Understanding Concerning the Regulation of MPF Intermediaries

This Memorandum of Understanding (MoU) was signed by the Monetary Authority (MA), the Insurance Authority, the Securities and Futures Commission and the Mandatory Provident Fund Schemes Authority (MPFA).

This MoU aims to achieve the following objectives:

- (a) to replace and supersede the previous MoU signed on 30 October 1999 among the four regulators in the light of the commencement of the Securities and Futures Ordinance, which repeals and replaces, among other things, the Securities and Futures Commission Ordinance (Cap. 24), the Securities Ordinance (Cap. 333) and the Protection of Investors Ordinance (Cap. 335);
- (b) to ensure consistency in regulatory approach by having the MPFA to act as the lead regulator and co-ordinator, leading and co-ordinating the regulatory functions of the four regulators in respect of MPF intermediaries;
- (c) to ensure conformity in regulatory approach, minimise duplication of regulatory efforts, close gaps in regulatory boundaries, minimise mis-selling by MPF intermediaries and maximise protection of MPF scheme participants by specifying the four regulators' respective responsibilities regarding the regulation of MPF intermediaries;
- (d) to promote mutual assistance and the exchange of information among the four regulators.

The responsibilities of the MA under this MoU include administering the provisions of the Banking Ordinance, the objectives of which include taking reasonable steps to ensure that authorized institutions including those which are MPF intermediaries are operated in a responsible, honest and business-like manner. The MA is responsible for the following:

- (a) to monitor MPF intermediaries who are supervised by the MA to ensure their compliance with the Code of Conduct for MPF Intermediaries;

- (b) to carry out routine inspection visits to MPF corporate intermediaries supervised by the MA;
- (c) to respond to public complaints referred to the MA by the MPFA, the Insurance Authority, the Securities and Futures Commission, or the public in relation to MPF intermediaries that are supervised by the MA, and to refer these complaint cases to the relevant authorized institutions for follow-up action;
- (d) to monitor investigating / enforcement / disciplinary actions taken by authorized institutions on their staff;
- (e) for MPF intermediaries that are registered institutions or their relevant individuals as defined in the Banking Ordinance who advise on securities under the Securities and Futures Ordinance incidental to the marketing of MPF schemes, to perform the MA's supervisory role regarding their conduct of regulated activities set out in the Memorandum of Understanding between the MA and the Securities and Futures Commission;
- (f) to inform the MPFA and the regulators concerned on issues of concern relating to the fitness and propriety / suitability of MPF intermediaries that are authorized institutions and their staff that come to the MA's notice;
- (g) to issue guidelines to assist MPF intermediaries that are authorized institutions and their staff to comply with the Code of Conduct for MPF Intermediaries;
- (h) to participate in and carry out the functions of the MPF Intermediaries Regulation Co-ordinating Committee;
- (i) to co-operate with and assist the Insurance Authority, the Securities and Futures Commission, the MPFA and other regulators in Hong Kong or elsewhere on matters concerning MPF intermediaries.

This MoU was signed in December 2003.

Section 4 Advisory committees

A number of advisory committees provide guidance and advice in the main areas of the HKMA's work. The most important among these is the Exchange Fund Advisory Committee (EFAC), which, together with its sub-committees, carries out many of the functions of a management board.

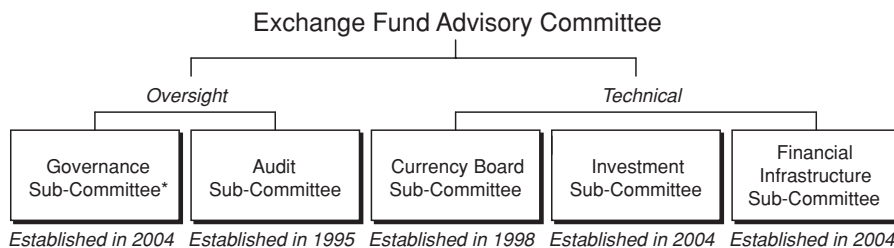
Exchange Fund Advisory Committee

In his control of the Exchange Fund, the Financial Secretary is advised by EFAC. EFAC is established under Section 3(1) of the Exchange Fund Ordinance, which requires the Financial Secretary to consult the Committee in his exercise of control of the Exchange Fund. The Financial Secretary is ex officio Chairman of EFAC. Other members, including the Monetary Authority, are appointed in a personal capacity by the Financial Secretary under the delegated authority of the Chief Executive of the Hong Kong SAR. Members of EFAC are appointed for the expertise and experience that they can bring to the Committee. Such expertise and experience includes knowledge of monetary, financial and economic affairs and of investment issues, as well as of accounting, management, business and legal matters.

