

Policy and Procedures on Post-Termination Employment of HKMA Staff

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A. Introduction

1. This circular sets out the policy and procedures on post-termination employment of HKMA staff: it incorporates, with certain modifications, the established policies and practices on this subject, draws attention to the relevant legal provisions, and clarifies procedures for avoiding conflicts of interest. This circular replaces all previous rules relating to post-termination employment. With the exception of the control period set out in Part D, which applies to staff at the level of Senior Manager and above, the policy and procedures set out in this circular apply to all HKMA staff. The rules in this circular apply to all forms of termination, whether initiated by the employer or by the employee.
2. One of the aims of the HKMA in its employment policy is to be able to employ suitably qualified staff so that it can carry out its policy objectives effectively and respond flexibly to changing work priorities. The HKMA recruits most of its staff from the private sector and, while it hopes that staff will look on their employment with the HKMA as a career, it is inevitable that some staff will leave for the private sector. A degree of mobility between the private sector and the HKMA, and the transfer of expertise and experience between the two that it entails, is also conducive to maintaining the stability and integrity of the financial system of Hong Kong, which is one of the HKMA's main policy objectives. The HKMA's terms and conditions of employment therefore take into account the fact that some HKMA staff will be employed by the HKMA for only a part of their career: in particular, and in contrast to the civil service, staff are not employed on pensionable terms.
3. It is vital to the credibility and effectiveness of the HKMA that employees who move from the HKMA to other organisations are not placed in actual or potential conflicts of interest. Generally speaking, the situations that might place HKMA employees (or former employees) in positions of actual or potential conflicts of interest fall into the following categories:

while in the HKMA during the notice period:

- access to confidential or commercially sensitive information within the HKMA that might be of value to a future employer
- involvement in decisions or policy formulation by the HKMA that might specifically benefit a future employer
- involvement in a statutory, supervisory, contractual or other form of direct relationship between the HKMA and a future employer

in new employment after having left the HKMA:

- employment on projects or assignments connected with former responsibilities in the HKMA
- employment in work that involves lobbying, or similar forms of contact with, former colleagues in the HKMA.

Staff are reminded that statutory or other general legal provisions apply to employees or former employees of the HKMA who abuse either their position in the HKMA or confidential information they may acquire while working for the HKMA. These provisions, which apply to staff at all levels and are not subject to any time limit, are summarised in Part B below. All HKMA staff should ensure that they are familiar with them.

4. To help prevent or reduce potential conflicts of interest, exit-management arrangements apply to all staff during the notice period prior to termination of employment with the HKMA: these are set out in Part C below. The aim of these arrangements is to ensure that there is an appropriate time lapse between involvement in any sensitive work within the HKMA and commencement of employment with any organisation that may have a substantial direct relationship with the HKMA.
5. A control period of six months is applicable to staff at the Senior Manager level and above (or twelve months in the case of the Monetary Authority). During this period approval is required to take up certain forms of employment within Hong Kong. These arrangements, which are set out in Part D, are intended to provide further safeguards for staff in the senior ranks against possible conflicts of interest and the inappropriate use of confidential information that the HKMA should protect, while at the same time avoiding restrictions on a person's freedom of choice of occupation or ability to earn a living. Although the control period applies to Senior Managers and above, all staff should be aware of the rules governing contacts with former employees who are subject to the control period: these rules are set out in Part E.

B. Statutory and other legal provisions

6. Staff are reminded of the following legal provisions, which, among other things, provide safeguards against conflicts of interest.

Banking Ordinance

7. Section 120 of the Banking Ordinance (extracted at Annex A) requires HKMA staff to preserve and aid in preserving secrecy of information obtained while exercising functions under the Banking Ordinance. The secrecy provisions apply to all HKMA staff, regardless of rank, and continue to apply to them after they have ceased to work for the HKMA. Breach of these provisions is a

criminal offence punishable by a fine or imprisonment. Any person (individual or corporate) who aids, abets, counsels or procures any person to contravene section 120 also commits an offence and is subject to the same criminal penalties.

