



**SECURITIES AND
FUTURES COMMISSION**
證券及期貨事務監察委員會

**A Consultation Paper on the Draft Securities
and Futures (Offences and Penalties)
Regulations**

《證券及期貨(罪行及罰則)規例》草擬本
諮詢文件

Hong Kong
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香港
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Consultation

This consultation document invites public comments on the draft **Securities and Futures (Offences and Penalties) Regulations** (“the draft Regulations”). The Securities and Futures Commission proposes to recommend to the Chief Executive in Council to make the draft Regulations under section 398 (6) of the Securities and Futures Ordinance (No. 5 of 2002) (“the Ordinance”) when it commences.

Introduction

1. Part XVI of the Ordinance provides that where the Ordinance has not specified that it is an offence to contravene rules made by the SFC under the Ordinance, the Chief Executive in Council may make regulations to provide that a person who contravenes any specified provision of the rules commits an offence and is liable to a penalty.

2. The draft Regulations make it an offence (and set out the penalty) for persons who fail to comply with certain provisions of the draft Securities and Futures (Miscellaneous) Rules (“Miscellaneous Rules”). The Miscellaneous Rules contain a range of provisions which do not readily fit into other subsidiary legislation made under the Ordinance.

3. There are controls built into the legislative system, whereby any regulations made by the Chief Executive in Council must be subject to negative vetting by the Legislative Council. The SFC now releases the draft Regulations for public consultation before recommending to the Chief Executive in Council to make the draft Regulations (see Attachment 1).

4. The public may obtain copies of the consultation document and the attachment free of charge at the SFC’s office and on the SFC’s Internet website at <http://www.hksfc.org.hk>.

5. The SFC invites interested parties to submit written comments on the draft Regulations or to comment on related matters that might have a significant impact upon the draft Regulations **no later than 16 August 2002**. Any person wishing to comment should provide details of any organization whose views they represent. In addition, persons suggesting alternative approaches are encouraged to submit proposed text to amend the draft Regulations.

The draft Regulations

6. The draft Regulations prescribe the offences and penalties if a person fails to comply with certain provisions in the draft Miscellaneous Rules. The level of fine is proposed having regard to the nature of the offences and the penalties provided for similar offences in the Ordinance.

7. Where an intermediary fails to exhibit its licence or certificate of registration in its principal place of business and, if it has more than one place of business, a certified

copy of such document at each of its other places of business, as required in section 5 of the Miscellaneous Rules, it is liable to a fine at level 5 (\$50,000). In view of the nature of the offence, it is considered appropriate to set the penalty for a pecuniary fine at this level and it represents the lowest pecuniary fine under Part V of the Ordinance. This item is currently listed under the existing Securities (Offences and Penalties) Regulations made under section 146A of the Securities Ordinance.

8. An intermediary must return its licence or certificate of registration to the SFC if it ceases to carry on all regulated activities or varied the regulated activities for which it is licensed or registered pursuant to section 6 of the Miscellaneous Rules. The SFC may also request an intermediary to return its licence or certificate of registration for the purpose of correcting an error that exists in such document. Failure to comply with any provision of this section is liable to level 6 (\$100,000) fine. The penalty is proposed having regard to penalty on provisional licensed representative for similar offence under section 120(12) of the Ordinance.

9. It is the intention of the SFC that the draft Regulations should be user-friendly and, for example, they have been drafted in plain English where possible with this objective in mind. The SFC would welcome suggestions from industry participants on any specific improvements that could be made to streamline procedures or make it easier for participants to comply with the Ordinance and the draft Regulations.

New Policy Initiatives

10. No new policy changes have been incorporated into the draft Regulations which are intended simply to implement the policy already explained in the draft Miscellaneous Rules.

Other matters

11. Please note that the names of the commentators and the contents of their submissions may be published on the SFC website and in other documents to be published by the SFC. In this connection, please read the Personal Information Collection Statement attached to this consultation paper.

12. You may not wish your name to be published by the SFC. If this is the case, please state that you wish your name to be withheld from publication when you make your submission.

13. Written comments may be sent -

By mail to: SFC (Offences and Penalties Regulations)
12/F, Edinburgh Tower
The Landmark
15 Queen's Road Central
Hong Kong

By fax to: (852) 2293 5755

By on-line submission at: <http://www.hksfc.org.hk>

By e-mail to: Offences_and_Penalties_Regulations@hksfc.org.hk

14. The draft Regulations should be read in conjunction with the Securities and Futures Ordinance itself.

Personal Information Collection Statement

1. This Personal Information Collection Statement (“PICS”) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data¹ will be used following collection, what you are agreeing to with respect to the SFC’s use of your Personal Data and your rights under the PDPO.

Purpose of Collection

2. The Personal Data provided in your submission to the SFC in response to this Consultation Paper may be used by the SFC for one or more of the following purposes:
 - to administer the relevant Ordinances, rules, regulations, codes and guidelines made or promulgated pursuant to the powers vested in the SFC
 - for the purposes of performing the SFC’s statutory functions under the relevant Ordinances
 - for research and statistical purposes
 - other purposes permitted by law

Transfer of Personal Data

3. Personal Data may be disclosed by the SFC to the members of the public in Hong Kong and elsewhere, as part of the public consultation on the Consultation Paper. The names of persons who submit comments on the Consultation Paper together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the SFC web site and in documents to be published by the SFC throughout and at the conclusion of the consultation period.

Access to Data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on the Consultation Paper. The SFC has the right to charge a reasonable fee for processing any data access request.

Enquiries

5. Any enquiries regarding the Personal Data provided in your submission on the Consultation Paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer

¹ Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance, Cap 486 (“PDPO”)

The Securities and Futures Commission
12/F, Edinburgh Tower, The Landmark
15 Queen's Road Central, Hong Kong

A copy of the Privacy Policy Statement adopted by the SFC is available upon request.