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Panel on Financial Affairs
Meeting on 4 May 2006

Background Brief
on Members' proposal for the Administration to brief the Panel
on the annual budget of the Hong Kong Monetary Authority

Purpose

This paper sets out the background to Members' proposal for the Administration to brief the Panel on Financial Affairs (FA Panel) on the annual budget of the Hong Kong Monetary Authority (HKMA). It also summarizes the major views and concerns expressed by Members on the subject at previous meetings of the FA Panel.

Establishment of HKMA

2. In his Policy Address delivered on 7 October 1992, the then Governor said that the time had come to establish a HKMA within the framework of the executive-led Government. He also said that HKMA would bring together the Office of the Exchange Fund and the Office of the Commissioner of Banking, and it would be accountable to the Financial Secretary (FS).

3. On 4 November 1992, the Administration introduced the Exchange Fund (Amendment) Bill 1992 into the Legislative Council (LegCo). When moving the Second Reading of the Bill, the then Secretary for Monetary Affairs said that “[t]he objective of the Bill is to provide for the establishment of the Hong Kong Monetary Authority and for this purpose extends the functions of the Exchange Fund by introducing a secondary role of maintaining the stability and integrity of the monetary and financial systems. The staff and operating costs of the Authority would be charged directly to the Exchange Fund instead of to the general revenue, thus taking the Authority outside the resource allocation constraints applicable to other parts of government. The Authority would be accountable to the Financial Secretary, who would continue to be advised by the Exchange Fund Advisory Committee on matters relating to the control of the Exchange Fund. the Committee would function very much like a management board, including advising the Financial Secretary on the annual budget of the Monetary Authority”. The then Secretary for Monetary Affairs

also indicated in his speech that “HKMA would remain an integral part of the Government”. A copy of the speech is in **Appendix I**.

4. Following the passage of the Exchange Fund (Amendment) Bill 1992 on 9 December 1992, HKMA was established on 1 April 1993 as the office of the Monetary Authority appointed by FS under the Exchange Fund Ordinance (EFO) (Cap. 66).

Powers and functions of HKMA

5. The powers, functions and responsibilities of the Monetary Authority are provided in EFO, Banking Ordinance (Cap. 155), Clearing and Settlement Systems Ordinance (Cap. 584), Deposit Protection Scheme Ordinance (Cap. 581), and other relevant ordinances. The Monetary Authority’s major powers, functions and responsibilities are summarized as follows:

- (a) EFO establishes the Exchange Fund under the control of FS. 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 Monetary Authority is appointed to assist FS in performing the latter’s functions under EFO and to perform such other functions as are assigned by other ordinances or by FS. Under delegated authority from FS, the Monetary Authority is responsible to FS for the use of the Exchange Fund, and for the investment management of the Fund;
- (b) The Banking Ordinance provides the Monetary Authority with 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;
- (c) The Clearing and Settlement Systems Ordinance provides a statutory regime under which the Monetary Authority is empowered 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; and
- (d) Under the Deposit Protection Scheme Ordinance, the Monetary Authority has the duty to implement the decisions of the Hong Kong Deposit Protection Board, and among other things, to decide whether compensation should be paid pursuant to the Ordinance to the depositors of a failed bank that is a scheme member.

6. The division of functions and responsibilities in monetary and financial affairs between FS and the Monetary Authority is set out in an Exchange of Letters dated 25 June 2003 between the two. The Exchange of Letters, which is in **Appendix II**, also discloses the delegation of powers by FS to the Monetary Authority under relevant ordinances.

Funding arrangements for HKMA

7. As mentioned by the then Secretary for Monetary Affairs in his speech moving the Second Reading of the Exchange Fund (Amendment) Bill 1992 on 4 November 1992 (**Appendix I**), the staff and operating costs of HKMA are charged directly to the Exchange Fund instead of to the general revenue. Section 6(a) of EFO provides that the emoluments payable to, and other staff costs relating to, the persons employed in connection with the purposes of the Exchange Fund shall be charged to the Fund. Section 6(b) of EFO provides that any incidental expenditure which the Chief Executive of the Hong Kong Special Administrative Region (CE) may approve as necessary for the due performance of the duties laid upon FS and the Exchange Fund Advisory Committee (EFAC) in connection with the operation of the Exchange Fund shall be charged to the Fund.

Mechanism for approving and controlling expenditure of HKMA

8. An administrative budget is prepared annually by HKMA for approval by FS on the advice of EFAC and the recommendations of the Governance Sub-Committee (GSC). The annual budget is for a calendar year and is normally approved in November of the preceding year.

9. Section 3(1) of EFO requires FS to consult EFAC in his exercise of control of the Exchange Fund. FS is the ex-officio Chairman of EFAC. Other members, including the Monetary Authority, are appointed by FS under the delegated authority of CE. Since the operating and staff costs of HKMA are charged to the Exchange Fund, FS has to seek EFAC's advice on HKMA's annual administrative budget and on the terms and conditions of service of HKMA staff. EFAC is assisted in its work by five sub-committees, including GSC and Audit Sub-Committee (AC). GSC monitors the performance of HKMA and makes recommendations on its remuneration and human resources policies, and on budgetary, administrative and governance issues. AC reviews and reports on HKMA's financial reporting process and the adequacy and effectiveness of its internal control systems.

10. HKMA's Internal Audit Division (IAD) was established in 1995 to assist the management in accomplishing organizational objectives by independently reviewing and evaluating the effectiveness of risk management, control and governance processes, and advising on opportunities for improvement. IAD reports directly to the Chief Executive of HKMA (CE/HKMA) and AC.

11. In addition to the internal audit arrangements, HKMA is subject to external auditing by the Director of Audit. Under the Directive dated 11 December 1993 made by the then Governor pursuant to section 7 of EFO¹, it was directed that the accounts of the Exchange Fund should be audited by the Director of Audit who should certify the signed statement of accounts subject to any report he might think fit to make to FS.

Members' major views and concerns expressed at previous meetings of FA Panel

12. LegCo Members have, on a number of previous occasions, expressed their concern about the existing practice that HKMA, though an integral part of the Government, is not subject to the resource allocation mechanism applicable to other government departments. Members note that Article 73(3) of the Basic Law has vested in LegCo the powers and functions to approve public expenditure. In this connection, section 5(1) of the Public Finance Ordinance (Cap. 2) provides that FS shall cause the estimates of the revenue and expenditure of the Government for the next following financial year to be laid before LegCo. Section 6 of the same Ordinance provides that the heads contained in the estimates of expenditure for a financial year shall be included in an Appropriation Bill for LegCo's approval. Given that HKMA is an integral part of the Government, Members are of the view that its annual budget (apart from the expenditure related to the management of the Exchange Fund) should also be subject to the scrutiny of LegCo.

13. One of the major issues that has drawn Members' attention to the mechanism for approving and controlling HKMA's expenditure is the use of the Exchange Fund for the purchase of office premises of 341 711 square feet at Two International Finance Centre in 2001, at the price of HK\$3,699 million, as HKMA's permanent office. When the subject was discussed at the FA Panel meetings on 20 April, 3 May and 5 November 2001, members queried the need of the purchase and its cost-effectiveness, and the legality of using Exchange Fund for the purchase of office premises for HKMA. The Panel sought the advice of the Legal Adviser of the LegCo Secretariat (LA) on the subject. A summary of the incident is set out in **Appendix III**, and the following papers are also attached:

- (a) One of the papers prepared by LA for the FA Panel, which sets out his views on the constitutional framework on the control of public expenditure and the government policy behind the creation of the Monetary Authority, is in **Appendix IV**;

¹ Section 7 of EFO provides that the accounts of all transactions of the Exchange Fund shall be audited at such times and in such manner as CE may from time to time direct.

- (b) Minutes of the FA Panel meetings on 20 April, 3 May and 5 November 2001 are in **Appendices V, VI and VII** respectively; and
- (c) The list of relevant papers is in **Appendix VIII**.

14. At the FA Panel meeting on 9 April 2002, members reiterated their concern that under the existing arrangement, HKMA, despite being a part of the Government, was under no obligation to seek approval from the LegCo Finance Committee for the multi-billion purchase of its office premises. They were also concerned that there were other expenditures of HKMA such as staff remuneration which were not subject to similar scrutiny and governance as other government departments. The Panel therefore decided to examine the governance of HKMA. To facilitate the Panel's deliberation on the subject, the Research and Library Services Division of the LegCo Secretariat was requested to conduct a research comparing the governance of HKMA and comparable authorities in Hong Kong and overseas jurisdictions. Having noted the research report, the Panel subsequently discussed the governance of HKMA at its meetings on 2 June 2003 and 2 February 2004. The list of relevant papers is in **Appendix IX**.

15. In brief, Members' major views and concerns expressed at previous meetings of the FA Panel are summarized as follows:

- (a) What is the rationale for allowing the operation of an organization which is primarily a government body reporting directly to FS to be financed entirely by the Exchange Fund and not to be subject to the resource allocation mechanism applicable to all other government departments? What is the scope of activities of HKMA which can be directly financed by the Exchange Fund?
- (b) In line with the existing arrangements applicable to government departments, HKMA as part of the Government should seek LegCo's approval for its capital expenditure as well as recurrent expenditure for carrying out its functions other than that related to the management of the Exchange Fund. For example, apart from performing its duties under EFO, HKMA also plays an important role in advising FS in formulating banking policies and implementing new initiatives. This role is no different from that of other government bureaux which are subject to the usual public funding appropriation mechanism; and
- (c) HKMA should follow the example of the Securities and Futures Commission (SFC) to present its annual budget, before the commencement of each financial year, to the FA Panel for discussion and to solicit views and comments from Members on the estimated revenue and expenditure, and other related matters.

HKMA's written responses

HKMA's written response in 2003 and 2004

16. HKMA's written responses provided in April 2003 and January 2004 to Members' views and concerns mentioned in paragraph 15 above are summarized as follows:

- (a) The activities of HKMA which can be directly financed by the Exchange Fund are any of those which serve the strategic objectives of EFO, e.g. section 3(1), section 3(1A), or the specific charging provisions of the Ordinance, e.g. section 3(2), section 4, and section 6 (The relevant provisions of EFO are in **Appendix X**);
- (b) The rationale for taking HKMA outside the resource allocation mechanism applicable to other Government bodies is the same rationale that lies behind the Exchange Fund itself: the Exchange Fund is a discrete Government Fund that is established to allow the Government to pursue specific strategic objectives, e.g. currency stability, without the delay and disruption to public finances that could otherwise be caused by having to employ the general revenue. Continuity of policy and speed of reaction are key factors in achieving EFO's statutory goals. The need to persuade the legislature to provide funding from the general revenue would mean advance publicity for all strategic operations. This could (a) result in the publication of market sensitive information; (b) frustrate the effective use of the funds proposed; and (c) exacerbate a crisis, e.g. a bank run, even to the point where systemic damage is done;
- (c) It is important for a central banking institution to be able to formulate its budget free of outside influence – whether of a political or private nature – that might prevent or inhibit it from pursuing the policy objectives set out for it. This is a commonly accepted approach throughout the world. In the large majority of jurisdictions the central banking institution has the power to determine its expenditure budget. In tandem, there typically is a review process (often involving the legislature) in which the performance of the institution is scrutinized, but is not voted upon or otherwise formally approved by the legislature;
- (d) The funding of HKMA is however subject to high degree of control, transparency and accountability, as set out in paragraphs 9 to 11 above; and
- (e) It is inherently difficult to compare governance across different institutions, since each institution has its own unique governance arrangements deriving from historical factors, the characteristics of the market in which it operates, and its designated functions.

HKMA's written response in April 2005

17. In response to members' request raised at the FA Panel meeting on 3 May 2004 for information on the breakdown of the Exchange Fund Operating Expenses, of HKMA's salaries and other staff costs, and of HKMA's other departmental expenses, CE/HKMA responded in his reply dated 19 April 2005 that at the request of FS, GSC had reviewed the question of disclosure of HKMA's 2005 budget in the context of HKMA's 2004 Annual Report and the review had taken into account best practices among other central banks. FS, on the advice of EFAC and GSC, had approved the proposal to disclose information on HKMA's administrative budget for the current financial year in the Annual Report starting from the 2004 Annual Report.

HKMA's written response in January 2006

18. In response to members' request raised at the FA Panel meeting on 5 January 2006 for the Administration to brief the Panel on HKMA's budget before the commencement of each financial year, CE/HKMA responded in his reply dated 27 January 2006 that as in previous years, HKMA's 2006 administrative budget would be included in the 2005 Annual Report to be published in April 2006. CE/HKMA also pointed out in his reply that in January 2005, FS confirmed that the current arrangements for approval of HKMA's budget had been effective in allowing sufficient flexibility in resource deployment for HKMA and in providing checks and controls, while at the same time ensuring that HKMA's operations were free from political interference. Moreover, GSC had recently reviewed disclosure on HKMA's administrative expenditure, taking into account the disclosure practices of comparable organizations, accounting standards and other relevant factors. The advice of GSC was that the current disclosure arrangements for the annual budget were both broadly consistent with the best practices of comparable organizations and in line with the governance arrangements of HKMA.

