

Bills Committee on Securities and Futures (Amendment) Bill 2015

Responses to Follow-up Actions Arising from the Discussion at the Meeting on 15 September 2015

This paper sets out the responses from the Administration and the Securities and Futures Commission (“SFC”) to the issues raised by Members in relation to the Securities and Futures (Amendment) Bill 2015 (“Bill”) at the meeting on 15 September 2015.

Ensuring the requesting regulator’s ability and willingness to provide reciprocal assistance

2. In considering whether a request that would enable the assistance envisaged by the Bill from a regulator outside Hong Kong is to be entertained or not –

- (a) the SFC must be satisfied that the regulator outside Hong Kong performs similar functions as those of the SFC and that it is subject to adequate secrecy provisions (under section 186(5) of the Securities and Futures Ordinance (“SFO”)).
- (b) the SFC must be satisfied that it is desirable or expedient that the assistance should be provided in the interest of the investing public or in the public interest (under section 186(3) of the SFO).
- (c) the SFC should take into account whether the regulator outside Hong Kong will pay the costs and expenses incurred in providing the assistance and be able and willing to provide reciprocal assistance within its jurisdiction in response to a comparable request for assistance from Hong Kong (under section 186(4) of the SFO).

3. Accordingly, the SFC would not enter into bilateral Memorandum of Understanding (“MoU”) that would enable the assistance envisaged by the Bill with any jurisdiction or authority which will not provide reciprocal assistance in response to an equivalent assistance request made by the SFC.

4. All such MoUs in the securities field are non-binding, expressly subject to exceptions, i.e. supervisory assistance could be denied by the signatories of the MoU for circumstances where providing assistance would be in breach of domestic law. That said, we expect regulators of comparable jurisdictions with which the SFC enters into supervisory MoUs would use reasonable endeavours to provide the supervisory assistance with the fullest co-operation permissible, and such exceptions would not ordinarily apply.

Potential impacts if the proposed mechanism is or is not put in place

5. Supervisory MoUs are built on reciprocal and mutual assistance among international regulators in relation to supervision and oversight of regulated entities and their related corporations whose activities may affect the jurisdictions of the parties to the MoU. Given Hong Kong's open market architecture and the significant presence of international firms with group companies that are regulated overseas, the ability to enter into supervisory MoUs to enable reciprocal supervisory assistance is particularly important for Hong Kong. This would enable the SFC to seek information regarding entities of systemic significance or whose activities could have a systemic impact on the markets.

6. The supervisory assistance sought would also involve issues of compliance by regulated persons with the securities-related legal or regulatory requirements administered by regulators. The current limitation of the SFC's powers under the existing legal framework could hinder the SFC's ability to enter into supervisory MoUs with regulators outside Hong Kong, and thus undermine the SFC's ability to seek assistance for the purposes of enhancing monitoring of the financial stability in Hong Kong and ensuring compliance of licensed corporations.

7. The proposed amendments will also enable Hong Kong licensed corporations to have greater access to overseas markets and allow regulators outside Hong Kong to grant market access to Hong Kong financial firms, which otherwise could be denied. For instance, enhanced supervisory co-operation arrangements between the SFC and the European Union ("EU") regulators are required under the Alternative Investment Fund Managers Directive for SFC-licensed asset managers to market their fund products into Europe.

8. The proposed supervisory co-operation mechanism represents the

minimum necessary to ensure that Hong Kong can take advantage of the benefits of greater co-operation amongst international regulators. We believe that this objective is firmly in the public interest. It enables Hong Kong firms to have more assured access to overseas markets and also enables the SFC to protect Hong Kong investors and its markets by obtaining more and better supervisory information from regulators outside Hong Kong about globally active firms through reciprocal arrangements.

Similar mechanisms in Members States of the EU

9. Please refer to the table at **Annex A**, which compares the supervisory co-operation mechanisms in three member states of the EU, i.e. Germany, the Netherlands and the United Kingdom. As seen from the table, all three member states of the EU have similar mechanisms in place which allow them to provide reciprocal supervisory assistance to their overseas counterparts. Other major jurisdictions such as Australia and Singapore¹ also have similar powers under their respective statutes to provide supervisory assistance to their counterparts.

