



HONG KONG MONETARY AUTHORITY 香港金融管理局

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The Board of Directors and Chief Executive
All Locally-Incorporated Authorized Institutions

The Chief Executive
All Overseas-Incorporated Authorized Institutions

Dear Sir/Madam,

Corporate Governance

I am writing to provide further guidance on the corporate governance standards expected of locally-incorporated authorized institutions (AIs), in the light of a Financial System Stability Assessment report published by the International Monetary Fund (IMF) in 2021.

The HKMA issued a revised Supervisory Policy Manual (SPM) module CG-1 “Corporate Governance of Locally Incorporated Authorized Institutions” in October 2017 to provide detailed guidance on the corporate governance standards to be observed by locally-incorporated AIs. While the revised guidance has led to increased emphasis on the proper discharge by the board of directors and senior management of their respective responsibilities, there are cases of directors of AIs (including chief executives (CEs) serving as executive directors) holding multiple directorships or management positions in entities outside of the AI’s banking group (“outside mandates”). As some of these entities are engaged principally in commercial activities, questions have been raised about potential conflicts of interest and the ability of the directors concerned to devote sufficient time to performing their roles in the AI. In view of these findings, the IMF recommended the HKMA to take suitable action to address potential issues around conflicts of interest and time commitment of directors and senior management of AIs.

Time commitment and management of conflicts of interest

As set out in SPM module CG-1, the primary responsibility for ensuring that directors and senior management are fit and proper for their roles rests with the board. When considering a director appointment, the board should satisfy itself, among other relevant considerations, that the candidate is able to commit sufficient time, attention

and effort to fulfilling his or her responsibilities effectively. This assessment is particularly important if the candidate has a seat on more than one board or is involved in the management of another entity. In addition, the board is expected to establish effective policies and procedures to manage any conflicts of interest of its members and oversee their implementation, and to assess the ongoing suitability of each director (at least on an annual basis). An assessment of the ongoing suitability of a director should take into account the director's time commitment to the business of the AI and his or her past performance, as well as any potential conflicts of interest arising. Where there are concerns about the ongoing suitability of a director, the board should take suitable remedial actions.

Considering that CEs (including alternate chief executives (ACEs)) of AIs are responsible for the day-to-day management of the institution, the HKMA expects them to observe a higher standard than that for directors. Accordingly, CEs should avoid taking up outside mandates, particularly in a commercial entity, unless they can demonstrate to the satisfaction of their boards that effective measures are in place to guard against all potential conflicts of interest associated with the outside mandates and that the CEs have adequate time to perform their managerial roles in the AIs. In forming any such views on outside mandates held in commercial entities, the boards of AIs are encouraged to have prior consultation with the HKMA.

New submission requirement

The HKMA will take into consideration the robustness of an AI's performance evaluation process for directors and CEs in assessing its corporate governance. To facilitate the HKMA's assessment, locally-incorporated AIs are required to submit the following information to their usual supervisory contacts in the Banking Supervision Department on an annual basis:

- (i) a current list of outside mandates held by each director and CE of the AI;
- (ii) an affirmation signed by the chair of the board (or its nomination committee) that the annual performance evaluation of each director and CE has been duly completed; and
- (iii) details of any findings for which remedial actions have been taken or will be taken in relation to time commitment and potential conflicts of interest identified in the performance evaluation process, and the time frame for completing the remedial actions to address such findings.

The first annual submission should be made by 30 June 2022.

For future applications for appointment as a director, CE or ACE of a locally-incorporated AI under section 71 of the Banking Ordinance, the AI should provide an assessment by the board (or its nomination committee) of the applicant in terms of time commitment to the role being applied for and any potential conflicts of interest

identified, if the applicant has outside mandates. Examples of factors which should be considered in assessing the time commitment and potential conflicts of interest of a director, CE or ACE are set out in the Annex.

Application to overseas-incorporated AIs

The above guidance in respect of time commitment and management of conflicts of interest of CEs (including ACEs) also applies to AIs incorporated outside Hong Kong. In the case of overseas-incorporated AIs, the term “board” should be interpreted to refer to their head/regional office overseeing the Hong Kong operation. If a candidate for CE or ACE appointment has any outside mandates, the overseas-incorporated AI should provide an assessment by its head/regional office of the applicant in terms of time commitment to the role being applied for and any potential conflicts of interest identified. Overseas-incorporated AIs are not subject to the annual submission requirement mentioned above but they should be prepared to provide such information to the HKMA upon request.

Should you have any questions about this circular, please contact Ms Karen Wong of Banking Supervision Department (in respect of supervisory matters) at 2878 1683 or Mr Ian Au of Banking Conduct Department (in respect of licensing matters) at 2878 1290.

Yours faithfully,

Arthur Yuen
Deputy Chief Executive

Encl.

Assessment of time commitment and potential conflicts of interest

Factors which should be considered by the board (or its nomination committee) in assessing the time commitment and potential conflicts of interest of a candidate for appointment as director, CE or ACE of a locally-incorporated AI should include but not limited to the following:

- (a) the number of directorships and other appointments held outside the AI's banking group;
- (b) the size and nature of the entities to which the outside mandates relate (e.g. whether it is a regulated/listed/private company, public body, charity or non-profit organisation, and whether it has active, sizable and complex business operation or is purely for holding assets);
- (c) the nature of the outside mandates held (e.g. executive/non-executive, and full-time/part-time employment);
- (d) the time commitment required of the outside mandates held (e.g. chairing a board or board-level committee tends to require more time commitment); and
- (e) the business nature of the entities to which the outside mandates relate and the relationship between the entities and the AI¹.

¹ Additional guidance can be found in paragraph 2.6.11 of SPM module CG-1.