Recent developments

19. When examining the Estimates of Expenditure 2006-07 at the special meeting of the Finance Committee on 13 March 2006, Members reiterated their concern that HKMA, as an integral part of the Government, was not subject to the resource allocation mechanism applicable to other government departments. They considered the current arrangement for HKMA to disclose its administrative budget for the current financial year in the Annual Report far from satisfactory because the disclosure was confined to very brief information about the administrative expenditure and was only made after the approval of HKMA's annual budget. They considered that the Administration should reconsider the request previously raised by Members that in line with the practice of SFC, HKMA should brief the Panel on its annual budget before the commencement of each financial year. The subject was then referred by the Finance Committee to the FA Panel for follow-up action. The FA Panel decided that the subject be

scheduled for discussion at its meeting on 4 May 2006. In this connection, the Administration was invited to provide written response to Member's concern and to confirm whether HKMA was a government department. HKMA's written response was issued to members vide LC Paper No. CB(1)1338/05-06(06) on 27 April 2006.

20. Hon SIN Chung-kai, in his letter dated 24 April 2006 to the Chairman of FA Panel (LC Paper No. CB(1)1372/05-06(01) issued on 27 April 2006), expressed concern about the significant growth of the operating expenditure of HKMA since 1997 and reiterated the request for HKMA to brief the Panel on its annual budget before the commencement of each financial year. At the request of Mr SIN and with the concurrence of the Chairman, HKMA was invited to provide, before the Panel meeting on 4 May 2006, written response to the list of questions set out in Mr SIN's letter. HKMA's written response was issued to members vide LC Paper No. CB(1)1372/05-06(02) on 3 May 2006.

Council Business Division 1
Legislative Council Secretariat
3 May 2006

~~He said: Mr Deputy President, I move that the District Court (Amendment) Bill 1992 be read a Second time.~~

~~The Bill is designed to improve the administration of justice in the District Court.~~

~~At present, a District Judge who has delivered a judgment or made an order in civil proceedings is entitled, of his own motion or upon application, to reopen a case and reverse or vary his judgment or order. Furthermore, where a District Judge subsequently records in writing the reasons he delivered orally, he may modify his legal reasoning. The Court of Appeal commented in 1990, and I agree, that such powers do not enhance general confidence in the administration of justice. By clauses 2 and 3 the Bill repeals these powers.~~

~~Where a District Judge delivers oral reasons in a civil case, the reasons need only be recorded in writing in limited circumstances. Given the importance of legal proceedings in the District Court, this is clearly inappropriate. The Bill therefore provides that in future all judgments will have to be reduced to writing.~~

~~By clause 4, the time limit for appealing against a decision in a civil case is extended with a view to ensuring that a party will have received the judge's written reasons before having to draft the grounds for any appeal. At present the time limit for appealing may expire before the written reasons for the judgment are available.~~

~~The Bill also addresses the question of recording verdicts and judgments in criminal cases. The existing provision in section 80 of the District Court Ordinance is loosely worded. Clause 5 of the Bill substitutes a new section. This requires the verdict and any sentence, together with the reasons, to be announced orally. This is for the benefit of the accused. The clause also provides that the verdict and sentence shall be formally recorded at the time of handing down, and the reasons reduced to writing within 21 days.~~

~~Mr Deputy President, support for the principles of the Bill has been expressed by the Judiciary and the legal profession.~~

~~*Bill referred to the House Committee pursuant to Standing Order 42(3A).*~~

EXCHANGE FUND (AMENDMENT) BILL 1992

THE SECRETARY FOR MONETARY AFFAIRS moved the Second Reading of: "A Bill to amend the Exchange Fund Ordinance."

He said: Mr Deputy President, I move that the Exchange Fund (Amendment) Bill 1992 be read a Second time.

The objective of the Bill is to provide for the establishment of the Hong Kong Monetary Authority and for this purpose extends the functions of the Exchange Fund by introducing a secondary role of maintaining the stability and integrity of the monetary and financial systems.

As the Governor explained in his address to this Council on 7 October, the establishment of the Authority will help ensure that Hong Kong's monetary policy is conducted with the continuity and professionalism necessary to command the confidence of the people of Hong Kong and the international financial community.

To effect the establishment of the Authority, clause 4 of the Bill empowers the Financial Secretary to appoint a Monetary Authority. Legally, the Monetary Authority would be a person rather than an institution. But in practice the term "Monetary Authority" would be regarded as an organization so that an institutional identity would be prominent.

The Authority would be formed by merging the Office of the Exchange Fund with the Office of the Commissioner of Banking. It would initially be staffed mainly by civil servants on secondment without any change to their pay and conditions of service. However, the Authority would be able to employ staff on terms different from those of the Civil Service in order to attract and retain high calibre staff with the right experience and expertise. Whilst it is considered that the Financial Secretary already has authority under the present section 6 of the Ordinance to employ people in connection with the purposes of the Fund and charge their emoluments and related costs to the Fund, clause 4 of the Bill clarifies this beyond doubt. The staff and operating costs of the Authority would be charged directly to the Exchange Fund instead of to the general revenue, thus taking the Authority outside the resource allocation constraints applicable to other parts of government.

The Financial Secretary would retain all his statutory powers under the Exchange Fund Ordinance. He would, however, delegate such powers as he saw fit to the Monetary Authority and other senior staff employed to assist the Monetary Authority.

The Authority would be accountable to the Financial Secretary, who would continue to be advised by the Exchange Fund Advisory Committee on matters relating to the control of the Exchange Fund. By reinforcing a trend over recent years, the involvement of the Committee in monetary and investment management matters would become much closer and the Committee would function very much like a management board, including advising the Financial Secretary on the annual budget of the Monetary Authority. To reflect the wider ambit of the Fund and the increased responsibility of the Committee, the membership of the Committee would be suitably expanded to include additional distinguished members of the financial and related sectors.

The establishment of the Monetary Authority would not affect the role of the Director of Audit who would continue to subject the resources of the Exchange Fund to stringent and continuous auditing. The publication of the Exchange Fund's accounts in July this year has enhanced the transparency of the Exchange Fund in that the performance of the Fund is now subject to public scrutiny. To further enhance public accountability, it is intended that the Authority's annual reports should be tabled in this Council.

Clause 3 of the Bill gives statutory recognition to the monetary policy objectives of Hong Kong. It provides that, apart from the primary use of the Exchange Fund to affect the Hong Kong dollar exchange rate, the Financial Secretary may use the Exchange Fund to maintain 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.

I should emphasize that this secondary use of the Fund would be strictly limited to dealing with problems with systemic implications and not for bailing out individual banks *per se*. While there might be occasions where the rescue of an individual bank proved necessary to prevent a domino effect across the whole banking system, each case would continue to be examined on its merits. This secondary purpose would be subordinate to the primary purpose of maintaining exchange rate stability. Should there be any conflict, the primary purpose would prevail.

Clauses 6 to 45 of the Bill contain consequential amendments to a number of Ordinances to transfer the statutory powers presently vested in the Commissioner of Banking and the Secretary for Monetary Affairs in such Ordinances to the Monetary Authority.

Finally, I would like to reiterate the point made by the Financial Secretary on 28 October that it is not intended that the Authority should be independent of the Government. Advocates of greater independence for the Authority readily point to the examples of the German Bundesbank, the US Federal Reserve Board and the Reserve Bank of New Zealand. Quite apart from the highly debatable point whether these central banks really enjoy full autonomy on monetary policy, the establishment of a fully independent Monetary Authority in Hong Kong separate from the Government would, I believe, be inconsistent with the Joint Declaration and the Basic Law. The relevant provisions in these documents stipulate that the Exchange Fund shall be managed and controlled by the SARG primarily for regulating the exchange value of the Hong Kong dollar. An independent Monetary Authority separate from the Government would thus not have available to it the resources of the Exchange Fund.

Although under our proposals the HKMA would remain an integral part of the Government, Members may rest assured that it will be given a high degree of day to day autonomy, including the necessary flexibility to deploy staff resources in response to priorities and to enable it to implement and achieve efficiently monetary policy objectives determined by the Government.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

FORESTS AND COUNTRYSIDE (AMENDMENT) BILL 1992

~~THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS moved the Second Reading of: "A Bill to amend the Forests and Countryside Ordinance."~~

~~He said: Mr Deputy President, I move the Second Reading of the Forests and Countryside (Amendment) Bill 1992. The main purpose of the Bill is to bring the provisions of the Ordinance, which was enacted in 1937 and last amended in 1974, up to date. A number of significant amendments are proposed.~~

~~First, the present Ordinance imposes a form of collective liability on villagers committing the offences of felling, cutting, burning or otherwise damaging or destroying trees on government land, and stipulates court of inquiry proceedings and the method of levying fines. It also empowers the Governor in Council to declare prohibited areas so as to protect trees and plants there from illegal use, mainly as firewood. Because of changes in socio-economic circumstances trees are no longer used as a source of fuel and most, if not all, of the important forests and plantations are now protected under the Country Parks Ordinance. Sections 5 to 15 of the Ordinance are no longer needed and clause 5 of the Bill proposes their repeal.~~

~~The second proposal, which is reflected in clauses 7 and 9 of the Bill, seeks the inclusion of more detailed provisions in relation to powers of inspection, search, arrest and seizure by authorized officers and the issue of search warrants. They follow the provisions recently introduced into the Police Force Ordinance and are consistent with the Bill of Rights.~~

~~The third proposal, in clause 11(b) of the Bill, seeks to revise the maximum fine for offences under the Ordinance from \$2,000 to \$25,000 to take account of the gravity of the offence as well as inflation, and to maintain the deterrent effect.~~

~~Fourth: the Ordinance now prohibits any person from cutting grass or plants, removing turf or earth, etc, in forests and plantations without lawful authority or excuse. Such acts are sometimes necessary for education and research purposes however. Clause 12 of the Bill therefore proposes to empower the Director of Agriculture and Fisheries to issue special permits to allow these acts for such purposes.~~

Press Release

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Functions and Responsibilities in Monetary and Financial Affairs: Exchange of Letters between the FS and the MA

The Hong Kong Monetary Authority (HKMA) has today (June 27) published an exchange of letters between the Financial Secretary and the Monetary Authority, dated June 25, 2003, setting out the division of functions and responsibilities between the Financial Secretary and the Monetary Authority. The publication of the letters, reflecting the existing arrangements under the relevant legislation, follows recommendations in the International Monetary Fund (IMF) Financial Sector Assessment Programme (FSAP) set out in its Financial System Stability Assessment (FSSA) report for Hong Kong.

A further, accompanying letter from the Financial Secretary to the Monetary Authority, also dated June 25, 2003, specifies the monetary policy objective and the structure of the monetary system of Hong Kong: this is 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, maintained through a currency board system. These arrangements reflect the Linked Exchange Rate system that has been in existence since October 1983. The publication of the letter specifying the monetary policy objective and the structure of the monetary system also follows recommendations in the FSSA report.

An HKMA spokesperson said that the letters summarised existing arrangements. "They have been published in the light of recommendations made in the FSSA report, with which the Hong Kong SAR Government and HKMA are in agreement, and they are published in the interests of transparency."

Copies of the letters are available on the HKMA's website:
www.hkma.gov.hk

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End/Friday, June 27, 2003

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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.

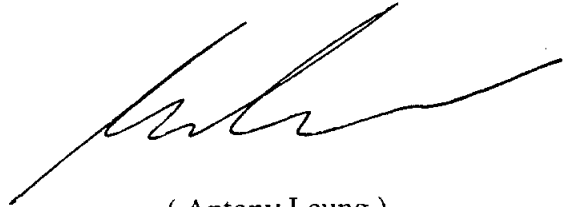
12. The Monetary Authority, under the delegated authority of the Financial Secretary and within the terms of the delegation, shall be responsible to the Financial Secretary for the use of the Exchange Fund, and for the investment management of the Exchange Fund.

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

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 (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>

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

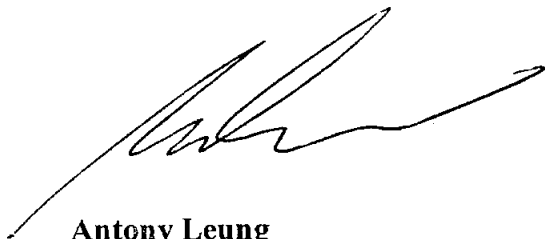
Monetary Authority

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

**Use of Exchange Fund
for the purchase of permanent accommodation for
the Hong Kong Monetary Authority**

In the past, the Hong Kong Monetary Authority (HKMA) occupied leased office premises of around 200 000 square feet located mainly in Central and Quarry Bay. At the FA Panel meeting on 11 January 2001, CE/HKMA informed Members that with the approval of the Financial Secretary (FS), HKMA was negotiating with the developer of Two International Finance Centre (IFC II) on the acquisition of its top floors (levels 77 to 88) and two auditorium floors (levels 55 and 56) as its office premises. In March 2001, HKMA provided an information paper to update the FA Panel on the progress of the proposed acquisition. Members noted from the information paper that the cost of the purchase would be charged to the Exchange Fund; the new premises would become part of the fixed assets on the books of the Exchange Fund; and HKMA believed that the purchase of the office accommodation at IFC II represented a profitable investment for the Exchange Fund in the long run.

