



**Report of the Audit Committee of
the Securities and Futures Commission**

**on its investigation into certain allegations concerning
the Commission contained in a series of anonymous
documents circulated in the community during the period
from July 2002 to January 2003**

Adopted by the Commission on 26 February 2003

February 2003

1. Introduction

- 1.1 Commencing around 15th July 2002 and continuing virtually up to the time of the writing of this report a series of anonymous documents have been circulated to the local media (principally the Chinese media), certain officials of the HKSAR Government, Legislative Councilors, Non-executive Directors of the Commission and a number of senior executives within the Commission.
- 1.2 Immediately after the anonymous documents first surfaced Mr. Andrew Sheng, the Chairman of the Commission, who was the principal target of accusations contained in the said documents, drew their existence formally to the attention of both the HKSAR Government and the Directors of the Commission and offered to co-operate with whatever process was considered appropriate to deal with the matter.
- 1.3 The Commission's Board referred the matter to their Non-executive Directors who decided that, despite the fact they were from anonymous sources, given the gravity of the accusations and the fact that they had been widely circulated in the community, it was both appropriate and in the best interests of the Commission as a public body that they be the subject of a thorough investigation. They further decided that since the allegations principally centred on the internal procedures of the Commission and related management issues the investigation should be dealt with by the Commission's Audit Committee. Terms of Reference were then set for the investigation and these were approved by the Commission's Board of Directors. (Refer to Appendix 1 of the PwC Report)

2. Independent Investigation

- 2.1 Initially the Audit Committee requested and was assigned the support of two senior staff members from the Commission to facilitate the gathering of information on the relevant Commission internal procedures and the facts regarding the cases of the individuals listed in the anonymous documents. Within a short period of time, however, it became apparent that the work of the Audit Committee and its two support staff could not be carried out in a confidential manner, as it too became the subject of leaks to the media.
- 2.2 Clearly such a situation was untenable. Further given the information gathered from the initial fact finding exercise the Audit Committee determined that in the best interests of a complete and independent investigation it was necessary to engage external professional support. This decision was agreed to by the Commission's Board of Directors and proposals were then invited from selected professional firms. After due consideration the Audit Committee recommended in favour of the proposal from Messrs PricewaterhouseCoopers (PwC) and this choice was agreed to by the Commission's Management Committee, the appropriate authorization body within the Commission's management structure.
- 2.3 PwC was awarded the assignment per the terms of reference set out in Appendix 1 of the PwC Report. They commenced work on 23rd September 2002 and their

report is appended to and forms the basis of the findings in this Audit Committee Report.

3. Findings and Observations on the Allegations

- 3.1 Before setting out the findings and observations of the Audit Committee it is important to draw readers' attention to Chapter 2 of the PwC Report, the section dealing with Confidentiality and Privacy Issues. The Audit Committee considers itself bound by the same constraints as PwC in relation to referring to individuals named in the anonymous documents other than references deemed appropriate to the Chairman of the Commission, Mr. Andrew Sheng and Mr. Peter Hsueh the Commission's Chief Information Officer as the names of these two individuals have already been widely circulated in the media.
- 3.2 While there have been quite a number of anonymous documents particularly letters since they first surfaced towards the end of July 2002, in the opinion of the Audit Committee, the allegations contained therein are very much a variation on a theme of a consistent set of allegations primarily directed against Mr. Sheng personally.
- 3.3 These allegations and the Audit Committee's findings and observations on them, based on the investigation findings in the PwC Report may be summarized as follows.

3.3.1 First Allegation

That many senior staff of the Commission had left the organization since Mr. Sheng assumed its chairmanship being dissatisfied with his leadership. The names of 15 former employees that this allegation purportedly applied to were appended to the anonymous letters.

Findings and Observations

- (a) As stated in the PwC Report, eight of the named individuals left the Commission in the normal course of events, of their own volition and with no complaints against the Commission or its Chairman.
- (b) A further five left the Commission, again of their own volition, but did express some degree of dissatisfaction resulting in their move, (e.g.) pay grievances; lack of promotion prospects; volume of workload; personality clashes; etc. It is important to note that in a number of instances these expressions of dissatisfaction were only raised by the individuals during their interviews by PwC as part of this investigation process and were not raised at the time of their exit interviews from the Commission. The reasons for such departures we do not find unusual in an organization of the size and structure of the Commission particularly against a background that the Commission was under a process of reform to meet rising public expectations for higher productivity and efficiency. Nevertheless we

recognize there may be a need to take into consideration these expressions of dissatisfaction in any future review of the workings of the Commission.

- (c) The balance two individuals expressed strong dissatisfaction with their departure from the Commission effectively regarding themselves as having been forced out as a result of clashes with their new department head.
- (d) While it is always sad to find situations where loyal employees find themselves at odds with new superiors again we do not find this situation too unusual as it is often difficult for long serving employees to adapt to changes in styles and demands of new leaders, in these two cases to changes in departmental leadership. Further given the tight head-count and budgetary constraints that the Commission operates under we recognize it is often not possible to facilitate inter-departmental transfers.
- (e) No fault was found by PwC in relation to the final financial settlements for the two individuals in question although in one of the cases, which involved termination, it does appear the exit process could have been handled better with greater tact and sensitivity both from the viewpoint of the counseling out exercise and in relation to documentation of the discussions that took place with the member of staff at the time. Mr. Sheng himself was not involved in the actual exit process.
- (f) Based on the above findings the Audit Committee considers that the case has not been established in respect of this allegation.

3.3.2 Second Allegation

That Mr. Sheng made use of temporary employment contracts to offer engagements at the Commission to personal contacts, friends and relatives and that in certain instances a number of these persons had their contracts converted from temporary to permanent status. Allied to this allegation it was further alleged that Mr. Sheng had favoured offering employment to citizens of his home country of Malaysia and that in some instances he had favoured their expense reimbursement claims. Again a list of names, this time of 16 individuals, that this allegation purportedly applied to were appended to the anonymous letters.

Findings and Observations

(a) Favouritism in relation to Temporary Posts

- (i) One of the 16 names listed in this allegation is that of Mr. Peter Hsueh whose recruitment to the Commission is dealt with separately in this and in PwC's report. Of the balance 15 the specifics of their recruitment to the Commission are set out in Chapter 3 and in Appendix 5 to the PwC report. It will be

observed that in fact 7 directly joined the Permanent Establishment of the Commission and 8 joined under Temporary Posts. Of the 15, 4 joined the Commission through conventional means. 1 independently approached the Chairman directly and another was directly approached by the Commission; the balance 9 were sourced through referrals. Of these 3 were referred to the Commission by the Chairman two being former colleagues from his previous positions and one being an individual with whom he had a previous working relationship.

- (ii) The steps in the recruitment process of the 15 individuals are set out in the PwC Report and in Appendix 5 and it will be observed that while there may have been occasional gaps in the process, as evidenced by PwC's conclusions, in substance these were minor. In so far as where there were available procedures, these were followed.
- (iii) A key factor identified by PwC is that at present there are no procedures within the Commission governing recruitment to the position of Temporary Posts other than as set out in Appendix 3 to their report which only relate to the authorisation process. As such obviously the procedures in this area can and should be enhanced. However this does not mean that no recruitment procedures were applied to temporary posts. As will be observed from the PwC report in addition to the authorisation point the recruitment process followed much of the normal process for recruitment to the Permanent Establishment. This was confirmed by the Commission's HR Department with the important distinction that as regards recruitment to Temporary Posts this is always by way of referral and often the interview process is less formal than that applied to recruitment to the Permanent Establishment. This is best explained by reference to the rationale for Temporary Posts which is the need for the Commission to recruit specific expertise for specific projects or exigencies. Appendix 5 of the PwC report sets out the specific projects/skills that applied to the 8 individuals recruited to Temporary Posts.
- (iv) Given this understanding of the need for Temporary Posts in relation to the allegation of favouritism the Audit Committee considers the issue centres around the use of referrals and the recruitment procedures thereafter. The latter have been dealt with above. As will be observed from the PwC report referrals have been commonly used by the Commission for many years. In addition to the 9 identified in the list of 15 included with the allegations, an additional 27 staff have been recruited using referrals as a sourcing channel since June 1994. PwC concluded that "the approaches adopted to source applicants including referrals were in line with normal and commonly used recruitment techniques in many organizations." The

Audit Committee agrees with this conclusion but also notes that while recruitment to temporary posts is in total a small number for an organization the size of the Commission, it is our view open recruitment and formal interviews, particularly in relation to the Permanent Establishment, is preferred and that exceptions be kept to the minimum. In this regard we also agree with PwC that a system should be established to record the most effective sourcing channels for vacant positions.

- (v) Another point the Audit Committee notes is that the Commission has replaced the use of continuous contracts for permanent post status with fixed term contracts whose durations run from one month to two years. As a result, an anomaly has developed whereby the division between permanent and temporary posts becomes less distinguishable. It is not our view that temporary posts should be removed because we recognise the need for it exists. However, we consider the use to which temporary posts should be put and the procedures that should apply need to be defined clearly.
- (vi) Given the findings of PwC as to the overall recruitment procedures used in relation to the 15 individuals named in the anonymous allegations; given the fact that Mr. Sheng personally only knew 3 of these individuals prior to their recruitment and given the fact that referrals was a commonly used method of sourcing recruitment prior to Mr. Sheng's arrival at the Commission particularly in relation to the position of Temporary Posts the Audit Committee considers the allegation that Mr Sheng used the recruitment process through the temporary post route to show favouritism not established.

(b) Favouritism regarding Conversion from Temporary Posts to Permanent Establishment

- (i) As regards this allegation it is to the effect that during his tenure as Chairman Mr. Sheng introduced quite a number of senior staff to the Commission through the use of Temporary Posts whose status was subsequently converted to the Permanent Establishment.
- (ii) As regards the 15 names in the list appended to the allegations only 2 of these individuals had their status converted from Temporary to Permanent. As evidenced in the PwC report presently there are no set procedures regarding the conversion process. However PwC have determined during their interview process that there were consultations amongst the Executive Directors as regards these two conversions. Further on joining the Permanent Establishment the two individuals' subsequent progress within the Commission has been subject to normal promotion procedures.

- (iii) PwC further confirmed that since Mr Sheng became Chairman there has been a total of 4 conversions from Temporary Posts to Permanent Establishment including the 2 under review. In the four years prior to Mr. Sheng becoming Chairman there were 9 such conversions.
- (iv) Given these findings the Audit Committee considers that the case has not been established in respect of this allegation.

(c) Favouritism to Malaysian Nationals

It has been alleged that Mr. Sheng showed favour in the recruitment process to individuals from his home country of Malaysia; further that some of these parties were related to him; and also that he showed these parties favour vis-à-vis traveling expense reimbursements relevant to the recruitment process.

- (i) Firstly as to numbers, as is evident from the PwC Report the total number of Malaysians working in the Commission is not unreasonable or out of line with other nationalities. Further other than Mr. Sheng there are no Malaysian citizens in the senior ranks of Director or above within the Commission. At the level of Associate Director there are only two Malaysian nationals and both of these were engaged prior to Mr. Sheng joining the Commission.
- (ii) Secondly as to recruitment of Malaysian citizens, we do not find it unreasonable that Mr. Sheng would have knowledge of high quality professionals from his mother country. Nor do we find it unreasonable that contacts of Mr. Sheng in Malaysia might introduce similarly qualified individuals to him. Further we do not find it inappropriate that he would introduce such highly qualified professionals to the Commission to assist in its work. In a similar vein he would introduce suitably qualified nationals from other countries who he was familiar with or who had been introduced to him to the Commission.
- (iii) We consider merit should be the overriding factor in any recruitment exercise. Appropriate levels of skill and expertise have been made out in these cases and in relation to several individuals, these have been extremely high. The main concern is not the nationality of the recruits but the need for competitive recruitment process to be applied wherever possible.
- (iv) As to the allegation that Mr. Sheng recruited a relative to the Commission this purported relationship has been wholly denied by Mr. Sheng and the individual concerned. Further per the official records of the Commission, which have been the

subject of standard recruitment and vetting procedures, there is no family relationship.

- (v) In relation to abuse of expense reimbursements in favour of Malaysian citizens we note the findings in the PwC Report that Malaysian interviewees were treated no differently from other nationalities.
- (vi) Based on the above findings and observations we consider Mr. Sheng treated Malaysians no differently from any other nationalities and accordingly the Audit Committee considers that the case has not been established in respect of this allegation.

3.3.3 Third allegation

That Mr. Sheng took the initiative to aid Mr. Peter Hsueh to evade personal taxes, particularly in relation to the entering into of a consultancy agreement by the Commission with a company controlled by Mr. Hsueh, and that this consultancy arrangement was not drawn to the attention of the Commission's Management Committee, for approval, as it should have been given its quantum value. Further there were suggestions that Mr. Sheng had showed favouritism to Mr. Hsueh in relation to his recruitment to the Commission through a Temporary Contract route.

(a) Tax Related Issues

The allegation regarding Mr. Hsueh's personal tax position is the subject of enquiry by the relevant authority, namely the Inland Revenue Department (IRD). The Commission is fully co-operating with this enquiry and as such, given the matter is under consideration by the IRD, we agree with PwC that it is not appropriate to comment on it in this Report.

As such the Audit Committee has confined its remarks on the Hsueh allegation to Mr. Hsueh's entry to the SFC and the conversion of his status from employee to secondee under a secondment contract.

(b) The Hsueh Recruitment Exercise

- (i) The circumstances of Mr. Hsueh's entry to the Commission are documented in the PwC Report. Mr. Sheng recognizing the urgent need to upgrade the Commission's IT capabilities, and being familiar with Mr. Hsueh's capabilities sourced Mr. Hsueh from the Hong Kong Monetary Authority.
- (ii) It is worth noting that PwC advised that in many instances during the course of their investigation they received very favourable comments from a variety of interviewees as to the

quality of work and achievements of Mr. Hsueh in upgrading the SFC's IT capabilities.

- (iii) Mr. Hsueh's age on joining the Commission was over the normal retirement age for Commission staff and PwC have rightly recommended that for the future the Commission document HR procedures to cover recruitment of individuals beyond the Commission's normal retirement age. We agree with this recommendation but we do not consider it should detract from the fact that Mr. Hsueh's recruitment proved of great value to the Commission. As such we agree with PwC's remarks that the use of personal referral in this instance as the sourcing technique was reasonable under the circumstances.

(c) Conversion of Mr. Hsueh's status from employee to secondee

- (i) The background to this exercise has been set out in the PwC Report.
- (ii) In short Mr. Hsueh expressed a desire to Mr. Sheng to move to effectively a part-time basis of work and requested that an agreement be entered into with a company controlled by him to cover his future services to the Commission at an agreed daily charge out rate. Mr. Sheng being anxious to retain Mr. Hsueh's services until a suitable replacement was found acceded to this request.
- (iii) He referred the matter to the HR Department to put the appropriate arrangements in place. The HR Department considered Mr. Hsueh's proposal to be in order as they considered the Commission had entered into what they regarded as similar arrangements in the past. They viewed Mr. Hsueh's new status as being that of a secondee from a company with whom the Commission had entered into an arrangement to engage his services and that accords with the documentation on the matter.
- (iv) Given that the arrangement was a secondment to fill a vacancy in the Permanent Establishment of the Commission there was no suggestion on the part of the HR Department to Mr. Sheng that it should be referred to the Commission's Management Committee for approval, which would have been the case if the arrangement had related to the engagement of external consultants. In fact, as noted by PwC, given that the arrangement was a secondment, and in the absence of specific HR procedures covering secondments, but having regard to precedent, and the Commission's "Policies and Procedures for Financial Control" which do cover the issue of secondment of professional staff, Mr. Sheng authorized the arrangement as head of the Commission's IT function and the Commission

notified the Inland Revenue Department of the cessation of Mr. Hsueh's status as an employee.

- (v) However, as PwC further noted in their report, while there have been instances in the past of the Commission contracting secondments of individuals from companies such parties have been wholly external to the Commission and not, as was the case involving Mr. Hsueh, of the conversion of a serving Commission employee to a secondment from that individual's own company immediately on his retirement from the Commission. This we consider is an important distinction as it raises issues of precedent in respect of similar requests in the future.
- (vi) We recognize that the HR Department of the Commission, on the basis that the arrangement was a secondment, did not make any suggestion to Mr. Sheng that he should consult with the Commission's Management Committee or his fellow Executive Directors in relation to the matter. We further recognize that Mr. Sheng had the appropriate levels of authority as Chairman and as Head of the IT Division to approve the arrangement.
- (vii) However despite these points the Audit Committee considers that since the arrangement was the first of its kind for the Commission; since it raised potential policy issues involving precedent; and since Mr. Sheng was acting both as Chairman of the Commission and as head of the IT Division, in the absence of a Deputy Chairman, it would have been more appropriate for him to consult with another executive director on the matter.
- (viii) We would emphasise though that this does not lead us to conclude, as suggested in the anonymous allegation that Mr. Sheng deliberately contrived with Mr. Hsueh to facilitate evasion of tax.

4. Recommendations

4.1 PwC Recommendations to improve HR procedures

In Chapter 6 of their Report PwC set out their recommendations to improve the Commission's HR procedures. These have been reviewed by the Audit Committee and we consider they should be adopted by the Commission. Particularly we consider it important that the Commission puts in place specific HR procedures to cover:

- (a) Temporary Posts;
- (b) Transfers from Temporary Posts to Permanent Establishment;

- (c) Referrals and
- (d) Secondments.

4.2 Deputy Chairman/Chief Operating Officer Role

- 4.2.1 The post of Deputy Chairman has been vacant since the previous incumbent left the Commission on 1st March 2001. Part of the duties of the Deputy Chairman was to take responsibility for most areas of the general administrative functions of the Commission including executive responsibility for the HR Department. Attempts were made to seek a replacement but in the absence of a suitable candidate being sourced and, given budgetary constraints, the view was taken by the Recruitment Panel that it might be wiser to leave the position temporarily vacant. This view was endorsed by the Commission's Management Committee and Board of Directors. In the absence of a deputy Mr. Sheng assumed these responsibilities.
- 4.2.2 Given the workload, responsibilities and the external and policy focus of the Chairman's role we recognize, with the benefit of hindsight, it would have been better to continue the search for a replacement particularly to take responsibility for the HR function. In this area we recognize the Chairman lacks the full complement of support which he requires and the absence of an executive director with specific responsibility for the HR function reduced the system of checks and balances in this area.
- 4.2.3 Accordingly we would recommend that a Deputy Chairman or Chief Operating Officer be employed to handle the administrative functions within the Commission including the HR function. We are pleased to note a search process has already begun in this regard.