Comparison of legal frameworks for other information exchange mechanisms

10. As explained in our paper CB(1)1231/14-15(02), the regime for information exchange on tax matters is generally provided for under binding intergovernmental agreements or arrangements. Before these agreements or arrangements can have domestic legal effect in Hong Kong, it is necessary for the Chief Executive in Council to declare by orders as required under the Inland Revenue Ordinance (Cap. 112) to give effect to them. These orders have to be enacted as subsidiary legislation, which are subject to negative vetting by the LegCo.

11. The regime for mutual legal assistance, which covers agreements concerning the surrender of fugitive offenders and those concerning mutual legal assistance in criminal matters, is analogous to the regime for information exchange on tax matters outlined above. The government enters into binding bilateral agreements with other governments and in order for these to have domestic legal effect in Hong Kong, subsidiary

¹ Please refer to Appendix A (International comparison table) to the SFC's "Consultation Paper on Proposed Amendments to the Securities and Futures Ordinance for Providing Assistance to Overseas Regulators in Certain Situations" dated 19 December 2014.

legislation is necessary.

12. Regarding arrangements on surrender of fugitive offenders, it is necessary for the Chief Executive in Council to direct, by order under the Fugitive Offenders Ordinance (Cap. 503), that the procedures in the Ordinance shall apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the order. As for arrangements on mutual legal assistance in criminal matters (“MLA”), the Chief Executive in Council may, with the approval of the LegCo, by order under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) direct that the Ordinance shall, subject to such modifications thereto as may be specified in the order, apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate.

13. In substantial contrast, in the context of securities market supervision, arrangements for supervisory co-operation are entered into between securities regulators (not governments) usually in the form of MoUs which are not legally binding and are expressly subject to each party’s domestic law. There is no scope for the SFC to enter into legally binding MoUs as neither it nor its counterparts has treaty-making capacity. Moreover, the narrow power to provide supervisory assistance under the Bill, when exercised, will be in relation to licensed corporations, but not licensed individuals. As such, the other information exchange mechanisms mentioned above are not relevant in this context. The current proposal under the Bill is in line with international practice.

14. In addition, the purpose of the legislation with regard to surrender of fugitive offenders and MLA is to provide for arrangements which require the exercise of more comprehensive powers, including compulsory measures, by the Government. The Fugitive Offenders Ordinance provides for the surrender to certain places outside Hong Kong of persons wanted for prosecution, or for the imposition or enforcement of a sentence, as well as the basis for refusing a surrender request. It also provides for the treatment of persons surrendered to Hong Kong. The Mutual Legal Assistance in Criminal Matters Ordinance regulates the provision and obtaining of assistance in the investigation and prosecution of criminal offences and ancillary criminal matters. The types of assistance that may be rendered by Hong Kong under the Ordinance include taking evidence and production of things before a magistrate, search and seizure of materials under search warrants, obtaining court orders for production of

material and enforcement of external confiscation orders.

15. Our current proposal is merely to enable the SFC to have the non-mandatory power to provide a narrow form of supervisory assistance to regulators outside Hong Kong upon request. The proposed scope of supervisory co-operation is limited to the SFC requiring a licensed corporation (or its related corporation) which is also regulated by the regulator outside Hong Kong to provide a copy of any record or document relating to any regulated activity carried on by the licensed corporation or any transaction or activity which was undertaken in the course of, or which may affect, any regulated activity carried on by the licensed corporation, and answer any question regarding any such record, document, transaction or activity. The information to be obtained must be in relation to the regulated activities supervised by the SFC. This information will be provided to the requesting regulator outside Hong Kong only for supervisory, but not enforcement, purposes. It should also be noted that the SFC is not seeking the power to enter the premises of any corporation.

16. To enhance transparency, the SFC is required under section 186(5) of the SFO to publish in the Gazette the names of the regulators outside Hong Kong with which it enters into supervisory MoUs. The SFC will usually publish the texts of signed supervisory MoUs on its website.

17. Taking into account the above, we consider it not appropriate or proportionate to impose a negative vetting requirement on the process of entering into an MoU by the SFC.