EFAC advises the Financial Secretary on investment policies and strategies for the Fund and on projects, such as the development of financial infrastructure, that are charged to the Fund. Since the operating and staff costs of the HKMA are also chargeable to the Exchange Fund, EFAC advises the Financial Secretary on the HKMA's annual administration budget and on the terms and conditions of service of HKMA staff. EFAC meets regularly and on other occasions when particular advice is being sought.

EFAC is assisted in its work by five sub-committees, which monitor specific areas of the HKMA's work and report and make recommendations to the Financial Secretary through EFAC. Two of these sub-committees – the Governance Sub-Committee and the Audit Sub-Committee – carry out oversight roles and are composed entirely of non-official Members. The other three – responsible for Currency Board, Investment, and Financial Infrastructure issues – provide technical and strategic advice on the HKMA's main central banking functions.

The terms of reference of these sub-committees are given in this section. Members of EFAC and its Sub-Committees are subject to a Code of Conduct, a copy of which is included in this section.



* Formerly the Remuneration and Finance Sub-Committee (established in 2001), which was formerly the Working Group on Terms and Conditions of Service (established in 1993).

The **Governance Sub-Committee** monitors the performance of the HKMA and makes recommendations on remuneration and human resources policies, and on budgetary, administrative and governance issues.

The **Audit Sub-Committee** reviews and reports on the HKMA's financial reporting process and on the adequacy and effectiveness of the internal control systems of the HKMA. The Sub-Committee reviews the HKMA's financial statements, and the composition and accounting principles adopted in such statements. It also examines and reviews with both the external and internal auditors the scope and results of their audits.

The **Currency Board Sub-Committee** monitors and reports on the Currency Board arrangements that underpin Hong Kong's Linked Exchange Rate system. It is responsible, among other things, for ensuring that Currency Board operations are in accordance with established policy, recommending improvements to the Currency Board system, and ensuring a high degree of transparency in the operation of the system. Records of the Sub-Committee's meetings and the reports on Currency Board operations submitted monthly to the Sub-Committee are published.

The **Investment Sub-Committee** monitors the HKMA's investment management work and makes recommendations on the investment policy and strategy of the Exchange Fund and on risk management and other related matters.

The **Financial Infrastructure Sub-Committee** monitors the work of the HKMA in relation to the development and operation of the financial infrastructure in Hong Kong and makes recommendations on measures and initiatives relating to the HKMA's responsibilities for promoting the safety, efficiency and development of Hong Kong's financial infrastructure.

The Banking Advisory Committee

The Banking Advisory Committee is established under Section 4(1) of the Banking Ordinance to advise the Chief Executive of the Hong Kong SAR on matters relating to the Banking Ordinance, in particular matters relating to banks and the carrying on of banking business. The Committee consists of the Financial Secretary, who is the Chairman, the Monetary Authority, and other persons appointed by the Financial Secretary under the delegated authority of the Chief Executive of the Hong Kong SAR.

The Deposit-Taking Companies Advisory Committee

The Deposit-Taking Companies Advisory Committee is established under Section 5(1) of the Banking Ordinance to advise the Chief Executive of the Hong Kong SAR on matters relating to the Banking Ordinance, in particular matters relating to deposit taking companies and restricted licence banks and the carrying on of a business of taking deposits by them. The Committee consists of the Financial Secretary, who is the Chairman, the Monetary Authority, and other persons appointed by the Financial Secretary under the delegated authority of the Chief Executive of the Hong Kong SAR.