4.3 Strengthening of the HR Function

- 4.3.1 Evidenced by the findings in the PwC Report and by our observations during this investigation it appears the HR role of the Commission at present comprises more a payroll, administrative and training function. Given the challenges that financial markets are facing world-wide and the additional challenges the Commission will be facing in its expanded role when the new Securities and Futures Ordinance comes into effect in April 2003, we believe the Commission needs to, as suggested by PwC conduct a broad comprehensive review of its HR policies and procedures with a view to:
- (a) strengthening its HR Department;
 - (b) developing a more pro-active and dynamic human resource policy and structure to meet future needs.
 - (c) implementing new procedures and controls as identified by PwC, and
 - (d) tightening up compliance with existing procedures.

These tasks should be assigned as regards executive responsibility to the new Deputy Chairman or Chief Operating Officer once recruited.

- 4.3.2 The HR function of the Commission is primarily the responsibility of management and should remain so; its operations being supervised by an executive director, reporting to the Management Committee or the executive directors as appropriate, and hence to the Board. At present, other than at Board level, the involvement of the Commission's non-executive directors in the checks and balances in the HR function is limited to their roles in two Board Committees, namely Remuneration and Audit, whose memberships comprise the Commission's non-executive directors.
- 4.3.3 The responsibilities of the Remuneration Committee solely, as its name implies, relate to remuneration issues and this is its only involvement at present in the Commission's HR function.
- 4.3.4 As to the Audit Committee its primary role focuses on financial controls and the management of risk. This includes review of the Commission's management procedures to monitor the effectiveness of the Commission's system of accounting and internal controls. Specifically in relation to the HR function the Audit Committee has in place a system of periodic reviews on a cyclical basis, by the Commission's external auditors, of aspects of the HR function. This includes a review of the Commission's recruitment process. The last review of this area was conducted in December 1999 when the auditors reported no exceptions and advised the controls in the recruitment process were generally satisfactory. A further review of this area on the cyclical basis would have taken place towards the end of 2002 but this was held back pending the conclusion of this investigation.
- 4.3.5 Without impinging on management's responsibility for the HR function the Audit Committee recommends that consideration be given to limited expansion of the responsibilities of these two Committees and this would enhance the role of the non-executive directors in the system of checks and balances on the HR function.
- 4.3.6 In the case of the Remuneration Committee consideration could be given to expanding its role to provide overview of the Commission's executive recruitment and promotion policy. We recognise that the Committee could not be involved, as non-executive directors often are in good governance models in the succession and nomination process for Board directors this for the Commission being the purview of Government. However we consider it could be involved in this process at the director and associate director levels. If this suggestion was adopted by the Commission this would no doubt necessitate a name change for this Committee possibly to that of Nomination and Remuneration.
- 4.3.7 As to the Audit Committee it is recommended it be given responsibility for overview of a complaints mechanism system as discussed next.

4.4 Complaints Mechanism

- 4.4.1 As noted by PwC in their report, at present no formal complaints mechanism exists within the Commission to handle staff grievances. We agree that such a system should be put in place. We recognise its absence may have been a contributory factor to the public course of action embarked on by the anonymous complaints although we would emphasise we do not consider this condones their actions, as we consider their concerns could have been raised through a number of other channels in an effective manner less public and damaging to the reputation of the Commission and its Chairman.
- 4.4.2 It should be the responsibility of the HR function to put in place a robust complaints mechanism with the ultimate responsibility for overview of the system resting with the Commission's independent Audit Committee. The system should be such that staff may raise their concerns in confidence about possible improprieties in relation to the Commission's activities. This expansion of the Audit Committee's responsibilities to overview complaints particularly whistle-blowing concerns from staff members has taken on particular import in enhanced corporate governance models, such as the recently published Smith Report in United Kingdom, post the recent corporate scandals in USA.
- 4.4.3 The Audit Committee further recommends that in any future terms of reference for a complaints mechanism it be given the authority to determine the appropriate and proportionate response to anonymous complaints since clearly there is a difference between such and the act of whistle-blowing in its true sense. The Audit Committee's views on the topic of whistle-blowing are best exemplified by reference to Time Magazine's recent naming of its Persons of the Year 2002. Their choice was the three whistle-blowers in the cases of Enron, World Comm and the FBI. In the opinion of the Audit Committee these individuals exemplified their courage and professionalism in identifying themselves and speaking up for what they believed to be correct despite obvious concerns about their careers. If there is to be whistle-blowing that is the sort of whistle-blowing the Audit Committee would expect from within a professional body such as the Commission.

4.5 Staff Opinion Surveys

PwC have recommended that a staff opinion survey be conducted at an appropriate time in the future and that such surveys be conducted on a regular basis. We agree with this recommendation. Such surveys have been conducted by the Commission in the past but not for some time. While the anonymous complaints involve only a minority of individuals clearly they do involve issues of staff morale and a key role of management is keeping in touch with staff and sensing morale within organizations to avoid situations getting out of hand as they have done in this case. The Audit Committee is particularly conscious that given the public nature of the matters at hand the overall staff morale of the Commission must have suffered. The re-introduction of a regular system of staff

opinion surveys is one element of HR policy in addressing such concerns. We consider the appropriate time to conduct such a survey would be once recommendations arising from this report have been adopted and implemented by the Commission and as part of the broader pro-active HR policy review that we have advocated above.

4.6 The Hsueh Incident

At present this matter is under consideration by the Inland Revenue Department. As such we recommend the Commission should not enter into any further arrangements of a similar nature until the matter has been resolved with the relevant authorities. Once this has been done we recommend the subject be discussed as a policy matter by the Commission's executive directors and their deliberations referred to the Commission's Board for a definitive decision to be taken as to the Commission's stance and involvement in such matters.

5. Concluding Remarks

5.1 In finalising this Report the Audit Committee wishes to emphasise two important factors that impacted the scope of this investigation which should be borne in mind when considering its findings. These are;

5.1.1 The terms of reference of the assignment were specific to investigation of allegations contained in the series of anonymous complaints circulated in the community commencing towards the end of July 2002 alleging certain malpractices in the Commission. As a result the investigation only focused on the individuals named in the anonymous allegations plus several other present and past Commission staff members as considered appropriate. Accordingly the findings in this report are specific to a small population of present and past Commission staff and should not be regarded as representative of the views of the Commission as a whole.

5.1.2 At any time, under any circumstances, the investigation of anonymous allegations is a complex and emotive topic and presents particular dilemmas for public bodies such as the Commission as to whether and how to handle anonymous allegations in relation to their internal operations. In the view of the Audit Committee anonymous acts lack common decency in that the accused require to defend themselves against whatever allegations are raised against them, whether these have merit or are spurious, without the opportunity of facing or challenging their accusers, who hide behind the cloak of anonymity. So too the Audit Committee in conducting this investigation has been denied the opportunity of querying the anonymous complainants directly and discussing their allegations in an appropriate and rational fashion.

5.2 Bearing in mind these scope limitations the findings of the Audit Committee in relation to the allegations contained in the anonymous documents may be summarized as follows:

- 5.2.1 It is considered the case has not been established that many former executives of the Commission left as the result of dissatisfaction with the leadership of Mr. Sheng as Chairman.
- 5.2.2 As regards purported acts of favouritism on the part of the Chairman towards specified individuals either in relation to their recruitment process; transfers from temporary to permanent posts within the Commission; or in some instances having regard to their nationality, this allegation is considered not to have been established.
- 5.2.3 As regards the allegation that the Chairman deliberately contrived with a senior executive to facilitate evasion of tax we have found no evidence to suggest this has any basis in fact.
- 5.2.4 As regards the allegation that Mr. Sheng should have drawn a proposed contractual arrangement between the Commission and one of its senior executives, which changed the status of that individual's relationship with the Commission, to the attention of the Commission's Management Committee before its conclusion, the Audit Committee considers Mr. Sheng had the appropriate levels of authority, as Chairman and as Head of the IT Division, but that in the absence of a Deputy Chairman a more appropriate course of action on his part would have been to refer to and consult on this matter with another executive director.
- 5.2.5 Finally on the subject of the allegations the Audit Committee wishes to place on record that throughout this investigation it has neither uncovered nor sensed any suggestion of impropriety or bad faith on the part of Mr Sheng and whatever actions he has taken it appears he has done so with the best interests of the Commission at heart.

5.3 Recommendations

- 5.3.1 Ancillary to its primary task of investigating the allegations contained in the anonymous complaints the Audit Committee was tasked with making recommendations to improve the Commission's HR policies and procedures as they considered appropriate arising from findings during the course of their investigation.
- 5.3.2 Given the gravity of the allegations and their public nature every attempt has been made to make this investigation a thorough one and as a result a number of recommendations have been made to improve the Commission's HR systems.
- 5.3.3 However the Audit Committee wishes to emphasise that it is important that these recommendations be considered in the context of the overall findings of the investigation particularly that where there were absences of defined HR procedures to a great extent existing alternative Commission procedures were followed. In this regard attention is drawn to PwC's concluding remarks in Chapter 8 of their report that in relation to the cases of the 31 individuals who were mentioned in the allegations, and were the primary thrust of this investigation, exceptions to the

Commission's policies and procedures and documentary trails 'were relatively minor in nature' and that 'On the whole, the established policies and procedures had in effect been adequately complied with.'

- 5.3.4 Accordingly while there are recommendations for improvement they should be read in the context of these remarks and should not detract from the primary focus of this investigation and its findings on the anonymous allegations of purported misconduct within the Commission.

Signed by



T Brian Stevenson

Date: 26 February 2003

Membership of Audit Committee

Mr. T Brian Stevenson (Chairman)
Ms. Anna Wu (Deputy Chairman)
Mr. Raymond Kwok (Member)



SECURITIES AND
FUTURES COMMISSION
證券及期貨事務監察委員會

證券及期貨事務監察委員會(證監會)的稽核委員會
就 2002 年 7 月至 2003 年 1 月期間
本地流傳的連串匿名文件中
涉及證監會的若干指控的
調查報告

2003 年 2 月 26 日獲證監會通過採納

2003 年 2 月

1. 引言

- 1.1 自大約 2002 年 7 月 15 日起，及實際上直至本報告撰寫時，多份源自匿名人士的文件(匿名文件)在本地流傳，範圍包括本地傳媒(主要是中文傳媒)、香港特區政府若干官員、立法會議員、證監會非執行董事及證監會內部多名高層人員。
- 1.2 繼該批匿名文件初次出現後，證監會主席沈聯濤(沈氏)，即該批文件的主要指控對象，立即正式出現該批文件一事知會香港特區政府及證監會董事局，並且主動提出會就視為處理該宗事件的任何適當程序提供合作。
- 1.3 證監會的董事局其後將事件轉交該會的非執行董事處理。證監會的非執行董事決定，儘管該批文件源自匿名人士，但鑑於有關指控的嚴重性，及該批文件已在本地廣泛流傳，為著證監會作為公營機構的最佳利益著想，最適當的做法便是對該批文件作出深入的調查。證監會的非執行董事進一步決定，鑑於有關指控主要圍繞證監會的內部程序及有關管理事宜，該宗調查應由證監會的稽核委員會(委員會)處理。該宗調查的職責範圍其後獲訂出，並獲得證監會董事局的批准(參閱羅兵咸永道會計師事務所報告附錄 1)。

2. 獨立調查

- 2.1 最初，委員會提出要求並其後獲分配兩名證監會高級職員以提供支援，從而協助搜集涉及證監會相關內部程序的資料，以及有關該批匿名文件臚列的人士個案的事實資料。然而，鑑於有人向傳媒洩漏委員會及其兩名支援職員的工作的消息，因此，上述的工作很快便看來無法保密進行。
- 2.2 明顯地，這種情況無法維持下去。此外，鑑於從初步搜集事實過程所得到的資料，委員會決定，為進行獨立而全面的調查，最佳的做法是必須取得外聘專業人員的支援。該項決定獲證監會的董事局同意，而委員會其後邀請若干專業顧問公司提交建議書。委員會經仔細考慮後，建議接納羅兵咸永道會計師事務所(羅兵咸永道)的建議書。該項決定獲證監會的管理委員會，即證監會的管理架構內的適當授權單位批准。
- 2.3 羅兵咸永道最後獲委聘進行工作，而其職責範圍載於羅兵咸永道報告附錄 1 內。羅兵咸永道於 2002 年 9 月 23 日展開工作；羅兵咸永道報告載於本報告附錄，並構成本報告的調查所得的依據。

3. 就有關指控的調查及觀察所得

- 3.1 在闡述委員會的調查及觀察所得之前，讀者必須注意羅兵咸永道報告第二章中有關保密及個人私隱事宜的環節。委員會認為，其與羅兵咸永道同樣

受限於對引述匿名文件羅列人士的姓名的限制，唯在其認為適當的情況中引述證監會主席沈聯濤先生(沈氏)及證監會資訊科技總監薛正綱先生的姓名則例外，原因是二人的姓名早已為傳媒廣泛報道。

- 3.2 自該批匿名文件在 2002 年 7 月底首次出現後，多份匿名文件相繼出現，當中主要是信件。然而，委員會認為，匿名文件所載的指控，大致上都是圍繞著連串主要針對沈氏個人的相同指控主題的類似控訴。
- 3.3 該等指控，以及委員會根據羅兵咸永道報告的調查結果而得出的結論，及委員會對該等調查結果的觀察現撮述如下。

3.3.1 指控一

自沈氏出任證監會主席一職後，證監會有多名高級職員因不滿其領導方式而離職。該批匿名文件附載有關指控指稱涉及的 15 名證監會前僱員的名單。

調查及觀察所得

- (a) 如羅兵咸永道報告所述，該批指名人士中，8 人是在正常情況下、出於本身意願及沒有對證監會或其主席投訴而離開證監會的。
- (b) 另外 5 人亦是出於本身意願離職，但他們確有表示是基於某些不滿而離職的，而原因計有不滿薪酬水平、欠缺晉升機會、工作量、人事衝突等。值得一提的，在某些個案中，該等不滿只是有關人士在羅兵咸永道為是次調查程序進行的會見中提出，而之前並無在其證監會離職會見中提出。以證監會這樣龐大的規模和架構，該等離職原因並不罕見，特別是適值證監會正落實連串改革，致力提高其工作成效及效率，從而符合公眾日漸提升的要求。然而，我們認為，可能有必要在日後檢討證監會的工作時，考慮該等不滿意見。
- (c) 其餘 2 人則對其離開證監會一事表達強烈不滿，認為他們本身是因與新任部門主管的矛盾而被迫離開證監會的。
- (d) 雖然發生對機構忠心的僱員與其新任上司意見不合的情況固然令人遺憾，但我們認為該等情況並不罕見。這是因為在機構內服務已久的職員，經常會難於適應新主管在辦事方式及要求上的改變，而在上述 2 人的情況則涉及部門主管的變動。此外，鑑於證監會在人手緊張及財政嚴重緊絀下營運，我們認為通常都無法利便跨部門的調職安排。
- (e) 羅兵咸永道並無就該 2 人的離職新津安排發現任何過失，然而，在當中涉及終止服務的一宗個案中，有關的離職過程的確看來應可更妥善地處理，當中涉及在勸喻離職安排及與該名員

工的會談文件紀錄方面的技巧與敏感度。沈氏本人在該次實際的終止僱用程序中並無牽涉在內。

(f) 基於上述調查所得，委員會認為有關指控並不成立。

3.3.2 指控二

沈氏利用臨時僱用合約聘請與其有個人聯繫的人士和親友加入證監會，及在某些情況中，當中某些人士獲得將其合約由臨時性質轉為長期合約。連同該項指控所提出的進一步指控，指沈氏因偏私而聘請其馬來西亞籍同胞，並且在某些情況中，在他們報銷開支申請方面偏私。該批匿名文件亦同樣附載該項指控指稱涉及的 16 人的名單。

調查及觀察所得

(a) 涉及臨時職位的偏私

- (i) 有關指控點名列出 16 人，而其中一人是薛正綱。本報告及羅兵咸永道報告將另行處理薛氏獲證監會聘用一事。至於其餘 15 人，其獲證監會聘用的具體詳情載於羅兵咸永道報告的第三章及附錄 5 內。從該報告可見，當中 7 人事實上直接加入證監會的常額編制，8 人則獲聘加入證監會擔任臨時職位。在該 15 人中，4 人經慣常途徑加入證監會，1 人直接獨立地接觸證監會主席，而另一人則經證監會直接接洽。其餘 9 人則透過其他轉介途徑物色。當中有 3 人則是由主席轉介予證監會，其中 2 人是其前任職位的舊同事，而 1 人則曾與其有工作上的關係。
- (ii) 該 15 人的招聘過程的所涉步驟載列於羅兵咸永道報告及附錄 5 內。從有關資料看來，雖然過程當中或曾偶爾出現不善之處，但羅兵咸永道報告結論足以證明，該等情況的性質亦實屬輕微。只要存在可供使用的程序，有關方面都已依照該等程序行事。
- (iii) 羅兵咸永道識別出的其中一項重要因素，是除羅兵咸永道報告附錄 3 列出的僅涉及批核的程序外，證監會內部目前並無程序管限臨時職位的招聘。因此，這方面明顯可以並應該加以改良。然而，這並不表示臨時職位沒有任何招聘程序可以依循。根據羅兵咸永道報告，除了上述的批核程序外，臨時職位大致上按照常額職位的一般招聘程序進行招聘。這點已得到證監會人力資源科證實；但當中的重大區別，在於臨時職位通常是透過轉介途徑招聘，因此面試程序不如常額職位的招聘程序般正式。設立臨時職位的理由，即證監會有必要聘請具特別專業知識的人士進行特別項目或緊急項目，正好說明上述招聘途徑及面試程序的安