Responses to the views and concerns raised by the deputations at the meeting

18. Please refer to our responses in **Annex B**.

**Financial Services and the Treasury Bureau
Securities and Futures Commission
October 2015**

International Comparison Table - Similar Mechanisms in Members States of the European Union

Germany	The Netherlands	United Kingdom
<p><u>Sections 4 and 7 of the Securities Trading Act (STA)</u> enable the Federal Financial Supervisory Authority (BaFin) to make use of all powers available to it by law to honour information transmission requests from supervisory authorities in other countries to fulfil their supervisory duties.</p> <p>Under <u>section 7 of STA</u>:</p> <p>(1) The BaFin is responsible for cooperation with the competent authorities responsible for the supervision of conduct of business and organisational requirements of companies providing investment services, of financial instruments and of markets on which financial instruments or commodities are traded in other member states of the European Union and the other signatories to the Agreement on the European Economic Area. Within the framework of its cooperation, for purposes of monitoring compliance with the prohibitions and requirements of this Act and of the countries specified in sentence 1 which are</p>	<p><u>Sections 1:65 and 1:68, Part 1.3.3 under Chapter 1.3 of the Financial Supervision Act (FSA)</u> enable the Authority for the Financial Markets (AFM) to request information from any party for implementation of agreements concluded with supervisory authorities in other countries, and to supply such information to the relevant supervisory authorities.</p> <p>Under <u>section 1:65 of FSA</u>:</p> <p>(1) The supervisor may supply a supervisory authority of a non-Member State with confidential data or information if the guarantees applicable under the law of that State with regard to the non-disclosure of this data and information are at least equivalent to those applicable under Section 1:90(1), and insofar as the exchange is made for the purpose of the exercise of supervision by the supervisory authority involved.</p> <p>...</p>	<p><u>Sections 169 and 169A of the Financial Services and Markets Act 2000 (as amended by the Financial Services Act 2012) (FSMA)</u> enable the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) to exercise their powers at the request of an overseas regulator to gather information under <u>sections 165 and 165A of the FSMA</u>.</p> <p>Under <u>section 169 of the FSMA</u>:</p> <p>(1) At the request of an overseas regulator, a regulator may-</p> <p>(a) exercise the power conferred by section 165; or</p> <p>(b) appoint one or more competent persons to investigate any matter.</p> <p>...</p> <p>(7) If a regulator has appointed an investigator in response to a request from an overseas regulator, it may direct the investigator to</p>

