



SECURITIES AND FUTURES COMMISSION

證券及期貨事務監察委員會

12th Floor, Edinburgh Tower, The Landmark, 15 Queen's Road Central, Hong Kong

香港中環皇后大道中十五號置地廣場公爵大廈十二樓

**A Consultation Paper on the
Draft Code of Conduct for Share Registrars**

Hong Kong
August 2001

A. Introduction & Background of the Draft Code

The Securities and Futures Commission (SFC, the Commission) has released for public consultation the draft Code of Conduct for Share Registrars. The attached draft Code represents the consensus of opinion of the Share Registrar industry and the Commission regarding the standards of commercial conduct and behaviour considered acceptable for Share Registrars.

B. The Share Registrar Industry

Share Registrars are those entities whose business and services typically include maintaining registers of holders of securities and matters relating directly and indirectly to the maintenance of the registers, issuing certificates for securities offerings and transfers, balloting, handling payment and refund checks, distributing entitlements, providing secretarial services (arranging for annual shareholder meetings, mailing proxies and other corporate communication materials, etc.), advising clients with regard to the timing of offerings and other corporate activities and establishing trust arrangements on behalf of registered owners of securities. Their main clients are listed companies.

The share registry industry in Hong Kong is made up of approximately 20 share registrars who form the Federation. The group was formed in 1971 and under the Securities (Stock Exchange Listing) Rules of 1976, was approved as an association whose members are approved share registers for the purposes of the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong (the Listing Rules). The Listing Rules state that only an approved share registrar may be employed to maintain a register of shareholders or warrant holders in Hong Kong.

C. The Proposed Regulatory Structure

The draft Code sets out the general principles and standards of conduct a share registrar should adhere to. These principles have been drafted in line with the International Organisation of Securities Commissions (IOSCO)'s 1998 report entitled "Objectives and Principles of Securities Regulation" that "market intermediaries should conduct themselves in a way that protects the interests of their clients and helps to preserve the integrity of the market"¹. These principles include Honesty and Fairness, Diligence, Capabilities, Information for Clients, Conflicts of Interest, Safeguarding of Client Assets, Compliance, and the Responsibility of Senior Management. The last section of the draft Code sets out the Disciplinary Proceedings for a share registrar, which includes the formation of a Disciplinary Committee and a Disciplinary Appeals Committee, the grounds for disciplinary action and the Federation's role in implementing penalties.

¹ See Section 12.5 ("The Conduct of Business Rules and Other Prudential Requirements") of the abovementioned IOSCO report.

Share registrars who wish to be a part of the securities markets in Hong Kong will need to comply with the draft Code. A breach of the requirements of the draft Code will reflect adversely on the share registrar and its status as a member of the Federation of Share Registrars and may result in disciplinary action. The Federation has agreed that it will assist the Commission to implement the draft Code and will require its members to comply with the draft Code. The Federation has also agreed to implement the penalties imposed in the disciplinary process.

It is proposed that there will be two committees established under section 6 of the Securities and Futures Commission Ordinance – a Disciplinary Committee and a Disciplinary Appeals Committee. The constitution of these committees is based on that of the existing Takeovers and Mergers Panel and the Takeovers Appeal Committee.

The Disciplinary Committee will hear and decide on breaches of the draft Code. Under the draft Code, a share registrar and the Federation will be required to report any breaches of the draft Code to the Commission and the Commission may convene a disciplinary hearing. In addition, any complaints referred to the Commission which amount to breaches of the draft Code may also trigger a disciplinary hearing. The Disciplinary Committee will be empowered to impose various penalties including the revocation of a share registrar's membership with the Federation and the prohibition from soliciting or taking of new clients.

The Disciplinary Appeals Committee will hear appeals with respect to penalties imposed by the Disciplinary Committee. The Disciplinary Appeals Committee will be empowered to review the decisions of the Disciplinary Committee for the purpose of determining whether any penalty imposed by the Disciplinary Committee was unfair or excessive based upon its findings of facts.

The Federation will be required to implement the findings and the penalty (where the penalty is a suspension or revocation) imposed by the Disciplinary Committee (or the Disciplinary Appeals Committee, as the case may be).

D. Consultation Period

The SFC invites comments from the public on the draft Code set out in this consultation paper. Comments in writing should be addressed to:

Supervision of Markets Division
Securities and Futures Commission
12th Floor, Edinburgh Tower
The Landmark
15 Queen's Road Central
Hong Kong

Comments may also be faxed to (852) 2521 7917 or sent by email to: shareregcodeconsult@hksfc.org.hk. In all cases, comments should be submitted by 21st September 2001.

Further copies of the consultation paper may be obtained from the above address of the SFC. A copy of this paper can be also found on the SFC website at <http://www.hksfc.org.hk>.