排。羅兵咸永道報告的附錄 5 詳細說明了上述 8 名受聘至臨時職位的人士所進行的特殊項目/具備的技能。

- (iv) 鑑於對上述有關須聘請臨時職位的理解，就偏私指控，委員會認為有關事宜主要圍繞著採用轉介的方法及其後的招聘程序。上文已就後者作出分析。正如羅兵咸永道報告指出，轉介員工的方法在證監會已沿用多年。除上述指控臚列的 15 人名單中所識別出的 9 人外，自 1994 年 6 月後，共有 27 名員工透過轉介渠道招聘。羅兵咸永道的結論是“物色申請人的方法，包括轉介，與大部分機構的一般和常用招聘程序相同”。委員會贊同上述結論，但同時認為，即使臨時職位只佔如證監會般龐大的機構的整體招聘的一小部分，證監會亦應該選取公開招聘及正式面談程序(特別在涉及常額編制的情況中)及盡量減少例外情況。在這方面，我們亦認同羅兵咸永道的意見，同意應設立系統載錄物色填補空缺人選的最有效渠道。
- (v) 委員會另外也注意到，證監會以 1 個月至 2 年期的固定期限合約取代常額職位所用的持續性合約，於是產生了常額職位與臨時職位之間界線較難分辨的異常情況。我們認為臨時職位有其存在需要，因此我們不認為應該取消；然而，臨時職位的用途和適用程序必須清晰界定。
- (vi) 基於羅兵咸永道就匿名指控中指名的 15 人的整體招聘程序的調查所得、沈氏本身在該批人士受聘前只認識其中 3 人，以及證監會在沈氏任職證監會前已經常透過轉介渠道招聘員工，尤其是臨時僱員，委員會認為，有關沈氏透過臨時職位的渠道在招聘程序中偏私的指控不成立。

(b) 偏私 – 將臨時職位改為常額編制的職位

- (i) 有關指稱主要指沈氏在擔任證監會主席期間，透過臨時職位介紹了多名高層人員加入證監會，而該批人員其後獲更改為常額編制職員。
- (ii) 在有關指控附載名單臚列的 15 人中，只有 2 人是從臨時職位改為常額編制的。正如羅兵咸永道報告指出，證監會目前並無制定有關更改合約的既定程序。然而，羅兵咸永道在會見過程中確定，上述兩宗更改合約的個案曾在證監會的執行董事之間進行諮詢，而該 2 人加入常額編制後在證監會內的職位變動均依照一般的晉升程序進行。
- (iii) 羅兵咸永道進一步證實，自沈氏出任證監會主席後，一共有 4 個臨時職位更改為常額編制，當中包括是次調查涉及

的兩宗個案。在沈氏接任證監會主席前的 4 年內，共有 9 宗類似更改合約個案。

(iv) 基於上述調查所得，委員會認為有關指控不成立。

(c) 偏袒馬來西亞籍人士

該批匿名文件指沈氏在招聘過程中偏袒其馬來西亞籍同胞，並且聲稱部分有關人士與沈氏有親屬關係，以及指稱沈氏在該等人士報銷與招聘程序有關的交通費的過程中偏私。

- (i) 第一，羅兵咸永道報告清楚指出，證監會內的馬來西亞籍員工數目並非不合理或與其他國籍的員工數目不相符。再者，除沈氏之外，證監會內並無其他馬來西亞籍人士擔任總監或以上的高職。在證監會的副總監職級員工中，只有 2 名為馬來西亞籍人士，而該兩人都在沈氏加入證監會之前已受聘。
- (ii) 第二，在聘請馬來西亞籍人士方面，我們認為，沈氏認識其本國的卓越專業人士，或沈氏的馬來西亞朋友向其介紹類似的專業人士並無不合理之處。此外，對於沈氏將該等富資歷的專業人士引入證監會以協助其工作，我們認為並無不當之處。同樣道理，沈氏也可以介紹其熟悉或他人向其推薦的其他國籍的適當合資格人士加入證監會。
- (iii) 我們認為招聘程序的關鍵應是以能者居之。在上述個案中，有關人士均具備合適的技能和專業知識，而當中個別人士的水平更是極高。關注的重點不在於受聘者的國籍，而是有必要盡量採用有利於競爭的招聘程序。
- (iv) 關於指稱沈氏聘請一名親屬加入證監會一事，沈氏及該名有關人士均已完全否認。此外，依據證監會的正式紀錄，而該等紀錄已經通過標準的招聘及審核程序，二人並無親屬關係。
- (v) 至於濫用報銷費用程序從而優待馬來西亞籍人士，我們注意到，按照羅兵咸永道報告的調查所得，馬來西亞籍應徵者與其他國籍的應徵者所得到的待遇並無差異。
- (vi) 基於上述調查所得及觀察，我們認為沈氏給予馬來西亞籍人士的待遇無異於其他國籍人士。因此，委員會認為有關指控不成立。

3.3.3 指控三

有關匿名文件指沈氏主動協助薛正綱逃稅，尤其涉及證監會與薛正綱控制的一家公司簽訂顧問協議，且該協議並無提交管理委員會審批，而鑑於涉及龐大金額，該協議應提交管理委員會審批。有關匿名文件亦指稱沈氏偏袒薛正綱，利用臨時合約聘請其加入證監會。

(a) 稅務事宜

指控中有關薛正綱的個人稅務狀況，是有關當局，即稅務局的查訊目標。證監會目前正全力協助進行該項查訊。由於事件正由稅務局審理，我們贊同羅兵咸永道的意見，不宜在本報告中加以評論。

基於上述原因，委員會已將其論述的範圍局限於薛正綱加入證監會的過程及其身分由僱員轉為借調合約下的借調人員一事。

(b) 薛正綱的聘任過程

- (i) 薛正綱加入證監會的背景載錄於羅兵咸永道報告中。當時，沈氏基於迫切需要提昇證監會資訊科技系統，加上熟知薛正綱的能力，引薦了當時任職香港金融管理局的薛正綱。
- (ii) 值得注意的是，羅兵咸永道表示，他們在調查期間，曾經多次有不同的會見人士高度讚賞薛正綱在提昇證監會資訊科技系統方面的工作素質和成就。
- (iii) 薛正綱加入證監會時，已經超過證監會員工的正常退休年齡。羅兵咸永道已正確地建議證監會在日後的人力資源程序中，載入聘請超過證監會正常退休年齡人士的指引。我們同意這項建議，但認為有關建議不應該減損薛正綱的聘任對證監會發揮重要作用這項事實。因此我們同意羅兵咸永道的意見，即在有關情況下，以個人轉介作為物色人選方法是在該個案中合理的做法。

(c) 薛正綱的身分由僱員改為借調人員

- (i) 有關安排的背景載於羅兵咸永道報告中。
- (ii) 簡單來說，薛正綱向沈氏表示，希望將其工作更改為實際兼職的性質，並要求與其控制的一家公司簽訂協議，使其日後得以按照協定的每日工作時薪繼續為證監會服務。沈氏因急於挽留薛正綱留任至有合適接任人選時，因此答允其要求。

- (iii) 沈氏將事件轉交證監會人力資源科，以作出適當的安排。鑑於該科認為證監會過去亦曾作出其視為類似的安排，因此認為薛正綱的建議合乎程序。該科認為薛正綱新的身分，是證監會向與該會為聘用薛正綱的服務而簽訂協議的公司借調的人員，而該項安排亦與就此事的文件資料吻合。
- (iv) 鑑於該項安排屬為填補證監會的常額編制中的空缺的借調，人力資源科沒有向沈氏建議有關安排須交由管理委員會審批，而假如有關安排真的涉及聘用外間顧問，有關安排便需經審批。事實上，羅兵咸永道指出，該項安排屬借調，加上欠缺有關借調的人力資源程序，沈氏參照往例及證監會有涵蓋專業職級人員的借調的“Policies and Procedures for Financial Control”(《財務監控政策及程序》)，以證監會資訊科技職能主管的身分批准有關安排，而證監會亦知會稅務局薛正綱已終止其證監會僱員的身分。
- (v) 然而，正如羅兵咸永道報告進一步指出，雖然證監會過去也有向其他公司借調員工的個案，但有關人士是完全來自證監會以外，而非如薛正綱的情況般，涉及一名證監會現職人員自其不再受僱於證監會的時候起隨即更改為其本身公司的借調員工。鑑於有關安排就日後的類似要求立下先例，因此我們認為這點構成與其他同類個案的重要差別。
- (vi) 我們理解，證監會人力資源科基於該項安排屬借調性質，因而未有建議沈氏應就此諮詢證監會管理委員會或其他執行董事的意見。我們亦進一步認為，沈氏具有適當的權力，以主席及資訊科技部門主管的身分批准該項安排。
- (vii) 然而，儘管有上述各點，委員會認為，鑑於有關安排是首宗同類個案、該宗個案產生涉及立下先例的潛在政策事宜、及由於沈氏當時正兼任證監會的主席及資訊科技部門的主管，在證監會當時並無副主席的情況下，處理此事的較適當做法是由沈氏就有關事宜諮詢另一位執行董事的意見。
- (viii) 雖然如此，但我們強調，這並不致使我們如匿名文件所指控般，作出沈氏蓄意與薛正綱策劃有關安排協助逃稅的結論。

4. 建議

4.1 羅兵咸永道就改善人力資源程序的建議

羅兵咸永道在其報告第六章中闡述了對改善證監會的人力資源程序的建議。經審閱後，委員會認為證監會應該接納該些建議，尤其是應該為下列各範疇制定具體的人力資源程序：

- (a) 臨時職位；
- (b) 更改臨時職位至常額編制；
- (c) 轉介員工；及
- (d) 借調安排。

4.2 副主席/營運總裁的角色

4.2.1 自前任副主席於 2001 年 3 月 1 日離職後，副主席一職一直懸空。副主席的職責之一，是對證監會內大部分的一般行政職能承擔職責，包括人力資源科的行政職能。雖然該職位曾經進行招聘以填補空缺，但未能覓得合適人選，加上財政緊絀，招聘委員會認為副主席職位應暫時懸空。對此，管理委員會及董事亦同意。在證監會並無副主席期間，副主席的職能由沈氏承擔。

4.2.2 鑑於主席一職的工作量、職責，及集中於對外事務和政策範疇的職務，我們認為，作為事後判斷，當時應該繼續尋覓合適人選特別負責人力資源的職能。在人力資源方面，我們發現主席缺乏所需的全面支援；而欠缺一名專責人力資源職能的執行董事亦削弱了對有關制度的制衡。

4.2.3 因此，我們建議聘請一名副主席或營運總裁，處理證監會包括人力資源在內的內部行政職能。我們欣然獲悉證監會已經就此展開物色工作。

4.3 加強人力資源職能

4.3.1 根據羅兵咸永道報告的論述及我們在是次調查期間觀察所得，證監會目前的人力資源角色看來主要屬於在薪酬、行政及培訓方面的職能。基於全球金融市場正面對的挑戰，以及證監會在 2003 年 4 月新制定的《證券及期貨條例》正式生效後因其擴展的職能而將會面對額外挑戰，我們認為證監會有必要按照羅兵咸永道建議般，對其人力資源政策及程序進行廣泛及全面的檢討，以達致下列目標：

- (a) 加強人力資源科的職能；
- (b) 制定更前瞻性和靈活的人力資源政策及架構以適應未來需要；
- (c) 推行羅兵咸永道提及的新程序及監控措施；及
- (d) 嚴格執行現有程序。

上述工作應以行政職責方式撥入新副主席或營運總裁的職責範圍內。

- 4.3.2 證監會的人力資源職能主要屬管理層的職責，而這個角色應維持不變，其營運須由一名執行董事負責監督，並向管理委員會或適當的執行董事及其後向董事局匯報。目前，除董事局的層面外，證監會非執行董事在人力資源制衡機制方面的參與，只限於其於兩個董事局委員會 – 由證監會的非執行董事組成的薪酬委員會及稽核委員會的角色。
- 4.3.3 薪酬委員會的職責，一如其名，只限於薪酬事宜，這亦是目前其在證監會人力資源方面的唯一參與。
- 4.3.4 稽核委員會則主要負責監管財務及風險監控，當中包括覆核證監會的管理程序，監察證監會的會計制度及內部監控的有效性。具體而言，在人力資源職能方面，稽核委員會設立了一個定期檢討制度，由證監會的外聘核數師對人力資源職能進行周期性檢討，當中包括覆核證監會的招聘程序。對上一次對有關範疇的覆核在 1999 年 12 月進行，核數師當時的報告指並無任何特殊情況，並表示監控招聘程序的措施大致上令人滿意。根據周期性檢討程序，對該範疇的另一次檢討應在 2002 年底進行，但由於須等待是次調查的結果，因此已暫時擱置。
- 4.3.5 委員會建議，在不影響管理層在人力資源範疇的職責下，有限度地擴大該兩個委員會的職責，加強非執行董事在人力資源職能的制衡機制中的角色。
- 4.3.6 至於薪酬委員會，可考慮擴大其職能，使其兼負覆核證監會行政人員的招聘及晉升政策的責任。我們確認，薪酬委員會不能如一般非執行董事在良好管治模式下參與董事局成員的繼任及提名程序，因為就證監會而言，該等程序屬政府的管轄範圍。然而，我們認為薪酬委員會可在總監及副總監的層面參與有關的過程。若證監會接納上述的建議，薪酬委員會將毫無疑問需要更改名稱，譬如易名為“提名及薪酬委員會”。
- 4.3.7 至於稽核委員會，一如下文所述，建議授予其全面監察投訴機制的職責。

4.4 投訴機制

- 4.4.1 正如羅兵咸永道報告指出，證監會內部目前並無處理員工不滿的正式投訴機制。我們同意應設立這類制度。我們認為欠缺類似的機制可能是該等匿名投訴訴諸公開渠道的主因。然而，我們在此強調，這個原因並不表示該等行為情有可原，理由是我們認為該等關注可

以有效地透過多個渠道提出，從而減低其公開程度和對證監會及其主席聲譽的打擊。

- 4.4.2 人力資源部門有責任建立健全的投訴機制，並由證監會的獨立稽核委員會最終負責全權監察該機制的運作。該機制應能讓員工以機密形式對證監會的運作中可能存在的不當行為提出關注。這項將稽核委員會的職能擴大至監察員工投訴，尤其是以舉報揭發方式提出關注的建議，具體上參照近期在美國發生連串企業醜聞後有關加強企業管治模式的方案，例如最近在英國發表的 Smith Report (《史密夫報告》)。
- 4.4.3 委員會進一步建議，因應匿名投訴與真正的舉報揭發行為之間的實質差別，在設定該投訴機制的權限時，賦予其就匿名投訴作出適當和相應回應的權力。《時代周刊》最近選出安然(Enron)、世界通訊(WorldCom)及聯邦調查局 3 位舉發者為 2002 年風雲人物，正好反映了委員會對舉發行為的態度。稽核委員會認為，該 3 位女士的行為充分顯示了他們在憂慮工作之餘，仍恪守本分，大膽說出他們認為正確的事情的勇氣和專業精神。委員會認為，若有需要舉發的事件，委員會期望該種舉發行為會在像證監會般的專業機構內出現。

4.5 僱員意見調查

羅兵咸永道建議在將來的適當時候進行僱員意見調查，並且應定期進行。我們贊同這項建議。證監會過去也曾進行過類似的調查，但距今已有一段時間。儘管是次匿名投訴只涉及少數人士，但是已明顯地觸及員工士氣的問題，而管理層的其中一項主要工作，就是與員工保持溝通，掌握機構內員工的士氣，避免事情如這次般演變至無法控制的局面。委員會特別意識到，事件中有關事宜的公開，必定已經打擊證監會整體的員工士氣。處理該等關注的其中一項措施，就是重新引入定期的僱員意見調查。我們認為，僱員意見調查應該在本報告的建議獲證監會接納和落實之後隨即進行，並作為我們在上文提出的更廣闊層面的前瞻性人力資源政策檢討的一環。

4.6 薛正綱事件

該宗事件目前仍由稅務局審理中。因此，我們建議在有關當局解決該宗事件前，證監會不應再訂立任何類似的安排。該宗事件一經解決後，我們建議將此事作為政策性事宜提交證監會的執行董事進行討論，而其討論結果由證監會的董事局就證監會在該等事宜中的立場和參與作出最終的決定。

5. 結論

- 5.1 在總結本報告前，委員會希望在此強調影響是次調查範圍的兩個重要因素，而該等因素應在考慮委員會的調查所得時加以注意。該兩項因素如下：

- 5.1.1 是次工作的範圍，只限於就接近 2002 年 7 月底開始在本地開始流傳的多份匿名文件中有關證監會內某些不當行為的指控進行調查，因此，調查只集中於有關匿名文件中指名的個別人士，以及認為適當的某些相關的證監會現職和前任員工。因此，本報告的調查結果只限於證監會的少數現職和前任員工，並不能代表證監會的整體意見。
- 5.1.2 不論何時及在任何情況下，調查匿名指控均是一件複雜和容易引起強烈反響的工作；對證監會般的公營機構來說，應否和如何處理涉及其內部運作的匿名指控更令其進退維谷。委員會認為，匿名指控是不得體的行為，因為無論有關指控有沒有理據或是否捏造，被指控人士都要自行抗辯該些指控，而無機會面對面地質詢對其作出指控的以匿名方式隱藏身分的人士。同樣，委員會在進行調查時，也沒有機會直接地質詢有關的匿名投訴人，與其進行適當和理性的討論。
- 5.2 顧及有上述限制的情況下，委員會現撮要總結其就載於匿名文件的指控的調查結果如下：
- 5.2.1 有關證監會多名前任高層員工因不滿證監會主席沈氏的領導方式而離職的指控不成立。
- 5.2.2 有關證監會主席涉嫌對個別人士偏私，即不論是在招聘該等人士的過程中，或從臨時職位調任至證監會內的常額編制，或在某些情況中因為有關人士的國籍而偏私的指控並不成立。
- 5.2.3 有關證監會主席蓄意協助一名高層員工逃稅的指控，我們發現並無證據顯示有關指控有任何事實根據。
- 5.2.4 有關指控指沈氏應該在證監會與一名高層人員達成更改該人與證監會的關係的建議合約安排前，將有關事宜知會證監會的管理委員會。對此，我們認為沈氏以主席及資訊科技部門主管的身分具有適當的權力，但由於當時證監會並無副主席，較適宜的做法，是沈氏應將事件向另一執行董事提出及就此諮詢其意見。
- 5.2.5 最後，在指控的所涉對象一事上，委員會在此申明，委員會在是次調查過程中，一直並無發現或察覺沈氏有任何不當行為或不真誠的跡象，而無論沈氏採取任何行動，都顯示他是真心地以證監會的最佳利益為依歸。
- 5.3 建議**
- 5.3.1 除了主責調查匿名投訴中的指控外，委員會同時要根據其調查所得，對改善證監會的人力資源政策和程序提出其認為適當的建議。

- 5.3.2 鑑於該等指控性質嚴重及其公開性質，委員會已竭盡所能，力求使調查深入詳盡，因此亦對完善證監會的人力資源制度提出了多項建議。
- 5.3.3 然而，委員會在此重申，該等建議必須在是次調查的整體結果的背景下加以考慮，特別是整體而言，在欠缺指定的人力資源程序的情況中，在很大程度上，證監會的其他現有程序已獲依循。對此，請注意羅兵咸永道在其報告第八章的總結中指出，就有關指控指名、以及作為是次調查的主要對象的 31 名人士而言，證監會的政策、程序與文件紀錄方面所發現的特殊情況均“性質輕微”，且“總括而言，已實際上充分地依照現有政策及程序處理”。
- 5.3.4 因此，雖然委員會提出改善建議，但有關建議應在該等論述的背景下參閱，且不應偏離是次調查的主要焦點及就在證監會內的指稱失當行為的匿名指控的調查所得。

簽署

施文信

日期： 2003 年 2 月 26 日

稽核委員會成員名單

施文信先生	(主席)
胡紅玉女士	(副主席)
郭炳聯先生	(委員)

Report to the Audit Committee of the Securities and Futures Commission

February 2003



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CHAPTER 1 - EXECUTIVE SUMMARY

I. Background

The Securities and Futures Commission (“SFC”) and various other parties have received anonymous letters, starting from July 2002, alleging non-compliance on the part of the SFC in respect of certain Human Resource policies and procedures.

