

Corporate Finance Adviser

Code of Conduct

Securities and Futures Commission

Hong Kong

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DEFINITION

Advising on corporate finance	See paragraph 1.2 of the Code
Code	Corporate Finance Adviser Code of Conduct
Corporate Finance Advisers	Persons or entities who carry on the business of <i>advising on corporate finance</i> in Hong Kong and are registered under the Securities Ordinance (Cap. 333) as dealers, investment advisers, investment representatives, or dealer representatives, or who have been declared by the SFC to be exempt dealers or exempt investment advisers for the purposes of the Securities Ordinance (Cap. 333)
Designated Compliance Officer	The person within a Corporate Finance Adviser who supervises and oversees the compliance function of the Corporate Finance Adviser, who may carry out other functions or responsibilities
IFA	Independent financial adviser
Listed company	A company or corporation the shares of which are listed on the Stock Exchange
Listing Rules	The Rules Governing the Listing of Securities on the Stock Exchange and the Rules Governing the Listing of Securities on the Growth Enterprise Market of the Stock Exchange
Regulators	The SFC and/or the Stock Exchange as appropriate
Relevant Persons	Employees or directors of a Corporate Finance Adviser who are likely to have access to confidential information in relation to a matter where the Corporate Finance Adviser is advising on corporate finance

Senior Management	Managing director, the board of directors or the chief executive officer of a corporation or other senior operating management personnel in a position of authority over a corporation's business decisions
SFC	Securities and Futures Commission
Share Repurchase Code	The Hong Kong Code on Share Repurchases
Stock Exchange	The Stock Exchange of Hong Kong Limited
Takeovers Code	The Hong Kong Code on Takeovers and Mergers
Takeovers Executive	The Executive Director of the Corporate Finance Division of the SFC or any delegate of the Executive Director

Corporate Finance Adviser Code of Conduct

1. Introduction

Purpose of this Code

1.1 This Code sets out requirements and guidelines in respect of the conduct of Corporate Finance Advisers.

Corporate finance advice

1.2 “*Advising on corporate finance*”¹ means giving advice:

- (a) concerning compliance with or in respect of regulations including the Listing Rules, the Takeovers Code and the Share Repurchase Code respectively;
- (b) concerning:
 - (i) any offer to dispose of securities to the public;
 - (ii) any offer to acquire securities from the public; or
 - (iii) acceptance of any offer referred to in subparagraph (i) or (ii), but only in so far as the advice is given generally to holders of securities or a class of securities; or
- (c) to a listed corporation or public company or a subsidiary of the corporation or company, or to its officers or shareholders, concerning corporate restructuring involving securities (including the issue, cancellation or variation of any rights attaching to any securities),

but does not include advice given by:

- (i) a person who is licensed to deal in securities who gives such advice wholly incidental to the carrying on of his securities dealing business;

¹ The definition of “*advising on corporate finance*” represents the SFC’s current view and is adopted from the latest draft of the Securities and Futures Bill. If the Securities and Futures Ordinance is implemented in the future, this definition will be amended to reflect the definition contained in the Ordinance.

- (ii) an exempt dealer which gives such advice wholly incidental to the carrying on of its securities dealing business;
- (iii) an individual who is employed by an exempt dealer referred to in paragraph (ii) who gives such advice wholly incidental to the carrying on of his securities dealing business;
- (iv) a corporation solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
- (v) a solicitor who gives such advice wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);
- (vi) a counsel who gives such advice wholly incidental to his practice as such;
- (vii) a professional accountant who gives such advice wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50);
- (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice wholly incidental to the discharge of its duty as such; or
- (ix) a person through –
 - (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
 - (B) television broadcast or radio broadcast for reception by the public or a section of the public, whether on subscription or otherwise.