The latest membership of the Committees and Sub-Committees may be found on the HKMA website (www.hkma.gov.hk).

Exchange Fund Advisory Committee Governance Sub-Committee

Terms of reference

- (1) To monitor the performance of the HKMA in carrying out its functions and responsibilities and in its use of resources, and to formulate recommendations to the Financial Secretary through the Exchange Fund Advisory Committee (EFAC) on
 - (a) the remuneration and human resources policies of the HKMA;
 - (b) remuneration for HKMA staff, taking account of the Sub-Committee's assessment of the quality and effectiveness of the HKMA's work; and
 - (c) the use of resources of the HKMA, including its annual administrative budget.
- (2) To consider recommendations and provide advice to the Financial Secretary on the appointment and dismissal of staff at the level of Executive Director and above.
- (3) To keep under review the governance arrangements for the HKMA and to make recommendations to the Financial Secretary through EFAC as appropriate.

Exchange Fund Advisory Committee Audit Sub-Committee

Terms of reference

- (1) The objectives of the Audit Sub-Committee are as follows:
 - (a) help Members of the Exchange Fund Advisory Committee to discharge their responsibilities for ensuring the proper and smooth running of the HKMA operations and management of the Exchange Fund;
 - (b) consider any matters relating to the financial affairs of the HKMA and the internal and external audit of the HKMA's financial statements as the Sub-Committee may think necessary or desirable;
 - (c) encourage higher quality accounting and audit and provide more credible and objective financial reporting of the HKMA; and
 - (d) consider any other matters referred to it by the Committee; and to report on all such matters to the Committee.
- (2) The functions of the Sub-Committee include, but are not restricted to, the following:
 - (a) reviewing the HKMA's financial statements, the composition and accounting principles adopted in such statements, whether these are intended to be audited or published or not;
 - (b) advising on the form and content of the financial statements of the HKMA;
 - (c) examining and reviewing with both the external and internal auditors the scope and results of their audits;
 - (d) reviewing the findings, recommendations or criticisms of the auditors, including their annual management letter and management's response;
 - (e) reviewing the HKMA's management procedures to ensure the effectiveness of internal systems of accounting and control, and management's efforts to correct deficiencies discovered in audits; and

- (f) initiating investigations or audit reviews into any activities of the HKMA which may be of concern or interest to the Sub-Committee.

(3) Authority

The Sub-Committee shall be entitled to obtain any information it requires from any member or employee of the HKMA, and all such members and employees shall be instructed to assist the Sub-Committee to the fullest extent possible. The Sub-Committee may also take such independent legal or other professional advice as it considers necessary. The Sub-Committee shall have no executive powers as regards its findings and recommendations.

(4) Meetings

The Sub-Committee shall meet at least twice a year. The Secretary to the Exchange Fund Advisory Committee shall attend its meetings and take minutes, copies of which shall be circulated to the Committee. The Chief Executive of the HKMA shall be entitled to attend the Sub-Committee's meetings. In all other respects, the Sub-Committee shall decide its own procedures.

Exchange Fund Advisory Committee Currency Board Sub-Committee

Terms of reference

- (1) To ensure that the operation of the Currency Board arrangements in Hong Kong is in accordance with the policies determined by the Financial Secretary in consultation with the Exchange Fund Advisory Committee.
- (2) To report to the Financial Secretary through the Exchange Fund Advisory Committee on the operation of the Currency Board arrangements in Hong Kong.
- (3) To recommend, where appropriate, to the Financial Secretary through the Exchange Fund Advisory Committee, measures to enhance the robustness and effectiveness of the Currency Board arrangements in Hong Kong.
- (4) To ensure a high degree of transparency in the operation of the Currency Board arrangements in Hong Kong through the publication of relevant information on the operation of such arrangements.
- (5) To promote a better understanding of the Currency Board arrangements in Hong Kong.

Exchange Fund Advisory Committee Investment Sub-Committee

Terms of reference

- (1) To monitor the investment management work of the HKMA.
- (2) To make recommendations to the Financial Secretary, through the Exchange Fund Advisory Committee, on
 - (a) the investment benchmark for the Exchange Fund;
 - (b) the investment policy and risk management of the Fund;
 - (c) the investment strategy for the Fund; and
 - (d) any other matters referred to the Sub-Committee in connection with the investment management of the Exchange Fund.