2. Given Members' grave concern about the legality of using the Exchange Fund for the purchase of permanent accommodation for HKMA, the FA Panel invited the then FS to attend its meeting on 20 April 2001 for discussion of the subject. While the then FS declined the invitation, he responded in his reply dated 12 April 2001 that '[t]he specific legal advice¹ sought over the transaction confirms that the legality of using the Exchange Fund to purchase permanent office accommodation for HKMA is beyond question. Section 6(a) of the Exchange Fund Ordinance provides that "the emoluments payable to, and other staff costs relating to, the persons employed in connection with the purposes of the Fund" shall be charged to the Fund. The accommodation of staff and their equipment is clearly a "staff cost" in this context. The proposed acquisition using the Exchange Fund is in line with the law'.

3. At the FA Panel meeting on 20 April 2001, members expressed serious doubt over the argument put forward by HKMA's legal adviser that "other staff costs" in section 6(a) of the Exchange Fund Ordinance (EFO) (Cap. 66) should include "cost for accommodation of staff". They were concerned that if such a wide interpretation of section 6(a) was accepted, the provision could be easily abused and the Exchange Fund could be used to meet any expenses incurred by HKMA. Members therefore suggested that FS should seek the advice of the

¹ The Administrative Assistant to FS confirmed in his letter dated 18 May 2001 to the Clerk to FA Panel that the legal advice referred to in the letter dated 12 April 2001 from FS was the legal advice given by HKMA's legal adviser.

Department of Justice (DoJ) on the matter. They also requested the Legal Adviser of the LegCo Secretariat (LA) to provide a paper setting out the legal issues relating to the subject. The minutes of the Panel meeting are in **Appendix V**.

4. At the FA Panel meeting on 3 May 2001, members noted that FS had signed a Memorandum of Understanding (MOU) on 28 April 2001 with the developer of IFC II for the purchase of the office premises for HKMA at a cost of HK\$3.699 billion, which would be charged to the Exchange Fund. Members also noted LA's paper (which is in **Appendix IV**), including his views that 'against the constitutional requirement that public expenditure has to be approved by the Legislative Council under the Basic Law and the fact that the use of the Exchange Fund to purchase office accommodation for a government department is no doubt public expenditure, the reliance on section 6(a) to justify charging that expenditure to the Exchange Fund would need very strong and compelling arguments. To simply argue that "staff costs" means staff-related costs and therefore covers the cost of accommodating staff may not be conclusive'. The Panel decided that the subject should be further examined upon receipt of the Administration's reply on the advice of DoJ and the Administration's written response to LA's view. The minutes of the Panel meeting are in **Appendix VI**.

5. On 19 July 2001, the FS Office informed the FA Panel in writing of the DoJ's advice. In gist, DoJ pointed out that section 6(b) of EFO provided that the Chief Executive (CE) might approve any incidental expenditure to be charged to the Exchange Fund as necessary for the due performance of the duties laid upon FS and EFAC in connection with the operation of the Fund. FS, who was vested with the delegated authority to approve expenditure under section 6(b) of EFO, had been satisfied that the expenditure on the accommodation was necessary and approved it. In this connection, the FA Panel noted LA's paper, including his views that:

- (a) whether the expenditure for the purchase of permanent accommodation of a gross floor area of about 340 000 square feet for HKMA could be lawfully considered as within the scope of section 6(b) of EFO would be a matter of judgement for CE. CE has to decide whether the proposed expenditure could reasonably be categorized as "incidental" and "necessary" in the context of section 6(b). CE would be accountable to LegCo for such decision which is amenable to judicial review; and
- (b) section 6(b) is intended to provide a statutory requirement of an independent review at a level senior to FS of any proposed expenditure which may be charged to the Exchange Fund as incidental expenditure necessary for the due performance of the duties laid upon the FS and EFAC. That mechanism obviates the

need to seek the approval of LegCo for such incidental and necessary expenditure which CE has approved. The purported delegation of the power to approve under section 6(b) by CE to FS would in effect dismantle the statutory requirement of an independent review at a level senior to FS.

6. On 3 September 2001, the FS' Office informed the FA Panel that FS had taken further advice from DoJ on the matter, and on the strength of the advice and for the avoidance of doubt, FS had sought and received the approval for the purchase from CE, under section 6(b) of EFO.

7. When the subject was further discussed at the FA Panel meeting on 5 November 2001, members were informed by the Administration that:

- (a) with the approval of FS, the Sale and Purchase Agreement for the purchase of 12 office floors and two auditorium floors at IFC II had been signed on 5 October 2001. The total area of the premises purchased was 341 711 square feet and the purchase price was HK\$3,699 million. The expenditure had been charged to the Exchange Fund; and
- (b) DoJ had also examined the comments of LA regarding the application of certain provisions in the Basic Law to the office purchase and the interaction between these provisions and the provisions in the EFO. Having regard to the constitutional background, DoJ was of the view that the Hong Kong SAR Government had the power to invoke the relevant provision in the EFO to allocate funds from the Exchange Fund to finance the purchase of office accommodation for HKMA. There was no need to obtain the approval of LegCo for the relevant expenditure.

8. At the same meeting of the FA Panel, LA recapitulated the principles underlying his legal analyses on the matter as follows-

- (a) The expenditure for the purchase of office accommodation for HKMA as a government department was definitely a public expenditure;
- (b) Given that this was a public expenditure, the approval of LegCo for the purchase was required in accordance with the Basic Law, unless LegCo had, in accordance with the law, delegated the authority to a specified person; and
- (c) Even if CE considered that the proposed expenditure was within his power to approve under section 6(b) of EFO, he might still

cause that to be proposed to LegCo for approval in accordance with the Public Finance Ordinance (Cap. 2).

9. Having noted the Administration's advice and LA's view, members of the FA Panel remained concerned about the legality of using the Exchange Fund for the purchase of office premises for HKMA. They requested the Administration to provide further information, including the justification for CE's decision to approve the purchase. The minutes of the Panel meeting on 5 November 2001 are in **Appendix VII**.

10. In his reply dated 7 March 2002, the then Secretary for Financial Services informed the FA Panel that:

- (a) DoJ advised that provided CE, having considered all relevant circumstances, concluded that the proposed purchase was necessary for the due performance of the duties laid upon FS and the operation of the Exchange Fund, and approved the expenditure, then the expenditure should be charged to the Fund under section 6(b) of EFO; and
- (b) On the basis of the advice in item (a) above and for the avoidance of doubt, CE, having considered the specific accommodation needs of HKMA and the suitability of the proposed property to meet these needs, took the view that the purchase of the premises was incidental expenditure which was necessary for the due performance of the duties laid upon FS (which include those of HKMA) in connection with the operation of the Exchange Fund under section 6(b) of EFO.

11. A list of relevant papers is in **Appendix VIII**.

立法會
Legislative Council

Paper for the Panel on Financial Affairs
Legal Adviser's view on the interpretation of Section 6(a) of
the Exchange Fund Ordinance (Cap. 66)

Purpose of Paper

This paper sets out Legal Adviser's view on the interpretation of section 6(a) of the Exchange Fund Ordinance (Cap. 66).

Background

2. In his letter dated 12 April 2001 to the Chairman of the Panel on Financial Affairs, the Financial Secretary (FS) stated that using the Exchange Fund to purchase permanent office accommodation for Hong Kong Monetary Authority is lawful and within his powers under section 6(a) of the Exchange Fund Ordinance (Cap. 66). He had sought specific legal advice and was advised that the accommodation of staff and their equipment was clearly a "staff cost" in the context.

Analysis

3. Section 6(a) of Exchange Fund Ordinance (Cap. 66) reads as follows :

"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;"

4. Section 6(a), in its current form, was enacted in 1983 by the Exchange Fund (Amendment) Ordinance 1983. It is, on the face of it, an accounting provision. It requires certain expenditure specified in it to be charged to the Exchange Fund which is a fund comprising public money established by the Exchange Fund Ordinance (Cap. 66). It also authorizes FS by implication to do the necessary acts to effect payments which have to be made under the provision.

5. The word "emoluments" bears a relatively clear meaning. As regards the term "staff costs", it could cover any expenditure which has some relation with the performance of function by staff. For example, as suggested by the General Counsel to the Hong Kong Monetary Authority in his letter of 19 April, 2001, "expenditure that is staff-related" is "staff costs" if the expenditure is not emoluments. "The cost of accommodating staff" is one of the examples the General Counsel used to illustrate his point. On the other hand, the term could be given a more restrictive meaning by confining the costs to expenditure which is payable because of a condition in a staff's contract of employment or is reasonably incidental to such condition.

6. In order to ascertain what "staff costs" should mean or the principle which should be applied in interpreting this term, an understanding of the constitutional framework on the control of public expenditure and the government policy behind the creation of the Monetary Authority is important so that the term could be interpreted in context.

7. Under Article 73(3) of the Basic Law, it is one of the powers and functions of the Legislative Council "to approve taxation and public expenditure". The power is without qualification. All public expenditure will, as a matter of constitutional requirement, have to be approved by the Legislative Council. However, it should be accepted that if an enactment should empower a designated person to incur public expenditure, that enactment would not contravene the Basic Law if the Legislative Council retains the ultimate control of the public expenditure in question.

8. Under Article 113 of the Basic Law, 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". The main purpose of this article is to make clear that the management and control of Exchange Fund lies with the government of the Hong Kong Special Administrative Region. It also makes clear that the purpose of the Exchange Fund is primarily for regulating the exchange value of the Hong Kong dollar.

9. Although Article 113 of the Basic Law appears to rule out the Legislative Council's intervention in the management and control of the Exchange Fund, it does not contradict Article 73(3) because use of the Fund for the purpose specified in the Basic Law is not public expenditure. Legislative Council's role in relation to the management and control of the Exchange Fund is governed by Article 64 of the Basic Law. Under Article 64, it would be quite legitimate for the Legislative Council to ask the government questions on the management and control of the Exchange Fund as one of the means to hold the government accountable.

10. Section 4 of Public Finance Ordinance (Cap. 2) provides that "no expenditure shall be charged on the general revenue except as provided by or under this Ordinance or any other enactment". Section 5(1) of the same Ordinance further provides that the FS "shall cause to be prepared in each financial year estimates of the revenue and expenditure of the Government for the next following financial year, and shall cause such estimates to be laid before the Legislative Council". Under section 6 of the same Ordinance, the estimates of expenditure have to be included in an Appropriation Bill. The estimates of expenditure so included are deemed to be approved by the Legislative Council upon the enactment of the relevant Appropriation Ordinance. In order to provide a mechanism for the Legislative Council to approve proposals to incur public expenditure which are made subsequent to the enactment of the Appropriation Ordinance, section 8 of the same Ordinance empowers the Finance Committee of the Legislative Council to approve changes to the approved estimates of expenditure upon the proposal of the FS.

11. Section 3(1) of the Exchange Fund Ordinance (Cap. 66) establishes the Exchange Fund. It also provides that the Exchange Fund "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". By virtue of section 3(1A) and (1B) of the same Ordinance, the Fund may also be used for the secondary purpose of 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.

12. In 1992, section 5A of the Exchange Fund Ordinance (Cap. 66) was enacted to require the FS to appoint a person as the Monetary Authority on such terms and conditions as he thinks fit. The person appointed has the functions as provided in section 5A(2). They are: to assist the FS in the performance of his functions under the Exchange Fund Ordinance; perform such functions as the FS may direct; and perform functions imposed on or assigned to the Monetary Authority by any other Ordinance. Under section 5A(3), the FS 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 section 5A(2). A person appointed to assist the Monetary Authority is deemed to be employed in connection with the purposes of the Exchange Fund.

13. The institutional structure provided in the Exchange Fund Ordinance for the FS to discharge his functions under section 3 of the same Ordinance does not include a department of the government. What the FS is provided with are a person holding the title of Monetary Authority, persons whom FS could appoint to assist the Monetary Authority and an advisory committee entitled Exchange Fund Advisory Committee with which the FS is required to consult when performing his functions under section 3. However, the then Secretary for Monetary Affairs, when speaking at the Second Reading debate of the Exchange Fund (Amendment) Bill 1992, stated that "in practice the term "Monetary Authority" was to be regarded as an organization" and it would "remain an integral part of the Government". He also stated that it was the government's intention that "the staff and operating costs of the Authority would be charged directly to the Exchange Fund instead of to the general revenue, thus taking the Authority outside the resource allocation constraints applicable to other parts of government".