Status of this Code

1.3 This Code aims to supplement, and should be applied in conjunction with, relevant laws, legislation, codes, regulations or guidelines applicable to Corporate Finance Advisers. It does not replace any existing codes, rules and regulations. Corporate Finance Advisers should not interpret this Code as if it were a statute but rather, have regard to the spirit, as well as the letter, of the Code. Further reference should however be made to relevant codes, regulations, guidelines and legislation. In the case of any inconsistency, the provision requiring a higher standard of conduct will apply. This Code does not have the force of law and should not be interpreted in a way that it would override the provisions of any law.

Enforcement

1.4 The SFC will use this Code as a benchmark, along with other SFC's codes and guidelines, against which a Corporate Finance Adviser's fitness and properness will be measured. Breaches by a Corporate Finance Adviser of any of the requirements of this Code will, in the absence of extenuating circumstances, reflect adversely on its fitness and properness, and may result in disciplinary or other actions by the SFC.

General

1.5 Corporate Finance Advisers engaging in corporate finance advisory work under the Listing Rules, the Takeovers Code or the Share Repurchase Code are required to observe the specific requirements under the respective codes and rules as regards their conduct. Corporate Finance Advisers who are found in breach of the Listing Rules, the Takeovers Code or the Share Repurchase Code will be subject to the respective disciplinary measures contained in those codes and rules. In general, any breaches of the above codes and rules will prima facie cast doubts on the fitness and properness of the Corporate Finance Adviser concerned.

2. Conduct of business

A Corporate Finance Adviser should ensure that it is fit and proper to conduct its business.

This paragraph 2 applies to all Corporate Finance Advisers other than individuals. It shall be the responsibility of the Senior Management of a Corporate Finance Adviser to ensure compliance with this paragraph 2.

Licensing

2.1 A Corporate Finance Adviser should ensure that its business is properly established and conducted, and that the Corporate Finance Adviser and its directors and representatives are fit and proper, and are properly registered in accordance with all applicable statutory and regulatory requirements.

Management of the business

2.2 A Corporate Finance Adviser should:

- (a) organise and control its internal affairs in a prudent and responsible manner;
- (b) maintain satisfactory financial and operational controls;
- (c) maintain satisfactory risk management procedures commensurate with its business; and
- (d) ensure that it has adequate competence, professional expertise and, human and technical resources for the proper performance of its duties as a Corporate Finance Adviser.

Books and records

2.3 A Corporate Finance Adviser should maintain proper books and records, and be able to provide a proper trail of work done upon request by the SFC.

Staff supervision

2.4 A Corporate Finance Adviser should ensure that:

- (a) all of its staff members who engage in advising on corporate finance are suitable and appropriately qualified;
- (b) its less experienced staff are properly supervised; and

- (c) there are clear reporting lines with supervisory and reporting responsibilities assigned to the more experienced staff members.

Compliance

2.5 A Corporate Finance Adviser should:

- (a) maintain an effective compliance function, which should be headed up by a Designated Compliance Officer to monitor compliance with its own internal policies and procedures, and all applicable legal and regulatory requirements, including this Code;
- (b) ensure that its compliance function possesses the technical competence, adequate resources and experience necessary for the performance of its functions; and
- (c) ensure that its compliance function is independent of other business functions and reports directly to Senior Management. Compliance monitoring activities may be delegated to an appropriately qualified professional, although the responsibilities and obligations may not be delegated.

Note:

For small firms where human resources are limited, Senior Management should assume the role of the Designated Compliance Officer.

2.6 A Corporate Finance Adviser is encouraged to establish clear and comprehensive written compliance procedures (which should be readily available to all staff involved in the business of advising on corporate finance), covering its corporate finance business and addressing all applicable regulatory requirements. Such procedures should give Senior Management reasonable assurance that the corporation complies with all applicable requirements at all times.

Training

2.7 A Corporate Finance Adviser should offer continuous professional training to its staff.

3. Competence

A Corporate Finance Adviser should act with competence.