Persons submitting comments to the SFC should give details of any organisation whose views they represent. In addition, unless person submitting comments to the SFC indicate to the contrary, it will be assumed that they have no objection their comments or the substance of their comments being made available to the public.

Draft Code of Conduct for Share Registrars

**Securities and Futures Commission
Hong Kong**

Table of Contents

EXPLANATORY NOTES	iv
GENERAL PRINCIPLES.....	1
GP1. HONESTY AND FAIRNESS	1
GP2. DILIGENCE	1
GP3. CAPABILITIES	1
GP4. CONFLICTS OF INTEREST	1
GP5. SAFEGUARDING OF CLIENT ASSETS	1
GP6. COMPLIANCE	1
GP7. RESPONSIBILITY OF SENIOR MANAGEMENT	1
1. INTERPRETATION AND APPLICATION	2
1.1 DEFINITIONS	2
1.2 PERSONS TO WHOM THIS CODE APPLIES	3
1.3 PURPOSE OF THIS CODE.....	3
1.4 EFFECTS OF BREACHES OF THIS CODE	3
1.5 MEMBERSHIP	3
2. HONESTY AND FAIRNESS	4
2.1 ACCURATE REPRESENTATIONS AND INFORMATION	4
2.2 MARKETING AND OPERATION OF SERVICES	4
3. DILIGENCE	4
3.1 PERFORMANCE OF SERVICES: DUE SKILL, CARE AND DILIGENCE.....	4
3.2 DUTY TO REGISTERED OWNERS OF SECURITIES.....	4
3.3 BEST INTERESTS OF CLIENTS.....	4
4. CAPABILITIES	5
4.1 INTERNAL CONTROLS, FINANCIAL AND OPERATIONAL RESOURCES	5
4.2 HUMAN AND TECHNICAL RESOURCES.....	5
4.3 SYSTEMS INTEGRITY	5
4.4 SECURITY.....	6
4.5 CAPACITY	6
4.6 RELIABILITY	6
4.7 CONTINGENCY PLANNING	7
5. INFORMATION FOR CLIENTS	8
5.1 CLIENT AGREEMENT	8
5.2 FEES AND CHARGES AND THE DISCLOSURE OF FEES.....	8
5.3 INFORMATION ABOUT THE FIRM : GENERAL	8
5.4 RECORDKEEPING AND REPORTING	8
5.5 COMMUNICATIONS BETWEEN CLIENTS AND REGISTERED OWNERS OF SECURITIES THROUGH THE SHARE REGISTRAR	8
6. CONFLICTS OF INTEREST	9
6.1 CONFLICTS OF INTEREST	9
6.2 CONFIDENTIALITY.....	10

7.	SAFEGUARDING OF CLIENT ASSETS.....	10
7.1	ESTABLISHMENT OF REVIEW PROCESSES.....	10
7.2	AUDIT TRAILS	10
7.3	SAFEKEEPING OF DOCUMENTS AND CLIENT INFORMATION.....	10
8.	COMPLIANCE	11
8.1	COMPLIANCE	11
8.2	MAINTENANCE OF AN AUDIT FUNCTION	12
8.3	HANDLING OF COMPLAINTS AND OTHER REQUESTS.....	12
8.4	NOTIFICATION.....	12
9.	RESPONSIBILITY OF SENIOR MANAGEMENT	13
9.1	RESPONSIBILITY OF SENIOR MANAGEMENT	13
10.	DISCIPLINARY PROCEEDINGS	13
10.1	THE SHARE REGISTRARS’ DISCIPLINARY COMMITTEE (“DISCIPLINARY COMMITTEE”)	13
10.2	DISCIPLINARY PROCEEDINGS	14
10.3	PENALTIES THE DISCIPLINARY COMMITTEE MAY RECOMMEND	14
10.4	HEARINGS OF THE DISCIPLINARY COMMITTEE.....	15
10.5	FINDINGS AND RECOMMENDATIONS TO BE MADE TO FEDERATION.....	15
10.6	APPEALS	16
10.7	THE SHARE REGISTRARS’ DISCIPLINARY APPEALS COMMITTEE (“DISCIPLINARY APPEALS COMMITTEE”)	16
10.8	FINDINGS AND RECOMMENDATIONS WHICH THE DISCIPLINARY APPEALS COMMITTEE MAY MAKE.....	17
10.9	HEARINGS	17
10.10	NOTIFICATION OF FINDINGS AND RECOMMENDATIONS.....	17
10.11	THE FEDERATION TO IMPLEMENT RECOMMENDATIONS MADE BY THE DISCIPLINARY COMMITTEE OR THE DISCIPLINARY APPEALS COMMITTEE.....	17