14. The government policy reflected in section 6(a) of the Exchange Fund Ordinance is to allow the Hong Kong Monetary Authority, when operating as a government department, the resources to employ staff on terms different from those of the Civil Service in order to attract and retain high calibre staff with the right experience and expertise. It is necessary for the implementation of that policy that the FS is given the authority to appoint persons from outside the Civil Service and their emoluments and other staff costs relating to them are to be paid from the Exchange Fund.

15. It seems clear from paragraphs 12, 13 and 14 above that the government remains financially responsible for the operation of the Hong Kong Monetary Authority in the same way as it is responsible for other government departments. Under normal circumstances, this responsibility is translated into a responsibility to provide funds from the General Revenue for all the recurrent and non-recurrent expenditure for the operation of the department. But, in the case of the Hong Kong Monetary Authority "staff and operating costs" are to come from the Exchange Fund. The antithesis of this is that expenditure other than for covering these costs would have to come from the General Revenue. Although it would seem more convenient if all the public expenditure relating to the operation of the Hong Kong Monetary Authority could be charged to the Exchange Fund, there is no clear provision in the Exchange Fund Ordinance allowing this to be so either expressly or by implication. Furthermore, to seek to include within the meaning of "staff costs" the purchase of a multi-billion dollar permanent office accommodation raises the issue of whether such an interpretation is in contravention of the Basic Law since it effectively nullifies the Legislative Council's constitutional function of approving public expenditure under Article 73 (3).

16. In Legal Adviser's view, against the constitutional requirement that public expenditure has to be approved by the Legislative Council under the Basic Law and the fact that the use of the Exchange Fund to purchase office accommodation for a government department is no doubt public expenditure, the reliance on section 6(a) to justify charging that expenditure to the Exchange Fund would need very strong and compelling arguments. To simply argue that "staff costs" means staff-related costs and therefore covers the cost of accommodating staff may not be conclusive. Members are advised that it would be a matter for them to hold the public officers concerned accountable for their decisions until they are satisfied that it is a proper application of the law to justify the expenditure from the Exchange Fund. In addition, it is suggested that in view of the fact that it has been some years since section 6(a) of the Exchange Fund Ordinance (Cap. 66) was enacted it may be time to consider reviewing the provision to see if it still meets contemporary needs.

Prepared by

MA Yiu-tim, Jimmy
Legal Adviser
Legislative Council Secretariat
2 May 2001

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Legislative Council

LC Paper No. CB(1) 1728/00-01

(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

**Legislative Council
Panel on Financial Affairs**

**Minutes of special meeting held on
Friday, 20 April 2001 at 8:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon Ambrose LAU Hon-chuen, JP (Chairman)
Hon Henry WU King-cheong, BBS (Deputy
Chairman)
- Hon James TIEN Pei-chun, JP
Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, JP
Hon NG Leung-sing
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
Hon Jasper TSANG Yok-sing, JP
Hon Emily LAU Wai-hing, JP
- Non-Panel Member attending** : Hon Tommy CHEUNG Yu-yan, JP
- Members absent** : Hon LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP
Hon James TO Kun-sun
- Public officers attending** : Hong Kong Monetary Authority
Mr Joseph YAM, JP
Chief Executive

Mr Raymond LI, JP
Executive Director (Corporate Services)

Mr Stefan GANNON, JP
General Counsel

Financial Services Bureau

Mr Stanley WONG
Deputy Secretary for Financial Services

Clerk in attendance : Mrs Florence LAM
Chief Assistant Secretary (1)4

Staff in attendance : Mr Jimmy MA
Legal Adviser

Ms Pauline NG
Assistant Secretary General 1

Ms Connie SZETO
Senior Assistant Secretary (1)1

I Permanent accommodation for the Hong Kong Monetary Authority

(LC Paper Nos. CB(1) 905/00-01, 994/00-01, 1022/00-01(01) & (02), 1038/00-01(01) & (02), and 1051/00-01(01) & (02))

The Chairman informed members that the purpose of the meeting was for the Administration to brief the Legislative Council (LegCo) Members on the proposed acquisition of premises at Two International Finance Centre (IFC II) as the permanent accommodation for the Hong Kong Monetary Authority (HKMA). He referred members to letter of 12 April 2001 from the Financial Secretary (FS) (LC Paper No. CB(1) 1022/00-01(01)) setting out FS' position on the matter and the reasons for declining the Panel's invitation to attend the meeting.

2. Members noted that HKMA intended to acquire an area of 280,000 sq. ft. as office for the Authority (i.e. 80,000 sq. ft. in excess of the size of its current accommodation at Citibank Tower) and an additional of 60,000 sq. ft. to provide for conference facilities and public access. The cost of the purchase, which was estimated by the market to reach HK\$4 billion, would be charged to the Exchange Fund (EF).

3. The Chief Executive, Hong Kong Monetary Authority (CE/HKMA) said that he was aware that some LegCo Members had expressed serious concern over the proposed acquisition of the permanent accommodation. He responded to the three major issues relating to the concern as follows :

(a) Arguments for the acquisition of the new accommodation

HKMA's financial analyses had suggested that it would be more economical to purchase rather than to lease offices for HKMA in the long run. The provision of permanent accommodation would enable HKMA to enhance its security arrangements.

(b) Legal basis for using EF for the proposed acquisition

The decision to purchase the premises was made by FS after seeking the advice of the Exchange Fund Advisory Committee (EFAC). FS was the controller of EF and was responsible for the management and operation of the Fund as provided under section 3 of the Exchange Fund Ordinance (EFO) (Cap. 66). Section 6(a) of EFO provided that "the emoluments payable to, and other staff costs relating to, the persons employed in connection with the purposes of the Fund" shall be charged to the Fund. As the office accommodation of HKMA staff was clearly a "staff cost" in the context, the use of EF to purchase the premises was *intra vires* EFO.

(c) Transparency and public accountability of HKMA's operations

HKMA was committed to enhancing its openness and accessibility to the public and LegCo. Apart from explaining to the public and briefing LegCo Members on its work on a regular basis, HKMA was subject to scrutiny of EFAC and the Director of Audit whose staff members had a continuous presence in HKMA. As for transparency of the proposal, the Panel on Financial Affairs was informed of the proposed acquisition in January 2001. An information paper was issued in March 2001 to provide members with details on the proposal.

Arguments for the proposed acquisition

4. Mr David LI, Mr NG Leung-sing, and Mr Philip WONG supported the proposal. They considered it appropriate to provide HKMA with separate and clearly identifiable premises. The practice was in line with other premier international financial centres which also housed their central banking institutions and regulatory authorities in separate and dedicated office premises.

5. Some members questioned the need to acquire an extra of 140,000 sq. ft. in the new premises and urged HKMA to provide details on the usage of the space.

6. CE/HKMA explained that 80,000 sq. ft. of the extra space would cater for possible future needs of HKMA. Possible new duties for HKMA included consumer protection for bank customers, supervision of the deposit insurance system and the Credit Reference Agency, etc. Given the long term nature of these activities, it would be difficult to specify their requirements in detail. Moreover, a number of international financial institutions, such as the Bank for International Settlements, the World Bank and the International Monetary Fund, had expressed an interest to expand and establish offices in Hong Kong. The HKMA should also cater for such needs. Any space in the new accommodation which was not used immediately would be let to suitable tenants at market rate. It was estimated that letting of the space could secure a reasonable return of 6% to 7% for EF. Therefore, it would be cost effective and prudent planning to cater for such future needs at the outset. The remaining 60,000 sq. ft. would be used mainly to provide purpose-built conferencing facilities to enable HKMA to provide high quality venue for international conferences and seminars for the international financial community and to provide public access facilities to enhance the public's understanding of the financial system and the works of HKMA. The HKMA saw the latter as an important step in enhancing the transparency and accountability of its operations.

7. Given that the financial investments of EF had achieved good returns for the Fund over the past years, Mr James TIEN was of the view if the cost for acquiring the premises was invested in the financial market, it might give a better yield for EF. Miss Emily LAU was concerned that the premises might become a negative asset in view of the slack performance of the property market. Mr Albert HO considered that using EF to make the purchase would change the asset composition of the Fund and could affect its liquidity adversely.

8. In response, CE/HKMA emphasized that the proposed acquisition was cost effective. According to HKMA's analyses, it would take less than 20 years to recoup the cost of purchasing the premises from rental savings. As the transaction was still under negotiation, commercially sensitive information

HKMA could not be disclosed at the moment. HKMA would provide details on the financial analyses when such information could be disclosed. CE/HKMA stressed that the main purpose of the acquisition was to provide permanent accommodation for HKMA. The purchase would represent a profitable investment of EF. There were guidelines on asset composition of EF. The purchase would not breach any of the guidelines. The cost for purchasing the premises was insignificant when compared with the huge size of EF which currently exceeded HK\$ 1 trillion. HKMA did not envisage that the liquidity of EF would be adversely affected.

(Post-meeting note: The results of the financial analyses were disclosed in connection with the signing of a memorandum of agreement by the FS on 28 April 2001.)

9. Mr James TIEN commented that in order to request the property developers of IFC II to provide HKMA with customized security arrangements and access facilities to suit its unique requirements, HKMA could consider the alternative of negotiating with the developers to arrange a rental contract of over 30 years. CE/HKMA replied that as IFC II was under construction, the acquisition would enable HKMA to ensure that the design of the building would meet its operational requirements. These included the introduction of enhanced and customized security arrangements to meet its special needs and the provision of a separate lift lobby for the offices. HKMA received a significant number of distinguished guests, such as governors of central banks and finance chiefs from the Mainland and overseas. There had been comments that the security arrangements at HKMA's present accommodation would need to be improved. Currently, a substantial quantity of confidential and market sensitive information was stored electronically at HKMA's office premises. The acquisition of the new premises would enable HKMA's cabling and telephone lines to be laid in dedicated trunkings, thus ensuring the security of HKMA's market operations.

10. Responding to Mr Henry WU's enquiry as to whether HKMA had considered other locations for its permanent office, such as the proposed Central Government Offices at Admiralty, CE/HKMA said that as the final decision on the use of the site at Admiralty was still outstanding, FS had instructed that other locations should be considered. Given the Government policy of housing all major financial regulators under one roof, and the fact that the Mandatory Provident Fund Schemes Authority (MPFA) and the Hong Kong Exchanges and Clearing Limited (HKEx) had already moved into IFC in 1999 and 2000 respectively, the Government considered IFC II to be a suitable location for the permanent office of HKMA.

11. Miss Emily LAU doubted whether LegCo had been consulted on the government policy of housing all major financial regulators in one strategic location. Noting that MPFA and HKEx were accommodated in rented

premises at IFC, Miss LAU questioned the rationale for HKMA to acquire its offices at the building. She also expressed concern that housing all financial regulators in the same building could pose a risk. The Deputy Secretary for Financial Services replied that the government policy was announced in 1997. The main objectives were to enhance communication among the regulatory bodies and to facilitate sharing of common market infrastructure. However, individual financial institutions had their own considerations as to whether they should acquire or rent their offices at IFC.

12. Some members expressed concern that the announcement of the "one-roof" policy in 1997 might have put HKMA in a disadvantaged position when negotiating with the developers. CE/HKMA assured members that HKMA had engaged property consultants to handle the purchase to ensure that the price for the accommodation was reasonable. According to the analysis of the Government Property Agency, the price for the premises was below the prevailing market price.

Legality of using the Exchange Fund to purchase the premises

13. Mr Albert HO pointed out that section 3(1) of EFO had clearly stipulated that the primary purpose of EF was to maintain the stability of Hong Kong dollar. However, the acquisition of the HKMA's permanent accommodation was unrelated to this purpose. Mr HO and Miss Emily LAU considered that the cost of purchasing the accommodation should be charged to the general revenue and should be subject to the approval of the Finance Committee of LegCo. They expressed serious doubt over the argument put forward by HKMA's legal adviser that "other staff costs" under section 6(a) of EFO should include "cost for accommodation of staff" and hence the cost for the purchase could be met by EF. They cautioned that if such a wide interpretation of section 6(a) was accepted, the provision could be easily abused and EF could be used to meet any expenses incurred by HKMA. Their views were shared by Mr TSANG Yok-sing and Mr Henry WU.

14. CE/HKMA explained that sections 3(1) and (1A) of EFO provided FS with the power to use EF for purposes either directly or indirectly affecting the exchange value of Hong Kong dollar, and to maintain the stability and integrity of its monetary and financial systems, with a view to maintaining Hong Kong as an international financial centre. HKMA was delegated the authority to achieve these purposes. Providing HKMA with accommodation and systems for its operation would be consistent with these purposes. CE/HKMA assured members that HKMA would not abuse its power in using EF to meet its expenses. All expenditure incurred by HKMA was reasonable and had been made in good faith.