- Integrity*** 3.1 A Corporate Finance Adviser should be honest, and of good repute and character, and it should maintain a high standard of integrity and fair dealing.
- Demonstration of competence*** 3.2 Regulators may require a Corporate Finance Adviser and its staff members to demonstrate their resources, competence and suitability, e.g. by submitting a list of their qualifications and previous experience in handling relevant corporate finance work for the Regulators' consideration.
- Professional advice*** 3.3 Where appropriate, a Corporate Finance Adviser should seek proper professional advice in respect of its compliance with the applicable laws and regulations.

4. Conflicts of interest

A Corporate Finance Adviser should avoid engaging in work that is likely to involve conflicts of interest.

- Conflicts of interest*** 4.1 A Corporate Finance Adviser should:
- (a) take all reasonable steps to avoid situations that are likely to involve a conflict of interest;
 - (b) not unfairly place its interests above those of its clients; and
 - (c) withdraw from, or decline to accept, a mandate where a material conflict of interest arises with its client that cannot be resolved through its client giving its informed consent.

- Acting as IFA*** 4.2 Issues of conflicts of interest relating to the independence of a financial adviser should be dealt with in accordance with the Listing Rules, the Takeovers Code or the Share Repurchase Code as appropriate.
- Chinese walls*** 4.3 Where a Corporate Finance Adviser is part of a professional firm or group of companies undertaking other activities, e.g. auditing, banking, research, stockbroking and fund management, the Corporate Finance Adviser should ensure that there is an effective system of functional barriers (*Chinese walls*) to prevent the flow of information that may be confidential or price sensitive between the corporate finance activities and the other business activities. This system should include physical separation between, and different staff employed for, the various business activities.
- Sponsors*** 4.4 A Corporate Finance Adviser acting as a sponsor to a listing applicant should satisfy all the requirements applicable to sponsors as set out in the Listing Rules. It should ensure that, when giving a view as to whether an issuer is suitable for listing, it is capable of giving “*impartial advice*” before accepting the sponsorship role and that such view is given independently.
- Contingency fees*** 4.5 A Corporate Finance Adviser should disclose, upon request by the Regulators particularly if there is a conflict of interest concern, any fees or other benefits-in-kind that are offered contingent upon the success of a transaction.
- Receipt or provision of benefits*** 4.6 A Corporate Finance Adviser should:
- (a) not offer nor accept any inducements in connection with the business of, or a transaction involving, its client without first disclosing the particulars of the inducements to the client. If the client is a corporation, such disclosure should be made to the board of directors of the corporation; and

- (b) ensure that it develops and maintains written policies and procedures on the disclosure of the value of gifts given to, or provided by, its staff members above a certain monetary limit, and the circumstances in which they were offered or received.

5. Standard of work

A Corporate Finance Adviser should aim to deliver a high standard of work at all times.

Due skill and care

- 5.1 A Corporate Finance Adviser must act with due skill, care and diligence and observe proper standards of market conduct.

Engagement letter

- 5.2 A Corporate Finance Adviser is encouraged to record the terms of its engagement in writing between the Corporate Finance Adviser and its client and to ensure that the service performed for the client is in accordance with the provisions of the engagement letter.

Role of sponsor in a public offer

- 5.3 Where a Corporate Finance Adviser acts as a sponsor in relation to an initial public offering which involves the offer for subscription or an offer for sale to the public (the “public offer”), it should be responsible for:
- (a) the overall management of the public offer;
 - (b) assessing the likely interest in, or the reception of, the offer by the public; and
 - (c) putting in place sufficient arrangements and resources to ensure that the public offer and all matters ancillary thereto are conducted in a fair, timely and orderly manner.

