Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000

Summary of Public Comments and Administration's Response on Part VIII of the Securities and Futures Bill

Clause no.	Respondent	Respondent's comments	Administration's response
Part VIII – Supervision and Investigations			
General	Hong Kong Bar Association	The new information gathering powers will significantly enhance the SFC's investigatory powers in cases of suspected crime or misconduct and are to be welcomed. The new provisions set out a clear code and provide the Commission with "teeth" to enforce it.	We welcome the Bar Association's support for the enhanced investigatory and supervisory powers. The provisions are also balanced by adequate safeguards.
General*	Hon Henry Wu	Whether equivalent supervision authorities of other financial markets have the same investigatory powers of the SFC.	An international comparison of the supervisory and investigatory powers of overseas securities regulatory bodies is included in Paper No. 7/01, paragraphs 31 to 39.
		The Administration is asked to provide a comparison of the check and balances of the supervisory powers of other financial markets.	Broadly speaking, the SFC will be subject to greater checks and balances than its overseas counterparts such as the UK Financial Services Authority ("FSA"), the US Securities and Exchanges Commission ("SEC") and the Australian Securities and Investments Commission ("ASIC"). For instance, the Process Review Panel ("PRP") does not have any equivalent in any of the above jurisdictions. The international comparison included in Paper No. 7/01 did not specifically cover the power to conduct preliminary inquiries into listed corporations and a comparative table illustrating the powers of the overseas regulators to conduct inquiries into listed companies is now attached at the **Annex**. The checks and balances on the exercise of this power by the various regulators are also

* Response to comment not incorporated in Paper No. 7A/01 when last issued.

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			detailed. Below is an overview of the various checks and balances on the supervisory and investigatory powers of overseas regulatory bodies from the major jurisdictions. <u>*United States*</u> The SEC has broad authority to investigate actual or potential violations of the securities laws it administers. It also has broad authority to determine the scope of its investigations and persons subject to investigation. The SEC has wide powers to subpoena witnesses, compel their attendance, take testimony and compel the production of documents "for the purpose of all investigations *which, in the opinion of the Commission, are necessary and proper*" for the enforcement of the securities law (section 19(b) of the Securities Act). This appears to be a lower threshold for the exercise of similar powers by the SEC than that required by clause 175 of the SF Bill. The exercise of SEC's powers is subject to judicial review. There does not appear to be any provision for independent review of the processes employed by the SEC as will be the case for the exercise of SFC's powers by way of the PRP. <u>*United Kingdom*</u> The thresholds for commencing general investigations under the Financial Services and Markets Act ("FSMA") are similar to those for the exercise of investigatory powers by the SFC under the SF Bill. For general investigations, the information must be *reasonably required* by the FSA in connection with the exercise of its functions under the Act. Under section 167 of the FSMA, the authority may appoint investigators to investigate the business or the ownership or control of intermediaries *if it appears to the authority that there is good reason for doing so*. Specific investigations may be commenced if there are circumstances suggesting breaches of the statutory requirements (section 168 of the FSMA). Persons aggrieved by the improper or unreasonable exercise of the powers by the authority can seek judicial review. Whilst there appears to be no dedicated process review mechanism similar to the PRP, the constitution of

