

Our Ref.: B1/15C

附件 17

Annex 17

12 March 2008

The Chief Executive
All Registered Institutions

Dear Sir/Madam,

Thematic Examinations on Controls to Ensure Fitness and Propriety of Relevant Individuals

The Hong Kong Monetary Authority (HKMA) has recently completed a round of thematic on-site examinations on selected Registered Institutions (RIs) which are active in regulated activities (RAs) and have engaged a substantial number of relevant individuals (ReIs) in such activities. The objective of the examinations is to ascertain whether the selected RIs have put in place adequate controls for ensuring compliance with the regulatory requirements on registration of ReIs.

In general, the RIs examined have implemented controls for ensuring compliance with the regulatory standards, including the following areas:

- the competency of proposed ReIs by ascertaining the education / professional qualifications and industry experience;
- the fitness and propriety of ReIs by obtaining self-declarations and conducting background checks;
- proper registration of the individuals before engaging them in any regulated function of any RA;
- prompt de-registration of ReIs who cease to be engaged by the RI in any regulated function of any RA;
- accuracy and appropriateness of information for the HKMA Register; and
- compliance with the requirements related to the "six-month grace period" for passing local regulatory framework paper for certain eligible ReIs and Continuous Professional Training (CPT) for all ReIs.

Our on-site examinations have also identified certain good practices as well as some common issues. I would like to share such findings with all RIs which could take them into consideration when considering possible improvements to the RIs' own control environment. The details are set out in Annex 1 and Annex 2 respectively for your reference.

In the course of the thematic examinations, we have come across a number of cases where some RIs encountered difficulty when requesting information on the proposed ReIs' previous employment, registration and grandfathering status from other RIs (as former employers). The difficulties include late and ambiguous responses or even refusal to provide the requested information from some RIs. Such practices would obviously hinder the industry's collective efforts to ensure that only fit and proper persons are engaged and registered for RAs. I therefore would like to draw your attention to our circular issued on 28 September 2006¹ about the requirement for RIs to provide information to the new / potential employer of their former employees when they receive request for verifying the relevant industry experience of such former employees. Please be reminded that all RIs should provide, within a reasonable period of time, a clear response to other RIs' request for information about former employees' employment, registration and "grandfathering" status.²

Should you have any questions about the content of this circular, please contact Ms Alice Lee at 2878-1603.

Yours faithfully,

Arthur Yuen
Executive Director
(Banking Supervision)

¹ Refer to control (4) in Annex 1 of the HKMA circular entitled "Controls to ensure the fitness and propriety of staff of authorized institutions" issued on 28 September 2006.

² Refer to paragraph 4.2.5 (for executive officers) and paragraph 4.2.6 (for other ReIs) of the HKMA Supervisory Policy Manual module SB-1 for details of "grandfather" arrangements

c.c. SFC (Attn: Mr Stephen Po, Senior Director, Intermediaries and Investment Products Division)

Encl. [Annex 1](#) (PDF file, 80KB)
[Annex 2](#) (PDF file, 137KB)

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Good Practices Adopted by Certain RIs

(1) Background Checks

- (1.1) Some RIs clearly document the performance and the results of background checks of proposed ReIs in a standardised assessment checklist, and maintain a good record keeping system for such information.
- (1.2) The background checks of proposed ReIs performed by a number of RIs include areas such as civil litigations and criminal records, which cover a wider scope than the existing regulatory requirements.

(2) Competence Assessment

Several RIs adopt a standardised and comprehensive assessment checklist to evidence the performance of relevant checking and assessment. The completed checklist is supported by relevant documents and approved by an independent reviewer.

(3) Registration Control

- (3.1) Some RIs have established clear internal guidelines on the mapping of job duties and internal ranks with the types of RAs and the capacity to be registered for different categories of staff members across various business units.
- (3.2) A number of RIs perform regular checks between the internal records of ReIs and the HKMA register to ensure accuracy of registration details.

(4) Ongoing monitoring of ReIs' fitness and propriety

- (4.1) Several RIs perform regular bankruptcy checks against their internal credit database on all existing ReIs to ensure their continuous fitness and propriety in financial status.

- (4.2) A number of RIs require all ReIs to make an annual self-declaration on matters set out in subsection 5.4 of the HKMA Supervisory Policy Manual module SB-1 to ensure their continuous fitness and propriety.
- (4.3) The examined RIs have a common practice of referring potential breaches of regulatory requirements by ReIs (e.g. arising from customer complaints) to the compliance unit for review and appropriate action.

Major Common Issues Identified

(1) *Deficiencies in policies and procedures*

The policies and procedures of some RIs are not sufficiently clear and detailed to ensure that the fitness and propriety assessments of proposed ReIs are conducted properly and sufficient documentation is maintained. For instance, these policies and procedures do not describe the division of duties and responsibilities among different units involved in the assessment, as well as the requirement for establishing and maintaining audit trails and supporting documentation on the assessment process (including the follow-up actions on apparent irregularities found in such process). As a result, some critical assessment steps have not been performed due to misunderstanding of the involved units about their respective duties and responsibilities.

(2) *Deficiencies in background checks and self-declarations*

- (2.1) The major issues include incomplete coverage of background checks of proposed ReIs (e.g. on transferees from group entity), no documentary evidence to support the performance of the background checks and / or follow up actions of adverse results, and registration of ReIs before completion of the assessments.
- (2.2) Control deficiencies in respect of obtaining self-declarations from ReIs include insufficient scope of the self-declaration form to ensure compliance with subsection 5.4 of the HKMA Supervisory Policy Manual module SB-1, registration before obtaining or without evidence of having obtained self-declarations, and no documentary evidence of follow-up actions on any apparent irregularities.

(3) *Deficiencies in competence assessments and relevant documentations*

In some cases, the documentation is insufficient to demonstrate how a proposed ReI meets the competence requirements. For instance, the basis for the competence assessment of every proposed ReI is not documented, including:

- whether he / she has been grandfathered (and if so, how he / she becomes eligible for grandfathering);
- whether he / she fulfils all elements of the initial competence requirements before registration; and
- whether the registration is subject to the “six-month grace period” arrangement, or exemption from examination subject to condition(s) (and if so, how he / she becomes eligible for such exemption and the specific condition(s) applicable).

(4) *Deficiencies in observing Continuous Professional Training (CPT) requirement*

A few RIs have erroneously included the attendance in meetings or certain training courses which are not relevant to enhancing the technical skills, professional expertise, ethical standards or regulatory knowledge of Rels as CPT eligible hours.

(5) *Deficiencies in submission of information for the HKMA Register*

Some RIs' registration of certain Rels is inappropriate given that their duties (e.g. mortgage business, anti-money laundering monitoring) are not relevant to any RAs.

(6) *Problems in obtaining information from previous employers*

Some deficiencies are observed in certain incidents such as no previous employment check performed, registration of staff before receipt of results, and no documentary evidence of follow-up actions on any apparent irregularities. In some cases, the deficiencies in the previous employment checks and the fitness and propriety assessments are attributable to the difficulties in obtaining timely and satisfactory employment reference and confirmation on grandfathering and registration details from other RIs (as previous employers).