- 5.4 In discharging its obligations under paragraph 5.3 above, the Corporate Finance Adviser should have regard to at least the following matters:
- (a) whether there are sufficient prospectuses and application forms for the securities offered for distribution to the public during the public offer period;
 - (b) without derogating from the Corporate Finance Adviser's obligation to act as the overall manager of the public offer as sponsor, whether specific responsibilities in relation to the public offer should be delegated to other professionals or advisers; and if so, whether such professionals or advisers are competent and have sufficient capacity and resources to handle the relevant responsibilities;
 - (c) whether sufficient measures have been put in place to ensure that (i) the distribution of prospectuses and application forms to the public; (ii) the collection of completed application forms from the public; and (iii) the despatch of unsuccessful applications, refund cheques and share certificates after the public offer period closes, can be made in a timely and orderly fashion;
 - (d) the need to avoid events of disorder or failure which may arise during the public offer period and before the trading of securities commences or otherwise in connection with the public offer, and ensure that appropriate contingency plans have been drawn up to deal with any such events; and
 - (e) where balloting is required to determine the successful applications under a public offer, whether appropriate arrangements have been put in place to ensure that balloting would be conducted fairly and independently of the issuer and parties associated with it.

***Reliance on
work by experts
or other
professionals***

5.5 Where reliance on the work of independent experts or other professionals is planned, a Corporate Finance Adviser (including an independent financial adviser) should, inter alia:

- (a) undertake reasonableness checks to assess the relevant experience and expertise of the firm of experts or other professionals and to satisfy itself that reliance could fairly be placed on their work; and
- (b) review and discuss with its clients and the experts or other professionals the qualifications, bases and assumptions adopted by the experts or the other professionals in the course of their work and satisfy itself that the qualifications, bases and assumptions have been made with due care and objectivity, and on a reasonable basis.

Note:

The requirements in paragraph 5.5(b) shall not be applicable in respect of work performed by:

- (i) a property valuer in respect of a valuation of real property if it is a member of a relevant regulatory or professional body;*
- (ii) legal advisers in respect of legal advice rendered by them; and*
- (iii) accountants in respect of the audit of results and accountants' reports derived therefrom.*

***Reliance on
information from
the client***

5.6 Where information and representations are provided by a client for incorporation in a public document or submission to the Regulators, the Corporate Finance Adviser should advise its client to take all reasonable steps to ensure, and obtain confirmation from the client, that the information and representations provided are true, accurate, complete and not misleading, and that no material information or facts have been omitted or withheld.

- Avoid undue delay*** 5.7 A Corporate Finance Adviser should have regard to the time management of a transaction and should avoid undue delay, e.g. in the preparation of the appropriate document or the filing of the application fee. It should ensure that its responsibilities are performed on a timely basis in accordance with the relevant rules and regulations.
- Standard of documents*** 5.8 Where a Corporate Finance Adviser is involved in the preparation of any document for public dissemination, it should use all reasonable efforts to assist its client in ensuring that the document is prepared to the required standard and no relevant information has been omitted or withheld.
- Use of plain language*** 5.9 A Corporate Finance Adviser is encouraged to use plain language in the preparation of documents. Reference should be made to the *Guides on the preparation of announcements and documents* issued by the Regulators.

6. Duties to the client

A Corporate Finance Adviser should ensure that it acts in the best interests of its client at all times.

- Know your client*** 6.1 Unless the circumstances do not require, a Corporate Finance Adviser should understand the business of its client. In particular, a Corporate Finance Adviser should:
- (a) obtain at the outset, information regarding its client's background, the nature of its business, and if the client is a company, the identity of its controlling shareholder(s), and its shareholding structure; and
 - (b) understand the financial circumstances and investment or corporate objectives in relation to the transaction under consideration.