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			the FSA provides that the FSA may make arrangements for the investigation of complaints concerning the exercise of any of its functions and appoint an independent person to investigate such complaints (clause 7 of schedule 1, FSMA). *Australia* The circumstances in which ASIC can commence investigations under the provisions detailed in Paper No 7/01, are roughly similar to, but not quite as high as the thresholds for the exercise of its investigatory powers by the SFC. It has the power to make such investigation as it thinks expedient where it has reason to suspect contraventions of the law or contraventions involving fraud relating to securities or futures contracts (section 13 of the ASIC Act). As in Hong Kong, the exercise of these powers by the regulator is subject to judicial review and complaint to the Ombudsman.
		The Administration is asked to provide a comparison of the supervisory roles of the HKMA before the signing of the revised MOU with the SFC and under the current MOU. Details on how the HKMA is to discharge its regulatory duties (such as anticipated work, establishment and financial implication) in future are sought.	The existing MOU was signed between the two regulators in 1995. The emphasis of the supervisory approach is on co-ordination and liaison between the HKMA and the SFC, in respect of institutions or groups containing institutions in which both regulators have a supervisory interest. Notwithstanding the co-ordination, the regulators will continue to exercise their respective statutory functions over the institutions including setting capital and liquidity requirements and receiving prudential information. The co-ordination does not curtail the supervisory action of the other regulator except with the consent of the latter. Under the MOU, the regulators will exchange prudential information that reflects on an institution's financial position and the fitness and properness of its management, or that assists either party in performing its statutory functions. Each will inform the other prior to taking any disciplinary/regulatory actions, and will also act as the conduit of information received from the relevant home supervisors of overseas incorporated entities. Furthermore, each will liaise with the other party on the arrangements for the timing of examinations and for meetings with the regulated institutions and their auditors. For financial groups each regulator will endeavour to obtain and disseminate promptly information

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			relating to the group which is relevant to the functions of the parties. The signing of the MOU in 1995 mainly formalized the then arrangements. The structured co-ordination also helps to ensure that concerns arising on the part of different regulators are brought together and evaluated on an overall basis where appropriate. Under the proposed regime, the HKMA will be the front line regulator supervising exempt AIs on a day-to-day basis. The powers and responsibilities of the HKMA in this context are set out in the relevant Parts of the SF Bill and the Banking (Amendment) Bill 2000, as well as summarised in the tables comparing the regulatory framework for a licensed corporation and an exempt AI attached to the Bills Committee papers concerning Parts V-VII and IX. The MOU will be correspondingly revised to set out more explicitly the respective roles and responsibilities of the two regulators in respect of exempt AIs, e.g. in granting exemption, setting conditions, consultation on codes, guidelines etc, conduct of examinations, the taking of disciplinary actions etc. In the light of the relaxation of the statutory secrecy provisions, the new MOU will also formally set out the framework for the exchange of prudential information and prompt notification of designated serious matters between the two regulators, both regularly and whenever the need arises. In other words, while the current MOU emphasizes the co-ordination between the two regulators to ensure no supervisory gaps or overlaps exist with respect to the securities business of AIs, the revised MOU will aim at formalising the detailed arrangement for the HKMA to apply, in its day-to-day supervision of exempt AIs' regulated activities, the supervisory standards set by the SFC and applied to licensed persons. These include ascertaining compliance with the SFC regulatory requirements in the course of on-site examinations and off-site reviews, consulting the SFC and drawing references to the SFC's experience in interpreting rules and codes issued by the SFC, referring cases that may require detailed investigations by the SFC, and discussing possible sanctions to be imposed on exempt AIs and their securities staff, etc. The HKMA currently has three specialized securities teams (each with three staff) to perform the day-to-day supervision of the securities business of exempt