15. Members noted that the LegCo Legal Adviser (LA) had written to HKMA to seek clarification on the legal bases for charging the cost of the purchase to EF and that HKMA's legal adviser had responded reiterating his previous position. Mr Albert HO and Miss Emily LAU suggested that FS should be asked to seek the advice of the Department of Justice on the matter. In order to facilitate further discussion by the Panel, Mr Albert HO requested LA to provide a paper setting out the legal issues relating to the subject.

(Post meeting note: LA's paper was circulated to members vide LC Paper No. CB(1) 1120/00-01 on 2 May 2001.)

16. Mr Albert HO pointed out that FS' decision to use EF for purchasing the accommodation was inconsistent with the position which he took at the debate on the 2001-02 Budget, where he had repeatedly stressed the need for the Government to retain sufficient reserves under EF for defending the Hong Kong dollar and hence had refused the demand of the public to use the sizable reserves accumulated to fund new initiatives to relieve the hardship suffered by the community. He urged the Administration to explain its fiscal policy and what it considered to be the appropriate level of EF.

17. As regards the relationship between the Government's fiscal reserves and EF, CE/HKMA said that they were two separate and distinct entities. The fiscal reserves, which currently stood at over HK\$430 billion, had been accumulated from the budget surpluses over the years. He recognized that there had been strong public demand for the Government to use the substantial reserves to address the needs of the community. If this was considered appropriate, the necessary amount could, at any time, be withdrawn from EF. Furthermore, Section 8 of EF provided a mechanism for FS, after satisfying certain conditions, to transfer the accumulated surplus of the EF to the general revenue. One condition was that FS should be satisfied that such transfer would not adversely affect the purposes of EF as stipulated in section 3(1) or (1A) of EFO.

18. On the question of adequacy of foreign reserves, CE/HKMA said that under the Linked Exchange Rate system and the currency board arrangements, theoretically it was only necessary for Hong Kong to maintain the level of foreign reserves at US\$28 billion in order to provide full backing for the current monetary base of HK\$220 billion. However, experience had suggested that Hong Kong needed considerably more in foreign reserves than this theoretical minimum to maintain currency stability. The amount of foreign reserves utilized for defending the Hong Kong dollar against manipulative attacks on the currency during the international financial crisis of 1997/98 was as much as US\$38 billion. This was over three times of the theoretical minimum of US\$12 billion for backing the then smaller monetary base of HK\$95 billion. It was difficult, if not impossible, to derive a clear-cut and scientific formula for determining the appropriate level of foreign reserves.

Given that Hong Kong was a small economy with an entirely open market, it would be prudent to maintain a level of foreign reserves well above the theoretical minimum in order to strengthen the financial position of EF for meeting possible vulnerabilities and risks.

Issues about accountability and transparency

19. Mr Albert HO and Miss Emily LAU expressed strong dissatisfaction about the allegation of political interference by LegCo Members over the operations of EF as contained in FS' letter of 12 April 2001. They considered that it was the duty of LegCo to monitor the operations of EF and HKMA. Mr TSANG Yok-sing added that it was legitimate for LegCo to ask the Government questions on the management and control of EF, as this was one of the means for ensuring the Government's accountability. They considered that the Government should provide detailed information on the proposed acquisition in a timely manner to facilitate monitoring by LegCo.

20. CE/HKMA stressed that it was beyond doubt that LegCo had a legitimate interest in monitoring the use of public funds, regardless of whether it was the general revenue or EF. The Administration was vested with the power to control and manage EF and had been discharging this responsibility in a highly transparent manner. There was no adverse reaction from members of the Panel after the intention to purchase permanent accommodation for HKMA was disclosed in January 2001. An information paper was specifically prepared in March 2001 to update members on the progress. CE/HKMA also said that he had accepted members' invitation to attend the present meeting to brief them on further details on the subject. However, the success of Hong Kong's monetary management and the credibility of its monetary policy depended crucially on the independence of the monetary authority in discharging its responsibilities. Any indication from LegCo Members to halt the negotiation on the purchase using EF could be interpreted by the international financial community as fettering the independent and exclusive power of FS provided under EFO. This would undermine their confidence in Hong Kong's monetary and financial systems.

21. On the issue of public scrutiny, CE/HKMA fully agreed that the greater the independence in the control of EF the greater the need for arrangements to ensure that those exercising the authority were accountable. The degree of transparency in the operations of HKMA was already exceedingly high by international standards. The accountability arrangements mentioned in the above discussion were working effectively. HKMA welcomed advice from LegCo Members and the public on ways to further enhance its public accountability.

22. In this connection, Members were of the view that it was necessary to conduct a comprehensive review on the structure and operation of HKMA and EFO. In response, CE/HKMA advised members that the Administration, by its own initiative, had planned to further clarify the policy objectives, the mandates, the authority, and the governance and accountability arrangements of HKMA to ensure that it was able to discharge its functions effectively and professionally.

23. As regards Miss Emily LAU's comment that EFAC might be ineffective in monitoring the operations of HKMA, as majority of the members were from the banking sector whose business was regulated by HKMA, CE/HKMA stressed that EFAC comprised experts who were leading figures in the financial services sector with extensive knowledge and experience. He was confident that these members were able to provide objective advice on the management of EF and the operations of HKMA. He did not concur with Miss LAU's view that there would be role conflict on the part of members.

24. Members agreed that the Panel should follow up the subject. The development on the matter should be kept in view and further meetings would be convened when necessary.

II Any other business

25. There being no other business, the meeting ended at 10:35 am.

**Extract from the minutes of special meeting
of the Panel on Financial Affairs on 3 May 2001**



II. Any other business

Permanent accommodation for the Hong Kong Monetary Authority

25. Members noted that a special Panel meeting was held on 20 April 2001 to receive a briefing by CE/HKMA on the proposal to purchase office accommodation at Two International Finance Centre. They also noted that FS signed a Memorandum of Understanding (MOU) with the developer concerned on 28 April 2001. The purchase involved expenditure of HK\$3.699 billion, which would be charged to EF. At members' request at the meeting on 20 April 2001, the LegCo Secretariat Legal Adviser (LA) had provided the Panel with a paper (LC Paper No CB(1)1120/00-01 issued on 2 May 2001) setting out his views on the legal issues involved.

26. Miss Emily LAU said that at the meeting on 20 April 2001, some members had expressed grave concern over the legality of using EF to purchase permanent office accommodation for HKMA. Members were of the view that the cost for purchasing the premises should be charged to the general revenue and should be subject to the approval of LegCo. Miss LAU considered the signing of MOU by FS on 28 April to be a disrespect of LegCo. Since LA's paper had raised queries about FS's reliance on section 6(a) of the Exchange Fund Ordinance (EFO) (Cap.66) to justify the charging of expenditure to EF and that in LA's view, FS's decision had effectively nullified LegCo's constitutional function of approving public expenditure under Article 73(3) of the Basic Law, Miss LAU opined that the Panel should pursue the matter.

27. CE/HKMA said that HKMA only received LA's paper on 2 May 2001. HKMA would respond to the points raised in the paper as soon as possible. His preliminary comments were that while the paper had analyzed the legal issues involved, it had not given any conclusion on the legality of using EF for the purchase. Having regard to HKMA's legal advice that it was within FS' power under EFO to use EF for the said purchase, LA's comments could be seen as an allegation against FS for not acting in accordance with the law.

(Post-meeting note: HKMA's response to LA's paper was circulated to members vide LC Paper No. CB(1)1290/00-01 on 18 May 2001.)

28. LA explained that the purpose of his paper was to analyze the various legal issues relating to the subject to facilitate members' consideration of the issues rather than to act like a judge to determine whether FS had contravened any laws.

29. Miss Emily LAU requested HMKA to provide details of its legal advice to FS and the analysis regarding the legality of charging the cost to EF. She also considered it necessary for members to have access to the advice of the Department of Justice (D of J) on the matter.

30. CE/HKMA undertook to provide the details of HKMA's legal advice on the purchase for members' reference.

(Post-meeting note: The reply from FS's Office, HKMA's legal advice and analysis on the subject were circulated to members vide LC Paper No. CB(1)1290/00-01 on 18 May 2001.)

Action to be taken by the Panel in pursuing the matter

31. Miss Emily LAU suggested that the Panel should consider whether it was necessary to engage an independent counsel to provide further legal advice on the matter. As an alternative, the Panel might consider reporting the matter to the House Committee for discussion as to how the matter should be followed up. Noting that HKMA had undertaken to respond to LA's paper and that FS's Office would be requested to seek D of J's advice on the matter, Mr Eric LI and Mr NG Leung-sing were of the view that the Panel should consider these views first before deciding the way forward. Mr SIN Chung-kai suggested that the Panel should convene a special meeting to discuss the legal advice provided by HKMA and D of J when this was available.

32. After further deliberations, members agreed that this issue should be reviewed at the regular meeting of the Panel to be held on 4 June 2001.

(Post-meeting note: Members noted at the meeting on 4 June 2001 that FS had invited D of J to give its views on the matter and the advice would be provided to the Panel in due course. LA had provided a paper responding to HKMA's legal advice (CB(1)1290/00-01 dated 18 May 2001) which was circulated to members vide LC paper No. CB(1)1518/00-01 on 12 June 2001.)

33. The meeting ended at 6:15 pm.



**Extract from the minutes of meeting
of the Panel on Financial Affairs on 5 November 2001**



VI. Permanent accommodation for the Hong Kong Monetary Authority

(LC Paper No. CB(1)169/01-02(05) — Background brief on permanent accommodation for the Hong Kong Monetary Authority prepared by the LegCo Secretariat)

42. The Deputy Secretary for Financial Services (DS/FS) updated members on the purchase of permanent accommodation for HKMA. He said that with the approval of FS, the Sale and Purchase Agreement for the purchase of 12 office floors and two auditorium floors at Two International Finance Centre had been signed on 5 October 2001. The total area of the premises purchased was 341 711 square feet and the purchase price was HK\$3,699 million. The expenditure had been charged to the Exchange Fund.

43. Regarding the legality of the office purchase, DS/FS recapitulated that pursuant to members' request, FS had sought the legal advice of the Department of Justice (DoJ) on the matter. In gist, DoJ was of the view that according to the Exchange Fund Ordinance (EFO) (Cap. 66), it was appropriate to charge the expenditure for the office purchase to the Exchange Fund. Specifically, section 6(b) of EFO provided that the Chief Executive might approve any incidental expenditure to be charged to the Exchange Fund as necessary for the due performance of the duties laid upon the Financial Secretary and the Exchange Fund Advisory Committee in connection with the operation of the Fund.

44. DS/FS further said DoJ had also examined the comments of the Legal Adviser of the Legislative Council Secretariat (LA) regarding the application of certain provisions in the Basic Law to the office purchase and the interaction between these provisions and the provisions in the EFO. Having regard to the constitutional background, DoJ was of the view that the Hong Kong SAR Government had the power to invoke the relevant provision in the EFO to allocate funds from the Exchange Fund to finance the purchase of office accommodation for the HKMA. There was no need to obtain the approval of the Legislative Council (LegCo) for the relevant expenditure. The details of DoJ's advice had already been set out in the letters issued by FS's Office to this Panel on 19 July 2001 and on 3 September 2001.

Hopefully, the advice of DoJ would be able to remove any doubt of Members and the public on the legality of the office purchase.

Legality of using the Exchange Fund for the purchase

45. Miss Emily LAU and Ms Audrey EU expressed appreciation to the legal advice provided by LA for the Panel in the course of its deliberation on the matter. Miss Emily LAU expressed regret for the confusing manner in which the Administration had handled the matter, highlighting that initially, the former FS relied on the advice of the General Counsel to HKMA in approving the office purchase, asserting that the cost of providing accommodation for HKMA could properly be regarded as a “staff cost” which might be charged to the Exchange Fund under section 6(a) of the EFO. It was only upon the request of the Panel that the former FS sought the advice of DoJ on the matter. In July 2001, FS’s Office informed the Panel of DoJ’s advice that FS, who was vested with the delegated authority to approve expenditure under section 6(b) of the EFO, had been satisfied that the expenditure on the accommodation was necessary and approved it. When the purported delegation of the power from the Chief Executive (CE) to FS to approve the purchase under section 6(b) was again challenged by LA, FS sought further advice from DoJ and thereafter informed the Panel in September 2001 that FS had sought and received the approval for the purchase from CE under Section 6(b) of EFO. Miss LAU further said that she maintained her strong reservation on the propriety of using \$3.7 billion for the office purchase under the current economic climate and her doubt on the legality of the purchase.

46. Mr Albert HO commented that given the huge sum of public monies involved and the important legal issues to be fully addressed, the Administration should not have made hasty decisions on the purchase by entering into the Memorandum of Understanding (MOU) for the purchase in April 2001 and signing the Sale and Purchase Agreement in October 2001. Mr HO expressed regret for the handling of the matter by the former FS and HKMA, in particular their reckless approach in handling the legality issue of the purchase.

47. Pointing out that the MOU for the purchase had been signed in April 2001, when the Administration was still relying on section 6(a) of the EFO as the legal basis for the purchase, Miss Emily LAU questioned whether the Administration’s subsequent switch to rely on section 6(b) of the EFO was acceptable from the legal viewpoint.

