

**Consultation Conclusions on  
the Draft Code of Conduct  
for Share Registrars**

**Securities and Futures Commission**

**October 2001**

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## **Introduction**

1. A draft Code of Conduct for Share Registrars (“the draft Code”) was published by the Securities and Futures Commission for public consultation on 21 August 2001. This document summarises the responses received and the Commission’s conclusions.
2. The consultation period ended on 21 September 2001 but late submissions were accepted and considered. A total of 10 submissions were received. In addition, comments made in an article on the draft Code published in a Chinese newspaper were also considered.
3. In addition to comments, certain respondents sought clarification of a number of issues. Clarifications have been made to the provisions in the Code where they are conducive to the general understanding of the Code by the industry. Other more specific issues were discussed with the respondents directly.

## **Consultation Responses and Conclusions**

4. This section sets out a summary of the main consultation responses and should be read in conjunction with the Code. References are made to the specific paragraphs as they appear in the draft Code.

### ***General comments***

#### *Comment*

5. Most respondents welcomed the introduction of the Code and some saw it as an acknowledgement of the Commission on the importance of quality performance of the share registry industry.
6. Two respondents commented that it was unclear from the draft Code how the Code will bind Share Registrars and their staff.

#### *The Commission’s response*

7. The Federation is approved by the Commission as an association each of whose members shall be an approved share registrar under the Securities (Stock Exchange Listing)(Approved Share Registrars) Rules (Cap. 24). A listed company must either be an approved share registrar or employ an approved share registrar as its share registrar.
8. In order to ensure compliance with the Code, the Federation is, in consultation with the Commission, amending its constitutive documents to require its members and their staff to comply with the Code. These amendments will also

enable the Federation to implement the penalties imposed by the Disciplinary Committee or the Disciplinary Appeals Committee.

9. In addition, the Commission and the Federation will exchange letters which set out their undertakings to each other in relation to their respective functions and responsibilities under the Code.

### *Comments to the Explanatory Notes and Guiding Principles*

#### *Comment*

10. Several respondents commented that the draft Code (General Principles 1 and 2 as well as paragraph 6.1 ) was unclear as to which interests would prevail if there was a conflict between the interests of a Client and the integrity of the market.

#### *The Commission's response*

11. The Code is based on the general principles of regulation published by the International Organisation of Securities Commissions. The general principles prescribe that regulation should ensure the integrity of the market. Generally speaking, the integrity of the market would prevail in most circumstances where there may be a conflict of interest. However, the Commission recognises that in some situations a Share Registrar may be bound contractually by the terms of its service agreement with the Client.
12. The Commission appreciates that a Share Registrar has a contractual duty to its Clients and a Share Registrar will not necessarily have the power to ensure that the instructions given to it by its Clients are in accordance with Code.

#### *Comment*

13. One respondent commented that the requirements in the Listing Rules bind listed companies rather than the Share Registrars who perform share registry services for the listed companies. It suggested that the Code should be more explicit in requiring Share Registrars to perform their share registry services for their Clients to enable their Clients to comply with the Listing Rules.

#### *The Commission Response*

14. The Commission agrees with the comment. General Principle 6 and paragraph 8.1 of the Code have been amended to make this requirement explicit.

#### ***Comments on Section 4 – Capabilities***

##### *Comment*

15. One respondent commented that where a Share Registrar outsources part or all of its systems in a public offering to an agent, the agent should also be required to comply with the requirements under paragraph 4.5.

##### *The Commission's response*

16. The Commission agrees with this comment. A new paragraph 4.5(c) has been included to require Share Registrars to ensure that its agents comply with the requirements relating to systems capacity.

#### ***Comments on Section 5 – Information for Clients***

##### *Comment*

17. Various respondents commented that Share Registrars should not be required to publicly disclose their fees as these are private commercial arrangements with individual clients.
18. In addition, various comments were made that paragraph 5.5(a) of the draft Code dealing with communications with Shareholders should differentiate between shareholders who hold securities through Hong Kong Clearing Company Limited and those which are Registered Owners of Securities.

##### *The Commission's response*

19. The Commission agrees with these comments and paragraphs 5.2 and 5.5 of the Code have been amended accordingly.

#### ***Comments on Section 9 – Responsibility of Senior Management***

##### *Comment*

20. Two responses commented that the term “Senior Management” was not sufficiently clear and suggested that the Commission set out a definition of what positions would be covered.

*The Commission's response*

21. The Commission has not accepted these suggestions. The Commission takes the view that it is inappropriate to define the term "Senior Management" by reference to specific positions because the title of a person's position may not always reflect accurately the degree of responsibility that person has.
22. The Commission reiterates that in deciding whether a person is a member of senior management, his level of responsibility, his supervisory duties and the levels of control and knowledge he has concerning any failure by the Share Registrar or persons under his supervision will be considered.

