



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF :
本函檔號 OUR REF : LS/B/17/14-15
電話 TELEPHONE : 3919 3508

傳真 FAX : 2877 5029
電郵 E-MAIL : vkfcheng@legco.gov.hk

By Fax (2294 0460)

23 September 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

Thank you for your letter of 8 September 2015. We should be grateful if you could clarify the following matters:-

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

You explained in your letter of 8 September 2015 that the sort of information to be covered by the proposed section 378(9A) will relate to non-statutory matters such as investigation by a recognized exchange company of suspected breaches of its rules. It is noted that the effect on section 378(7) of Securities and Futures Ordinance (Cap. 571) by adding the proposed paragraph (ia) to section 378(7) (clause 27(2) under Part 5 of the Bill) is that where information is disclosed by a specified person pursuant to section 378(1) or in any of the circumstances described in subsection (2), (3) or (4), the person to whom that information is so disclosed shall not disclose the information, or any part thereof, to any other person, unless if the specified person is a recognized exchange company, the Securities and Futures Commission (SFC) or the recognized exchange company consents to the disclosure.

- (a) What are the factors to be considered by a recognized exchange company in granting the consent for onward disclosure of information? Please consider if these factors should be stated in the Bill.
- (b) Please also consider if it is necessary to spell out in the Bill the purposes for the onward disclosure of information.


Cross-border on-site visits

We understand that SFC is not provided with the power to enter the premises of the licensed corporation for the purposes of providing supervisory assistance to regulators outside Hong Kong under the Bill. It is noted that the SFC's Reference Document – for Supervisory MOU Negotiation setting out the usual terms of the supervisory memorandum of understanding to be signed with overseas regulators (annexed to the Responses to Follow-up Actions Arising from the Discussion at the Meeting on 7 July 2015 (LC Paper No. CB(1)1231/14-15(02))) contains an article (Article Four) relating to cross-border on-site visits (paragraphs 24 to 27). Under the SFC's Reference Document, cross-border on-site visit is defined to mean any regulatory visit by one authority to the premises of a cross-border regulated entity located in the other authority's jurisdiction, for the purposes of ongoing supervision and oversight.

- (a) What is the source of the power to conduct such cross-border on-site visits in Hong Kong? Please also elaborate the nature of such cross-border on-site visits, in particular, what activities and actions will be undertaken by the regulatory authority outside Hong Kong or SFC during such cross-border on-site visits in Hong Kong.
- (b) Would the consent of the licensed corporation or its related corporation be sought before conducting such cross-border on-site visits?
- (c) Please clarify whether the term of cross-border on-site visit is appropriate and enforceable if SFC or the regulatory authority outside Hong Kong is not empowered under the Bill to enter the premises of the licensed corporation for the purposes of providing supervisory assistance to regulators outside Hong Kong under the Bill.

I should appreciate your reply in both English and Chinese **by 30 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))
Legal Adviser
Senior Assistant Legal Adviser 1
Clerk to the Bills Committee