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			AIs. Such teams are of equal status and structure as the other bank examination teams in the HKMA. Further internal resources will be deployed if necessary to take up the additional tasks arising from the proposed regime, e.g. the maintenance of the register. No substantial financial implication is anticipated at this stage.
172	HKSA	Audit working papers are prepared by auditors when they perform work that is necessary to provide a reasonable basis for their opinion. These papers are the property of the auditor and not the company. They may or may not be useful for the purpose of an investigation. The HKSA has been assured that (i) it is unlikely that the SFC would be able to grant third party access to correspondence or records of discussions with auditors held under cl 172, and (ii) the general immunity provisions under cl 368 are adequate to ensure that unintended liabilities would not be incurred by auditors co-operating with the SFC under cl 172.	Whether audit papers are the property of auditors is irrelevant in the face of a lawful request for them. The SFC and, on a judicial review or action to enforce compliance with a request for documents, the courts, are the only arbiters of whether they are relevant to an investigation. The secrecy provisions under clause 366 prohibit the disclosure of non-public information by the SFC or any of its officers except in the performance of a function or in the limited circumstances specified therein (e.g. criminal proceedings or in civil proceedings to which the SFC is a party). Disclosure in all these circumstances is proper and in the public interest which must prevail over any conflicting interest of an individual. Further, cl 368(3) also provides that a person complying with a requirement under the Bill will not incur civil liability by reason only of that compliance. This provision is applicable to auditors who are complying with a requirement of the SFC under clause 172.
172(1) and (9)	HKAB	The SFC will be able to characterise almost any misconduct or fraud in a listed authorised institution as involving inadequate disclosure to members allowing it to conduct an inquiry under cl 172. The SFC should not be allowed to conduct cl 172 inquiries into listed authorised institutions or should be obliged to seek the HKMA's approval in every instance.	The SFC can only start an inquiry into a listed authorised institution when the suspected misconduct goes directly to the nature of the corporation <u>as a listed entity</u> in that the corporation's members had a reasonable expectation that the information be disclosed to them. If an authorised institution seeks listed status, it must accept the greater scrutiny and regulatory controls that accompany that status to protect the investing public. The SFC would in practice consider whether any conduct would be better dealt with by the HKMA in deciding whether to start an inquiry under cl 172. The SFC has the power to apply to court for various orders to remedy misconduct in a listed corporation after a cl 172 inquiry and the ability to apply for those remedies should be available in the case of a listed authorised institution. In any event, under cl 172(10), the SFC may only issue a direction to the authorised institution itself, any of its group corporations or associated corporations or a

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			corporation which controls the authorised institution, after consulting the HKMA.
172(1)(iii), (iv) and (v)	HKAB	Under these clauses, the SFC can seek documents from third parties in relation to the affairs of a listed authorised institution without first consulting the HKMA and also when the inquiry has nothing to do with inadequate disclosure to that listed authorised institution's members. Either these provisions should not apply to a listed authorised institution; or the SFC should have to first seek the HKMA's approval before getting documents about a listed authorised institution's affairs.	The SFC is the agency charged with investigating possible crime or misconduct in the securities and futures markets and it is the only public body with the power to conduct a limited preliminary inquiry into possible crime or misconduct in a listed corporation. It has expertise in these areas. We understand that any investigatory action on a bank would have an impact on its reputation, which goes hand-in-hand with the public's confidence on the bank. In these instances, the SFC's exercise of power is already subject to adequate safeguards and prior consultation with the HKMA (subclauses 172(6), (9) and (10)). In all instances, the SFC's inquiries on banks or with others seeking information about the affairs of a listed bank are secret. In respect of third parties (other than banks) related to a listed bank which may be required to produce the information under the clause, adequate safeguards are already in place to ensure that the inquiry powers are not exercised lightly. Authorised institutions should not be ring fenced from the SFC's inquiry powers under cl 172 simply because of their status, nor do we see strong reasons why the powers should be subject to prior consultation with the HKMA in theses cases, as these third parties are not regulated by the HKMA.
172(1)(iii)	HKAB	This clause undermines a bank's obligation of confidentiality to its customers. The HKMA should first have to approve the SFC obtaining documents from a bank and should only give it's approval if the document is necessary for the SFC's inquiry.	A bank's duty of confidentiality to its clients arises under common law and can be overridden by statute. The SFC is granted its inquiry powers under cl 172(1)(iii) so that it can in the public interest determine whether crime or other misconduct has occurred in a listed corporation so that appropriate action can be taken. Owing to the central roles banks play in business, it is often necessary to obtain a customer's banking records from a bank in the course of an inquiry (eg to trace funds). The SFC's exercise of this power under cl 172(1)(iii) is already subject to adequate safeguards under cl 172(6) that exceed those that the SFC usually has to meet before exercising its inquiry or investigatory powers. We believe that additional restrictions are unnecessary.