In the anonymous letters, the authors have attached a list of 31 individuals. These were grouped as 15 individuals who have allegedly entered the SFC through personal contacts with or referrals made to Mr. Andrew Sheng, Chairman of the SFC (hereafter referred to as Group 1) and 15 individuals who have left the SFC since Mr. Andrew Sheng assumed the Chairmanship in October 1998 (hereafter referred to as Group 2). The remaining individual is Mr. Peter Hsueh, Chief Information Officer (“CIO”) of the SFC, whose situation is dealt with separately in Chapter 5 of this report.

The Audit Committee (“AC”) of the SFC was tasked to investigate the allegations and PricewaterhouseCoopers (“PwC”) was engaged to assist the AC in this task, and to conduct a Human Resource policies and procedures compliance review on the 31 listed individuals. The Terms of Reference for this engagement are included in Appendix 1.

II. Overall Assessment

Based on the approach adopted, our overall assessment of the compliance of established Human Resource policies and procedures as applied to the 31 listed individuals are as follows:

<u>Human Resource Area</u>	<u>Staff who are part of the permanent establishment</u>	<u>Staff who are on temporary post status</u>
1. Recruitment of staff	Broadly complied	Exceptions noted*
2. Conversion of fixed term contract to continuous contract	Fully complied	Not applicable
3. Transfer of staff	Fully complied	Not applicable
4. Promotion of staff	Fully complied	Not applicable
5. Termination of staff by resignation or contract expiry	Broadly complied	Broadly complied
6. Termination of employment	Needs improvement	Not applicable

*There are no written procedures governing the recruitment and termination of staff on temporary post status other than the authorisation process as set out in Appendix 3 of this report. The assessment was based on the established procedures for staff who are part of the permanent establishment. The exceptions noted are related on certain occasions to the lack of advertisements and formal interviewing procedures.

III. Summary Findings on Key Allegations

We set out below the summary findings on the following 6 allegations which the AC considered to be more substantive ones. The detailed findings on key allegations are set out in Chapter 7 of this report.

Allegations against Mr. Andrew Sheng

1. *“In fact senior staff of the SFC have been leaving one after the other since (Mr.) Andrew Sheng took up the Chairmanship, indicating that those senior staff would rather accept remunerations at a big discount amid such an economic environment than working with him.”*

- 8 of the 15 individuals in Group 2 left during the normal course of business and hence the allegations in respect of them were unfounded. 5 individuals felt some degree of personal dissatisfaction and chose to leave. The remaining 2 individuals felt forced out of the SFC.
- In recent years the overall and executive staff turnover rate of the SFC were lower than the HK average rate published by the Hong Kong Institute of Human Resource Management except for the year ended 31 March 2001 due to buoyant market conditions in the financial services industry which were not in favour of the SFC to retaining staff.

2. *“There are altogether 16 highly paid staff employed under temporary contracts since (Mr.) Andrew Sheng took over. 7 of them came from (Mr.) Andrew Sheng’s motherland Malaysia. They include the younger sister of his wife, and the son of one of his good friends or relatives. Staff recruited under temporary contracts generally do not need to go through the stringent screening process applicable to permanent staff.”*

“Even in the case of middle ranking positions, such as manager, he would also recruit someone whom he trusts from Malaysia, with the SFC footing all the travel and accommodation bills. There should probably be many people in Hong Kong qualified for those positions.”

- The figures included in this allegation are incorrect.
- 23 executive level staff have been recruited on temporary post status since Mr. Andrew Sheng became Chairman. During the 4 years prior to Mr. Andrew Sheng joining the SFC, there were 19 executive level staff recruited on temporary post status.
- Malaysians make up 3.22% of the total executive grade staff within the SFC as of 30 November 2002. Of the 31 listed individuals in Group 1 and 2, only 5 are Malaysians.

- The SFC staff does not include the younger sister of Mr. Andrew Sheng’s wife, but does include the son of a former colleague of the Chairman and normal recruitment procedures were carried out on this individual.
- 5 prospective candidates were provided with reimbursements since Mr. Andrew Sheng became Chairman. During the 4 years prior to Mr. Andrew Sheng becoming Chairman, there were 9 cases where reimbursements were provided to overseas candidates.
- Under the present system operated by HR, staff recruited on temporary post status are not required to undergo the same procedures applicable to staff who are part of the permanent establishment. By reference to the established procedures for staff who are part of the permanent establishment, the exceptions noted are related on certain occasions to the lack of advertisements for the posts and formal interviewing procedures.

3. *“If we look back the years since (Mr.) Andrew Sheng became the Chairman, there are quite a number of senior staff who were introduced to him to join the SFC and have been converted from a temporary contract status to a permanent staff status.”*

- Of the 15 individuals in Group 1, 6 were referred to the Chairman by various parties for SFC’s consideration. 3 individuals were approached by the Chairman and 1 individual was approached by the SFC with a view to recruiting them into the SFC. 4 individuals were recruited through conventional avenues and 1 individual was recruited as a result of making enquiries to the Chairman for work opportunities during sabbatical leave.
- In the case of Mr. Peter Hsueh, he was recruited through the personal contact of the Chairman, being former colleagues at the HKMA and the World Bank.
- On the issue of conversion from temporary post status to permanent post status, 4 of the 23 executive level staff who joined since Mr. Andrew Sheng became Chairman have been converted. For comparative purpose, HR stated that during the 4 years prior to Mr. Andrew Sheng becoming Chairman, 9 of the 19 executive level staff who joined during that period were converted to permanent post status.

Allegations against Mr. Andrew Sheng in relation to the affairs of Mr. Peter Hsueh

4. *“In (Mr.) Peter Hsueh’s case, (Mr.) Andrew Sheng has obviously offered (Mr.) Peter Hsueh with personal benefits at the expense of the government’s tax revenue.”*

- We understand that enquiries on Mr. Peter Hsueh’s tax position have been raised by the Inland Revenue Department and the SFC is co-operating with this review. Given the status of these matters we are not in a position to comment further in this report.

5. *“Failing to seek the endorsement and approval of the SFC’s Management Committee in accordance with the SFC’s internal guidelines, and going beyond his authority by entering into a service contract with Longridge International Limited (a Hong Kong incorporated company controlled by Mr. Peter Hsueh) on behalf of the SFC.”*

“Under the SFC’s internal guidelines, all out-sourcing contracts involving amounts above \$150,000 are subject to the consent of the SFC’s Management Committee. However, while the service contract in question amounts to well above \$150,000, no consent for it under the Internal Guidelines was obtained from the Management Committee.”

- The Management Committee (“MC”) has a role to play in situations governing the hiring of consultants in terms of approving expenditure in excess of \$150,000. For secondees (as opposed to consultants) HR stated that MC’s approval is not required and this has been the practice of the SFC since its establishment. This is because the level of authority for the purpose for administration, financial and management functions governing secondments of professional staff is delegated to the Division Head as stipulated in the Policies and Procedures for Financial Control Manual.
- It should be noted that the terms of the Longridge agreement is a secondment arrangement and as such MC approval was not sought. Mr. Andrew Sheng as the Division Head of IT approved the secondment of Mr. Peter Hsueh.
- As the Longridge agreement involved the unusual circumstances of an exiting executive grade staff being seconded back to the SFC, it would have been desirable for the circumstances and rationale for the change in status of Mr. Peter Hsueh to be communicated internally within senior management. This could either be at the level of Executive Director or to the MC.

6. *“The service contract was signed with the SFC by Longridge on (his – Mr. Peter Hsueh) behalf providing for a remuneration package amounting to HK\$15,000 per day and HK\$3.46 million per annum on a basis of 246 working days a year.”*

- This allegation is incorrect. The figures are known to the SFC but are not released in this report due to confidentiality and personal data privacy issues.

IV. Key Recommendations of Human Resource Best Practice

We recommend that the SFC develop and implement clear and defined policies and procedures with regard to the following issues in order to remove the perception of the lack of transparency and impartiality:-

- Recruitment of staff on temporary posts (Chapter 6, section 6.2)
- Use of referrals as a staff sourcing channel (Chapter 6, section 6.3)
- Conversion of staff from temporary post to part of the permanent establishment (Chapter 6, section 6.8)
- Appointment of staff from temporary post to another temporary post (Chapter 6, section 6.9)
- Conduct staff opinion surveys on a regular basis (Chapter 4, section 4.6)
- Improvement on procedures governing termination of employment (Chapter 6, section 6.11)
- Hiring of secondees (Chapter 6, section 6.15)
- Establishment of a complaint mechanism (Chapter 6, section 6.17)
- Delegation of oversight responsibility of the Human Resource function (Chapter 6, section 6.18)

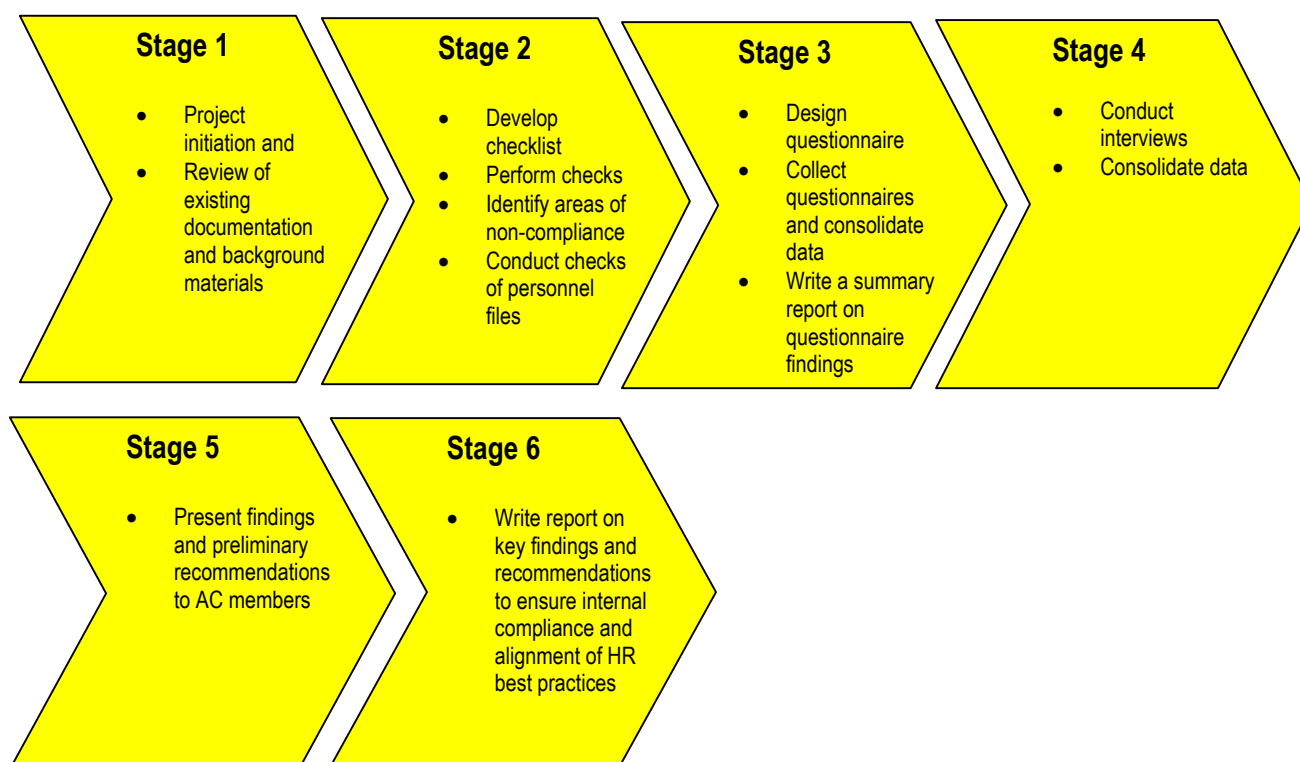
The detailed recommendations of Human Resource best practice are set out in Chapter 6 of this report.

CHAPTER 2 - SCOPE OF REVIEW

The scope of this review is limited to the 31 listed individuals as contained in the anonymous letters. As such, the contents and comments contained in this report should not be regarded as being representative of the SFC as a whole.

2.1 Methodology and Profile of Listed Individuals

PwC undertook the review work in 6 stages, as diagrammatically represented below:



The objective of Stage 1 and 2 is to provide quantitative data, to identify and investigate any areas of non-compliance with organisational policies and procedures in relation to the recruitment, employment contracts and termination of the 31 listed individuals.

The objective of Stages 3 to 6 is to provide qualitative data, as well as to provide recommendations on improvements to ensure Human Resource best practice going forward.

In this report, we covered the situation of Mr. Peter Hsueh separately and categorised the remaining 30 listed individuals into two groups.

Group 1 is a list of 15 individuals who have allegedly entered the SFC through personal contacts with or referrals made to the Chairman. For analytical purpose, this group is further sub-divided by the status of the post the individual held upon entry

into the SFC. Group 1a are 7 individuals who have joined as part of the permanent establishment whereas Group 1b are 8 individuals who have joined on temporary post status. For the individuals in Group 1, we focused on the internal compliance of the following 5 key Human Resource areas:

- Recruitment Procedures (including Temporary Staff)
- Continuous Contract
- Transfer
- Promotion
- Termination

Group 2 is a list of 15 individuals who have left the SFC after Mr. Andrew Sheng became Chairman. For the individuals in Group 2, we focused on the internal compliance of the termination procedures.

In conducting this review, PwC reviewed 39 information and personnel files of the SFC. We interviewed 23 listed individuals and analysed the completed questionnaires of 7 listed individuals who are no longer residing in Hong Kong. 1 listed individual declined to be interviewed.

10 other persons considered relevant to our review work were also interviewed by PwC.

2.2 Confidentiality and Privacy issues

In order to secure full co-operation of the individuals during the data gathering interviews so as to achieve the objectives of this review, PwC undertook to the listed individuals (except Mr. Peter Hsueh) in that any information obtained during the interview would be kept confidential and that no individual would be identified in this report. As confidential personal data has been communicated to PwC on condition of an obligation of confidence, we have amalgamated information provided by the individuals during the interviews in this report.

Given that the media has published some of the circumstances surrounding the case of Mr. Peter Hsueh, PwC has received legal advice that it would be appropriate to identify Mr. Peter Hsueh in the relevant parts of this report which specifically deal with his case. Nevertheless, a substantial amount of the information that relates to Mr. Peter Hsueh's case (for example in relation to the amount of fees payable by the SFC to Longridge) possesses the attributes of limited availability and specific character which has been communicated to the SFC in circumstances imposing an obligation of confidence. Such information also contains Mr. Peter Hsueh's personal data. The SFC and PwC will rely on the exception under section 58(2)(b) of the Personal Data (Privacy) Ordinance (Cap 486 of the Laws of Hong Kong) to justify using the personal data other than for a purpose for which the data were to be used at the time of collection since the purpose of this review is the prevention, preclusion and remedying of any alleged malpractice at the SFC.

CHAPTER 3 - SUMMARY OF FINDINGS FOR GROUP 1 INDIVIDUALS

During our review of the personnel files of the 15 listed individuals in Group 1, we focused on the internal compliance of the following 5 key Human Resource areas:

- Recruitment Procedures (including Temporary Staff)
- Continuous Contract
- Transfer
- Promotion
- Termination

A summary of the recruitment procedures for Group 1 individuals is set out in Appendix 4.

3.1. Recruitment Procedures

The HR policy states that there are 7 steps in the established recruitment procedures, which are:

1. Recruitment Request
2. Sourcing of Applicants
3. Interview Procedures
4. Offer of Employment
5. Pre-employment Verification
6. Signing of Contract
7. Commencement of Employment

3.1.1 Recruitment Request

The HR policy states that:

“When a vacancy arises due to resignation, transfer or addition in headcount, the Division / Department Head can put forth a request to Human Resources to initiate the recruitment process.”

The recruitment request is mainly submitted through the completion of the Employee Requisition Form or the Temporary Staff Requisition Form. HR stated that in practice other methods e.g. verbal request, memo and email could also be used; however, these are not always documented and filed in the records.

To determine the status of the post (i.e. whether the post is part of the permanent establishment or a temporary post), we referred to the requisition form - Employee Requisition Forms for staff who were recruited as part of the permanent establishment, and Temporary Staff Requisition Forms for staff recruited on temporary post status (refer to Appendix 3 for definition of temporary staff).

HR stated that another method of determining the status of the post which an individual is holding is through the “Staff Position Paper” which is submitted to the MC each month.

3.1.1a Employee Requisition Form

Of the 7 individuals in Group 1a, we found 2 cases where we were unable to locate any records of the request in the personnel files at the time of our review. HR stated that staff requests were not always documented and filed in the records.

In summary, the submission and filing of Employee Requisition Forms were in the main adhered to.

3.1.1b Temporary Staff Requisition Form

Of the 8 individuals in Group 1b, we found 2 cases where we were unable to locate any records in the personnel files at the time of our review. In one of these cases, a Temporary Staff Requisition Form was submitted to HR for this individual’s second contract but not for the first.

In summary, the submission and filing of the Temporary Staff Requisition Form were in the main adhered to.

RECOMMENDATION

Irrespective of whether a requisition form (i.e. Employee Requisition Form or Temporary Staff Requisition Form) or another method is used, the staff request should be noted and filed in the relevant personnel file for record keeping purposes.

3.1.2 Sourcing of Applicants

Prior to June 2002, the HR policy states that to fill a vacancy, HR can adopt any of the following approaches: -

- Review the waiting list maintained by the SFC;
- Review internal manpower resources or possible staff transfer or rotation;
- Advertise internally;
- Advertise externally in the media; and
- Approach reputable and effective recruitment consultancy firms or recruitment agencies.