8. The Monetary Authority's approval is required under section 71 of the Banking Ordinance for appointments to certain positions in authorized institutions (AI). Consideration will be given to withholding or withdrawing such approval in the case of former employees of the HKMA who are in breach of section 120 of the Ordinance, or whose fitness or propriety is in any other way brought into doubt. The Monetary Authority may also take supervisory action against an AI and/or its officers if they have encouraged or assisted a former HKMA employee in breaching these secrecy provisions.

General confidentiality provisions

9. Obligations of confidentiality to an employer by an employee in receipt of information that is clearly confidential in nature are recognised by the courts, which have powers to enforce such confidentiality obligations even after employment has been terminated.

Prevention of Bribery Ordinance

10. Under the Prevention of Bribery Ordinance it is, among other things, a criminal offence for a public servant to solicit or accept any office, employment or contract in return for giving official favours. For the purpose of the Prevention of Bribery Ordinance all HKMA employees are public servants.

C. Exit management

11. The standard period of notice of termination for staff at the Executive Director level and above is 6 months, for staff at the Division Head and Senior Manager level 3 months, and for staff at all other levels 1 month. It is the HKMA's policy to make the fullest use necessary of the notice period to ensure that the departing employee is separated from sensitive duties or duties that might place him or her in a conflict of interest in any future employment.
12. Immediately after notice of termination has been given, whether by the employee or the employer, H(Adm) (or ED(CS) in the case of EDs and above) will discuss with the employee's supervisor and with the employee an exit-management plan to determine
 - which of the employee's duties, if any, should be assigned to other staff during the notice period
 - what kinds of information, whether in written form or at meetings or through access to information systems, should be withheld from the employee during the notice period

- the work plan, including any accumulated leave to be taken, of the employee during the notice period
- the succession plan, including any acting or doubling-across arrangements, for the post to be vacated.

The departing employee and other members of the management team should, as appropriate, be consulted on the formulation of the exit management plan, and a brief note of the main elements of the plan should be put on file.

13. In certain cases, where all or most of the departing employee's duties are sensitive, the employee may need to be removed from his or her main duties altogether and placed on special duties of a non-sensitive nature. In these cases, H(Adm) (or ED(CS) in the case of DHs or above) will, in consultation with senior management as appropriate, make the necessary arrangements for these special duties (which may include duties to be performed outside of the HKMA's main offices) and for the employee's original duties to be taken up temporarily by other staff until a permanent replacement is found.
14. H(Adm) (or ED(CS) in the case of DHs or above) will, as soon as possible after a member of staff has given or received notice of termination, recirculate this circular to the member of staff and remind him or her of the policy and rules in the circular.

D. Control period for staff at the Senior Manager level and above

15. An employee or former employee of the HKMA at the level of Senior Manager or above must obtain the prior approval of the Monetary Authority, or, in the case of the Monetary Authority, the Financial Secretary, before he or she may
 - (a) enter business on his or her own account;
 - (b) become a partner of a partnership;
 - (c) become a director of a company; or
 - (d) become an employee, whether or not on a full-time basis

in Hong Kong within the six months (or twelve months in the case of the Monetary Authority) from the termination of his or her employment with the HKMA.

16. In determining whether approval should be given in the case of Executive Directors and above, the Monetary Authority (or, in the case of the Monetary Authority, the Financial Secretary) shall consider advice from a panel composed of the Chairman and two other Members (to be drawn by rota from a pool appointed by the Financial Secretary) of the Governance Sub-Committee of the Exchange Fund Advisory Committee.
17. Approval is not required if the employment is with

