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24 October 2003

Secretary for Financial Services and the Treasury
(Attn: Mr Edmond LAU)
Financial Services and the Treasury Bureau (Financial Services Branch)
18th floor, Tower 1, Admiralty Centre
18 Harcourt Road
Hong Kong

Dear Edmond,

Panel on Financial Affairs

Special Committee Report released by BOCHK

Thank you for your letter dated 19 September 2003 in response to Hon James TO's proposal for the Panel on Financial Affairs to examine public policy issues relating to the "Report of the Special Committee on the Corporate Governance, Credit Approval Process, Risk Management and Internal Control Mechanism of Bank of China (Hong Kong) Limited" (the Report).

Hon James TO has since explained that his concerns are about the protection of depositors and the stability and effective working of the banking system. It is his proposals that the Panel should examine how the Hong Kong Monetary Authority (HKMA) has discharged its responsibilities as the supervisor and regulator of the banking industry in respect of authorized institutions (AIs) that have given cause for concern, of which the Bank of China (Hong Kong) Limited (BOCHK) seems to be a conspicuous example. More particularly, the examination should include the policy of HKMA for dealing with such cases and the criteria for deciding what measures should be taken, if any.

We understand that the Administration is of the view that section 120 of the Banking Ordinance (Cap. 155) prevents the Monetary Authority (MA) from discussing publicly the affairs of an individual AI. According to our Legal Adviser, this appears to be a gloss on the actual provision of the Ordinance and is not entirely accurate. Section 120(1)(a) only requires the preservation of secrecy with regard to "all matters relating to the affairs of any person that may come to [MA's] knowledge in the exercise of any function under [the] Ordinance". The Report is not within this category of matters. It was published by BOCHK itself. Even the section 59 reports have been disclosed in summary in the Report. This means that to the extent of the summary of the section 59 reports disclosed, section 120(5)(i) would apply. In the circumstances, we do not see any obstacle for the Panel to embark on the examination as proposed by Hon James TO. If the Administration still maintains that section 120 prevents the Administration (including MA) from accounting to the Panel the work of the Government relating to the policy issues referred to by Hon James TO, please provide detailed reasons and authorities for your stand.

Grateful if you would let me have the Administration's response by 31 October 2003, so that we may finalize the discussion items for December at the regular Panel meeting on 6 November.

Yours sincerely,

(Miss Salumi CHAN)
Clerk to Panel

c.c. Hon Ambrose LAU Hon-chuen, GBS, JP
Chairman of the LegCo Panel on Financial Affairs

Hon James TO Kun-sun
Member of the LegCo Panel on Financial Affairs

Mr Vincent LEE, AA to CE/HKMA (Fax: 2878 1396)

Mrs Avia LAI, AA/SFST (Fax: 2537 1736)