48. In response, DS/FS reaffirmed the Administration’s position that the purchase of the office accommodation in question for HKMA was entirely lawful.

49. LA recapitulated the principles underlying his legal analyses on the matter as follows -

- (a) the expenditure for the purchase of office accommodation for HKMA as a government department was definitely a public expenditure;
- (b) given that this was a public expenditure, the approval of the Legislative Council (LegCo) for the purchase was required in accordance with the Basic Law, unless LegCo had, in accordance with the law, delegated the authority to a specified person; and
- (c) even if CE considered that the proposed expenditure was within his power to approve under section 6(b) of EFO, he might still cause that to be proposed to LegCo for approval in accordance with the Public Finance Ordinance (Cap. 2).

50. LA further said that as he did not have the knowledge of the legal details surrounding the transaction in respect of the office purchase, he could not comment on the propriety and strength of the legal basis on which the parties to the transaction relied in the process. As regards the Administration's switch from relying on section 6(a) to relying on section 6(b) of the EFO to substantiate the legality of the purchase, LA said that this change of stance appeared to raise the issue of how the Administration should properly discharge its duty of accountability to LegCo on the issues relating to the office purchase.

51. Miss Emily LAU sought clarification on whether the approval by CE for the expenditure of the purchase to be charged to EFO under section 6(b) was consistent with the principle that the expenditure was a public expenditure.

52. LA said that as analysed in his paper for the Panel, when a person outside the LegCo had been delegated the authority to approve a public expenditure, he should exercise the authority in accordance with the conditions stipulated under such delegation. In this case, as stipulated in section 6(b) of EFO, CE had to be satisfied that the nature of the expenditure was incidental and that it was necessary for the due performance of duties laid upon FS and the Exchange Fund Advisory Committee in connection with the operation of the Fund. In exercising the power, CE should follow the general principles that such statutory power should be exercised in good faith and in accordance with the usual standards of reasonableness consistent with the scope and policy of the ordinance in question.

53. Mr Albert HO sought clarification on whether CE had been delegated the authority to approve the expenditure of the purchase, and whether the office purchase in question satisfied the necessity criterion stipulated in section 6(b) of the EFO.

54. Miss Audrey EU commented that the crux of the whole issue lay in whether the strength of the legal and operational justifications provided by the Administration were proportionate to the vast sum of money spent on the purchase. She sought the

advice of LA on whether, from the legal viewpoint, the expenditure for the purchase could be regarded as an incidental expenditure in the context of section 6(b) of the EFO, and if the answer to the question was in the affirmative, given that LA had confirmed his view that the expenditure was a public expenditure, whether the Administration was still required to obtain the approval of the LegCo for the expenditure in accordance with the Basic Law.

55. LA advised that section 6(b) of the EFO was a clear delegation of authority to CE. He reiterated his view that even if CE considered that the proposed expenditure was within his power to approve under section 6(b), he might still cause that to be proposed to LegCo for approval in accordance with the EFO. It was CE's own judgement on which course of action was appropriate. Referring to Article 64 of the Basic Law which provided that the Administration should be accountable to LegCo, LA said that CE would be accountable to the LegCo for his decision to approve the purchase under section 6(b) of the EFO and this decision was amenable to judicial review.

56. LA further advised that whether the purchase was necessary was a matter of judgement. According to the letter from FS's Office dated 19 July 2001 to the Panel, DoJ had not expressly given a view on the necessity of the purchase, but had mentioned that "the Monetary Authority clearly requires accommodation to enable him and his staff to undertake their functions and duties under the Ordinance". A general observation was that this factor alone was insufficient to satisfy the conditions stipulated under section 6(b). Other factors including the location, size, tenure and price etc. of the office to be acquired vis-à-vis the operational requirements of HKMA might also be relevant. However, the Administration had not revealed how CE had arrived at his decision to approve the purchase. As such, Members might consider inviting the Administration to explain this decision.

57. As to whether the expenditure for the purchase was an incidental expenditure, LA advised that there was no precise definition of "incidental expenditure" in the law, but two relevant principles were observed in precedent cases. Firstly, the expenditure should be incurred for purposes subsidiary but necessary for attaining a pre-determined primary objective. Secondly, the question of whether an expenditure was "incidental expenditure" should be considered 'in the context' of the reasons and factors surrounding the expenditure and this to a certain extent involved matters of judgement.

Consideration of public sentiments in deciding the office purchase

58. Mr SIN Chung-kai expressed dissatisfaction that despite the poor performance of the Exchange Fund and the difficult economic climate, the Administration still insisted on using a huge sum of public money to purchase a new office of the premium standard for HKMA. He questioned whether the Administration had taken into account the views and sentiments of the community towards the then proposed purchase before making its decision to complete the purchase agreement. DS/FS said

that as he was not directly involved in the decision-making process, he would relate Mr SIN's question to the responsible officer(s) for a reply after the meeting. He then affirmed the Administration's position that there was a need to purchase permanent accommodation for HKMA and the premises acquired met the operational requirements of HKMA. The Administration also considered that from the long-term perspective, the purchase was a sound investment.

Review of HKMA's powers and management structure

59. Members noted that at the Panel meeting on 20 April 2001, CE/HKMA had informed members that the Administration had plans to further clarify the policy objectives, the mandates, the authority, and the governance and accountability arrangements of HKMA to ensure that it was able to discharge its functions effectively and professionally. In response to Miss Emily LAU's enquiry about the progress of the review, DS/FS said that according to his understanding, the former FS had mentioned about the plan to review the powers and management structure of HKMA to reinforce its accountability and transparency in the 2001-02 Budget Speech. At this stage, the Administration did not have a timetable on the matter.

60. Miss Emily LAU expressed disappointment that the Administration was not able to report any progress of the review to members although the plan to conduct the review had already been announced in March 2001 by the former FS. DS/FS said that he would convey members' views on the matter to FS. At Miss LAU's request, the Chairman agreed to write to FS to convey members' concern and draw FS's attention to the need to take up the matter.

(Post-meeting note: The Chairman's letter to FS and FS's reply were issued to members vide LC Paper No. CB(1)373/01-02 dated 21 November 2001 and CB(1)610/01-02(01) dated 14 December 2001.)

Security of the new office

61. Mr Albert HO expressed concern about the security of the new office. Noting that it would be located at the top floors (at levels 77 to 88) of Two International Finance Centre, he asked whether the security aspect had been reviewed in the light of the terrorist attacks in the United States on 11 September 2001. In response, DS/FS advised that according to the Administration's assessment, the risk associated with terrorist attacks in Hong Kong was very low. Hence, there was no reason to believe that Two International Finance Centre would be a probable target of terrorist attacks. In terms of internal security control, there would be improvement upon removal of HKMA from the current accommodation to the new accommodation, as the security requirements of HKMA would be taken into account in the design and fitting-out of the new office. The Executive Director (Corporate Services), HKMA (ED/HKMA) supplemented that there would be separate lifts designated for exclusive use by HKMA and this would facilitate better security control by HKMA.

Expenditure for fitting out the new office and other concerns

62. Miss Emily LAU asked whether the Administration concurred that the expenditure for the purchase was a public expenditure and sought confirmation on whether the Administration would seek the approval of LegCo for the expenditure for fitting out the new office accommodation. In response, ED/HKMA advised that this expenditure would also be charged to the Exchange Fund and would be subject to FS's approval. However, HKMA would be pleased to provide relevant information to members when the details were confirmed.

63. To clarify the Administration's position, DS/FS referred members to the advice of DoJ set out in paragraph (d) of the letter from the FS's Office dated 19 July 2001 to the Panel that "...Following from this, it is unlikely that the duty to obtain approval for public expenditure is applicable in the context of the Exchange Fund under Article 113 of the Basic Law (BL 113), as long as the relevant expenditure falls within the terms of BL 113 and the EFO". He said that as the expenditure for the office purchase fell within the terms of BL 113 and the EFO, there should be no need to obtain LegCo's approval for the expenditure. DS/FS added that it was not uncommon for legal experts to have different view points on a legal issue.

64. LA said that while he agreed to DoJ's analysis set out in paragraph (d) of the letter from the FS's Office dated 19 July 2001, his understanding of the advice was different from that of DS/FS. He pointed out that the duty to obtain approval for public expenditure was not applicable only if the relevant expenditure fell within the terms of BL 113 as well as those of the EFO. He was of the view that while the expenditure referred to in sections 3(1) and 3(1A) of the EFO was covered by BL 113, the expenditure referred to in sections 6(a) and 6(b) of the EFO was not covered by BL 113.

65. The Chairman suggested that in view of the complicated legal issues involved, LA be invited to provide written views on the issues for further consideration by members. Miss Emily LAU suggested that the Panel Clerk should seek further information from the Administration, including the justification for CE's decision to approve the purchase, and work together with LA to prepare a paper for the Panel.

66. Mr NG Leung-sing requested the Administration to confirm whether the control and management of the office accommodation in question fell under the purview of the Government Property Administrator.

67. Mr Albert HO said that he was given to understand that the Director of Lands had made an assessment of the value of the premises in question before the MOU was signed. He requested the Administration to confirm this and to inform the Panel of the results of the assessment.

68. The Chairman concluded that the Panel would decide how it would proceed with the deliberation on the matter upon receipt of further information from the Administration and perusal of the paper to be prepared by LA and the Panel Clerk.

69. DS/FS remarked that as the Administration was accountable to LegCo, the Administration would try its best to facilitate the Panel's deliberation on the matter.

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Permanent accommodation for the Hong Kong Monetary Authority

<i>Date</i>	<i>Context</i>	<i>Summary of development</i>	<i>Action</i>
11.1.01	Financial Affairs Panel (FA Panel)	<p>The Chief Executive of the Hong Kong Monetary Authority (CE/HKMA) informed members that the Exchange Fund Advisory Committee had approved the proposal for HKMA to purchase its own office premises in order to save office rentals in the long run. The cost of purchase would be charged to the Exchange Fund (EF). [Minutes “page 3”] http://www.legco.gov.hk/yr00-01/english/panels/fa/minutes/fa110101.pdf</p>	
20.4.01	FA Panel	<p>The Panel discussed with the Administration on the progress of the proposed acquisition of top floors (levels 77 to 88) and 2 auditorium floors (levels 55 and 56) of Two International Finance Centre (IFC II) as the permanent accommodation for HKMA. The cost of the purchase was estimated by the market to reach \$4 billion. [Paper] http://www.legco.gov.hk/yr00-01/english/panels/fa/papers/a905e.pdf</p> <p>The following papers were also circulated to members –</p> <ul style="list-style-type: none"> ● Letter dated 4.4.01 from the Democratic Party to the Financial Secretary (FS) [Letter (Chinese version only)] http://www.legco.gov.hk/yr00-01/chinese/panels/fa/papers/a994c.pdf ● Letter dated 12.4.01 from FS [Letter (English version only)] http://www.legco.gov.hk/yr00-01/english/panels/fa/papers/a1022e01.pdf ● Letter dated 12.4.01 from CE/HKMA [Letter] http://www.legco.gov.hk/yr00-01/english/panels/fa/papers/a1022e02.pdf ● Letter dated 18.4.01 from Legal Adviser (LA) to CE/HKMA [Letter (English version only)] http://www.legco.gov.hk/yr00-01/english/panels/fa/papers/a1038e01.pdf ● Letter dated 19.4.01 from CE/HKMA [Letter] http://www.legco.gov.hk/yr00-01/english/panels/fa/papers/a1038e02.pdf ● Reply dated 19.4.01 from the General Counsel of 	

<i>Date</i>	<i>Context</i>	<i>Summary of development</i>	<i>Action</i>
		<p>HKMA to LA's letter [Letter (English version only)] http://www.legco.gov.hk/yr00-01/english/panels/fa/papers/a1051e01.pdf</p> <ul style="list-style-type: none"> ● Letter dated 18.4.01 from the Clerk to Panel to the Secretary for Financial Services (S for FS) and the latter's reply [Letters (English version only)] http://www.legco.gov.hk/yr00-01/english/panels/fa/papers/a1051e02.pdf <p>Some members were particularly concerned about the legality of using EF to purchase the premises for HKMA. The following papers were circulated to members after the meeting –</p> <ul style="list-style-type: none"> ● LA's view on the interpretation of Section 6(a) of the Exchange Fund Ordinance (Cap. 66) [Paper] http://www.legco.gov.hk/yr00-01/english/panels/fa/papers/cb1-1120e.pdf ● Reply dated 18.5.01 from FS on the legal advice on the use of Exchange Fund [Letter (English version only)] http://www.legco.gov.hk/yr00-01/english/panels/fa/papers/ltr.pdf ● Paper setting out LA's comments on legal advice on issues related to the purchase of permanent office accommodation received by CE/HKMA and provided to FA Panel [Paper] http://www.legco.gov.hk/yr00-01/english/panels/fa/papers/cb1-1518.pdf ● Letter dated 22.5.01 from LA to the General Counsel of HKMA [Letter (English version only)] http://www.legco.gov.hk/yr00-01/english/panels/fa/papers/cb1-1312e.pdf ● Reply dated 23.5.01 from the General Counsel of HKMA [Letter (English version only)] http://www.legco.gov.hk/yr00-01/english/panels/fa/papers/cb1-1348e.pdf ● Letter dated 19.7.01 from the FS's Office providing the Department of Justice's advice on the legality of charging the expenditure for the purchase of permanent office accommodation for HKMA to EF [Letter] http://www.legco.gov.hk/yr00-01/english/panels/fa/papers/cb1-1829e.pdf ● Paper setting out LA's comments on legal issues 	