Explanatory notes

- (a) This Code has been issued by the Commission, in consultation with the Federation of Share Registrars.
- (b) The primary purpose of this Code is to provide an orderly framework within which Share Registrars are to conduct their business.
- (c) This Code does not have the force of law and should not be interpreted in a way that would override the provision of any law. This Code represents a consensus of opinion of the Share Registrar industry and the Commission regarding the standards of commercial conduct and behaviour considered acceptable for Share Registrars. It is framed so far as possible in non-technical language and should not be interpreted as if it is statute.
- (d) Share Registrars who wish to be a part of the securities markets in Hong Kong should conduct themselves in accordance with the Code. A breach of the requirements of this Code will reflect adversely on the Share Registrar and its status as a member of the Federation of Share Registrars and may result in disciplinary action. The Listing Rules state that only an approved Share Registrar may be employed to maintain a register of shareholders or warrant holders in Hong Kong. A Share Registrar needs to be a member of the Federation in order to be an approved Share Registrar.
- (e) The Commission may, in consultation with the Federation of Share Registrars, amend this Code from time to time.

General principles

GP1. Honesty and fairness

In conducting its business activities, a Share Registrar should act honestly, fairly, and in the best interests of its Clients and the integrity of the market.

GP2. Diligence

In conducting its business activities, a Share Registrar should act with due skill, care and diligence, in the best interests of its Clients and the integrity of the market.

GP3. Capabilities

A Share Registrar should have and employ the resources and procedures which are needed for the proper performance of its obligations to its clients and the integrity of the market.

GP4. Conflicts of interest

A Share Registrar should try to avoid conflicts of interest, and when they cannot be avoided, should ensure that its Clients are fairly treated.

GP5. Safeguarding of client assets

A Share Registrar should ensure that Client Assets are promptly and properly accounted for and adequately safeguarded.

GP6. Compliance

A Share Registrar should comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of Clients and the integrity of the market.

GP7. Responsibility of senior management

The senior management of a Share Registrar should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the Share Registrar. In determining the degree of responsibility of a particular individual, regard shall be had to the factors referred to in paragraph 1.2(b) below.

1. Interpretation and Application

1.1 Definitions

In this Code:-

- (a) “Clients” means listed companies the Share Registrar provides services for;
- (b) “Client Assets” means any information, documents and stationery, including blank share certificates and dividend cheques that are retained and kept at the premises of a Share Registrar;
- (c) “Registered Owners of Securities” means the registered owners of listed securities of the Share Registrar’s Clients;
- (d) “Share Registrars” means persons whose business and services typically include maintaining registers of holders of securities and all matters relating directly and indirectly to the maintenance thereof, issuing certificates for securities offerings and transfers, balloting, handling payment and refund checks, distributing entitlements, providing secretarial services (arranging for annual shareholder meetings, mailing proxies and other corporate communication materials, etc.), advising Clients with regard to the timing of offerings and other corporate activities and establishing trust arrangements on behalf of Registered Owners of Securities and who are members of the Federation;
- (e) “the Commission” means the Securities and Futures Commission established under the Securities and Futures Commission Ordinance, Cap. 24;
- (f) “the Executive” means the staff members of the Commission who perform the duties described in section 10 of this Code;
- (g) “the Federation” means the Federation of Share Registrars approved by the Securities and Futures Commission under the Securities (Stock Exchange Listing)(Approved Share Registrar) Rules, Cap. 333;
- (h) “the Listing Rules” means the Rules Governing the Listing of Securities on the Stock Exchange;
- (i) “Share Registrars Disciplinary Appeals Committee” means the committee constituted in accordance with section 10.7;
- (j) “Share Registrars Disciplinary Committee” means the committee constituted in accordance with section 10.1;
- (k) “securities” has the meaning assigned to it by section 2(1) of the Securities Ordinance (Cap.333, Laws of Hong Kong); and

- (l) “HKEx” means Hong Kong Exchanges and Clearing Limited and its successors and assigns.

1.2 Persons to whom this Code applies

- (a) This Code sets out the conduct requirements for Share Registrars. It also applies to Share Registrars who help shareholders establish trust arrangements for their shares and provide probate services and other services.
- (b) This Code is applicable to all Share Registrars and their employees. A senior manager’s 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 in applying this Code to him.
- (c) A Share Registrar whose business operations are fully automated is expected to comply with requirements set out in Section 4 relating to computer and backup systems. Where the business operations of a Share Registrar are partially automated, it is expected to comply with these requirements as far as it is reasonably practicable to do so. Where none of the business operations of a Share Registrar are automated, it is expected to comply fully with the requirements relating to proper record keeping and establishing a full audit trail.

1.3 Purpose of this Code

This Code sets out the minimum standards of conduct for Share Registrars. It does not replace any legislative provision, codes or guidelines issued by the Commission. This Code does not have the force of law and should not be interpreted in a way that would override the provision of any law.

1.4 Effects of breaches of this Code

Breaches of this Code will, in the absence of extenuating circumstances, reflect adversely on the Share Registrar and its status as a member of the Federation and may result in disciplinary action under section 10 of this Code.