These five methods of sourcing are printed on the Employee Requisition Form for marking to indicate the approach adopted. However, this part of the form was usually not completed by HR and was found to be incomplete for all 7 individuals in Group 1a. Additionally, there is no provision in the Temporary Staff Requisition Form to determine how sourcing was conducted for staff on temporary post status.

In June 2002, the HR policy was revised to include referrals as a recruitment technique. This is an issue of contention in the anonymous letters which allege that all individuals in Group 1 have joined the SFC through personal contacts with or referrals made to the Chairman. We asked the individuals in Group 1 as to the circumstances leading to their joining the SFC in the data gathering interview stage.

For the 7 individuals in Group 1a, 2 individuals joined the SFC through the referral of a former colleague of the Chairman. 1 individual was approached by the SFC to apply for a position. The remaining 4 individuals joined the SFC through conventional avenues.

For the 8 individuals in Group 1b, 4 were introduced and referred to the Chairman from various sources. 2 individuals were former colleagues of the Chairman and 1 individual had past working relationships with the Chairman. All 3 were approached by the Chairman to join the SFC. 1 individual was recruited having approached the Chairman informally and enquired about suggestions regarding work opportunities during this person's sabbatical leave.

During the period from June 1994 to November 2002, HR stated the SFC had used referrals as a sourcing channel for 27 other staff.

In summary, the approaches adopted to source applicants including referrals were in line with normal and commonly used recruitment techniques in many organisations.

RECOMMENDATION

The SFC should consider implementing a system to record the recruitment channels of successful candidates to determine the most effective sourcing channels for vacant positions. This will help to save costs by focusing on and using the recruitment channels which have been the most successful in the future.

Furthermore, there are currently no procedures governing the use of referrals as a sourcing technique. Referrals should ideally be used in conjunction with other recruitment channels to ensure that the most suitable candidate is offered the position. Additionally, formal interview and assessment procedures should be conducted and recorded in the personnel file.

3.1.3 Interview Procedures

The HR policy states that:

“the objective of pre-employment screening by HR and / or by a panel of interviewers is to ensure impartiality and consistency”.

As part of our review, we examined whether interviews had been conducted for individuals from Group 1 prior to their employment with the SFC.

During our data gathering interviews, we determined that 6 out of the 7 individuals in Group 1a were interviewed, and this was confirmed by the individuals and the

relevant supervisors. As for the individual who declined to be interviewed for this report, this person's supervisor confirmed that an interview had taken place.

For the 6 individuals that were interviewed we found records of interviews in the personnel files for 4 cases only at the time of our review. In the other 2 cases, both individuals were recruited through open recruitment.

In Group 1b, we found no information in the personnel files of the 8 individuals at the time of our review regarding being interviewed prior to joining the SFC. During our data gathering interviews, we determined that all 8 individuals were interviewed either formally or informally. However, records were not always kept as the interviewing supervisor did not always make notes or fill out the necessary forms during the interviews.

HR stated that individuals who join the SFC on temporary post status are not required to undergo the panel interviewing process. The HR policy does not have any formal procedures governing the recruitment of staff on temporary post status, other than as set out in Appendix 3 of this report.

In summary, there were cases of lack of record keeping in the personnel files with regard to the interviewing procedures. However, all individuals from Group 1 were interviewed either formally or informally prior to their employment with the SFC.

RECOMMENDATION

Formal interviews should be conducted for all positions within the SFC, regardless of whether the post is part of the permanent establishment or temporary. Completion of the interview assessment form should be a compulsory part of the interview procedures. The completed form should be filed in the personnel file as validation of the interviewing process.

In the case of a single applicant and where a supervisor holds multiple positions in the interviewing process, it is advisable to have a selection panel or a supervisor from another division to participate in the interviewing process so that the hiring decision is shared.

3.1.4 Offer of Employment

The HR policy states that:

“Before an offer of employment is made, Division Heads will agree with Human Resources the grade level and the salary to be offered”.

HR stated that the offer of employment is usually effected by the submission of the Offer of Authorisation Form. Only one signature is required on the Offer of Authorisation Form provided that it is the highest level of approval.

In view of the forthcoming departure of the then Deputy Chairman, the Chairman issued an internal memo in January 2001 outlining the changes to be made to the approval levels. For senior manager grade and below, the highest approval level is to

be the Division Head. For director and senior director level, the highest approval level is to be the Chairman.

We found that 14 of the 15 listed individuals in Group 1 had the Offer of Authorisation Forms filed in the personnel files at the time of our review. We also noted that there was only 1 case where the Employee Requisition Form was completed in advance of the Offer of Authorisation Form. In most other cases, the two forms were dated on the same day.

In summary, the submission of the Offer of Authorisation Forms was satisfactory.

RECOMMENDATION

HR should have a system in place to ensure that the requisition forms are completed and submitted prior to processing the Offer of Authorisation. This would result in the recruitment procedures being conducted in the right sequence and enhance transparency of the process.

3.1.5 Pre-employment Verification

The HR policy states that all prospective employees must go through pre-employment verification. This verification process includes the following:

- 1. Medical Examination** - Prior to signing of the employment contract, a prospective staff is required to attend a pre-employment medical examination. Confirmation of appointment is subject to the receipt of a satisfactory medical report from doctors appointed by the SFC. Temporary staff with an employment period of less than 3 months are not required to undergo pre-employment medical examination.
- 2. Vetting** - For all staff, confirmation of appointment is subject to satisfactory completion of vetting procedures. Vetting checks are conducted by the Independent Commission Against Corruption (“ICAC”) and the Hong Kong Police Force (“Police”). However, this vetting procedure does not cover potential staff who either do not have HKID numbers or are not Hong Kong residents.
- 3. Reference Checks** - Reference checks should be conducted as part of the pre-employment verification. The HR policy states that the role of HR is to conduct reference checks where appropriate on suitable prospective candidates.

For the 15 listed individuals in Group 1, medical examinations were conducted on 12 individuals as pre-employment verification procedures. HR stated that the remaining 3 individuals were initially recruited for short term employment and fringe benefits were not offered. 2 of these individuals were later provided with longer contracts and subsequently underwent medical examinations as required for medical and life insurance. The remaining individual was only hired for a short duration (i.e. 6 months) during this person’s sabbatical leave. This individual’s medical benefits

continued to be covered by the primary employer which was a local academic institute.

ICAC vetting checks were fully completed for all 15 individuals in Group 1. Police vetting checks were fully completed for 12 individuals in Group 1, except for 3 individuals who did not reside in Hong Kong for the 5 years prior to the police vetting.

We also found that reference checks were conducted for individuals in Group 1 except for 2 cases. Both these individuals were hired directly from local academic institutions on temporary post status. HR stated that these 2 individuals were reputable figures in their respective fields and were hired during their sabbatical leave. As such, it was determined that there was no apparent need to conduct reference checks prior to their recruitment.

In summary, pre-employment verification procedures were in the main adhered to.

RECOMMENDATION

HR should note the reasons for any exceptions to the pre-employment verification procedures in the personnel file for record keeping purposes.

3.1.6 *Signing of Contract*

Upon receipt of satisfactory pre-employment medical report and other vetting checks, the prospective candidate will be invited to sign the employment contract.

During our review, we sighted copies of the employment contracts in the personnel files for all 15 listed individuals in Group 1. They were all approved and signed by the relevant parties.

In summary, procedures for signing of employment contracts were adhered to.

3.1.7 *Commencement of Employment*

The HR policy states that all new employees (except for short-term staff) will attend an induction programme organised by the Training and Development Department (“T&D”), to understand the mission, structure and culture of the SFC, and the terms and conditions of employment.

In many cases we found no information in the personnel files regarding the attendance at the induction course. HR subsequently provided us with an invitation and attendance list of the relevant individuals to the induction course. From this additional information we noted that most individuals in Group 1 had attended the induction course. There were 2 cases whereby the individuals were invited but did not attend and 1 case where no records were found for the invitation or attendance at the induction course. HR stated that all new staff are usually invited to attend the induction course but staff may not be able to attend due to workload or other commitments. They are then invited to a subsequent induction course but there could

be a long time lapse and staff may not see the need to attend the induction course at that stage.

In summary, procedures governing the induction programme were in the main adhered to.

RECOMMENDATION

The HR policy should include a mechanism whereby staff members need to advise their Division Heads as to the reasons for not attending the induction course and obtain approval for non-attendance. Once approval has been obtained, another invitation to a subsequent induction course should be sent to the individual by T&D as soon as practicable.

As these courses are not held regularly, consideration should also be given to interim measures to deal with situations whereby an employee has to wait for an extensive period before being enrolled onto the next scheduled induction course.

3.2 *Continuous Contract*

A continuous contract is not a fixed term contract as it is not bound by an expiry date. The employment may be terminated by either party (i.e. employee or employer) with sufficient notice period provided or payment in lieu.

Continuous contracts are offered to executive grade staff who have met the following requirements:

- a) Successfully completed at least one year of employment with the SFC;
and
- b) Recommended for long-term employment by their Division or Department Heads.

The offer of continuous contracts to executive grade staff was suspended in November 2001 and subsequently all new staff were only offered fixed term contracts (either as part of the permanent establishment or temporary post status).

Only 4 individuals from Group 1a were offered continuous contracts. 3 of these individuals have met all the necessary requirements to convert from fixed term contract to continuous contract for executive grade staff. The remaining individual was hired as a general grade staff on a continuous contract from the first day of employment.

HR stated that for general grade staff, continuous contracts could be offered with a 3 month probation period. The offer of continuous contracts to general grade staff was suspended in July 2000.

There were no cases of continuous contracts being offered to individuals from Group 1b.

In summary, all the necessary requirements to convert fixed term employment contracts to continuous contracts were complied with.

3.3 *Transfer*

A member of staff may be transferred from one post to another for the purpose of staff development, administrative or operational reasons. A transfer normally refers to a horizontal move within the SFC and will usually not result in any change of grade level, remuneration and benefits.

There are two types of transfer as described below:

3.3.1 *Employee Initiated Transfer*

Any request made by an employee for transfer to a similar position in another division may be accepted if there is a vacancy in the receiving division, and the transfer is agreed by the Division Heads concerned.

There was only 1 case of employee initiated transfer in Group 1. The individual applied to HR for the post of Manager in another division following the posting of an internal advertisement. All the necessary transfer procedures were met on that occasion.

3.3.2 *SFC Initiated Transfer*

Any transfer initiated by the SFC must have the agreement of the relevant Division Heads. The Head of the receiving division, or his delegate, shall notify the details in writing, including a statement that the transfer had been discussed with the employee, to HR before the transfer can take place.

We have identified 2 cases of SFC initiated transfers in Group 1. Both cases were found to be compliant on procedures.

In summary, the policies and procedures governing the transfer of staff were complied with.

3.4 Promotion

The HR policy states that a recommendation for promotion has to be approved in accordance with the following procedures:

Approval Level for Promotion

	APPROVAL LEVEL				
Staff Grade	Associate Director - HR	Directorate Staff	Division Head	Deputy Chairman	Chairman
Director and Senior Director			Recommendation	Endorsement	Approval
Senior Manager and Associate Director			Approval	Approval	
Manager		Recommendation	Approval	Endorsement	
Officer / General Grade	Endorsement	Recommendation	Approval		

“Exceptions to the above promotion procedures have to be approved by the Chairman and Deputy Chairman” (The Deputy Chairman post has been vacant since March 2001).

From 23 August 2000, the HR policy states that all vacancies and promotions for the posts of senior manager level and above must be internally advertised. In the case where there is only a single internal applicant for the post advertised, no promotion panel needs to be convened if the Division Head and Chairman agree that this candidate meet the requirements of the post. If there is more than one applicant, a selection panel will be formed to interview the candidates.

There were 3 cases of promotion from Group 1a and 2 cases of promotion from Group 1b. All cases were found to be compliant.

In summary, the necessary approval procedures prevailing at the time of these 5 promotions were adhered to.

3.4.1 Conversion from Temporary Post to Permanent Establishment

HR stated that conversion of staff by way of appointment from temporary post status to part of the permanent establishment occur within the SFC. However, once staff become part of the permanent establishment (permanent staff), any future progression of grades is considered a promotion and the procedures relating to promotion were applied. It should be noted that appointments can also occur from temporary post status to temporary post status, which will be discussed in the following section.

During our review we noted that 2 individuals in Group 1b were converted mid-way through their existing contracts.

HR advised us that there were 9 cases of conversions prior to Mr. Andrew Sheng becoming Chairman.

Within the HR policy, the issue of conversion is neither precluded nor specific rules established to govern the process. Furthermore, HR stated that temporary posts are not provided with a grading structure. It is only when a staff converts from a temporary post status to part of the permanent establishment that a grade is assigned to the relevant post. As such, conversions should not be considered as promotions as temporary posts are not graded.

Although no formal interviews were undertaken at the time of the conversions we were advised by HR and confirmed during our data gathering interviews that consultation between Executive Directors took place prior to these conversions. Once the status of these individuals changed to become part of the permanent establishment, procedures governing promotion were adhered to when they were further promoted at a later stage.

In summary, the lack of formal procedures governing conversion from temporary post status to part of the permanent establishment have led to the emergence of issues relating to the perceived lack of transparency and impartiality of the system.

RECOMMENDATION

We recommend that when an individual is converted from a temporary post to part of the permanent establishment, the procedures for promotion should be conducted.

A grading system for temporary staff should be structured based on the existing grading structure to facilitate internal benchmarking and equity.

3.4.2 Appointments from Temporary Post to Another Temporary Post

HR stated that temporary posts do not have a grading structure, and therefore appointment of staff on a temporary post status to another cannot be considered a promotion.

During our review we noted that one individual from Group 1b had been appointed from a temporary post status to another temporary post status with a different title.

In summary, the lack of formal procedures governing the appointment of staff from temporary post status to another temporary post status may have led to the emergence of issues relating to the perceived lack of transparency and impartiality of the system

RECOMMENDATION

A grading system for temporary posts should be structured based on the existing grading structure to facilitate internal benchmarking and equity. This would be desirable for staff who are subsequently appointed to positions which could potentially be regarded to be at levels higher than the former posts.

3.5 Termination Procedures

The HR policy states that exit interviews will normally be conducted (except for Executive Directors) other than for reasons of termination on the grounds of poor performance or disciplinary action.

We found 4 cases of termination of employment, 1 case from Group 1a and 3 cases from Group 1b. HR stated that there are no termination procedures for staff on temporary post status. Please refer to Appendix 4 for the definition of the types of termination of employment and associated procedures.

For case 1, from Group 1a, there was no exit interview form in the personnel file at the time of our review. HR stated that this particular individual had agreed with the Division Head to waive the notification period for termination of employment due to personal reasons. The reason for departure was already made known to the SFC and therefore an exit interview was considered unnecessary.

For case 2 from Group 1b, there was no evidence in the personnel file that HR had informed this person 3 months before the expiry date of the individual's 6 month contract. HR stated that this was due to the short duration of the contract. This individual was working at the SFC during their sabbatical leave and since the reasons for departure were well known to the SFC, it was considered unnecessary to complete an exit interview.

For case 3 from Group 1b, HR sent a memo to this individual through the Division Head, 3 days before the expiry date of the contract. This individual had worked for a total of 1 year at the SFC (two 6 month contracts) at the time of departure, and an exit interview was conducted for this individual.

For case 4 from Group 1b, HR sent a memo to this individual 13 days before the expiry of the contract. This individual had completed the contract and at the time of departure was completing a 1 month contract extension. Due to the short duration of the contract extension, the stipulated 3 month notification period was not practicable. Additionally, no exit interview was conducted for this individual.

In summary, there was 1 case where there was no exit interview conducted for Group 1a. For cases 2 to 4, all individuals were on temporary post status and short-term employment, such as sabbatical leave, project basis and personal reasons. In these situations advance notification of contract expiry would seem impracticable.

RECOMMENDATION

In good practice, the SFC should develop and implement policies and procedures for the termination of staff on temporary post status, or HR should implement as far as possible the same policies and procedures applicable for the termination of staff who are part of the permanent establishment.

Exit interviews should be conducted on/or prior to the last day of employment, and the relevant exit interview forms should preferably be signed by the exiting staff member to evidence the satisfactory completion of the established procedures. Any exceptions should be noted and filed in the relevant personnel file.

CHAPTER 4 - SUMMARY OF FINDINGS FOR GROUP 2 INDIVIDUALS

During our review of the personnel files of the 15 individuals in Group 2, we focused on the internal compliance of the termination procedures.

To recap, there are 4 types of termination of employment (refer to Chapter 3, section 3.5):

- Resignation
- Contract Expiry
- Retirement
- Termination on the Grounds of Poor Performance

4.1 Termination Procedures

As mentioned, the HR policy states that exit interviews will normally be conducted (except for Executive Directors) other than for reasons of termination on the grounds of poor performance or disciplinary action.

For the 15 individuals in Group 2, we located the exit interview forms for the 10 individuals who had tendered their resignations in the personnel files. Upon reviewing the exit interview forms we noticed on 2 occasions, the form had been signed by HR rather than the relevant individual. HR stated that the policy does not specify which party should sign the exit interview form.

The exit interview form was not applicable to the remaining 5 cases as 4 individuals at Executive Director level left due to contract expiry. 1 individual departed due to termination of employment on the grounds of poor performance.

In summary, the procedures governing exit interviews were complied with.

RECOMMENDATION

The exit interview form should preferably be signed by the exiting staff member to evidence the satisfactory completion of the established procedures.

4.2 Resignation

10 of the 15 individuals in Group 2 terminated their employment with the SFC by tendering their resignations. The information in the personnel files evidenced that HR undertook the established procedures for all these 10 individuals.

In summary, the procedures for termination of contract in relation to resignation were complied with.

4.3 Contract Expiry – Executive Directors

All 4 cases in Group 2 related to Executive Directors. HR sent a notification of contract expiry in 3 of the 4 cases. In 1 case, no notification of contract expiry was found in the personnel file at the time of our review. However, this individual had already notified the SFC of the intention to leave 6 months prior to the contract expiry date.

In summary, the procedures governing termination due to contract expiry were complied with.

4.4 Retirement

There was no such case for the individuals in Group 2.

4.5 Termination of Employment

There was 1 case in Group 2 where an individual's employment was terminated over concerns by management covering performance and communication issues. We have sighted an email which was sent from this person's supervisor to HR to arrange a meeting to discuss the actions required. We have further sighted an internal memorandum indicating the areas for improvement were discussed between the individual and supervisor. However, no subsequent records of whether any agreed development plans with related measurable outputs were found at the time of our review.