<p>equivalent to those prohibitions and requirements of this Act or the Exchange Act (Börsengesetz), the BaFin may make use of all powers available to it by law, to the extent that this is suitable and necessary to honour the requests of the authorities specified in sentence 1...</p> <p>(2) Upon request by the competent authorities named in subsection (1) sentence 1, the BaFin conducts investigations pursuant to Article 15 of Commission Regulation (EC) No. 1287/2006 and transmits all information without undue delay, to the extent that this is necessary for the supervision of organised markets or other markets for financial instruments, of credit institutions, financial services institutions, investment companies, financial enterprises or insurance undertakings or administrative or judicial proceedings related thereto. When transmitting information, the BaFin is obliged to instruct the recipient that, without prejudice to his prosecutorial obligations, the transmitted information, including personal data, is to be used only to fulfil supervisory duties in accordance with sentence 1 and in the context of administrative and judicial proceedings related thereto.</p> <p>(3) The BaFin may refuse an investigation, the transmission of information or the participation of representatives of foreign authorities within the meaning of subsection (1) sentence 1 if</p>	<p>(4) Insofar as the data and information referred to in Subsection (2) was obtained from a supervisory authority of a non-Member State, the AFM shall not disclose it to a person or body as referred to in Subsection (2) unless the supervisory authority from which the data and information was obtained has expressly consented to the disclosure of the data and information and, where applicable, has consented to the use of this data and information for a purpose other than that for which it was supplied.</p> <p>(5) Immediately upon concluding an agreement on the exchange of data and information with a supervisory authority of a non-Member State or a person or body as referred to in Subsection (2), with due observance for Subsections (1) or (2), the supervisor shall send a copy of this agreement to Our Minister.</p> <p>Under <u>section 1:68 of FSA</u>:</p> <p>(1) The supervisor may request information from any party for the implementation of treaties on the exchange of data or information, or for the implementation of agreements concluded with supervisory authorities on the exchange of data and information as referred to in Section 1:65.</p>	<p>permit a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation.</p> <p>...</p> <p>Under <u>section 169A of the FSMA</u>:</p> <p>(1) At the request of an overseas regulator, the PRA may exercise a corresponding section 165A power.</p> <p>(2) An “overseas regulator” means an authority in a country or territory outside the United Kingdom which exercises functions with respect to the stability of the financial system operating in that country or territory.</p> <p>(3) A “corresponding section 165A power” means a power corresponding to the one conferred by section 165A, but reading references in that section to the stability of the UK financial system as references to the stability of the financial system operating in the country or territory of the overseas regulator.</p> <p>(4) The following provisions apply in relation to the exercise of the corresponding section 165A power-</p> <p>(a) section 165B(1) to (5); and</p> <p>(b) section 169(3), (4)(a) and (d), (5) and (6).</p> <p>(5) In this section “the financial system” includes</p> <p>(a) financial markets and exchanges;</p> <p>(b) activities that would be regulated activities</p>
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<p>a. this might adversely affect the sovereignty, security or public order of the Federal Republic of Germany or</p> <p>b. judicial proceedings have already been initiated in respect of the same facts against the persons in question or if a final judgement has been passed.</p> <p>.....</p> <p>(7) The Supervisory Authority may work in cooperation with the competent authorities of countries other than those mentioned in subsection (1) in accordance with subsections (1) to (6) and conclude agreements on the exchange of information.</p> <p>Under <u>section 4 of STA</u>:</p> <p>(3) The Supervisory Authority may require the provision of information, submission of documentation and surrender of copies from anyone, as well as summon and question persons, to the extent that these measures are necessary based on evidence for monitoring compliance with the prohibitions and requirements of this Act. In particular, it may require details concerning changes in holdings of financial instruments as well as information about the identities of other persons, especially the principal and the persons acquiring rights or incurring liabilities from transactions. Statutory rights</p>		<p>if carried on in the United Kingdom; and</p> <p>(c) other activities connected with financial markets and exchanges.</p> <p>Under <u>section 165 of the FSMA</u>:</p> <p>(1) Either regulator may, by notice in writing given to an authorised person, require him-</p> <p>(a) to provide specified information or information of a specified description; or</p> <p>(b) to produce specified documents or documents of a specified description.</p> <p>(2) The information or documents must be provided or produced-</p> <p>(a) before the end of such reasonable period as may be specified; and</p> <p>(b) at such place as may be specified.</p> <p>(3) An officer who has written authorisation from the regulator to do so may require an authorised person without delay-</p> <p>(a) to provide the officer with specified information or information of a specified description; or</p> <p>(b) to produce to him specified documents or documents of a specified description.</p> <p>(4) This section applies only to information and documents reasonably required in connection with the exercise by either regulator of</p>