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172(1)(iv)	Consumer Council	Supports the proposal to give the SFC power to access audit working papers, as it would assist the SFC to effectively and efficiently fulfil its inquiry function and provide an added safeguard to the investing public.	We welcome the Consumer Council's support for the proposals.
172(7)(a)	HKSA	It is reasonable to expect the SFC to seek access to audit working papers only after it has commenced an investigation into a listed company and has determined that the audit working papers would be relevant from inspection of the company's documents. It would be inappropriate for audit working papers to be used by the SFC as the starting point of an investigation or as a means of 'fishing expeditions'. The HKSA has been assured by the Administration and the SFC that it is not intended that audit working papers would be so used. However the HKSA is concerned that the inclusion of the words 'or may be given under subsection (1)(i) or (ii)' in cl 172(7)(a) suggests that the SFC could require the production of audit working papers without having first given any direction to the subject corporation. This appears to be contrary to the assurances which we have been given. The words 'or may be' in this sub-clause should be deleted.	The SFC does not intend to use audit working papers to go on "fishing expeditions" and cannot under the Bill in that the documents sought must be relevant to the grounds for the inquiry. The SFC's inquiries under cl 172 are limited in scope and are conducted quickly to establish quickly whether more serious action needs to be taken. So they are as focussed as possible. However, the SFC needs flexibility in how it plans its inquiries. Different matters need different inquiry strategies. Usually the SFC will seek auditors' working papers to verify information obtained from the listed corporation under inquiry or one of its group corporations. This will necessarily be after obtaining information from such a corporation. But, sometimes the SFC will seek information from an auditor first to close off avenues of inquiry that the auditor has already sufficiently examined. It would unnecessarily inhibit the SFC's inquiries if it was prohibited from doing this.
172(9)	HKISD	Please explain the reason for the difference in the SFC's authority in enquiring into listed companies and authorised financial institutions.	There is <u>no</u> difference in SFC's authority in enquiring into an authorised financial institution as a listed corporation for the protection of the interests of its shareholders. The HKMA as the frontline regulator of authorized financial institutions has primary responsibility for the day-to-day supervision of authorized financial institutions in regard its regulated activities under the Bill

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			and is equipped with the necessary investigatory powers. The Bill already puts in place adequate safeguards and restrictions on the SFC's power to exercise its inquiry powers on authorised institutions.
172(13)	HKSA	The HKSA is concerned that auditors should be subject to criminal sanctions under cl 172(13) for failure to produce working papers or give explanations. The HKSA notes the 'reasonable excuse' proviso. But the threat of heavy criminal liabilities could nonetheless be used to enforce onerous or unreasonable request by the SFC. Considerations could be given on whether the penalties set out in this sub-clause are appropriate for use against third parties (such as auditors) who are called upon to assist in an investigation.	The offences in clause 172 are standard provisions in similar regulatory powers both in this jurisdiction and other major international financial centres. Their objective is to deter non-compliance and they are adapted from existing law. They are not targeted at auditors. They apply to any person from whom SFC may request information under clause 172. To secure a conviction for a failure to produce documents, the prosecution must prove beyond reasonable doubt that an auditor has failed to produce the required documents and there should be no reasonable excuse for the failure to do so. In seeking assistance from auditors in an inquiry, the SFC's primary concern is to obtain relevant records and documents. In case of non-compliance, the SFC will usually first go to court for an order to compel compliance and it will be up to the court to decide what amounts to a reasonable excuse. If a person fails to comply with a court order compelling compliance after the SFC has certified non-compliance to the court, the court may punish non-compliance as if it were contempt of court. Similar systems for dealing with non-compliance are found in the regulatory regimes of the US, UK and Australia.
173	HKAB	There appears to be a drafting flaw in that cl 173(9) and (10) do not apply where an authorised institution is exempt. The protections in those clauses should apply when an exempt authorised institution receives an inquiry under cl 173(1)(c)(iii) or (3)(c) in relation to its dealings with another entity rather than in relation to its own regulated business.	We recognise HKAB's comments that the safeguard should be given to all authorized institutions. We will work with the SFC, HKMA and the DoJ to further consider the comment and propose Committee Stage Amendments as necessary.