<i>Date</i>	<i>Context</i>	<i>Summary of development</i>	<i>Action</i>
		<p>arising from the summary of the legal views of the Department of Justice as set out in the letter of the Administrative Assistant to FS dated 19.7.01 [Paper] http://www.legco.gov.hk/yr00-01/english/panels/fa/papers/cb1-1935e.pdf</p> <ul style="list-style-type: none"> ● Reply dated 3.9.01 from the FS's Office to LA's advice dated 31.8.01 [Letter] http://www.legco.gov.hk/yr00-01/english/panels/fa/papers/a1958e.pdf 	
5.11.01	FA Panel	<p>The Panel discussed with the Administration on the progress of the purchase of permanent accommodation for HKMA. The Panel noted that with the approval of FS, the Sale and Purchase Agreement for the purchase of 12 office floors and two auditorium floors at IFC II had been signed on 5.10.01. The total area of the premises purchased was 341 711 square feet and the purchase price was \$3,699 million. [Background brief prepared by the Secretariat] http://www.legco.gov.hk/yr01-02/english/panels/fa/papers/fa1105cb1-169-05e.pdf</p> <p>In response to members' concern raised at the meeting, the following papers were circulated to members after the meeting –</p> <ul style="list-style-type: none"> ● Letter dated 15.11.01 from the Panel Chairman to FS regarding review on the powers and management structure of HKMA [Letter] http://www.legco.gov.hk/yr01-02/english/panels/fa/papers/fa1105cb1-373-e.pdf ● Reply dated 4.12.01 from FS on review on the powers and management structure of HKMA [Letter] http://www.legco.gov.hk/yr01-02/english/panels/fa/papers/fa1105-610-1e.pdf ● Background brief prepared by the LegCo Secretariat on "Purchase and fitting-out of government offices" [Paper] http://www.legco.gov.hk/yr01-02/english/panels/fa/papers/fa1105cb1-1260-1-e.pdf ● List of issues on which the Administration was requested to provide information during the discussion at the meeting held on 5.11.01 [Paper] http://www.legco.gov.hk/yr01-02/english/panels/fa/papers/fa1105cb1-1260-1-e.pdf 	

<i>Date</i>	<i>Context</i>	<i>Summary of development</i>	<i>Action</i>
		<ul style="list-style-type: none"> ● a/papers/fa1105cb1-1280-1e.pdf Letter dated 7.3.02 from S for FS setting out the Administration's response on the issues raised at the meeting held on 5.11.01 [Letter (English version only)] ● http://www.legco.gov.hk/yr01-02/english/panels/fa/papers/fa1105-1280-2e-scan.pdf LA's comments on Administration's reply dated 7.3.02 [Paper] ● http://www.legco.gov.hk/yr01-02/english/panels/fa/papers/fa1105cb1-1595-1e.pdf 	
6.11.03	FA Panel	<p>At the meeting when CE/HKMA briefed the Panel on the work of HKMA, some members raised concern about the disposal of surplus office space in HKMA's new accommodation in IFC II. [Minutes "page 23"]</p> <p>http://www.legco.gov.hk/yr03-04/english/panels/fa/minutes/fa031106.pdf [Follow-up paper]</p> <p>http://www.legco.gov.hk/yr03-04/english/panels/fa/papers/fa1106cb1-433-1e.pdf</p>	

- HKMA: <http://www.info.gov.hk/hkma/index.htm>

Related topics in the Database:

- Governance of HKMA

Governance of Hong Kong Monetary Authority (HKMA)

<i>Date</i>	<i>Context</i>	<i>Summary of development</i>	<i>Action</i>
20.6.01	Council Question	Hon Emily LAU raised a question on the monitoring of the Hong Kong Monetary Authority (HKMA), which was governed by the Exchange Fund Advisory Committee chaired by the Financial Secretary (FS). [Hansard "page 50"] http://www.legco.gov.hk/yr00-01/english/counmtg/hansard/010620fe.pdf	
9.4.02	Financial Affairs Panel (FA Panel)	Some members referred to the background brief on "Purchase and fitting-out of government office" prepared by the Secretariat and considered it problematic that HKMA, being a part of the Administration, could be exempted from seeking approval from the Finance Committee for the purchase of the new office premises. They also noted that there were other areas of HKMA, such as staff remuneration, which did not appear to be subject to similar scrutiny and governance as other departments of the Administration. The Panel agreed that the issue of governance of HKMA should be discussed at a future meeting. The Secretariat was also requested to conduct a research on the subject. [Background brief] http://www.legco.gov.hk/yr01-02/english/panels/fa/papers/fa1105cb1-1260-1-e.pdf	
6.5.02	FA Panel	The Panel discussed the research outline on the governance of HKMA prepared by the Research and Library Services Division (RLSD). [Minutes] http://www.legco.gov.hk/yr01-02/english/panels/fa/minutes/fa020506.pdf [Research outline] http://www.legco.gov.hk/yr01-02/english/panels/fa/papers/fa0506cb1-1628-1e.pdf	
9/02	FA Panel	An information note on governance of HKMA was circulated to the Panel. [Paper] http://www.legco.gov.hk/yr01-02/english/panels/fa/papers/facb1-2606-e.pdf	

<i>Date</i>	<i>Context</i>	<i>Summary of development</i>	<i>Action</i>
2.6.03	FA Panel	<p>The Panel discussed with the Administration on the Research Report on “The Governance of the Hong Kong Monetary Authority and Comparable Authorities in Hong Kong and Overseas Jurisdictions” prepared by RLSD. [Research report] http://www.legco.gov.hk/yr02-03/english/panels/fa/papers/facb1-1584-e.pdf [Administration’s response] http://www.legco.gov.hk/yr02-03/english/panels/fa/papers/facb1-1592-e.pdf [Follow-up paper] http://www.legco.gov.hk/yr02-03/english/panels/fa/papers/fa0602cb1-2144-1e.pdf</p> <p>The Panel also met with Professor Stephen Y L CHEUNG, City University of Hong Kong on the subjects. [Paper] http://www.legco.gov.hk/yr02-03/english/panels/fa/papers/fa0602cb1-1788-4e.pdf</p> <p>Submissions from the following academics/organizations were also received –</p> <ul style="list-style-type: none"> ● Professor Charles GOODHART [Paper] http://www.legco.gov.hk/yr02-03/english/panels/fa/papers/fa0602cb1-1788-6e.pdf ● Professor Y C JAO [Paper] http://www.legco.gov.hk/yr02-03/english/panels/fa/papers/fa0602cb1-1788-7e.pdf ● Professor TSANG Shu-ki [Paper] http://www.legco.gov.hk/yr02-03/english/panels/fa/papers/fa0602cb1-1788-8e.pdf ● Bank for International Settlements [Paper] http://www.legco.gov.hk/yr02-03/english/panels/fa/papers/fa0602cb1-1839-1e.pdf <p>At members’ request, RLSD prepared a written response to Prof Charles GOODHART’s submission after the meeting. [Submission] http://www.legco.gov.hk/yr02-03/english/panels/fa/papers/fa0602cb1-1788-6e.pdf [RLSD’s response] http://www.legco.gov.hk/yr02-03/english/panels/fa/papers/fa0602cb1-2168-1e.pdf</p> <p>In view of the various concerns and suggestions raised, members decided that the subject should be further discussed at a meeting of the Panel, and FS and the Chief Executive of HKMA (CE/HKMA) should be</p>	

<i>Date</i>	<i>Context</i>	<i>Summary of development</i>	<i>Action</i>
		invited to the meeting.	
27.6.03	Press Release	<p>HKMA published an exchange of letters between FS and HKMA setting out the division of functions and responsibilities between FS and HKMA. [Press release] http://www.info.gov.hk/gia/general/200306/27/0627278.htm [Exchange of letters] http://www.legco.gov.hk/yr02-03/english/panels/fa/papers/facb1-2111-2e-scan.pdf [FS's letter on monetary policy objectives] http://www.legco.gov.hk/yr02-03/english/panels/fa/papers/facb1-2111-3e-scan.pdf</p> <p>The Administration also published a document to delineate the responsibilities of FS and the Secretary for Financial Services and the Treasury in areas of public finance, and monetary and financial affairs. [Paper] http://www.legco.gov.hk/yr02-03/english/panels/fa/papers/facb1-2194-1e.pdf</p>	
15.12.03	Public Service Panel	<p>At the meeting when the Panel discussed with the Administration on the review of remuneration of senior executives of statutory and other bodies, some members raised their concern about remuneration level of CE/HKMA. [Minutes "page 7"] http://www.legco.gov.hk/yr03-04/english/panels/ps/minutes/ps031215.pdf [Administration's paper] http://www.legco.gov.hk/yr03-04/english/panels/ps/papers/ps1117cb1-296-4e.pdf [LegCo Brief] http://www.legco.gov.hk/yr01-02/english/panels/ps/papers/cso_adm_cr3_1136_02_e.pdf [Administration's follow-up paper] http://www.legco.gov.hk/yr03-04/english/panels/ps/papers/ps1215cb1-772-1e.pdf</p>	
2.2.04	FA Panel	<p>The Panel discussed with FS and CE/HKMA on the governance of HKMA. [Paper prepared by the Secretariat] http://www.legco.gov.hk/yr03-04/english/panels/fa/papers/fa0202cb1-595-e.pdf [Administration's paper] http://www.legco.gov.hk/yr03-04/english/panels/fa/papers/fa0202cb1-847-5e.pdf [HKMA's follow-up paper]</p>	

<i>Date</i>	<i>Context</i>	<i>Summary of development</i>	<i>Action</i>
		http://www.legco.gov.hk/yr03-04/chinese/panels/fa/papers/fa0202cb1-1111-1ce.pdf	
6.5.05	FA Panel	At the briefing on the work of HKMA by CE/HKMA, some members raised concern about the increase in HKMA's staff costs and disclosure of its annual budget. [Letter dated 19 April 2005 from the CE/HKMA to the Chairman of the Panel] http://www.legco.gov.hk/yr04-05/english/panels/fa/papers/fa0506cb1-1312-3e.pdf [Requests raised by members of the Panel for information about HKMA's annual budget] http://www.legco.gov.hk/yr04-05/english/panels/fa/papers/fa0506cb1-1312-5e.pdf	
14.12.05	Council Question	Hon KWONG Chi-kin raised a question on former senior staff of statutory regulators (including HKMA) taking up outside work. [Hansard "page 33"] http://www.legco.gov.hk/yr05-06/chinese/counmtg/floor/cm1214ti-confirm-c.pdf	
6.2.06	FA Panel	At the briefing on the work of HKMA by CE/HKMA, some members raised concern about the policies on remuneration for and post-termination employment of HKMA's senior executives and disclosure of HKMA's annual budget. [Letter dated 15 December 2005 from the Clerk to Panel to CE/HKMA] http://www.legco.gov.hk/yr05-06/english/panels/fa/papers/fa0206cb1-806-5e.pdf [Letter dated 5 January 2006 from the Clerk to Panel to CE/HKMA] http://www.legco.gov.hk/yr05-06/english/panels/fa/papers/fa0206cb1-806-6e.pdf [Reply dated 27 January 2006 from CE/HKMA] http://www.legco.gov.hk/yr05-06/english/panels/fa/papers/fa0206cb1-806-7e.pdf The Governance Sub-Committee of the Exchange Fund Advisory Committee was invited to consider the views expressed by members on the policies on remuneration for and post-termination employment of senior executives of HKMA and provide the information requested by members. [Letter dated 9 February 2006 from the Clerk to Panel to the Chairman of the Governance Sub-Committee]	

<i>Date</i>	<i>Context</i>	<i>Summary of development</i>	<i>Action</i>
		<p>http://www.legco.gov.hk/yr05-06/english/panels/fa/papers/facb1-1092-1e.pdf [Reply dated 15 March 2006 from the Chairman of the Governance Sub-Committee]</p> <p>http://www.legco.gov.hk/yr05-06/english/panels/fa/papers/facb1-1092-2e.pdf</p>	
6.3.06	FA Panel	<p>When the Panel was briefed on the Securities and Futures Commission (SFC)'s budget for the financial year 2006-07, members expressed concern about the high staff turnover rate of SFC in 2005, particularly for executive staff. In this connection, the Panel invited SFC and HKMA to provide information on the post-termination employment of their senior executives in the past three years. [Letter dated 7 March 2006 from the Clerk to Panel to the Chief Executive of HKMA]</p> <p>http://www.legco.gov.hk/yr05-06/english/panels/fa/papers/facb1-1183-1e.pdf [Reply dated 27 March 2006 from the Chief Executive of HKMA]</p> <p>http://www.legco.gov.hk/yr05-06/english/panels/fa/papers/facb1-1183-2e.pdf</p> <p>At the Panel meetings on 6 February and 6 March 2006, members also agreed that SFC be invited to provide information on its policies on remuneration for and post-termination employment of its senior executives. [Letter dated 9 February 2006 from the Clerk to Panel to the Chairman of SFC]</p> <p>http://www.legco.gov.hk/yr05-06/english/panels/fa/papers/facb1-1186-1e.pdf [Letter dated 7 March 2006 from the Clerk to Panel to the Chairman of SFC]</p> <p>http://www.legco.gov.hk/yr05-06/english/panels/fa/papers/facb1-1186-2e.pdf [Reply dated 27 March 2006 from the Commission Secretary of SFC]</p> <p>http://www.legco.gov.hk/yr05-06/english/panels/fa/papers/facb1-1186-3e.pdf</p>	
13.3.06	Special meeting of Finance Committee (FC) (Session on Financial	<p>When examining the Estimates of Expenditure 2006-07 at the special meeting of FC, some Members expressed their concern about the existing practice where HKMA, as an integral part of the Government, was not subject to the resource allocation mechanism applicable to other government departments. They stressed the need for the Administration to enhance the</p>	

<i>Date</i>	<i>Context</i>	<i>Summary of development</i>	<i>Action</i>
	Services)	transparency of HKMA's expenditure. The subject was then referred by FC to the FA Panel for follow-up action. The FA Panel decided that the subject be discussed at its meeting on 4 May 2006.	