In summary, the policy and procedures governing this particular termination as stipulated in Appendix 4 of this report were in the main complied with. However, there is room for improvement in terms of the approach and steps taken which would enhance the robustness and transparency of the termination process.

RECOMMENDATION

All meetings with regard to staff with poor performance should be acknowledged by the relevant individual and recorded in the personnel file. Additionally, specific development actions with measurable outputs should also be agreed, recorded and filed. The consequences of not performing up to the required standards should be clearly articulated.

Enhanced termination procedures on the grounds of poor performance should be developed and implemented. An example of this is to issue formal warning letters prior to termination.

Performance appraisal ratings should be reflective of an individual's performance in order to communicate a clear message on actual performance and development needs.

4.6 Reasons for Leaving the SFC

The anonymous letters alleged that many senior people have left the SFC since the Chairman joined in October 1998. During our review, we cross checked the comments recorded on the exit interview forms with the information obtained during our data gathering interviews and questionnaires. Our findings are:

Of the 15 listed individuals in Group 2, 8 individuals left the SFC during the normal course of business. Of the remaining 7 individuals, 3 individuals stated different reasons for leaving the SFC when compared to what were disclosed on the exit interview forms, 1 individual stated the same reasons for both. 2 individuals did not state the reason for leaving the SFC on the exit interview forms, and 1 individual was terminated and was not required to complete an exit interview form.

For the 7 individuals who left for reasons other than during the normal course of business, 5 individuals expressed some degree of dissatisfaction and chose to leave. The other 2 individuals felt forced out of the SFC.

In summary, we have identified instances where the exiting staff did not accurately disclose the reasons for leaving the SFC during the exit interviews. However, it should be acknowledged that the exiting staff have full prerogative in this matter.

RECOMMENDATION

Given the number of individuals who did not express their fundamental reasons for leaving the SFC during the exit interview process, HR should bear this situation in mind and do their best to encourage the frank disclosure of views for the betterment of the SFC.

A staff opinion survey should be conducted at an appropriate time to determine the existence of any key areas of satisfaction and discontentment within the SFC, so that appropriate measures, if needed, can be implemented. Staff opinion surveys should be conducted on a regular basis, e.g. once every 2 years.

CHAPTER 5 - REPORT ON MR. PETER HSUEH

5.1 Background

In November 1998 an external Information Technology (“IT”) consultancy review recommended that a Chief Information Officer (“CIO”) should be appointed to oversee the IT strategic direction and IT action plan as well as to enhance the IT structure of the SFC.

To fulfil this identified need, the SFC eventually hired Mr. Peter Hsueh for the post of CIO. Mr. Peter Hsueh joined the SFC from the Hong Kong Monetary Authority (“HKMA”) where he had previously worked with the Chairman.

The table below shows the different employment / secondment contracts that Mr. Peter Hsueh had with the SFC.

Employment / Secondment Contracts for Mr. Peter Hsueh

Contract	Contract Period (Fixed Term)	Post Status	Date Signed
A.	14 Jan. 99 – 13 Jan. 01	Initially recruited as temporary staff in addition to permanent establishment. As of May 1999, the post status was converted to part of the permanent establishment.	8 Dec. 98
Addendum to A.			23 Mar. 00
B.	1 Apr. 00 – 31 Mar. 01	Continued to be part of the permanent establishment.	11 Apr. 00
C.	1 Apr. 01 – 31 Mar. 03	Seconded under the Longridge agreement*	21 Feb. 01

* Longridge is a Hong Kong incorporated company controlled by Mr. Peter Hsueh.

5.2 Summary of findings in respect of Contract A and B

5.2.1 Budget Confirmation Request Form

The post of CIO was not yet formally established when Mr. Peter Hsueh was hired by the SFC in December 1998. A Budget Confirmation Request Form (“BCR”) for the first employment contract was signed on 7 December 1998 by the Division Head of IT and the Chairman for the post of CIO. The financial implications involved were to be expended out of the Budget vote of “Professional and Others – External Professional Services” as there was no budget available from the approved establishment at that time.

In summary, the BCR was rightly raised as the expenditure was to be expended under the “Professional and Others – External Professional Services”.

5.2.2 Staff Requisition Form

A Temporary Staff Requisition Form was submitted for Contract A on 7 December 1998 to cover the period from 14 Jan. 1999 to 13 Jan. 2001. The form was signed by the Division Head of IT and countersigned by the Chairman.

Mr. Peter Hsueh initially joined the SFC as a “temporary staff in addition to the permanent establishment”. As such, the approval of the Chairman was obtained for the financial commitment as required under established procedures. Upon the formal establishment by the SFC Board of the CIO post in May 1999, the status of Mr. Peter Hsueh was converted to part of the permanent establishment and the salary was paid from Personnel Expenses.

There was no record of a staff request when the post was changed from temporary to being part of the permanent establishment. HR stated that this was due to the fact that Mr. Peter Hsueh was already occupying the post and recruitment of new candidates was not necessary.

In summary, this area was complied with.

5.2.3 Sourcing of Applicants

The recruitment channel for the position of CIO was personal referral by the Chairman, who had previously worked with Mr. Peter Hsueh at the HKMA and the World Bank. There was no information in the personnel file to suggest that other recruitment channels were used for this post. Mr. Peter Hsueh was the single candidate for the post of CIO.

A Selection of External Consultants Form was completed for Mr. Peter Hsueh and submitted for Contract A on 7 December 1998 which documented the reason as to why a single candidate approach was used on that occasion.

According to the Chairman, it was a challenging task to source an individual who was competent on the IT front and yet familiar with systems work in a regulatory environment. The Chairman considered that Mr. Peter Hsueh possessed such attributes based on past working experiences. Given the urgent need to have a CIO in the SFC, the Chairman made an approach to the HKMA for Mr. Peter Hsueh to join the SFC. During our data gathering interviews, we received many positive comments on Mr. Peter Hsueh's ability and contributions to the advancement of IT within the SFC.

In summary, the use of personal referral by the Chairman as the sourcing technique was reasonable under the circumstances.

5.2.4 Employment of Staff over the Retirement Age of 60

HR stated that there are no procedures or policies governing the recruitment of staff on temporary posts who are over the normal retirement age. In practice HR follows the same guidelines as those for termination of employment under normal retirement which states that:

“An employee shall retire upon attaining 60 years of age unless an extension is agreed between the Commission and the Employee”

Mr. Peter Hsueh was over the normal retirement age when he joined the SFC. However, his extensive IT experience and expertise in a regulatory environment was considered to be most relevant to fulfil the manpower need of the SFC and he was offered the position of CIO.

In summary, this was an uncommon case whereby an executive grade staff whose age was older than the normal retirement age of the SFC at the time of recruitment. However, the need to recruit a person with the right skills set made the recruitment reasonable under the circumstances.

RECOMMENDATION

Policies and criteria should be set to govern the hiring of an employee over the SFC's normal retirement age of 60. Before the employee is hired, the individual needs to go through proper recruitment procedures e.g. interview, reference check, medical examination, offer of appointment...etc.

5.2.5 Interview

There was no evidence in the personnel file at the time of our review to suggest that any formal panel interview had been conducted. During our data gathering interview, Mr. Peter Hsueh said that he was interviewed by the Chairman and this statement was also confirmed by the Chairman. As there are no established procedures for the recruitment of staff on temporary post status, a formal panel interviewing process was not conducted in practice.

In summary, an informal interview was conducted at the time of recruiting Mr. Peter Hsueh but this was not documented in the personnel file.

5.2.6 Offer of Employment

For Contract A, the Offer of Authorisation was signed by both the Deputy Chairman and Chairman of the SFC on 5 and 7 December 1998 respectively.

For Contract B, the Offer of Authorisation Form was signed by both the Deputy Chairman and Chairman on 11 April 2000.

In summary, the procedures governing the Offer of Authorisation Forms were adhered to.

5.2.7 Pre-employment Verification

Vetting by ICAC and the Police as well as medical examination procedures were conducted for Mr. Peter Hsueh.

However, there were no reference letters in the personnel file. HR stated that written references were not considered necessary in this case as there was positive assessment by the Chairman on Mr. Peter Hsueh's capabilities and performance as they had both worked together at the HKMA and the World Bank.

In summary, the pre-employment verification procedures were in the main complied with.

5.2.8 Commencement of Employment

Mr. Peter Hsueh was invited but was unable to attend the induction course held on 22 September 1999.

5.2.9 Conversion from Temporary Post Status to Permanent Establishment

Mr. Peter Hsueh's status was converted to part of the permanent establishment in May 1999.

Currently, there are no formal policies or procedures governing the change of employees' status from staff on temporary posts to part of the permanent establishment.

In summary, the lack of formal procedures governing conversion from temporary post status to part of the permanent establishment have led to the emergence of issues relating to the perceived lack of transparency and impartiality of the system.

5.2.10 Termination Procedures

There was no letter of resignation, or notification from HR to inform Mr. Peter Hsueh that Contract A was terminated, prior to signing Contract B. HR stated that they had verbally informed Mr. Peter Hsueh of the termination of Contract A, and that it would be replaced by Contract B.

HR sent a notification letter to advise him of the expiry of Contract B 3 days prior to the date of expiry instead of the stipulated 3 months notification period, as required for termination due to contract expiry.

No exit interview form was completed when Mr. Peter Hsueh left the SFC as an employee prior to being seconded back to the SFC under the Longridge agreement commencing 1 April 2001.

In summary, we noted certain areas of non-compliance with termination procedures but these points were not of major significance.

5.2.11 Contract Renewal

We noted that in Mr. Peter Hsueh's case Contract B started 1 year and 3 months after the commencement of Contract A. HR confirmed that although Mr. Peter Hsueh was technically holding two contracts concurrently, albeit for a short period, there was no adverse financial implications as a result. HR stated that they had verbally informed Mr. Peter Hsueh of the termination of Contract A, and that it would be replaced by Contract B.

RECOMMENDATION

Tighter control should be exercised when the employee's contract is renewed to ensure the next contract does not overlap with the previous one.

5.3 Agreement with Longridge to second Mr. Peter Hsueh

5.3.1 Background

Up to 31 March 2001 Mr. Peter Hsueh was an employee of the SFC holding the position of Chief Information Officer (“CIO”).

Given his age and the progress made on various IT projects at the SFC by 2001, Mr. Peter Hsueh wished to reduce his workload and eventually retire. With this scenario in mind, Mr. Peter Hsueh approached the SFC when his term of office under Contract B was coming to an end to discuss the way forward.

The idea of a secondment from Longridge was discussed and HR considered this approach to be in order as there had been precedent cases of similar secondment arrangements. Mr. Peter Hsueh was of the view that the Longridge arrangement would meet his objective as well as reducing the expenditure of the SFC.

The agreement between the SFC and Longridge was signed on 21 February 2001 by Mr. Andrew Sheng and Mr. Peter Hsueh representing the SFC and Longridge respectively. The agreement with Longridge was for the secondment of Mr. Peter Hsueh for an intended period of two years subject to being terminated by either party with 3 months notice.

Under the circumstances, the SFC had to embark on the process of recruiting a replacement CIO. However, this process has yet to be completed. A letter was sent on 7 March 2001 by the Chairman requesting Mr. Peter Hsueh to continue serving in the post of CIO at the start of the secondment until a permanent CIO is recruited. Mr. Peter Hsueh was asked not to take on any other consultancy work during this period.

As of 1 April 2001, the status of Mr. Peter Hsueh changed to being a secondee from Longridge in the capacity of Information Technology Advisor. Within the SFC, the fees payable to Longridge continued to be paid from Personnel Expenses (charged against the CIO approved headcount). The cheques for payment were prepared by HR and then presented to the authorised signatories for signature.

5.3.2 Hiring of Secondees

HR stated that the secondee position is held against a vacant permanent post. There are no formal HR procedures governing the hiring of secondees, other than the reference to the authorisation level as stipulated in the Policies and Procedures for Financial Control. It states that the level of authority required for the purpose of administration, financial and management functions is the Division Head for the secondment of professional staff. In Mr. Peter Hsueh’s case, Mr. Andrew Sheng was the Division Head of IT at the relevant time of finalising the secondment arrangement.

In summary, the authorisation procedures practiced by the SFC in the hiring of secondees were followed.

RECOMMENDATION

HR should implement formal policies and procedures to govern the secondment of staff including the situation involving exiting staff. The related tax issues have to be fully taken into consideration as part of the overall process as well.

5.3.3 Service Fee

In summary, the daily rate used was in alignment with the rate used by another secondee which the SFC had engaged previously.

RECOMMENDATION

In determining the service fee for a secondee, reference should be made to readily available market data to ensure that the agreed fee or rate is in line with general market conditions.

5.3.4 Approval Process

There was no information in the personnel file at the time of our review to indicate that the MC was made aware of the change in the status of Mr. Peter Hsueh from an employee to a secondee from Longridge.

The MC has a role to play in situations governing the hiring of consultants in terms of approving expenditure in excess of \$150,000. For secondees (as opposed to consultants) HR stated that MC's approval is not required and this has been the practice of the SFC since its establishment. This is because the level of authority for the purpose for administration, financial and management functions governing secondments of professional staff is delegated to the Division Head as stipulated in the Policies and Procedures for Financial Control Manual.

It should be noted that the terms of the Longridge agreement is a secondment arrangement and as such MC approval was not sought. Mr. Andrew Sheng as the Division Head of IT approved the secondment of Mr. Peter Hsueh.

The Chairman had not received contrary advice from any SFC staff regarding a need to obtain approval from the MC, as the Longridge agreement was similar to past secondment arrangements which were only approved by the respective Division Heads and payments were charged under Personnel Expenses.

5.3.5 Overall Comments

The crux of the issue is whether the Longridge agreement is one of secondment or consultancy. As stated earlier the Longridge agreement is a secondment arrangement.

As the SFC has no formal HR policies and procedures governing secondments other than the reference to the authorisation level as stipulated in the Policies and Procedures for Financial Control, the approach adopted in precedent cases were therefore relied upon and followed in this case.

As the Longridge agreement involved the unusual circumstances of an exiting executive grade staff being seconded back to the SFC, it would have been desirable for the circumstances and rationale for the change in status of Mr. Peter Hsueh to be communicated internally within senior management. This could either be at the level of Executive Director or to the MC.

CHAPTER 6 - RECOMMENDATIONS OF HUMAN RESOURCE BEST PRACTICE

Based on the findings of the review work, we summarised below the recommendations as outlined in the earlier Chapters that would promote Human Resource best practice going forward.

6.1 Recruitment Request (Chapter 3, section 3.1.1)

Irrespective of whether a requisition form (i.e. Employee Requisition Form or Temporary Staff Requisition Form) or another method is used, the staff request should be noted and filed in the relevant personnel file for record keeping purposes.

6.2 Recruitment of Staff on Temporary Post Status (Chapter 3, section 3.1- 3.4)

While the HR policy provides a definition of temporary staff and the different types of situations that apply to temporary posts, there are no policies and procedures governing the recruitment of staff on temporary post status other than as set out in Appendix 3 of this report. We recommend that the SFC develop and implement policies and procedures to govern the recruitment of staff on temporary post status to enhance transparency and impartiality in the recruiting process.

6.3 Sourcing of Applicants (Chapter 3, section 3.1.2)

The SFC should consider implementing a system to record the recruitment channels of successful candidates to determine the most effective sourcing channels for vacant positions. This will help to save costs by focusing on and using the recruitment channels which have been the most successful in the future.

Furthermore, there are currently no procedures governing the use of referrals as a sourcing technique. Referrals should ideally be used in conjunction with other recruitment channels to ensure that the most suitable candidate is offered the position. Additionally, formal interview and assessment procedures should be conducted and recorded in the personnel file.

6.4 Interview Procedures (Chapter 3, section 3.1.3)

Formal interviews should be conducted for all positions within the SFC, regardless of whether the post is part of the permanent establishment or temporary. Completion of the interview assessment form should be a compulsory part of the interviewing procedure. The completed form should be filed in the personnel file as validation of the interviewing process.

In the case of a single applicant and where a supervisor holds multiple positions in the interviewing process, it is advisable to have a selection panel or a supervisor from another division participate in the interviewing process so that the hiring decision is shared.

6.5 Offer of Employment (Chapter 3, section 3.1.4)

HR should have a system in place to ensure that the requisition forms are completed and submitted prior to processing the Offer of Authorisation. This would result in the recruitment procedures being conducted in the right sequence and enhance transparency of the process.

6.6 Pre-employment Verification (Chapter 3, section 3.1.5)

HR should note the reasons for any exceptions to the pre-employment verification procedures in the personnel file for record keeping purposes.

6.7 Commencement of Employment (Chapter 3, section 3.1.7)

The HR policy should include a mechanism whereby staff members need to advise their Division Heads as to the reasons for not attending the induction course and obtain approval for non-attendance. Once approval has been obtained, another invitation to a subsequent induction course should be sent to the individual by T&D as soon as practicable.

As these courses are not held regularly, consideration should also be given to interim measures to deal with situations whereby an employee has to wait for an extensive period before being enrolled onto the next scheduled induction course.

6.8 Conversion from Temporary Post to Permanent Establishment (Chapter 3, section 3.4.1)

We recommend that when an individual is converted from a temporary post to part of the permanent establishment, the procedures for promotion should be conducted.

A grading system for temporary staff should be structured based on the existing grading structure to facilitate internal benchmarking and equity.

6.9 Appointments from Temporary Post to Another Temporary Post (Chapter 3, section 3.4.2)

A grading system for temporary posts should be structured based on the existing grading structure to facilitate internal benchmarking and equity. This would be desirable for staff who are subsequently appointed to positions which could potentially be regarded to be at levels higher than the former posts.

6.10 Termination Procedures due to Resignations and Contract Expiry (Chapter 3, section 3.5, and Chapter 4, section 4.1)

In good practice, the SFC should develop and implement policies and procedures for the termination of staff on temporary post status, or HR should implement as far as possible the same policies and procedures applicable for the termination of staff who are part of the permanent establishment.

Exit interviews should be conducted on/or prior to the last day of employment, and the relevant exit interview forms should preferably be signed by the exiting staff member to evidence the satisfactory completion of the established procedures. Any exceptions should be noted and filed in the relevant personnel file.

6.11 Termination of Employment (Chapter 4, section 4.5)

All meetings with regard to staff with poor performance should be acknowledged by the relevant individual and recorded in the personnel file. Additionally, specific development actions with measurable outputs should also be agreed, recorded and filed. The consequences of not performing up to the required standards should be clearly articulated.