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173[#]	HKAB, Group of nine investment bankers	The privilege against self-incrimination should apply to explanations or statements given under cl 173 as it does under cl 172.	Neither clause 173 nor clause 174 is intended to override the privilege either expressly or by necessary implication. We will propose Committee Stage Amendments to put this beyond doubt.
173	HKSbA, Hon Henry Wu*	Clause 173 extends the SFC's power in an intermediary inspection to any other person whether connected with the intermediary or an associated entity or not. The SFC may also ask any person any question about any document of the intermediary or an associate entity. The FSA's inspection powers under the FSMA are limited to those connected with a licensed person. A connected person is clearly defined as being a member of A's group (where A is the person under inspection), or in the case of a body corporate, its officer, manager, employee or agent. The SFC's inspection powers should only extend to people who are connected with the licensed person under inspection.	This is not an extension. The existing law already provides that the SFC may obtain "from any other person whom it reasonably believes is in possession or has under his control any record or other document" relating to the registered business and necessary for determining compliance with relevant Ordinances or the terms and conditions of registration – see SFCO section 30(2). The comment does not refer to the additional safeguard under clause 173(7)&(8) – the authorized person has to have reasonable cause to believe that the information cannot be obtained from the intermediary or the associated entity.
173*	Hon Henry Wu	Whether the powers under Part VIII are also available to the HKMA in the regulation of securities business of exempt AIs compared to the SFC in the regulation of licensed intermediaries.	Clause 173 in Part VIII provides for the same powers for the supervision of both licensed persons and exempt AIs. The only difference is that the authorized person would be authorized by the HKMA if the intermediary or its associated entity is an exempt AI; and by the SFC if the intermediary is a licensed person. Otherwise, the provision applies equally to exempt AIs and licensed persons.
174*	HKSbA	This section applies to unlisted securities. This is too strict an obligation for all shareholders of private companies or any company to perform, with possible criminal punishments for failure to do so.	This section does not apply to shares in private companies. See definition of "securities" - private company shares are specifically excluded. The rider "in so far as applicable" provides a degree of limitation on the existing requirement in section 31 of the SFCO and section 42 of the LFETO .

[#] Response to comment amended compared to Paper No. 7A/01 when last issued.

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		Subsection (2) lists the information required "in so far as applicable". It is not known what information is applicable in what circumstances which may be very varied. It is suggested that this phrase be substituted by "in so far as available". The application of this provision should be limited to securities or contracts (and not extended to futures and leveraged foreign exchange contracts and collective investment schemes).	It is not necessary or desirable to restrict the obligation to information which is "available". Inability to provide the information due to the fact that it was unavailable to the person would be a reasonable excuse and thus a defence to the offence under sub-clause (7). Existing legislation already applies to futures and leveraged foreign exchange contracts and collective investment schemes (see section 31 of the SFCO and section 42 of the LFETO). The regulatory framework both under existing law and under the Bill covers not only securities but also these other categories of contracts and it is necessary that the supervisory powers would cover these types of transactions.
174(3) to (7)	HKISD, HKSbA*	Given the wide power of enquiry under these sub-clauses, is it appropriate that the SFC can authorise 'anybody' to be the authorised person under sub-clause (5)?	This is in line with existing legislation (s 30 and 31 of the SFC Ordinance). The existing practice is for SFC employees to be authorised to carry out inspection, usually in a team under the supervision of an experienced SFC officer at manager or senior manager level or above. Very occasionally, the SFC may wish to appoint an independent expert (such as an accountant) to carry out the inspection where specialist expertise is required.
176*	HKSbA, Hon Henry Wu	The power of the investigator to require a person under investigation to produce any record or document, give explanation or further particulars, answer any question and give all assistance in connection with the investigation may be too extensive.	This provision is already in existing legislation – section 33(4) of the SFCO and section 44(4) of the LFETO. It is important that the SFC is equipped with effective investigatory powers. The investigator's power to require information under this clause is not unrestricted. The investigator must have reasonable cause to believe that the person under investigation has in his possession a record, document or other information which is relevant to the investigation. There are safeguards against possible abuse of power in that, if an investigation were started under clause 175(1) or an investigator exercised their powers under clause 176(1) improperly, an affected person could apply for judicial review or complain to the Ombudsman.
178	Law Society	There is no need for the SFC to have the option to initiate certification proceedings to punish non-compliance with cl 172, 173, 174 or 176 by way of either Originating Summons or Originating Motion. The SFC should have to proceed by way	It is important for the Commission to have the choice between the two procedures and hence both procedures must be referred to in the provision. This is because : (1) the expedited Originating Summons procedure would be appropriate in