Related topics in the Database:

- Permanent accommodation for HKMA

- “金融管理專員”(Monetary Authority)指根據第 5A 條委任的金融管理專員；(由 1992 年第 82 號第 2 條增補)
- “發鈔銀行”(note-issuing bank)具有《法定貨幣紙幣發行條例》(第 65 章)第 2 條給予該詞的涵義；(由 1995 年第 98 號第 6 條代替)
- “認可機構”(authorized institution)指根據《銀行業條例》(第 155 章)獲發牌照或註冊的銀行、有限牌照銀行或接受存款公司。(由 1995 年第 12 號第 2 條增補)
(由 1995 年第 98 號第 6 條修訂)

3. 外匯基金的設立、控制及管理

(1) 現設立一項基金，名為“外匯基金”(the Exchange Fund)，由財政司司長掌有控制權，並須主要運用於財政司司長認為適當而直接或間接影響港幣匯價的目的，以及運用於其他附帶的目的。財政司司長在行使控制權時，須諮詢外匯基金諮詢委員會，該委員會由財政司司長出任當然主席，其他委員則由行政長官委任。(由 1946 年第 12 號第 2 條修訂；由 1983 年第 26 號第 2 條修訂；由 1992 年第 82 號第 3 條修訂；由 1999 年第 68 號第 3 條修訂)

(1A) 財政司司長除為上述主要目的而運用外匯基金外，亦可為保持香港作為國際金融中心的地位，按其認為適當而運用外匯基金以保持香港貨幣金融體系的穩定健全。(由 1992 年第 82 號第 3 條增補)

(1B) 財政司司長為第 (1A) 款所指明的目的而運用外匯基金時，須顧及外匯基金的主要目的。(由 1992 年第 82 號第 3 條增補)

(2) 外匯基金或其任何部分，可以港幣、外匯、黃金或白銀持有，或由財政司司長投資於他在諮詢外匯基金諮詢委員會後認為合適的證券或其他資產；財政司司長據此可為外匯基金的帳戶——(由 1971 年第 25 號第 2 條代替。由 1975 年第 8 號第 2 條修訂；由 1983 年第 26 號第 2 條修訂；由 1995 年第 12 號第 3 條修訂)

(a) 買賣上述貨幣、外匯、黃金、白銀、證券或資產；及 (由 1995 年第 12 號第 3 條增補)

(b) 在諮詢外匯基金諮詢委員會後，訂立他認為對審慎管理外匯基金而言為合適的任何財務安排。(由 1995 年第 12 號第 3 條增補)

(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)

(3) 在以不限制財政司司長在第(1)及(1A)款下的權力的概括性為原則下，並在符合第(4)款的規定下，財政司司長可以政府一般收入作為抵押，為外匯基金的帳戶而在香港或其他地方借入款項。(由1995年第12號第3條代替)

(3A) 以下價值均須撥入外匯基金——

- (a) 根據或憑藉《硬幣條例》(第454章)發行的任何硬幣的價值；
- (b) “法定貨幣紙幣”定義的(a)(i)段所提述的任何法定貨幣紙幣的價值；
- (c) 不再是法定貨幣的硬幣在賣出後所得收益的價值。(由1995年第98號第7條代替)

(4) 除第(5)款另有規定外，根據第(3)款借入而尚未清還的款項總額，在任何時間均不得超過\$500億，如以外匯持有，則在任何時間均不得超過以當時匯率計算的相等款額。(由1971年第25號第2條增補。由1971年第150號法律公告修訂；由1972年第125號法律公告修訂；由1980年第56號法律公告修訂；由1980年第173號法律公告修訂；由1980年第363號法律公告修訂；由1981年第388號法律公告修訂；由1987年第64號法律公告修訂；由1995年第12號第3條修訂)

(5) 立法會可不時藉着經行政長官會同行政會議批准，並由一名經行政長官規定及指示為該目的而列席立法會會議的指明公職人員所建議的決議，決定其他款額為該等未清還借款在任何時間均不得超過的總額。(由1971年第25號第2條增補。由1984年第16號第2條修訂；由1995年第12號第3條修訂；由1999年第68號第3條修訂)

(由1997年第362號法律公告修訂)

3A. 規定開立、維持及運作戶口的權力

(1) 財政司司長可藉向認可機構送達通知書，規定該機構於金融管理專員開立一個戶口，在外匯基金記帳，並可規定該機構按財政司司長在顧及根據第3(1)及(1A)條須運用或可運用外匯基金的目的後認為合適的條款及條件，維持和運作該戶口。(由1997年第362號法律公告修訂)

(2) 財政司司長可隨時藉向認可機構送達通知書，以任何方式增補或更改根據第(1)款施加的條款或條件，該等增補或更改須與達致根據第3(1)或(1A)條須運用或可運用外匯基金的目的並無抵觸。(由1997年第362號法律公告修訂)

(3) 任何認可機構如因根據第(1)款施加的任何規定或因根據第(2)款作出的任何增補或更改而感到受屈，可向行政長官會同行政會議上訴以反對該規定、增補或更改。(由1999年第68號第3條修訂)

(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

(4) 行政長官會同行政會議可藉對該宗上訴所反對的規定、增補或更改事宜予以確認、更改或推翻的方式，裁定根據本條提出的上訴。(由 1999 年第 68 號第 3 條修訂)

(5) 根據本條送達的通知書，可藉留在或以郵遞方式寄往認可機構在香港的主要營業地址的方式，送達該認可機構。

(由 1995 年第 12 號第 4 條增補)

4. 負債證明書

(1) 財政司司長獲授權向任何發鈔銀行發出符合附表所載格式的負債證明書。證明書須由發鈔銀行持有，作為法定貨幣紙幣(不屬“法定貨幣紙幣”定義的(a)(i)段所提述的紙幣)的保證。財政司司長並獲授權要求發鈔銀行為外匯基金的帳戶而向財政司司長支付如此發行的紙幣的面值款項，或相等價值的外匯(而外匯的貨幣及匯率則由財政司司長決定)，並由外匯基金持有該等款項或外匯，主要作為贖回該等紙幣之用，如任何發鈔銀行在香港或其他地方清盤，則該等款項或外匯亦可作該等用途。(由 1951 年第 4 號附表代替。由 1983 年第 26 號第 3 條修訂；由 1984 年第 16 號第 3 條修訂；由 1993 年第 58 號第 3 條修訂；由 1995 年第 98 號第 8 條修訂)

(2) 財政司司長可運用按照第(1)款向其支付的款項，按照第 3(2)條的條文買入外匯或黃金或作出其他投資，或為減少金融管理專員根據第(4)款備存的登記冊所記錄的政府負債款額，而以港幣或相等價值的外匯付款(外匯的貨幣及匯率由財政司司長決定)。(由 1951 年第 4 號附表代替。由 1984 年第 16 號第 3 條修訂)

(3) 財政司司長可將按照第 3(2)條賣出外匯或黃金套取港幣所得的收益運用，以減少金融管理專員根據第(4)款備存的登記冊所記錄的政府負債款額。(由 1946 年第 12 號第 2 條修訂)

(4) 金融管理專員須設立及備存一份登記冊，以記錄由財政司司長發出的所有負債證明書，依據第(1)款向財政司司長作出的所有付款及由財政司司長依據第(2)或(3)款為減少政府負債款額而作出的所有付款。(由 1995 年第 12 號第 5 條增補)

(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)

(5) 一份看來是由金融管理專員根據第(4)款備存的登記冊(或其任何部分)的副本的文件,或(如該登記冊以可閱讀形式以外的形式備存但能夠以可閱讀形式複製)一份看來是如此的複製本(或其任何部分的複製本)並看來是由金融管理專員簽署的文件,在沒有相反證據的情況下,可在任何司法程序中獲接納及須被當作經金融管理專員簽署,而文件上所記錄的事實在沒有相反證據的情況下須當作已確立。(由1995年第12號第5條增補)

(由1995年第12號第5條修訂;由1997年第362號法律公告修訂)

4A. (由1987年第64號第31條廢除)

5. 紙幣的發行限額須予維持

如有任何規限紙幣發行的條例或章程對紙幣的發行訂定最高限額,本條例並不賦權任何發鈔銀行發行超過該限額的紙幣,而財政司司長根據第4條發出證明書時,須顧及該等限額。

(由1951年第4號附表代替。由1978年第7號第3條修訂;由1995年第12號第6條修訂;由1997年第362號法律公告修訂)

5A. 金融管理專員的委任

- (1) 財政司司長須按其認為適當的條款及條件,委任一名人士為金融管理專員。
- (2) 金融管理專員須——
 - (a) 協助財政司司長執行其根據本條例獲授予的職能;
 - (b) 執行財政司司長所指示的職能;及
 - (c) 執行任何其他條例委予或指派予金融管理專員的職能。
- (3) 財政司司長可按其認為適當的條款及條件,委任其他人協助金融管理專員執行第(2)款指明的金融管理專員職能。
- (4) 儘管有第(2)(b)及(c)款的規定,金融管理專員及根據第(3)款獲委任以協助金融管理專員的人,就所有目的而言,須視作為外匯基金事宜而受僱用。
- (5) 在本條中,“職能”(functions)包括權力與職責。

(由1992年第82號第4條增補。由1997年第362號法律公告修訂)

(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)

5B. 向金融管理專員作出轉授

(1) 財政司司長可將根據本條例賦予或委予財政司司長的權力與職責，轉授予金融管理專員。

(2) 根據本條作出的轉授或再轉授——

- (a) 不妨礙財政司司長行使該權力或執行該職責；
- (b) 如財政司司長認為適當，可予以附加條件、約制或限制；
- (c) 可對當其時執行金融管理專員職能的人作出；及
- (d) 可由財政司司長加以修訂。

(3) 財政司司長可在根據本條作出的轉授中，加入一項再轉授的權力，以將所轉授的權力與職責按其指明的條款再轉授予其指明的人或其指明的任何界別或種類的人。

(由 1992 年第 82 號第 4 條增補。由 1997 年第 362 號法律公告修訂)

6. 須由外匯基金支付的費用

以下開支須由外匯基金支付——

(a) 為外匯基金事宜(包括為該基金作出投資)而僱用的人員所支取的薪酬，以及與這些人員有關的其他職員費用，包括以處理外匯基金事宜為其部分職責的受僱公職人員所提供服務的薪酬或職員費用的適當部分；

但委任該等職員的數目及其薪酬須已獲財政司司長批准；(由 1983 年第 26 號第 4 條代替)

(aa) 根據或憑藉《硬幣條例》(第 454 章)而發行的硬幣，其發行及維持流通所招致的任何開支；及 (由 1983 年第 26 號第 4 條增補。由 1994 年第 81 號第 7 條修訂)

(b) 行政長官所批准的任何附帶開支，而該等開支是財政司司長及諮詢委員會為適當地執行其與基金的運作有關連的職責而需要者。(由 1936 年第 44 號第 3 條代替。由 1946 年第 12 號第 2 條修訂；由 1948 年第 20 號第 4 條修訂；由 1999 年第 68 號第 3 條修訂)

(由 1997 年第 362 號法律公告修訂)

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)