Enhanced termination procedures on the grounds of poor performance should be developed and implemented. An example of this is to issue formal warning letters prior to termination.

Performance appraisal ratings should be reflective of an individual's performance in order to communicate a clear message on actual performance and development needs.

6.12 Reasons for Leaving the SFC (Chapter 4, section 4.4)

Given the number of individuals who did not express their fundamental reasons for leaving the SFC during the exit interview process, HR should bear this situation in mind and do their best to encourage the frank disclosure of views for the betterment of the SFC. However, it should be acknowledged that the exiting staff have full prerogative in this matter.

A staff opinion survey should be conducted at an appropriate time to determine the existence of any key areas of satisfaction and discontentment within the SFC, so that appropriate measures, if needed, can be implemented. Staff opinion surveys should be conducted on a regular basis, e.g. once every 2 years.

6.13 *Employment of Staff over the Retirement Age of 60 (Chapter 5, section 5.2.4)*

Policies and criteria should be set to govern the hiring of an employee over the SFC's normal retirement age of 60. Before the employee is hired, the individual needs to go through proper recruitment procedures e.g. interview, reference check, medical examination, offer of appointment...etc.

6.14 *Contract Renewal (Chapter 5, section 5.2.11)*

Tighter control should be exercised when the employee's contract is renewed to ensure the next contract does not overlap with the previous one.

6.15 *Hiring of Secondees (Chapter 5, section 5.3.2)*

HR should implement formal policies and procedures to govern the secondment of staff including the situation involving exiting staff. The related tax issues have to be fully taken into consideration as part of the overall process as well.

6.16 *Service Fee (Chapter 5, section 5.3.3)*

In determining the service fee for a secondee, reference should be made to readily available market data to ensure that the agreed fee or rate is in line with general market conditions.

6.17 *Complaint Mechanism*

Consideration should be given to establishing formal complaint procedures and mechanism so that any staff grievances can be adequately addressed within the SFC.

6.18 *Oversight Responsibility of Human Resource Function*

Given the extensive workload and external focus of the Chairman, consideration should be given to have the oversight responsibility of the Human Resource function delegated to an Executive Director.

CHAPTER 7 - DETAILED FINDINGS ON KEY ALLEGATIONS

We set out below the detailed findings from our compliance review work together with information provided by HR that are relevant to the following six allegations which the AC considered to be substantive.

Allegations against Mr. Andrew Sheng

1. *“In fact senior staff of the SFC have been leaving one after the other since (Mr.) Andrew Sheng took up the Chairmanship, indicating that those senior staff would rather accept remunerations at a big discount amid such an economic environment than working with him.”*
 - 8 of the 15 individuals in Group 2 left during the normal course of business and hence the allegations in respect of them were unfounded. 5 individuals felt some degree of personal dissatisfaction and chose to leave. The remaining 2 individuals felt forced out of the SFC.
 - Of the 2 individuals who felt forced out, one resigned under the Voluntary Separation Scheme. The other individual was terminated on the grounds of poor performance with pay in lieu of notice given in accordance with the terms of this individual’s contract.
 - The overall and executive staff turnover rate of the SFC were lower than the HK average rate published by the Hong Kong Institute of Human Resource Management (IHRM) for the years ended 31 March 1999 and 2000. For the year ended 31 March 2001, HR stated that the SFC experienced high turnover particularly in the Intermediaries and Investment Products and Enforcement Divisions. The reason was that staff were sought after by the market given their experiences with compliance policies and matters.

Year	SFC Overall Staff Turnover Rate (Period ending 31 March)	SFC Executive Staff Turnover Rate (Period ending 31 March)	IHRM Arithmetic Average of Staff Turnover Rate of All Companies (Period ending 30 June)
1998 – 1999	3.48 %	3.77 %	9.4%
1999 – 2000	7.92 %	6.16 %	12.8%
2000 – 2001	17.05 %	17.84 %	13.1%
2001 – 2002	7.44%	8.53 %	Not currently available

2. *“There are altogether 16 highly paid staff employed under temporary contracts since (Mr.) Andrew Sheng took over. 7 of them came from (Mr.) Andrew Sheng’s motherland Malaysia. They include the younger sister of his wife, and the son of one of his good friends or relatives. Staff recruited under temporary contracts generally do not need to go through the stringent screening process applicable to permanent staff.”*

“Even in the case of middle ranking positions, such as manager, he would also recruit someone whom he trusts from Malaysia, with the SFC footing all the travel and accommodation bills. There should probably be many people in Hong Kong qualified for those positions.”

- The figures included in this allegation are incorrect.
- Out of the 31 listed individuals, 8 in Group 1 together with Mr. Peter Hsueh were recruited on temporary post status. Only 1 individual in Group 2 was recruited on a temporary post status.
- HR stated that there were 23 executive level staff recruited on temporary post status since Mr. Andrew Sheng became Chairman. For comparative purpose, 19 executive level staff were recruited on temporary post status during the 4 years prior to Mr. Andrew Sheng assuming the Chairmanship. Under the present system operated by HR, staff recruited on temporary post status are not required to undergo the same procedures applicable to staff holding posts which are part of the permanent establishment. By reference to the established procedures for staff who are part of the permanent establishment, the exceptions noted are related on certain occasions to the lack of advertisements for the posts and formal interviewing procedures.
- We found that 5 of the 31 listed individuals are from Malaysia. HR stated that as of 30 November 2002, the nationality make up of executive grade staff within the SFC is as follows: American 1.08%, Australian 1.08%, British 5.01%, Canadian 0.36%, Indian 0.36%, Malaysian 3.22%, PRC national 1.43%, Singaporean 0.36%, and Hong Kong residents 87.1%.
- During our data gathering interviews, both the Chairman and the relevant individual, who was alleged to be the younger sister of the Chairman’s wife, categorically denied that they are related in any manner. HR stated that official records in the SFC also state that the two persons are not related.
- The son of a former colleague of the Chairman was recruited into the SFC, not as a staff on a temporary post status but as part of the permanent establishment, and he went through the normal recruitment procedures.
- Since Mr. Andrew Sheng became Chairman, 4 Malaysians and 1 PRC national were offered reimbursements for attending interviews in Hong Kong. Of these 5 prospective staff, 3 Malaysians were subsequently offered positions within the SFC. HR stated that advertisements for these positions were placed in other countries such as Canada, Australia, New Zealand and Singapore. However, candidates from these countries were considered inappropriate by

the relevant Division Heads. Advertisements were also placed in Hong Kong but it was difficult to attract Hong Kong candidates due to the prevailing market conditions.

- For other foreign nationals recruited into the SFC since Mr. Andrew Sheng became Chairman, no reimbursements were made as the individuals were either based in Hong Kong or visiting Hong Kong at the time of their interviews.
 - For comparative purpose, HR stated that the SFC provided reimbursements (travelling and accommodation expenses) to 9 prospective staff for attending interviews between the period March 1989 to September 1998. From these 9 individuals, 6 were offered positions in the SFC.
3. *“If we look back the years since (Mr.) Andrew Sheng became the Chairman, there are quite a number of senior staff who were introduced to him to join the SFC and have been converted from a temporary contract status to a permanent staff status.”*
- Of the 15 individuals in Group 1, 6 were referred to the Chairman by various parties for SFC’s consideration. 3 individuals were approached by the Chairman and 1 individual was approached by the SFC with a view to recruiting them into the SFC. 4 individuals were recruited through conventional avenues and 1 individual was recruited as a result of making enquiries to the Chairman for work opportunities during sabbatical leave.
 - On the issue of conversion from temporary post status to permanent post status, 4 of the 23 executive level staff have been converted since Mr. Andrew Sheng became Chairman. For comparative purpose, HR stated that during the 4 years prior to Mr. Andrew Sheng becoming Chairman, 9 of the 19 executive level staff who joined during that period were converted to permanent post status.
 - As for the 31 listed individuals, only 3 have been converted from temporary post status to being part of the permanent establishment since Mr. Andrew Sheng became Chairman. 2 of these individuals were referred to the Chairman for the SFC’s consideration, and the other individual was a former colleague of the Chairman.

Allegations against Mr. Andrew Sheng in relation to the affairs of Mr. Peter Hsueh

4. *“In (Mr.) Peter Hsueh’s case, (Mr.) Andrew Sheng has obviously offered (Mr.) Peter Hsueh with personal benefits at the expense of the government’s tax revenue.”*
- We understand that enquiries on Mr. Peter Hsueh’s tax position have been raised by the Inland Revenue Department and the SFC is co-operating with this review. Given the status of these matters we are not in a position to comment further in this report.

5. *“Failing to seek the endorsement and approval of the SFC’s Management Committee in accordance with the SFC’s internal guidelines, and going beyond his authority by entering into a service contract with Longridge International Ltd. (a Hong Kong incorporated company in which Mr. Peter Hsueh has an equity interest) on behalf of the SFC.”*

“Under the SFC’s internal guidelines, all out-sourcing contracts involving amounts above \$150,000 are subject to the consent of the SFC’s Management Committee. However, while the service contract in question amounts to well above \$150,000, no consent for it under the Internal Guidelines was obtained from the Management Committee.”

- Up to 31 March 2001 Mr. Peter Hsueh was an employee of the SFC holding the position of Chief Information Officer (“CIO”). The salary and related costs of the CIO post are charged under Personnel Expenses being part of the permanent establishment.
- As of 1 April 2001 the status of Mr. Peter Hsueh changed to being a secondee from Longridge International Ltd. (“Longridge”) in the capacity of Information Technology Advisor.
- In consequence, the SFC had to embark on the process of recruiting a replacement CIO. However, this process has yet to be completed and at the specific request of the SFC, Mr. Peter Hsueh continued to serve in the post of CIO at the start of the secondment (i.e. 1 April 2001) until a permanent CIO is hired.
- The MC has a role to play in situations governing the hiring of consultants in terms of approving expenditure in excess of \$150,000. For secondees (as opposed to consultants) HR stated that MC’s approval is not required and this has been the practice of the SFC since its establishment. This is because the level of authority for the purpose for administration, financial and management functions governing secondments of professional staff is delegated to the Division Head as stipulated in the Policies and Procedures for Financial Control Manual. Furthermore, the secondee position is to be held against a vacant permanent post and paid out of the Personnel Expenses budget.
- It should be noted that the terms of the Longridge agreement is a secondment arrangement. As such MC approval was not sought and Mr. Andrew Sheng, Division Head of IT, approved the secondment of Mr. Peter Hsueh.
- The Chairman had not received contrary advice from any SFC staff regarding a need to obtain approval from the MC, as the Longridge agreement was similar to past secondment arrangements which were also approved by the respective Division Heads and payments were charged under Personnel Expenses.

- The crux of the issue is whether the Longridge agreement is one of secondment or consultancy. As stated earlier the Longridge agreement is a secondment arrangement.
 - As the SFC has no formal HR policies and procedures governing secondments other than the reference to the authorisation level as stipulated in the Policies and Procedures for Financial Control, the approach adopted in precedent cases were therefore relied upon and followed in this case.
 - As the Longridge agreement involved the unusual circumstances of an exiting executive grade staff being seconded back to the SFC, it would have been desirable for the circumstances and rationale for the change in status of Mr. Peter Hsueh to be communicated internally within senior management. This could either be at the level of Executive Director or to the MC.
6. *“The service contract was signed with the SFC by Longridge on (his – Mr. Peter Hsueh) behalf providing for a remuneration package amounting to HK\$15,000 per day and HK\$3.46 million per annum on a basis of 246 working days a year.”*
- This allegation is incorrect. The figures are known to the SFC, but are not released in this report due to confidentiality and personal data privacy issues.

CHAPTER 8 - CONCLUDING REMARKS

In the context of the compliance of Human Resource policies and procedures in relation to the 31 listed individuals, the exceptions noted were relatively minor in nature. Most of the non-compliance related to the lack of documentary records or the reasons for departure from established policies and procedures not noted in the personnel files. On the whole, the established policies and procedures had in effect been adequately complied with.

As a regulatory body whose role is to ensure that people do the right things, it is imperative that its internal systems and processes are fair, open and transparent. To this end, the SFC should conduct a comprehensive review of its Human Resource policies and procedures with a view to incorporating recommendations which would achieve these objectives.

In particular, as a result of investigating the allegations in the anonymous letters we noted that many of these allegations appear to be related to the lack of Human Resource policies and procedures in the following key areas:

1. Recruitment of staff on temporary post status;
2. Conversion of staff holding temporary post status to posts which are part of the permanent establishment;
3. Appointment of staff from temporary post to another temporary post; and
4. Hiring of secondees.

These areas should be given priority within the SFC in order to minimise future discontentment. It is envisaged that once the relevant procedures are communicated and implemented to address the above issues, the sense of transparency and impartiality within the organisation will be enhanced.

APPENDIX 1 - Terms of Reference

To assist the Audit Committee (AC) of the Securities and Futures Commission (SFC) in the completion of the tasks set out in the AC's Supplementary Terms of Reference, a copy of which appears in Annex 1.

Terms of Reference

- (1) Review the background information and case summaries furnished by the SFC, and prepare a checklist of the procedures as contained in HR policy.
- (2) Compare the case summaries with the checklist and identifying any instances of non-observance of procedures for the AC to consider.
- (3) Perform checks of relevant personnel files to confirm that the summaries provided are accurate.
- (4) Prepare questionnaires in the light of (1) to (3) above, comprising questions to be put to SFC personnel past or present in relation to the matters under review.
- (5) Issue the questionnaires.
- (6) Collate the written responses to the questionnaires to enable the AC members to consider the responses.
- (7) In light of the results of (6) above, formulate questions to be put to the relevant personnel in interviews.
- (8) Arrange to conduct interviews including the keeping of verbatim records.
- (9) Given the results of the enquiries under (1) to (8) above:
 - a. Advise the AC on suggested areas of improvement in handling HR matters, to form the basis of recommendations in the report referred to in (10) below, and
 - b. Identify other areas of enquiry for consideration by the AC.
- (10) Based on the above and any additional instructions from the AC members, draft a report for the AC to submit to the SFC Board.

Annex 1

Securities and Futures Commission Audit Committee

Supplementary Terms of Reference

1. To consider allegations contained in anonymous letters dated 15, 20 and 27 July 2002 (“the letters”) in the light of -
 - (1) all relevant Commission management procedures and guidelines;
 - (2) written statements of fact prepared by the Chief Counsel and Commission Secretary on each case; and
 - (3) any other material required by the Commission to enable it to perform its task.
2. To determine whether or not if so the extent to which the above-mentioned procedures and guidelines have been followed.
3. To consider any related matter which –
 - (1) The Commission decides is necessary in order for it to complete its task; or
 - (2) The Commission shall refer to the Committee
4. To submit a report to the Commission containing –
 - (1) The findings of the Committee; and
 - (2) Any recommendations it wishes to make for follow up action.
5. To engage an independent person to assist the Committee in the completion of its task where the Committee believes that this is necessary.

APPENDIX 2 - Glossary of Terms

AC – Audit Committee of the SFC.

Approved Establishment – This is the headcount which is approved by the Financial Secretary. At present the approved establishment consists of 361 staff, 6 special advisors and 6 manager trainees. The advisors and manager trainees are temporary post status.

Continuous contract - A continuous contract is not a fixed term contract, and is not bound by an expiry date. Employment may be terminated by either party (i.e. employee or employer), with notice period provided or payment in lieu, as stipulated in the employment contract.

Fixed term contract – A fixed term contract is an employment contract which is bound by an expiry date.

Group 1 – A list of 15 individuals who have allegedly entered the SFC through personal contacts with or referral made to the Chairman. This group can be further sub-divided into Group 1a and Group 1b.

Group 1a – A list of 7 individuals who joined the SFC as part of the permanent establishment.

Group 1b - A list of 8 individuals who joined the SFC on temporary post status.

Group 2 – A list of 15 individuals who have left the SFC after Mr. Andrew Sheng became Chairman in October 1998.

HKMA – Hong Kong Monetary Authority.

HR – Human Resources Department of the SFC.

ICAC – Independent Commission Against Corruption.

Longridge – Longridge International Limited.

Manager Trainees – The Manager Trainee Program aims to groom a group of bright and competent executives with good potential to become security regulators through a structured and comprehensive on-the-job training program.

MC – Management Committee of the SFC.

Part of the Permanent Establishment Status – This refers to the situation when a staff member is occupying a post which is within the permanent establishment and therefore the post is permanent within the SFC (i.e. 361 staff).

Permanent Establishment – This refers only to the 361 staff under the Approved Establishment and does not include the 6 special advisors and 6 manager trainees.

Police – Hong Kong Police Force.

PwC – PricewaterhouseCoopers.

SFC – Securities and Futures Commission.

Special Advisers – Special Advisers are appointed on term contract for legislative and market reforms, regulatory policies, China-related projects, new products and market developments.

Temporary Post Status – This refers to three categories of temporary post as outlined in Appendix 3 of this report.

T&D – Training and Development Department of the SFC.

APPENDIX 3 - Definition of Temporary Staff

Although the HR policy provides a definition of temporary staff and the different types of situations that apply to temporary posts, there are no established policies and procedures governing the recruitment of staff on temporary post status.

The HR policy states that:

“Temporary staff are staff who are not part of the permanent establishment and are employed to meet essential and short-term additional manpower needs”.

The HR policy states that staff holding a temporary post can be divided into 3 categories:

“1. Temporary Staff holding against permanent vacancies - Temporary staff may hold against vacancies under the permanent establishment. When the need for a temporary employee arises, the Division Head may put forth a temporary staff requisition to Human Resources to initiate the recruitment process”.

“2. Temporary Staff for Specific Projects - Temporary Staff for specific projects may be authorised by the Management Committee during consideration of the approval for the project as a whole”.

“3. Temporary Staff in addition to the permanent establishment - Requests which do not comply with the approved manpower plan, and resulting in a financial commitment of HK\$10,000 or more will be actioned subject to their being forwarded via, and approved by the Chairman or the Management Committee”.

APPENDIX 4 – Termination of Employment

The HR policy states there are 4 types of termination of employment. These include:

“1. Resignation – Upon receiving an employee’s resignation letter, HR will acknowledge receipt which will cover end-of-service procedures.

2. Contract Expiry – For executive staff whose contract will not be renewed, HR will advise the employee in writing at least 3 months before the expiry of contract. The notice will also cover end-of-service procedures.