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		of Originating Summons which must be supported by an affidavit.	cases where there is reason to believe that the person who was the subject of the original requirement (upon which he defaulted) will comply with the requirement once certification proceedings are issued; (2) the Originating Motion procedure would be appropriate in cases where the defendant is likely to vigourously defend the application; and (3) in the case of an expedited Originating Summons, there is the additional benefit of saving costs as the first hearing (not being a hearing of the substantive application), is "in chambers" and may be attended by a Solicitor of the SFC's Legal Services Division. It is appropriate for the SFC to have the option of initiating proceedings by way of originating motion in open court, particularly in cases which may involve a complicated or important point of law.
178(1)(b)	HKSA	A lawyer, as a bona fide legal adviser of persons being the subjects of SFC requirements, who advised a client that he was not compelled to comply with the request, should not be able to be punished for the failure to comply if the Court of First Instance held that the failure was without reasonable excuse.	Clause 368 already recognises legal professional privilege, as in section 56 of SFC Ordinance. Reasonable excuse under cl 178 will be interpreted accordingly. If the person being the subject of an SFC request is able to satisfy the Court that he has received bona fide legal advice and has acted on such advice, it does not appear that the Court will take the view that the failure to comply is without reasonable excuse. If the person himself will not be punished, the legal adviser, as a person involved in the failure, will also not be punished. There are therefore no grounds on which to further exclude lawyers from punishment under cl 178(1)(b).
180[#]	Law Society	The privilege against self-incrimination should be available under cl 173 inspections and requests for information about transactions in securities, futures or leveraged foreign exchange contracts or interests in collective investment schemes under cl 174.	Neither clause 173 nor clause 174 is intended to override the privilege either expressly or by necessary implication. The information sought under cl. 173 or cl. 174 is used routinely by the SFC to monitor trading on the securities and futures market and for the monitoring of SFC licensees in compliance with requirements under the licensing regime. A formal investigation will be instituted under cl. 175 where specified grounds are

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		Alternatively, there should be restrictions put on the extent to which information gathered under those clauses can be used.	satisfied. Given that the privilege against self-incrimination has been preserved, we believe that it is inappropriate to place restrictions on the use of such information.
180*	HKSbA, Hon Henry Wu	The information given in relation to explanations and further particulars given in respect of documents sought, and answers to questions posed is admissible in proceedings under the market misconduct regime in Part XIII in relation to any category of market misconduct and not just insider dealing. This will contravene the Bills of Rights and is contrary to the criminal law principle on privilege against self-incrimination.	Articles 10 and 11 of the Hong Kong Bill of Rights Ordinance (HKBOR) apply where the proceedings involve the "determination of a criminal charge". Part XIII creates a civil regime to combat market misconduct. Proceedings before the Market Misconduct Tribunal (MMT) are not criminal. Therefore, the use of information obtained under clauses 172 and 176 in MMT proceedings does not contravene Articles 10 and 11 of the HKBOR.
181	HKISD	Is this only a disclaimer? Need there be an acknowledgement by the police?	This means that the document or record must be produced to the authorized person or investigator by the person in possession regardless of the lien and at no charge. It also functions to preserve a person's lien vis-à-vis parties other than the SFC. Cl 181 is not a disclaimer. There would not be a need for an acknowledgement by the police.