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<p>to provide or refuse to provide information as well as statutory obligations of confidentiality remain unaffected.</p>		<p>functions conferred on it by or under this Act.</p> <p>(5) The regulator in question may require any information provided under this section to be provided in such form as it may reasonably require.</p> <p>(6) The regulator in question may require-</p> <p>(a) any information provided, whether in a document or otherwise, to be verified in such manner, or</p> <p>(b) any document produced to be authenticated in such manner,</p> <p>as it may reasonably require.</p> <p>(7) The powers conferred by subsections (1) and (3) may also be exercised-</p> <p>(a) by either regulator, to impose requirements on a person who is connected with an authorised person;</p> <p>(b) by the FCA, to impose requirements on an operator, trustee or depositary of a scheme recognised under section 272 who is not an authorised person;</p> <p>(c) by the FCA, to impose requirements on a recognised investment exchange;</p> <p>(d) by the FCA, to impose requirements on a person who is connected with a recognised investment exchange.</p> <p>(8) “Authorised person” includes a person who was at any time an authorised person but who</p>
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		<p>has ceased to be an authorised person.</p> <p>(9) “Officer” means an officer of the regulator exercising the power and includes a member of that regulator's staff or an agent of that regulator.</p> <p>(10) “Specified” means-</p> <ul style="list-style-type: none"> (a) in subsections (1) and (2), specified in the notice; and (b) in subsection (3), specified in the authorisation. <p>(11) For the purposes of this section, a person is connected with another person (“A”) if he is or has at any relevant time been-</p> <ul style="list-style-type: none"> (a) a member of A's group; (b) a controller of A; (c) any other member of a partnership of which A is a member; or (d) in relation to A, a person mentioned in Part I of Schedule 15 (reading references in that Part to the authorised person as references to A). <p>Under <u>section 165A of the FSMA</u>:</p> <p>(1) The PRA may, by notice in writing given to a person to whom this section applies, require the person—</p> <ul style="list-style-type: none"> (a) to provide specified information or information of a specified description;
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		<p>or</p> <p>(b) to produce specified documents or documents of a specified description.</p> <p>(2) This section applies to—</p> <p>(a) a person who has a legal or beneficial interest in any of the assets of a relevant investment fund;</p> <p>(b) a person who is responsible for the management of a relevant investment fund;</p> <p>(c) a person (a “service provider”) who provides any service to an authorised person;</p> <p>(d) a person prescribed by an order made by the Treasury or any person of a description prescribed by such an order (and see also section 165C);</p> <p>(e) a person who is connected with a person to whom this section applies as a result of any of the above paragraphs.</p> <p>(3) This section applies only to information and documents that the PRA considers are, or might be, relevant to the stability of one or more aspects of the UK financial system.</p> <p>(4) A notice may be given to a service provider, or to a person who is connected with a service provider, only if the PRA considers that—</p> <p>(a) the service or the way in which it (or any part of it) is provided, or</p>
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		<p>(b) any failure to provide the service (or any part of it),</p> <p>poses, or would be likely to pose, a serious threat to the stability of the UK financial system.</p> <p>(5) Information or documents required under this section must be provided or produced—</p> <p>(a) before the end of such reasonable period as may be specified; and</p> <p>(b) at such place as may be specified.</p> <p>(6) The PRA may require any information provided under this section to be provided in such form as it may reasonably require.</p> <p>(7) The PRA may require—</p> <p>(a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require; or</p> <p>(b) any document produced to be authenticated in such manner as it may reasonably require.</p> <p>(8) In this section—</p> <p>“management” includes any of the activities listed in Annex II to the UCITS directive;</p> <p>“relevant investment fund” means an investment fund whose assets consist of or include financial instruments which—</p> <p>(a) are traded in the United Kingdom; or</p>
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		<p>(b) were issued by a body incorporated in the United Kingdom;</p> <p>“service” includes facility;</p> <p>“specified” means specified in the notice.</p> <p>(9) For the purposes of the definition of “relevant investment fund”—</p> <p>(a) arrangements may constitute an investment fund even if there is only one person participating in the arrangements; and</p> <p>(b) the reference to financial instruments has the meaning given by Article 4.1(17) of the markets in financial instruments directive.</p> <p>(10) For the purposes of this section a person is connected with another person (“A”) if the person is or has at any relevant time been—</p> <p>(a) a member of A's group;</p> <p>(b) a controller of A;</p> <p>(c) any other member of a partnership of which A is a member; or</p> <p>(d) in relation to A, a person mentioned in Part 1 of Schedule 15 (reading references in that Part to the authorised person as references to A).</p>
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Responses to the Views raised by the Deputations at the meeting on 15 September 2015