3. Retirement

- *Normal Retirement: An employee shall retire upon attaining 60 years of age unless an extension is agreed between the Commission and the Employee.*
- *Retirement on Medical Grounds: An employee may retire from the service of the Commission owing to ill health, certified by a doctor or doctors appointed by the Commission as incapacitating the employee for further service.*

4. Termination on the Grounds of Poor Performance

- *When the employee is reported to have misconduct or unsatisfactory performance, the line management should discuss the case with Human Resource and to decide on the kind of actions to be taken which will be on a case by case basis.*
- *It is important that any disciplinary action to be taken should be planned, progressive (unless the employee has to be summarily dismissed in view of committing serious offence) and recorded. Wherever possible, the employee should be given a chance to know what has gone wrong and to take remedial action or make improvement.*
- *Human Resource will assist respective divisions in the process of handling disciplinary cases, ensuring that statutory or contractual obligations are fulfilled while taking into account possible impact on employee relations.”*

The HR policy states that exit interviews should be conducted (except for Executive Directors) other than for reasons of termination on the grounds of poor performance or disciplinary action

APPENDIX 5 – Summary of Recruitment Procedures for Group 1 Individuals

Group 1a - Part of the Permanent Establishment

Case No.	Employee Requisition Form	Temporary Staff Requisition Form	Joined SFC through direct or indirect personal contact with the Chairman	Formal / Informal Interview		Offer of Authorisation Form	Pre-employment Verification				Offer of Continuous Contract	Transfer Procedures	Promotion Procedures	Termination Procedures	Post Status
				Info. from Personnel File	Info. from data gathering interviews		Medical Examination	Vetting by ICAC	Vetting by Police	Reference Checking					
1	No	n/a	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes	n/a	Yes	n/a	Established Post
2	No	n/a	No	No	Yes *	Yes	Yes	Yes	Yes	Yes	Yes	n/a	n/a	No #	Established Post
3	Yes	n/a	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	n/a	Yes	n/a	Established Post
4	Yes	n/a	No	Yes	Yes	Yes	Yes	Yes	No	Yes	n/a	Yes	n/a	n/a	Established Post
5	Yes	n/a	R	Yes	Yes	Yes	Yes	Yes	No	Yes	n/a	n/a	n/a	n/a	Established Post
6	Yes	n/a	R	Yes	Yes	Yes	Yes	Yes	Yes	Yes	n/a	Yes	Yes	n/a	Established Post
7	Yes	n/a	B	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	n/a	n/a	Established Post

* - This individual declined to be interviewed by PwC, however the supervisor stated that an interview had been conducted.

- No exit interview conducted as the reason for departure was already made known to the SFC.

APPENDIX 5 – Summary of Recruitment Procedures for Group 1 Individuals (Cont.)

Group 1b - Temporary Post Status

Case No.	Employee Requisition Form	Temporary Staff Requisition Form	Joined SFC through direct or indirect personal contact with the Chairman	Formal / Informal Interview		Offer of Authorisation Form	Pre-employment Verification				Offer of Continuous Contract	Transfer Procedures	Promotion Procedures	Termination Procedures	Post Status	Stated Reasons for Recruitment
				Info. from Personnel File	Info. from data gathering interviews		Medical Examination	Vetting by ICAC	Vetting by Police	Reference Checking						
8	n/a	Yes	R	No	Yes	Yes	No	Yes	Yes	Yes	n/a	n/a	Yes	n/a	Held against an Established Post	Consultation Paper on Statutory Backing for the Takeover Code and the Listing Rules
9	n/a	No	R	No	Yes	Yes	Yes	Yes	Yes	Yes	n/a	n/a	n/a	No ###	Special Advisor	Knowledge Management and other IT projects
10	n/a	Yes	R	No	Yes	Yes	Yes	Yes	Yes	Yes	n/a	n/a	n/a	n/a	Special Advisor	Derivatives and other market development
11	n/a	No	A	No	Yes	Yes	No	Yes	Yes	No **	n/a	n/a	n/a	n/a	Held against an Established Post	Consultancy service and SFC's research activities
12	n/a	Yes	R	No	Yes	Yes	Yes	Yes	Yes	Yes	n/a	n/a	Yes	n/a	Special Advisor	Regulatory policy
13	n/a	Yes	A	No	Yes	Yes	Yes	Yes	Yes	Yes	n/a	n/a	n/a	No ##	Temporary IT Staff	IT related projects
14	n/a	Yes	S	No	Yes	Yes	No	Yes	Yes	No **	n/a	n/a	n/a	No ###	Held against an Established Post	Consultancy service and SFC's research activities
15	n/a	Yes	A	No	Yes	Yes	Yes	Yes	No	Yes	n/a	n/a	n/a	n/a	Special Advisor	Regulatory policy and related issues / matters

NB: HR stated that there are no policies or procedures governing the recruitment of staff holding temporary posts - these include lack of advertisements for posts and formal interview procedures.

** - No reference letters in personnel file.

- Notification of contract expiry was shorter than 3 months

- Notification of contract expiry was shorter than 3 months and no exit interview conducted

A - Approached by Chairman

B - Approached by SFC

R - Referred to the Chairman

S - Individual approached the Chairman for work opportunities during sabbatical leave

羅兵咸永道會計師事務所
致證券及期貨事務監察委員會稽核委員會的
報告

第一章及第六章中文本

致證券及期貨事務監察委員會稽核委員會的報告

二零零三年二月

第一章 摘要

I. 背景

自 2002 年 7 月起，證券及期貨事務監察委員會（「證監會」）與其他團體分別收到匿名信，指稱證監會沒有遵守某些人力資源政策及程序。

該些匿名信羅列了 31 名人士。按照分類，其中 15 人據稱是透過與證監會主席沈聯濤先生的個人關係或由他人介紹予沈聯濤先生而進入證監會（以下簡稱為「組別一」），另外 15 名為 1998 年 10 月沈聯濤先生接任證監會主席一職後離開證監會的人士（以下簡稱為「組別二」），最後一位是證監會資訊科技總監薛正綱先生。薛正綱先生的個案會在報告的第五章另行論述。

證監會稽核委員會獲指派對有關指稱作出調查，而羅兵咸永道會計師事務所（「羅兵咸永道」）則獲委任協助稽核委員會進行調查，以及審核該 31 名人士的個案有否遵照相關的人力資源政策及程序。本項調查的職責範圍載於附錄 1。

II. 整體評核結果

根據評核方法，我們就該 31 名人士的個案是否符合現行的人力資源政策及程序作出了審核。整體評核結果如下：

	<u>人力資源範疇</u>	<u>常額編制下的員工</u>	<u>臨時職位的員工</u>
1.	招聘	大致上符合	特別說明*
2.	更改固定期限合約為持續性合約	完全符合	不適用
3.	調任	完全符合	不適用
4.	晉升	完全符合	不適用
5.	終止聘用 – 辭職或合約期滿	大致上符合	大致上符合
6.	終止聘用	可作改進	不適用

*除了附錄 3 指出的批核程序外，證監會並無制訂任何有關聘用及終止聘用臨時僱員的程序。是次評核是根據現時針對常額編制下僱員的程序及做法而作出。特別說明指因有關空缺宣傳不足及欠缺正式的面試程序而出現的個別情況。

III. 主要指控的調查所得摘要

以下是我們對稽核委員會認為比較實質的 6 個指控的調查結果概要。至於主要指控的詳細調查結果則載於第 7 章。

針對沈聯濤先生的指控

1. 「事實上，自沈聯濤(先生)出任主席後，證監會的高層職員就陸續離開，顯示這些員工寧願在目前的經濟環境下接受較低薪酬的工作，也不願與他共事。」

- 在組別二的 15 名人士中，其中 8 位是在正常情況下離開，因此有關指控並無根據；5 人因個人的某些不滿而選擇辭職；其餘 2 人覺得自己是被迫離開證監會。
- 證監會近年的整體僱員流失率及行政級員工流失率均比香港人力資源管理學會公佈的平均流失率低，唯一例外的是在 2001 年 3 月 31 日止年度，原因是當時的金融服務業發展蓬勃，不利於證監會挽留員工。

2. 「自沈聯濤(先生)接任主席後，一共有 16 名高薪職員是透過臨時合約聘請的，其中 7 人來自沈聯濤(先生)的祖家馬來西亞，包括其小姨及其好友或親戚的兒子。透過臨時合約聘請的員工一般不需要經過長期員工所需的嚴格審核程序。」

「即使是經理般的中層職位，他亦要聘請信任的馬來西亞籍人士，並由證監會支付一切的交通費與住宿費。香港應該有很多人有能力擔任這些職位。」

- 上述指控引述的數字不正確。
- 自沈聯濤先生出任證監會主席後，一共有 23 名行政級員工受聘至臨時職位；在沈聯濤先生加入證監會前的 4 年裡，有 19 名行政級員工以臨時性質受聘。
- 以 2002 年 11 月 30 日計算，在證監會的全體行政級員工中，馬來西亞籍員工佔 3.22%。在組別一和組別二共 31 名人士中，只有 5 人為馬來西亞籍。
- 證監會的員工中並無沈聯濤先生的小姨，但有一名僱員是沈聯濤先生舊同事的兒子。該人是循正常招聘程序受僱。
- 自沈聯濤先生出任證監會主席後，有 5 名應徵人士獲得報銷費用。在沈聯濤先生接任主席前的 4 年裡，有 9 個海外應徵者獲報銷費用。
- 根據現行的人力資源政策，受僱至臨時職位的僱員並不需要經過常額編制所需的招聘程序。參照現時有關常額編制下員工的招聘程序和做法，特別說明一般是因為有關空缺宣傳不足和缺乏正式的面試程序而產生。

3. 「自沈聯濤(先生)出任主席後的幾年間，有多名高層員工都是經由他人介紹予他而進入證監會的，而且從臨時合約轉為長期僱員的身份。」
- 在組別一的 15 人中，其中 6 人是由不同團體或人士轉介予沈聯濤先生供證監會考慮的；3 名由沈聯濤先生接洽，1 名由證監會接洽，聘請至證監會工作；4 名循慣常途徑聘請；另有 1 人是在休假年間向沈聯濤先生查詢就職機會後而聘請的。
 - 薛正綱先生是沈聯濤先生就職金融管理局和世界銀行時的舊同事，經由沈聯濤先生的個人聯繫而加入證監會。
 - 至於更改臨時職位為常額職位一事，在沈聯濤先生出任證監會主席後入職的 23 名行政級員工中，其中 4 人獲更改職位性質。據人力資源科表示，在沈聯濤先生接任主席前的 4 年裡，有 19 名行政級員工加入證監會，其中 9 人獲更改為常額僱員的身份。

就薛正綱先生事件對沈聯濤先生的指控

4. 「在薛正綱(先生)事件中，沈聯濤(先生)明顯是犧牲了政府稅收，給予薛正綱(先生)一些個人利益。」
- 據我們了解，稅務局已經就薛正綱先生的個案提出查詢，證監會現正合作審核有關的查閱。在這情形下，我們不便在本報告裡作進一步評論。
5. 「沒有按照證監會的內部指引尋求證監會管理委員會的同意和批准，以及越權代表證監會與 Longridge International Limited(一家在香港註冊成立而薛正綱先生持有股權的公司)簽訂服務合約。」

「根據證監會的內部指引，所有涉及 150,000 港元以上的外判合約都需要得到證監會管理委員會的同意。不過，雖然該服務合約涉及金額超過 150,000 港元，卻沒有按內部指引向管理委員會徵求同意。」

- 在聘請顧問人員的問題上，若有關開支超過 150,000 港元，便需要得到管理委員會的批准。據人力資源科表示，借調人員(與顧問人員相比)並不需要管理委員會批准，這是自證監會成立以來的一慣做法。根據[財務監控指引的政策與程序]的規定，批核行政、財政及管理部門借調專業人員的權力已下放予有關部門的主管。
- 根據 Longridge 的協議條款，該協議涉及一項借調安排，因此不須提交管理委員會審批。沈聯濤先生以資訊科技科主管的身份批准借調薛正綱先生的安排。
- 由於 Longridge 的協議條款涉及一名離職行政級員工經由合約形式被重新借調回證監會的非一般情況，比較恰當的做法是與管理高層就該安排的背景與原因作內部溝通，這包括在執行董事或管理委員會的層面。

6. 「該服務合約是由 Longridge 代表(他 – 即薛正綱先生)與證監會簽訂, 以每年 246 個工作天為準, 提供每天 15,000 港元與每年 346 萬港元的薪津。」
- 上述指控不正確。證監會清楚有關數字, 但基於保密理由和涉及個人私隱, 不能在本報告披露。

IV. 人力資源最佳實務的主要建議

我們建議證監會為下列各範疇制訂清晰明確的政策和程序, 並嚴格執行, 以提高透明度和公平性:

- 招聘臨時職位(第 6 章 6.2 節)
- 透過轉介方法物色員工(第 6 章 6.3 節)
- 改變臨時職位的員工為常額僱員(第 6 章 6.8 節)
- 調任臨時僱員至另一臨時職位(第 6 章 6.9 節)
- 定期進行僱員意見調查(第 4 章 4.6 節)
- 改良以表現不佳為由終止僱用員工的程序(第 6 章 6.11 節)
- 聘請借調人員(第 6 章 6.15 節)
- 設立投訴機制(第 6 章 6.17 節)
- 下放監察人力資源職能的責任(第 6 章 6.18 節)

有關人力資源最佳實務的詳細建議, 請參閱第 6 章。

第六章 人力資源最佳實務建議

根據調查所得，我們對報告較早前闡述的人力資源最佳實務改善建議概括如下。

6.1 招聘要求(第3章3.1.1節)

提出招聘要求 – 不論是透過申請書(例如招聘員工申請書或招聘臨時僱員申請書)或其它方法提出，應存入相關的員工檔案作為紀錄。

6.2 招聘臨時職位(第3章3.1至3.4節)

雖然人力資源政策訂明了何謂臨時僱員及設立臨時職位的各種情況，但沒有制定任何有關臨時職位的招聘政策和程序。我們建議證監會制定和實施臨時職位招聘政策和程序，以提高招聘過程的透明度和公平性。

6.3 物色申請人(第3章3.1.2節)

證監會可考慮紀錄受聘員工的招聘渠道，確定最有效的招聘方法，從而在日後集中資源於最有效的招聘途徑上，節省招聘成本。

目前證監會並沒有對轉介員工訂立任何程序。最好的做法是結合轉介方法與其他招聘方法，確保由最合適的應徵者填補有關的空缺。此外，進行正式的面試和審核程序，並將之記錄在員工檔案裡。

6.4 面試程序(第3章3.1.3節)

證監會的所有職位 – 不論是常額或臨時性質 – 均應有正式的面試程序，包括填寫面試評核表。有關的評核表必須存入員工檔案，作為面試程序的證明。

假若只有一名申請人應徵有關的空缺，或該職位的主管在面試程序中擔當任多個角色，便應設立遴選小組或由另一部門主管參與面試程序，共同作出決定。

6.5 發出聘書(第3章3.1.4節)

人力資源部門應設立制度，確保所有招聘申請書均在批核聘書前完成和提交，以便招聘程序能夠循序進行，同時提高透明度。

6.6 受僱前的審核(第3章3.1.5節)

人力資源部門應該在員工檔案中說明豁免進行受僱前審核程序的因由，作為紀錄。

6.7 接任職位(第 3 章 3.1.7 節)

在人力資源政策中加設一項機制，要求新入職員工向其部門主管解釋不參加入職指導課程的原因，並取得其部門主管的批准。若該名員工獲批准不參加入職指導課程，培訓及發展部門亦應在可行的情況下盡快邀請其參加另一個入職指導課程。

由於此類課程並非定期舉辦，若新入職員工需要等待一段長時間才能參加另一項入職指導課程，人力資源部門亦可考慮制定臨時措施處理。

6.8 更改臨時職位至常額編制(第 3 章 3.4.1 節)

當有員工從臨時職位調任至常額編制時，我們建議應進行晉升的程序。

臨時職位應該根據現行的職級制劃分等級，以便建立內部基準及提高公平性。

6.9 從臨時職位調任至另一臨時職位(第 3 章 3.4.2 節)

臨時職位應該根據現行的職級制劃分等級，以便建立內部基準及提高公平性。此建議更應用於獲調任至一個被視為較高職級的情況。

6.10 終止聘用程序 – 辭職和合約期滿(第 3 章 3.5 節與第 4 章 4.1 節)

證監會應該就終止聘用臨時僱員制訂政策和程序，並嚴格執行；或若可行的話，人力資源部門應採用終止聘用常額僱員所用的政策和程序。

在最後受僱日當天或之前進行離職面談，並由離職僱員簽署離職面談表格，證明已完成既定的程序。若有任何特殊情況，應在相關的員工檔案裡說明和紀錄。

6.11 終止聘用(第 4 章 4.5 節)

凡進行與表現不佳員工有關的會議，均應知會有關員工，並記錄在其員工檔案裡。另外，雙方應共同議定可量化的發展計劃，並將之妥為記錄和存檔。此外，清楚地向員工說明表現不達要求的可能後果。

改善以表現不佳為由終止聘用員工的程序，並加以執行，例如在終止聘用前發出正式的警告信。

工作表現評核應該反映員工的工作表現，讓員工能了解其實際工作表現和需要改進的地方。

6.12 離職原因(第 4 章 4.4 節)

鑒於有相當數量的離任員工沒有在離職面談中透露主要的離職原因，人力資源部門應加以注視，盡量鼓勵員工坦誠表達意見。不過，透露與否，決定權完全在於離職員工。

另外，在適當的時候進行僱員意見調查，了解員工對滿意和不滿證監會的主要地方，以便採取適當的跟進措施。僱員意見調查可定期進行，譬如每兩年一次。

6.13 聘請超過 60 歲退休年齡的員工(第 5 章 5.2.4 節)

制定聘請超過證監會設定的正常退休年齡 – 即 60 歲 – 的員工的政策和標準，而有關員工亦應經正常的招聘程序聘請，例如面試、背景調查、身體檢查、發出聘書……等。

6.14 延續合約(第 5 章 5.2.11 節)

嚴格監管僱員合約的續約事宜，確保新舊合約不會出現重疊。

6.15 聘用借調人員(第 5 章 5.3.2 節)

人力資源部門應該對借調員工，包括涉及離職員工的借調，制定正式的政策和程序。有關程序亦應充份考慮稅務事宜。

6.16 服務費用(第 5 章 5.3.3 節)

在釐定借調人員的服務費用時，應參考市場數據，確保雙方所議定的服務費用或費率符合整體市場狀況。

6.17 投訴機制

證監會可考慮設立正式的投訴程序和機制，讓員工能在證監會內充份地表達申訴。

6.18 監管人力資源職能的責任

鑒於證監會主席事務繁重，且集中於對外事務，可考慮把監管人力資源職能的責任下放予一名執行董事。