Exchange Fund Advisory Committee Financial Infrastructure Sub-Committee

Terms of reference

- (1) To monitor the work of the HKMA in relation to the development and operation of the financial infrastructure in Hong Kong.
- (2) To recommend to the Financial Secretary through the Exchange Fund Advisory Committee
 - (a) measures to promote the safety and efficiency of the financial infrastructure in Hong Kong, particularly payment and settlement arrangements; and
 - (b) initiatives for the HKMA, in discharging its responsibilities for maintaining the stability and integrity of the monetary and financial systems of Hong Kong, to promote the development of the financial infrastructure in Hong Kong with a view to maintaining Hong Kong's status as an international financial centre and helping to strengthen the international competitiveness of Hong Kong's financial services.

Code of Conduct for Members of the Exchange Fund Advisory Committee and its Sub-Committees

Introduction

1. This Code has been endorsed by the Exchange Fund Advisory Committee (EFAC) and approved by the Financial Secretary. The Code applies to all Members of EFAC and of its Sub-Committees. The Code, and any subsequent amendments to it, will be published on the website of the Hong Kong Monetary Authority for general information. Members who have any questions on the Code are invited to address them in the first instance to the Secretary of EFAC.

Membership

2. Members of EFAC and of its Sub-Committees are appointed in a personal capacity and not as representatives of any other organisation or body. Members shall give their advice at meetings independently and shall not seek or take instructions on that advice from other organisations or individuals.

Confidentiality and public comments

3. The papers and proceedings of EFAC and its Sub-Committee are confidential. The papers, minutes and other documents connected with EFAC and its Sub-Committees are for the private information of Members. Members shall make arrangements for keeping them safe and shall not show or divulge their contents to any other person or organisation.
4. Members shall not use confidential information given to them in connection with their membership of EFAC or of its Sub-Committees for the purpose of carrying out financial transactions, whether directly or indirectly, and whether on their own private account or on the account of any person, company or other organisation with which they have a connection.
5. In making comments in public (whether orally or in writing) on the work of EFAC and its Sub-Committees, Members shall
 - (a) avoid disclosing or commenting on confidential information, including the contents of papers connected with meetings and the substance of discussions at meetings;

- (b) make it clear, as appropriate, whether they are conveying the general views of EFAC or their own personal views;
- (c) avoid making comments that might undermine or bring into question the reputation of EFAC or of any of its Members.

Declaration of Interests

6. In accordance with guidelines and principles set by the Independent Commission Against Corruption, Members of EFAC and of its Sub-Committees shall follow a two-tier reporting system for declaring interests. These guidelines and principles are as follows:

A Register of Members' Interests

- (1) The Chairman and Members shall register in writing their personal interests, direct or indirect, pecuniary or otherwise, when they first join the Committee or Sub-Committee, and annually thereafter, to the Secretary. The registration shall be made on a standard form, at **Annex A**.
- (2) The types of interests required for registration shall include
 - (i) proprietorships, partnerships or directorships of companies;
 - (ii) remunerated employments, offices, trades, professions or vocations; and
 - (iii) shareholdings in a publicly listed or private company of more than 1% of the company's issued share capital; and/or
 - (iv) other declarable interests, taking into consideration the nature of work of the Committee or Sub-Committee.
- (3) A register of Members' interests shall be kept by the Secretary, which should be made available for inspection on request by any member of the public.