Views	Responses
<p><u>Safeguards under the proposal</u> <i>(Organizations: Alternative Investment Management Association Limited (“AIMA”); Calf Company Limited)</i></p> <p>Welcome the introduction of additional safeguards to the proposed mechanism.</p>	<ul style="list-style-type: none"> • Noted. Under the proposal, the existing conditions for providing assistance to regulators outside Hong Kong will also apply to the SFC’s provision of supervisory co-operation, which include the SFC being satisfied that providing assistance to the requesting regulator is in the “public interest” and subject to adequate secrecy provisions. • In addition to the existing legal safeguards, in order to guard against onward disclosure or unauthorised use, the proposal further requires written undertaking from the requesting regulator to the effect that it would not use the information in any proceedings unless with the SFC’s prior consent.

Views	Responses
<p><u>Benefits of the proposal</u> (<i>Organization: AIMA</i>)</p> <ul style="list-style-type: none"> Without the proposal, private funds in Hong Kong might have difficulty in accessing certain overseas markets, which would hinder their ability to raise capital and limit Hong Kong's development as an alternative investment hub. The proposal will allow the SFC to comply with the General Principles Relating to Cooperation in the relevant IOSCO Report. 	<ul style="list-style-type: none"> Noted. The proposal would facilitate Hong Kong regulated entities gaining access to overseas markets which otherwise could be denied. For example, supervisory cooperation arrangements are required under the Alternative Investment Fund Managers Directive ("AIFMD") for SFC-licensed asset managers to access the European Union market. The proposal would also allow the SFC to comply with the General Principles Relating to Co-operation in the International Organisation of Securities Commissions Report under which authorities should share information to assist each other in fulfilling their respective supervisory and oversight responsibilities for regulated entities operating across borders (such as intermediaries) and information regarding entities of systemic significance or whose activities could have a systemic impact on the markets.
<p><u>Scope and objective of the proposal</u> (<i>Organizations: Calf Company Limited; the Lion Rock Institute</i>)</p> <ul style="list-style-type: none"> The provision of assistance for "non-enforcement purpose" essentially refers to the stage where regulators are gathering evidence and investigating. The proposal seems to be merely for exchange 	<ul style="list-style-type: none"> A request for supervisory assistance is to be made by a regulator to ascertain if there may be a compliance or systemic concern so that it may take preventive measures where needed. The assistance to be provided under the proposal is designed for supervisory, but not enforcement, purposes. Also, the safeguard under the new section 186(2E) requires the requesting regulator to provide written undertaking to the effect that the information obtained under supervisory co-operation must not be used in any proceedings. Enforcement co-operation is governed by separate provisions in the SFO and administered by a different division of the SFC. As a result, enforcement and supervisory co-operation are dealt with on

Views	Responses
<p>of information for tax purposes.</p> <ul style="list-style-type: none"> • The proposal is overly simplified by solely requiring assistance to be in public interest. • Doubt the usefulness of the proposal as similar mechanisms seem not exist in jurisdictions other than the United Kingdom, Singapore and Australia (as quoted in the SFC's public consultation document). 	<p>separate tracks.</p> <ul style="list-style-type: none"> • In considering whether a request for supervisory assistance from a regulator outside Hong Kong is to be entertained or not, the SFC must be satisfied that the regulator outside Hong Kong performs similar functions to those performed by the SFC. Accordingly, no assistance will be provided to tax authorities. • Other than the “public interest” safeguard, there are other existing safeguards in the SFO (e.g. requiring that the requesting regulator be subject to adequate secrecy provisions and be able and willing to provide reciprocal assistance to Hong Kong, etc.) and additional safeguards proposed under the Bill (e.g. written statement confirming that the requesting regulator has not been and will not be able to obtain the information by any other reasonable means in order to fully ascertain the relevant matters, written undertaking to the effect that the requesting regulator would treat the information as confidential, etc.). • It is the prevailing trend towards greater co-operation over the regulation of cross-border market participants. The United Kingdom, Singapore and Australia, which are common law jurisdictions like Hong Kong, have similar mechanisms in place which allow them to provide reciprocal supervisory assistance to their overseas counterparts. Certain member states of the European Union, such as Germany and the Netherlands, also have similar mechanisms in place (please refer to Annex A).

Views	Responses
<p><u>Transparency of the proposed mechanism</u> (<i>Organization: Calf Company Limited</i>)</p> <p>There is a lack of transparency in administering the proposed powers.</p>	<p>Appropriate measures will be put in place to ensure sufficient transparency when the SFC administers its proposed new powers, including -</p> <ul style="list-style-type: none"> • The SFC will cite the relevant new SFO provisions (section 180(4A)) when seeking information, so that the relevant licensed corporations will know the purpose for collecting such information. • The SFC is required under the SFO to publish in the Gazette the names of the regulators outside Hong Kong with which it enters into supervisory MoUs. The texts of signed supervisory MoUs will usually be published on the SFC's website. • As a measure to further enhance transparency, the SFC will provide regular updates to the public on its work regarding supervisory assistance and communicate more closely with the industry to understand their concerns.
<p><u>Remedies for breaches of written undertaking</u> (<i>Organization: Calf Company Limited</i>)</p> <p>No sanctions on regulators outside Hong Kong breaching the written undertaking.</p>	<ul style="list-style-type: none"> • In the context of securities market supervision, international regulators can only enter into non-legally binding MoUs with each other. There is no scope for the SFC to enter into legally binding MoUs as neither it nor its counterparts has treaty-making capacity. The current proposal is in line with international practice and requirements for comparable undertakings featured in the legislation in both Australia and Singapore. • In practice, if a regulator breaches its undertaking or any terms of an