- Confidentiality** 6.2 A Corporate Finance Adviser should:
- (a) safeguard the confidentiality of information provided to it by its client; and
 - (b) take reasonable steps to ensure that all other persons who receive the confidential information from the Corporate Finance Adviser avoid an accidental leak of information.
- Client's behaviour** 6.3 A Corporate Finance Adviser should use all reasonable efforts to ensure that its client understands the relevant regulatory requirements and their implications at all stages of a transaction. Where a Corporate Finance Adviser becomes aware that its client is not complying with the regulatory requirements, it should advise its client to bring the matter to the attention of the Regulators at the earliest opportunity. If this is declined by the client without valid reasons, it should consider the need to cease to act. When asked by the Regulators about a possible breach of a relevant regulation (whether committed by itself or by its client), a Corporate Finance Adviser should respond to the Regulators in a co-operative and truthful manner (to the best of its knowledge).
- Conduct towards a client** 6.4 When acting for a client, a Corporate Finance Adviser should:
- (a) ensure that all representations made and information provided by it to its client are true, accurate, complete and not misleading;
 - (b) take all reasonable steps to give its client, in a comprehensive and timely manner, any information required (including advice on the Listing Rules, the Takeovers Code or the Share Repurchase Code) to enable its client to make a balanced and informed decision;
 - (c) be ready to provide a full and fair account of its fulfilment of responsibilities towards its client; and
 - (d) ensure that it makes adequate disclosure of all relevant and material information in its dealings with its client.

7. Communication with Regulators

A Corporate Finance Adviser must deal with the Regulators in an open and co-operative manner.

Dealing with the Regulators

7.1 A Corporate Finance Adviser should ensure that its day-to-day communication with the Regulators is only conducted by staff who are competent and conversant with the regulatory requirements.

Co-operation with the Regulators

7.2 A Corporate Finance Adviser should advise its client to co-operate fully with the Regulators, and to provide all relevant information and explanations upon request.

Consultation

7.3 A Corporate Finance Adviser is encouraged to consult the Regulators at an early stage of a transaction or an issue to seek guidance on the transaction or issue under consideration.

8. Personal account dealings

A Corporate Finance Adviser should ensure that all personal account dealings are properly conducted.

The following guidelines are intended to address the basic principle that a Corporate Finance Adviser should avoid conflicts of interest when dealing in securities on its own account while discharging its duties as adviser to its client.

Personal account dealings

8.1 (a) A Corporate Finance Adviser should have a policy which has been communicated to Relevant Persons in writing on whether they are permitted to deal for their own accounts in securities or futures contracts.

(b) In the event that Relevant Persons are permitted to deal for their own accounts in securities or futures contracts:

- (i) the written policy should specify the conditions on which Relevant Persons may deal for their own accounts;
- (ii) Relevant Persons should be required to identify all related accounts and report them to the Designated Compliance Officer;
- (iii) Relevant Persons should generally be required to deal through the Corporate Finance Adviser (if it is also a registered person) or its affiliates;
- (iv) if Relevant Persons are permitted to deal through another dealer, the Corporate Finance Adviser and the Relevant Persons should arrange for duplicate trade confirmations and statements of account to be provided to the Designated Compliance Officer;
- (v) any transactions for such Relevant Persons' accounts and related accounts should be separately recorded and clearly identified in the accounting records of the Corporate Finance Adviser (if it is also a registered person) or its affiliates; and
- (vi) the transactions of Relevant Persons' accounts and related accounts should be reported to and actively monitored by the Designated Compliance Officer who should not have any beneficial or other interest in the transactions and who should maintain procedures to detect irregularities and ensure that the handling of these transactions or orders by the Corporate Finance Adviser or its affiliates is not prejudicial to the interests of the Corporate Finance Adviser's clients.

Notes:

1. *For the purposes of paragraph 8.1, the term “related accounts” includes accounts of the Relevant Persons’ minor children and accounts in which the Relevant Persons hold beneficial interests.*
2. *A globally uniform policy on personal account trading which is consistent with the provisions of paragraph 8.1 above would normally be acceptable.*

Prohibition of dealings

- 8.2 For the purpose of proper monitoring of personal account dealings and proprietary trading, a Corporate Finance Adviser should maintain a watchlist and restricted list system.

Proper monitoring

- 8.3 A Corporate Finance Adviser should ensure that all personal account dealings in securities and derivatives by Relevant Persons are properly monitored by the Designated Compliance Officer.