Details of Submissions Referred to in the Comment / Response Table

Date received	Organization /party
31 January 2001	Hong Kong Society of Accountants ("HKSA")
23 January 2001	Hong Kong Association of Banks ("HKAB")
23 January 2001 and 15 February 2001	Linklaters & Alliance representing - Bear Stearns Asia Limited - Credit Suisse First Boston (Hong Kong) Limited - Dresdner Kleinwort Wasserstein - Goldman Sachs (Asia) L.L.C. - Merrill Lynch (Asia Pacific) Limited - JP Morgan - Morgan Stanley Dean Witter Asia Limited - Salomon Smith Barney Hong Kong Limited - UBS Warburg ("Group of nine investment bankers")
23 January 2001	Law Society of Hong Kong ("Law Society")
29 January 2001, 15 February 2001, 23 March 2001* and 5 June 2001*	Hong Kong Stockbrokers Association ("HKSbA")
30 January 2001	Hong Kong Institute of Securities Dealers ("HKISD")
14 February 2001	Hong Kong Bar Association
3 February 2001	Consumer Council
16 March 2001*	Written comments from the Hon Henry Wu

Securities and Futures Commission
Financial Services Bureau
13 July 2001

International comparison: company inquiry powers

Hong Kong	UK	Australia	US[1]	Canada[2]
SFC will have power to require the production of documents and information (including explanations or statements) when conducting a preliminary inquiry into suspected misconduct in the affairs of a listed company including the power to require a listed company's auditor to produce relevant records or documents This power can only be exercised in certain restricted circumstances as provided in clause 172(1). The exercise of the power will have to be certified by a senior SFC director Power will be subject to judicial review, Ombudsman and Process Review Panel	Department of Trade and Industry (DTI) the Serious Fraud Office (SFO) and President of the Board of Trade (PBT) PBT may appoint 1+ inspectors to investigate the affairs of a company on his own initiative on certain grounds, on the application of a company or a certain number of a company's shareholders. PBT must appoint inspectors if required to by a court - usually a QC and a chartered accountant assisted by DTI staff Inspectors have the power to require any person to testify before them or to produce any documents SFO may when investigating "serious or complex fraud" require anyone believed to have relevant information to attend to answer questions relevant to an investigation and/or to produce documents relevant to an investigation Powers subject to judicial review FSA will have power to access auditors' documents	Australian Securities and Investment Commission (ASIC) ASIC has extensive powers to conduct an investigation into a breach of the Corporations Law which regulates companies and a breach of any other Australian law which concerns the management or affairs of a company and involves fraud or dishonesty relating to a company These powers include the power to: • interview any person who may be able to give relevant information • obtain documents in any person's possession which may be relevant to the company's affairs • require the production of books (widely defined) about a company's affairs from that company or people related to the company, including its auditor [s 29 ASICA] Powers subject to judicial review and Ombudsman	No direct comparison as no US corporate regulator beyond bodies which register (incorporate) companies Most enforcement action by civil class action by shareholders as most companies legislation only creates civil obligations Misconduct involving companies that may be criminal are investigated: • at the local or state level by a district attorney or state attorney general assisted by police • at the federal level, by a US Attorney, assisted by the FBI. District attorneys, state attorneys general and US Attorneys have extensive subpoena powers which require an application to a magistrate (which may be done by telephone or in chambers) to establish probable cause for the exercise of subpoena powers SEC has extensive powers to issue their own subpoenas in relation to matters that they can investigate.	No direct comparison, as no Canadian corporate regulator beyond bodies which register (incorporate) companies Most enforcement action by civil class action by shareholders as most companies legislation only creates civil obligations Situation in respect of investigation of misconduct involving companies that may be criminal is not known Provincial securities regulators (e.g. Ontario Securities Commission (OSC)) have extensive power to obtain documents and interview people.

1 Uses the Securities and Exchange Commission (SEC) as a basis for comparison. Commodity Futures Trading Commission (CFTC) has similar powers.

2 Securities and futures regulation is a responsibility for provincial governments, but regulation in each province is broadly similar. Responses for the purpose of this table have been prepared on the basis of Ontario.