

立法會
Legislative Council

LC Paper No. LS50/11-12

Paper for the Panel on Financial Affairs

**Issues relating to the reserves of
the Securities and Futures Commission**

At the meeting of the Panel on Financial Affairs on 2 March 2012, legal advice has been sought on the following issues:

- (a) whether the Securities and Futures Commission (the Commission) has contravened section 396 of the Securities and Futures Ordinance (Cap. 571) (the Ordinance) in not consulting the Financial Secretary on the reduction of transaction levies, given that its reserves are and will be more than twice its annual expenditure; and
- (b) whether there are any restrictions under the Ordinance on the way the reserves are spent.

Reduction of levy

2. Section 396 of the Ordinance provides -

- (1) If during a financial year of the Commission -
 - (a) the reserves of the Commission, after deducting depreciation and all provisions, are more than twice its estimated operating expenses for the financial year; and
 - (b) the Commission has no outstanding borrowings,

the Commission shall consult the Financial Secretary with a view to recommending to the Chief Executive in Council that the rate or amount of a levy be reduced under section 394.

- (2) The Commission may, after consultation with the Financial Secretary under subsection (1), recommend to the Chief Executive in Council that the rate or amount of a levy be reduced under section 394.

3. Under section 394 of the Ordinance, a levy at the rate specified by the Chief Executive in Council by order published in the Gazette shall be payable to the Commission by the persons so specified for every sale and purchase of any securities or futures contracts traded on the stock market, futures market or by means of automated trading services.

4. Section 396 of the Ordinance sets out the financial conditions that must be satisfied before a reduction of the levy may be recommended by the Commission for a financial year and the relevant procedural requirements. There are two financial conditions. Firstly, the reserves of the Commission, after deducting depreciation and all provisions, are more than twice its estimated operating expenses for the financial year. Secondly, the Commission has no outstanding borrowings.

5. Procedurally, the Commission must consult the Financial Secretary on the proposed reduction of the levy. Having consulted the Financial Secretary, the Commission may then make a recommendation to the Chief Executive in Council for such reduction.

6. Section 396(1) of the Ordinance only imposes an obligation on the Commissioner to consult the Financial Secretary for a proposed reduction in the rate or amount of the levy. Such requirement arises when the Commission has a view to propose a reduction of the levy.

7. Based on the Commission's Budget of Income and Expenditure for 2012/2013, the reserves will be equal to about 5.6 times the Commission's annual expenditure. Notwithstanding that, the Commission does not propose any reduction in levy in 2012/2013 having regard to a number of factors*. The procedural requirement of consulting the Financial Secretary under section 396(1) of the Ordinance therefore has not arisen.

Use of reserves

8. Under section 6(2)(e) of the Ordinance, the Commission is required to have regard to, among others, the need to make efficient use of its resources in pursuing its regulatory objectives and performing its functions. There is no specific provision in the Ordinance restricting the use of reserves of the Commission. However, section 17 of the Ordinance

* Factors include the unstable global market, the uncertainly local market turnover levels and the necessity to deploy resources to deal with regulatory reform and initiatives after the financial crisis (please see Annex to LC Paper No. CB(1)1147/11-12(04), paras 6-9).

provides that the Commission may invest its funds which are not immediately required in the manner that the Financial Secretary approves. It may be an indicator that the Commission is not autonomous in the disposition of its funds.

Conclusion

9. In the circumstances, the Commission has not contravened section 396 of the Ordinance in not consulting the Financial Secretary notwithstanding that its reserves for 2012/2013 will be more than twice its annual expenditure. There is no specific provision under the Ordinance restricting how the reserves are spent but the Commission is generally required to make efficient use of its resources and may not dispose of funds not immediately required without the Financial Secretary's approval.

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