- (a) any of the organisations listed in [Annex B](#);
 - (b) the Hong Kong SAR Government or Judiciary;
 - (c) any non-commercial regional or international organisation;
 - (d) the Central Authorities; or
 - (e) any charitable, academic or other non-profit-making organisation not primarily engaged in commercial operations.
18. In determining whether approval should be given, the approving authority will take into account
- (a) the nature of the relationship, if any, between the organisation in question and the HKMA, and the nature and degree of involvement, if any, in that relationship by the applicant during his or her employment with the HKMA;
 - (b) whether any involvement in a relationship established under (a) was such that it might present an actual or potential conflict of interest for the applicant in his or her new occupation;
 - (c) whether separation from sensitive duties during the period of notice of termination has been sufficient to remove or minimise any actual or potential conflict of interest identified under (b); and
 - (d) whether, for any other reason, it would be against the public interest for approval to be granted.
19. The approving authority will attach the following conditions, which may apply to all or part of the control period, to any approval given under these rules
- (a) a requirement that, subject to certain exceptions, the former employee should not communicate with serving HKMA staff during the control period on any matter related to the HKMA's work or duties; and
 - (b) a requirement that the former employee should not deal with any matter in his or her new employment that has been the subject of statutory action by the HKMA, and with which he or she has been involved while employed by the HKMA.
20. Other conditions may also be applied depending on the circumstances of individual cases.
21. Where approval is not given the reasons for disapproval shall be communicated to the applicant, subject to any legal restrictions or other considerations of confidentiality.
22. An employee or former employee who is aggrieved by any decision made by the Monetary Authority under these rules may appeal to the Financial Secretary.

23. Employees or former employees whose future employment plans require approval under these rules are encouraged to make their applications for approval as early as possible during or before the control period and to provide sufficient information to enable the approving authority to consider the application fully. A list of the information that should be included in the application may be obtained from H(Adm). Applications and the application process will be handled in strict confidence.

E. Communication between HKMA staff and former HKMA employees during and after the control period

24. Conditions imposed on former HKMA staff during the control period in Part D will include restrictions on contact with serving HKMA staff. Exceptions may be made for
- (a) communication that is required for the exercise by HKMA staff of any statutory function or responsibility;
 - (b) communication that is conducive to achieving the objectives of the HKMA, for example the reporting by the former employee of a regulatory breach; and
 - (c) communication with HR staff related to the former staff member's employment with the HKMA.
25. Subject to these exceptions, staff should not contact or communicate with any former HKMA employee subject to the control period on any subject relating to the HKMA's work or duties. If such contact is initiated by the former employee, whether or not it is covered by exceptions, it should be recorded in writing and reported by the member of staff to his or her DH, or in the case of a DH the relevant ED, who should inform H(Adm) or ED(CS). H(Adm) or ED(CS) will determine, in consultation with the Legal Office, whether the reported contact conflicts with any condition imposed on the former employee during the control period and advise the Senior Management on what actions should be taken. Questions about whether or not a communication is official should be addressed to H(Adm) or ED(CS).
26. Social contacts between former employees and serving HKMA staff are not restricted but staff should exercise discretion in accepting social invitations from former HKMA employees who are subject to a control period, and be alert to any approach or communication in a social setting that is related to the HKMA's work or duties. Any communications related to the HKMA's work or duties should be treated in accordance with the reporting procedures in paragraph 25.
27. Any member of staff who has reason to believe that a former HKMA employee, of whatever rank and whether or not within the control period set out in Part D, may be in breach of the secrecy or other relevant provisions of the Banking Ordinance, or of any other laws referred to in Part B above, or is aware of any

circumstances involving a former employee that may give rise to a conflict of interest should notify his or her supervisor, who should make the case known to ED(CS). ED(CS) will then seek advice from the Legal Office and directions from the Senior Management on the action to be taken.

28. A list of the names of former employees currently under a control period will be maintained by H(Adm) on a database accessible to all HKMA staff. A list of the names of former employees of the HKMA, stating the departments in which they have served, shall be maintained by H(Adm) on a database accessible to all staff at the level of Division Head and above.