



中華人民共和國香港特別行政區  
Hong Kong Special Administrative Region of the People's Republic of China

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19 August 2015

Ms HO Kwok Shan, Joyce  
Prin AS for Financial Services  
& the Treasury (Financial Services)1  
Financial Services and the Treasury Bureau  
24/F, Central Government Offices  
2 Tim Mei Avenue, Tamar  
Hong Kong

Dear Ms HO

### **Securities and Futures (Amendment) Bill 2015**

We are scrutinising the legal and drafting aspects of the captioned Bill and should be grateful if you could clarify the following matters:

#### **Clause 18 under Division 4 of Part 2 – Item 9 of Schedule 1 to the Securities and Futures (Fees) Rules (Cap. 571AF)**

Under the existing Item 9 of Schedule 1 to the Securities and Futures (Fees) Rules (Cap. 571AF), substantial change in particulars of a licensed corporation/registered institution since the grant of the existing licence/certificate of registration will necessitate the grant of a new licence/certificate of registration in which a fee of \$200 is payable for such an application. Please explain why it is proposed to amend "substantial change" to "change" of particulars of a licensed corporation/registered institution in the triggering regime for the grant of a new licence/certificate of registration.

#### **Clause 20(37) under Division 5 of Part 2 – Proposed section 47C under the Proposed Part 5A of Schedule 11 to the Securities and Futures (Amendment) Ordinance 2014**

Under the proposed section 47C(2)(a) and (4)(a) of the proposed Part 5A to be added to Schedule 11 to the Securities and Futures (Amendment)

Ordinance 2014 (Ord. 6 of 2014), the printed licence/certificate of registration issued under Schedule 11 must be returned to the Securities and Futures Commission (SFC) within 7 days for cancellation after the date on which the deemed status ends as a result of withdrawal, refusal or approval of the normal licence application. It is noted that in sections 120(11) and 123(1)(b) of the Securities and Futures Ordinance (Cap. 571) which provide for a similar licence return mechanism, the term "7 business days" is used. Please consider if it is necessary to amend it to "7 business days" in the proposed section 47C.

Clause 22 under Part 3 – section 180 (supervision of intermediaries and their associated entities)

The proposed section 180(4A) confers powers on authorized persons to require licensed corporations or related corporations of licensed corporations to produce records or documents and answer questions.

- (a) Please clarify whether SFC can seek information from persons other than licensed corporations or their related corporations by virtue of section 181 of Cap. 571 (which provides that an authorized person may require information from other persons specified in section 181(1) for the purpose of enabling or assisting SFC to perform a function under any of the relevant provisions).
- (b) Will the licensed corporation or its related corporation from which the documents or information are sought be informed by SFC of the request made by the authority or regulatory organization outside Hong Kong?

Clause 24 under Part 3 – section 186 (Commission's assistance to regulators outside Hong Kong)

*Proposed section 186(2B)*

- (a) Are there any criteria for determining the scope of information that can assist in ascertaining whether a corporation constitutes a risk to the financial stability or may affect the financial stability of the jurisdiction of the authority or regulatory organization?

- (b) What is the threshold of gravity or seriousness required that will be considered as constituting a risk to or affecting the financial stability of the relevant jurisdiction of the authority or regulatory organization? What are the factors to be considered?

*Proposed section 186(2D)*

Would the authority or regulatory organization outside Hong Kong be considered as not being able to obtain the information by any other reasonable means if it is precluded by law or insufficient resources of the jurisdiction of the authority or regulatory organization from obtaining the information?

*Proposed section 186(2E)*

- (a) Please clarify the meaning of "a demand legally enforceable" under the laws of the jurisdiction of the authority or regulatory organization in the proposed section 186(2E)(d). Does it refer to or relate to any proceedings (including criminal or civil proceedings or enforcement-related proceedings) or pre-proceedings arising from matters concerning those set out in the proposed section 186(2B)?
- (b) What are the protections afforded to the licensed corporation or its related corporation which has provided the information if legal exemptions or privileges as provided in the proposed section 186(2E)(d)(ii) are not available under the laws of the jurisdiction of the authority or regulatory organization?
- (c) Please consider if it is necessary to add a provision to the effect that such documents or records covered by legal professional privilege would not be provided to the authority or regulatory organization outside Hong Kong without the consent of the licensed corporation or its related corporation.
- (d) Would the Administration consider adding a provision to the effect that explanation or statement provided by a person who claims that such explanation or statement might tend to incriminate him would not be provided to the requesting authority or regulatory organization outside Hong Kong for use in criminal proceedings against him in the

jurisdiction of the requesting authority or regulatory organization outside Hong Kong? Please also consider adding an undertaking to the effect that such self-incriminating explanation or statement, if any, shall not be admissible as evidence against the person in criminal proceedings in the relevant jurisdiction of the authority or regulatory organization outside Hong Kong.

- (e) Would SFC be entitled to send documents, records or information to the authority or regulatory organizations outside Hong Kong in such form, or to edit or otherwise organize the requested materials or cause only part of the materials to be so provided if it appears to SFC for any reason to be appropriate to do so? If not, please consider adding a provision to that effect. In this regard, you may wish to refer to section 18(2) and (3) of the Australia's Mutual Assistance in Business Regulation Act 1992 (which provides for a similar assistance scheme to requests by foreign regulators) as reference.
- (f) To safeguard the confidentiality of personal data within the meaning of the Personal Data (Privacy) Ordinance (Cap. 486), please consider spelling out specifically the maintenance of the confidentiality of such personal data in the undertaking set out in the proposed section 186(2E) to the effect that the authority or regulatory organization outside Hong Kong should take all reasonable precautions and exercise all due diligence to ensure that personal data will not, in the jurisdiction of the authority or the regulatory organization, be collected, held, processed or used in any manner which, if that place were Hong Kong, would be a contravention of a requirement under Cap. 486.


Clause 27(4) under Part 5 – Proposed section 378(9A) (preservation of secrecy)

It is proposed that a recognized exchange company may impose conditions in granting consent for onward disclosure of information. For safeguarding the secrecy of information, please consider if it is necessary to provide that the conditions imposed by the recognized exchange company for onward disclosure of information would not be less stringent than those imposed by SFC on the recognized exchange company.

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I should appreciate your reply in both English and Chinese by  
1 September 2015.

Yours sincerely,

  
(Vanessa CHENG)  
Assistant Legal Adviser

c.c. DoJ (Attn.: Ms Leonora IP, Sr Asst Law Draftsman (Laws Publication)  
(By Fax: 2869 1302))

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Clerk to the Bills Committee