

Our Ref: B1/15C
G16/1C

21 February 2005

The Chief Executive
All Registered Institutions
(Including those institutions deemed to be registered under the
transitional arrangements of the Securities and Futures
Ordinance)

Dear Sir / Madam,

Register of Relevant Individuals under Section 20(1)(ea) of the Banking Ordinance (BO)

The purpose of this letter is to remind registered institutions (RIs), including deemed RIs, of the importance of maintaining accurate information in the HKMA electronic register of relevant individuals established under section 20(1)(ea) of the BO, and to recommend a number of control measures that RIs should adopt to help ensure proper registration and maintenance of relevant individuals' particulars in the register.

We have come across a few cases of errors relating to information maintained in the register caused by mistakes of the RIs concerned since the commencement of the new securities regime in April 2003. RIs and relevant individuals are reminded of the following legal requirements under the Securities and Futures Ordinance (SFO) and the BO:

- a. section 114 of the SFO prohibits any individual from performing any regulated function of regulated activities for a RI unless he/she is properly registered with the HKMA;
- b. section 20 of the BO requires RIs to submit information of their relevant individuals to the HKMA, and notify the HKMA of any subsequent change to the information within seven business days; and
- c. section 119 of the SFO imposes a statutory condition of registration for every RI to ensure that its relevant individuals are fit and proper. Relevant individuals who are no longer fit and proper (e.g. unable to pass the requisite local regulatory framework paper within the six-month grace period¹) should therefore be promptly de-registered.

To ensure compliance with the above requirements, RIs should put in place adequate control procedures for on-going maintenance of their relevant individuals' particulars in the HKMA electronic register. Some examples of controls that should be put in place include:

- a. Developing a set of procedures to ensure that proper approval for information submitted to the HKMA for entering into the register and the subsequent changes (amendment or deletion) is obtained and recorded, and an appropriate audit trail is maintained.
- b. Notifying the relevant individual of:

- i. any of his/her personal particulars (new or changes) to be submitted for entering into the HKMA electronic register before making the submission; and
- ii. the fact that the changes have been made to the HKMA electronic register after receiving the HKMA's confirmation e-mail.

RIs should maintain proper records of the notifications made to the relevant individual.

- c. Performing periodic checks with the HKMA electronic register against the RI's own records (preferably by compliance).
- d. Reminding executive officers and other relevant members of management of their responsibility for ensuring proper registration of the relevant individuals in the HKMA electronic register. They should never instruct or allow any of their staff to perform any regulated activity without proper registration.
- e. Informing relevant individuals that it is in their own interest to check and ensure that their particulars have been properly entered into the HKMA electronic register (at www.info.gov.hk/hkma/eng/ereg/index.htm) before they engage in any new regulated activity.
- f. Informing relevant individuals that it is their responsibilities to act in compliance with the registered capacity as well as any conditions imposed by the HKMA and/or the RI concerned.

To assist RIs in implementing proper control procedures, an enhancement to the registration template for the HKMA electronic register is currently underway.

Effective from 1 March 2005, upon every submission of the template through the HKMA electronic registration system, the RI concerned will be required to confirm to the system that it has notified the relevant individual of the details of that submission. A specimen template is attached at the Annex.

I hope you will find the above reminder and information useful. If you have any questions or require any clarification on the content of this letter, please feel free to contact Mr Samuel Leung at 28781541 or Ms Alice Lee at 28781603.

Yours faithfully,

Y. K. Choi
Executive Director
(Banking Supervision)

¹ The HKMA allows a six-month grace period for a relevant individual who has yet to pass the local regulatory framework paper but has satisfied all other elements of the initial competence test. Refer to para. 4.2.10 of the HKMA Supervisory Policy Manual module SB-1 for details. The SFC has a similar arrangement for licensed representatives as stipulated in para. 6.2 of the Guidelines on Competence.

c.c. SFC (Attn: Mrs Alexa Lam)

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