***Comments on Section 10 – Disciplinary Proceedings***

*Comment*

23. A majority of the comments received were in relation to Section 10 of the draft Code. In summary, the comments were that the procedures of the hearings of the Disciplinary Committee and the Disciplinary Appeals Committee and the rights of Share Registrars and their staff in these hearings were insufficiently clear.

*The Commission's response*

24. The Commission has reviewed and amended various paragraphs in Section 10 of the Code to clarify the procedures and rights of the parties in disciplinary proceedings.
25. To summarise these amendments –
  - (a) the notice of hearing will be given in writing with details of the reasons for such hearing (paragraph 10.4(a));
  - (b) the person under inquiry will have the right to attend the hearing in person or by solicitor and he may present his own case or have his case presented by his solicitor (paragraph 10.4(b));
  - (c) The rules of evidence shall not apply. The Disciplinary Committee and the Disciplinary Appeals Committee will direct their own proceedings. Parties will be advised of the procedural rules applicable to the hearing prior to the hearing date (paragraph 10.4(d));
  - (d) The parties will be required to set out their case in writing and submit it to the Disciplinary Committee. The executive will be required to submit a summary of the issues (paragraph 10.4(e));

- (e) The parties may call such witnesses as they consider necessary (paragraph 10.4(e));
- (f) The appeal period has been extended from 14 days in the draft Code to 21 business days (paragraph 10.6(b));
- (g) The Disciplinary Committee may, where appropriate, hear evidence of a confidential commercial nature in the absence of some or all parties involved (paragraph 10.4(f));
- (h) The Disciplinary Committee or the Disciplinary Appeals Committee may, subject to confidentiality considerations, publish their rulings and reasons for them after the ruling has been sent to the parties (paragraph 10.5);
- (i) Parties to the proceedings are not permitted to disclose details of the proceedings to any other person including the media (paragraph 10.4(i));
- (j) The proceedings of the Disciplinary Appeals Committee shall conduct proceedings in accordance with the procedural rules applicable to the Disciplinary Committee.

*Comment*

26. Several comments were made in relation to the practical difficulties of implementing the penalties of revoking a Share Registrar's membership with the Federation and prohibiting a Share Registrar from soliciting or accepting new clients and/or new business. In particular, concern was expressed as to what constitutes "new business".

*The Commission's response*

27. The Commission believes that these concerns are valid. Paragraph 10.3(a) of the Code has been amended to require the Disciplinary Appeals Committee to, when imposing a revocation to specify a date for the revocation to take effect taking into account the amount of business that the particular Share Registrar would have to transfer to another Share Registrar. Paragraph 10.3(b) has also been amended to require the Disciplinary Committee, when it prohibits a Share Registrar from accepting or soliciting new business from existing clients to specify the type of new business the prohibition relates to. In doing so, the Disciplinary Committee is required to take into consideration the contractual arrangements the Share Registrar has with its existing Clients and customary practices of the share registry business.

### *Comment*

28. One comment received related to the constitution of the Disciplinary Appeals Committee. After the enactment of the Securities and Futures Bill, the Securities and Futures Panel will be chaired by a judge. The respondent commented that it may be inappropriate for a judge to chair the Disciplinary Appeals Committee. It was suggested that the Commission should address this issue now.

### *The Commission's response*

29. The Commission agrees with this comment. Paragraph 10.4 of the Code has been amended accordingly. Under the amendment, the Commission will constitute the Disciplinary Appeals Committee when there is an appeal or when required. The Commission will appoint a Chairman or Deputy Chairman of the Disciplinary Appeals Committee, both of whom shall be a qualified barrister or solicitor. The rest of the Disciplinary Appeals Committee will be made up of the members of the Disciplinary Committee save those who are members of the Commission, and other qualified lawyers appointed by the Commission.

### **Other Issues**

#### *Implementation of the Code*

30. Certain other amendments have been made to the Code pursuant to the comments received. There are also a number of minor stylistic changes.
31. The Code will become effective on 1 November 2001. There will be no grace period for Share Registrars which do not meet the requirements in the Code. In any event, the Commission will adopt a pragmatic approach in the implementation of the Code. Relevant persons, including Share Registrars, are encouraged to discuss any difficulties in implementing the Code with the Commission or the Federation.
32. Finally, the Commission would like to thank the Federation, respondents and other interested parties who have made valuable suggestions and comments.

Securities and Futures Commission  
October 2001

## **Annex 1**

The list of respondents in alphabetical order is as follows :

1. Consumer Council
2. Hong Kong Registrars Limited
3. Hong Kong Securities Institute
4. Independent Commission Against Corruption
5. Messrs. Linklaters and Alliance (by an article in the chinese press)
6. Secretaries Limited
7. The Federation of Share Registrars
8. The Hong Kong Association of Banks
9. The Hong Kong Institute of Company Secretaries
10. A law firm