B Declaration of Interests at Meetings

- (4) If a Member (including the Chairman) has any direct personal or pecuniary interest in any matter under consideration by the Committee or Sub-Committee, he or she must, as soon as practicable after he or she has become aware of it, disclose to the Chairman (or the Committee or Sub-Committee) prior to the discussion of the item. (The potential conflict of interest situations are described in **Annex B**).
 - (5) The Chairman (or Committee or Sub-Committee) shall decide whether a Member disclosing an interest may speak or vote on the matter, may remain in the meeting as an observer, or should withdraw from the meeting.
 - (6) If the Chairman declares an interest in a matter under consideration, the chairmanship may be temporarily taken over by a vice-chairman.
 - (7) When a known direct pecuniary interest exists, the Secretary may, having consulted the Monetary Authority, withhold circulation of relevant papers to the Member concerned. Where a member is in receipt of a paper for discussion which he or she knows presents a direct conflict of interest, he or she should immediately inform the Secretary and return the paper.
7. All cases of declaration of interests shall be recorded in the minutes of the meeting.

EXCHANGE FUND ADVISORY COMMITTEE

REGISTER OF MEMBERS' INTERESTS

NAME : _____

REGISTRABLE INTEREST	DETAILS
<p>A. Proprietorships, partnerships or directorships of companies, public or private</p> <p>Notes :</p> <p>(1) You should give the name of the company, briefly stating the nature of the business of the company in each case.</p> <p>(2) Both local and overseas companies are registrable.</p> <p>(3) You are not required to disclose the amount of any remuneration or benefit you receive.</p>	

REGISTRABLE INTEREST	DETAILS
<p>B. Remunerated employments, offices, trades, professions or vocations</p> <p>Notes :</p> <p>(1) Indicate the name of the employment, office, trade, profession or vocation, and where a firm is named, please briefly indicate the nature of the firm's business.</p> <p>(2) An employment, office, trade, profession or vocation is "remunerated" where a salary, honorarium, allowance or other material benefit is payable.</p> <p>(3) You are not required to disclose the amount of remuneration you receive.</p>	

REGISTRABLE INTEREST	DETAILS
<p>C. Shareholdings in companies, public or private. Shareholdings include options to purchase shares.</p> <p>Notes :</p> <p>(1) You should register the names of companies in which you have, to your knowledge, either yourself or with or on behalf of your spouse or infant children, a beneficial interest in shareholdings which have a nominal value greater than 1 per cent of the issued share capital of the company.</p> <p>(2) Indicate in each case the nature of the business of the company.</p> <p>(3) Shareholdings should be registered on a worldwide basis.</p> <p>(4) There is no need to register the size or value of shareholdings.</p>	
DATE _____	SIGNATURE _____

Declaration of Interests by Members of Advisory Committees

When a Member of this Committee has a potential conflict of interests in a matter placed before the Committee, he should make full disclosure of his interest. The basic principle to be observed is that Members' advice should be disinterested and impartial and it is the responsibility of each Member to judge and decide if the situation warrants a declaration, and to seek a ruling from the Chairman in case of doubt.

It is impossible to define or describe all the situations that would call for such a declaration, because each individual case differs, and because of the difficulty of catering for unusual and unforeseen circumstances. On the other hand, it is not intended that a member should make a declaration of interest simply because the Committee is considering a matter in which he has knowledge or experience. The following may assist Members to identify potential conflicts of interest:

- Pecuniary interests in a matter under consideration by the Committee, held either by the Member or by any close relative of his, should be declared. Members are themselves the best judge to who, in the particular circumstances, is a "close relative".
- A directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or other organisation which is connected with, or the subject of, a matter under consideration by the Committee, should be declared.
- Similarly, some friendships might be so close as to warrant declaration in order to avoid situations where an objective observer might believe a Member's advice to have been influenced by the closeness of the association.
- A Member who, as a barrister, solicitor, accountant or other professional adviser, has personally or as a member of a company, advised or represented or had frequent dealings with any person or body connected with a matter under consideration by the Committee, should make a declaration.

Advisory committees

- Any interest likely to lead an objective observer to believe that the Member’s advice might have been motivated by personal interest rather than a duty to give impartial advice, should be declared.

Declarations of interest may be made verbally during a Committee meeting or in writing to the Chairman or Secretary before the meeting. However, should a Member form the view that a conflict of interest renders it impossible for him to proffer impartial advice, or that he has been given access to information which he ought not to have, he should notify the Secretary or Chairman immediately and/or return any Committee paper concerned. The Chairman will then decide on the matter.

香港金融管理局

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