Views	Responses
	<p>MoU, it will seriously damage its international reputation and would lose the trust of other regulators participating in the global network of supervisory co-operation which is built on reciprocity. In the unlikely event of a breach, the SFC would likely refuse any further assistance to that regulator absent further credible assurance, and other regulators may also refuse to cooperate with that regulator in future.</p>
<p><u>Review mechanism</u> <i>(Organization: Calf Company Limited)</i></p> <p>No review mechanism under the proposal.</p>	<ul style="list-style-type: none"> • Unlike the regime for exchange of tax information where information may be sourced from third parties, information exchanged pursuant to supervisory co-operation will be sought from and provided by the licensed corporations/related corporations themselves. The licensed corporations/related corporations would have ample opportunity to satisfy themselves that the information they are providing to the SFC is correct. Therefore, there is no equivalent need here for a review mechanism like the one in the context of tax information. • There is in fact no such review procedure in the securities laws of other major comparable jurisdictions, such as Australia, Singapore and the United Kingdom. To have a review mechanism would run counter to the prevailing trend towards greater co-operation over the regulation of cross-border market participants. • If a regulator outside Hong Kong decides that it does not have sufficient confidence in the degree of supervisory co-operation available under Hong Kong laws because of an appeal or similar procedure, Hong Kong

Views	Responses
	<p>will risk being excluded from global regulatory networks enabling greater cross-border market access.</p> <ul style="list-style-type: none"> • The SFC is a statutory body and all its relevant regulatory powers are derived from the SFO. The SFC must act within its powers at all times and its decisions must be consistent with its statutory objectives and functions and reasonable as a matter of administrative law. Administrative decisions made by the SFC are subject to judicial review by the Courts where these are not already reviewable by the Securities and Futures Appeals Tribunal.
<p><u>Proposed new powers</u> (<i>Organization: The Lion Rock Institute</i>)</p> <p>The proposed new powers for the SFC are excessive, which would weaken Hong Kong's rule of law and the "One Country, Two Systems" principle.</p>	<ul style="list-style-type: none"> • The proposed powers required for providing supervisory assistance have a narrow scope. First, the corporation concerned must be (i) regulated by the requesting regulator; and (ii) a licensed corporation or a related corporation of a licensed corporation. Second, the information requested must be in relation to the regulated activities supervised by the SFC and the purpose of obtaining the information must be in relation to ascertaining financial stability or legal/regulatory compliance. • In the securities field, MoUs are generally not legally binding and cannot override domestic laws. In case of disparities, domestic laws will take precedence. Under the proposal, licensed corporations and their related corporations will still attract legal rights and protections (e.g. legal professional privilege will not be affected) in Hong Kong.

Views	Responses
	<ul style="list-style-type: none"> Accordingly, the proposal would not affect the rule of law or weaken Hong Kong's constitutional status.
<p><u>Compliance cost</u> <i>(Organization: Hong Kong Securities Professionals Association)</i></p> <p>The proposal would increase the already high compliance cost of financial institutions.</p>	<ul style="list-style-type: none"> The proposed supervisory assistance has a narrow scope. In particular, the corporation concerned must be (i) regulated by the requesting regulator; and (ii) a licensed corporation or a related corporation of a licensed corporation. In other words, if the corporation concerned is not regulated by any regulators outside Hong Kong, it will be outside the scope of the proposal. We envisage that firms without significant presence or operations outside Hong Kong, particularly small and medium sized firms, will unlikely fall under the ambit of the proposal.