1.5 Membership

The Federation shall have clear entry requirements for any person who wishes to become a member of the Federation and carry on the business of a Share Registrar.

2. Honesty and Fairness

2.1 Accurate representations and information

A Share Registrar should ensure that any representation made by it or information provided by it to its Clients or to Registered Owners of Securities is accurate and not misleading.

2.2 Marketing and operation of services

A Share Registrar should market, promote and carry out its services in a proper, appropriate and fair manner and comply with all applicable legislation, codes, rules and guidelines.

3. Diligence

3.1 Performance of services: due skill, care and diligence

A Share Registrar should perform services for its Clients in accordance with the terms and conditions upon which the Share Registrar is appointed by the respective Clients. The Share Registrar should also take all reasonable steps to carry out instructions from its Clients diligently and with reasonable skill and care.

3.2 Duty to Registered Owners of Securities

In addition to its duty to Clients, a Share Registrar should perform its services for Registered Owners of Securities diligently and with reasonable skill and care.

3.3 Best interests of Clients

In performing its services or in carrying out instructions from Clients, a Share Registrar should act in the best interests of its Clients insofar as that is consistent with the integrity of the market.

4. Capabilities

4.1 Internal controls, financial and operational resources

A Share Registrar should have satisfactory internal control procedures in place and financial and operational capabilities to ensure its business is properly structured and operated so that there is reasonable assurance that:-

- The Share Registrar has adequate financial resources;
- The Share Registrar can carry on its business in an orderly manner;
- There are proper safeguards for Clients and Registered Owners of Securities from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions committed by the Share Registrar;
- Proper records are maintained; and
- The Share Registrar is in compliance with all applicable laws and regulatory requirements in relation to its business and the services it offers.

4.2 Human and technical resources

- (a) A Share Registrar should have sufficient human and technical resources and experience to ensure the proper performance of its duties at all times. A Share Registrar shall ensure at all times that any person it employs or appoints to conduct business for or on behalf of Clients or Registered Owners of Securities is qualified, suitably trained or with appropriate experience to act in the capacity and to perform the respective duties and responsibilities for which they are so employed or appointed.
- (b) A Share Registrar shall provide suitable training and supervision to its employees to ensure that they can perform their duties and responsibilities diligently.
- (c) A Share Registrar shall ensure at all times that it has adequate resources to supervise its employees and agents diligently and does so supervise them.

4.3 Systems integrity

- (a) Computer systems used by a Share Registrar in its business should have sufficient operational integrity. The Share Registrar should ensure that its operating and information management systems (including electronic data processing (EDP) systems) meet business needs and operate in a secure and adequately controlled environment. Key components of the information management system design and implementation programme should be adequately documented and regularly reviewed.

- (b) A Share Registrar should ensure that a periodic review program is established to comprehensively plan, test and monitor its computer systems' security, reliability and capacity.
- (c) A Share Registrar should ensure that system documentation and audit logs are diligently maintained. The audit logs should be reviewed regularly by senior executives to detect potential problems and plan preventive measures.

4.4 Security

A Share Registrar should ensure that the following key principles of computer security are implemented –

- (a) proper segregation of employee duties;
- (b) use of alpha-numeric passwords for access to the computer system;
- (c) change of passwords at regular intervals;
- (d) use of an automatic time-out feature for system access;
- (e) use of appropriate encryption technology to ensure secured communication with Clients or Registered Owners of Securities; and
- (f) implementation of intrusion detection devices to monitor any unauthorised access.

4.5 Capacity

- (a) A Share Registrar should ensure that it has adequate systems capacity for the processing of initial public offering (IPO) allocations and other transactions, the printing of share certificates and the updating of share registers in the event of an IPO.
- (b) A Share Registrar should have an adequate margin above its current capacity to handle its current volume and systematically establish future capacity estimates on a regular basis. In addition, a Share Registrar should conduct periodic stress tests to assess whether its systems can perform adequately in relation to estimated capacity levels and in the event of heavily subscribed IPOs.

4.6 Reliability

A Share Registrar should ensure that the systems used in the performance of its business and services are reliable and that both internal and external system/program developers observe the following requirements:-

- (a) Proper implementation of systems and upgrades. Proper planning and testing must be undertaken;

- (b) Regular monitoring of systems and printers;
- (c) Availability of support in emergencies;
- (d) Timely rectification of problems;
- (e) Adequate resolution of recurring problems;
- (f) Proper and adequate maintenance of written systems documentation detailing functional and technical specifications of the share registration system; and
- (g) Maintenance and retention of a continuous and properly documented audit trail of systems changes and/or repairs.

4.7 Contingency planning

- (a) A Share Registrar should have an appropriate contingency plan to deal with potential operational failures, emergencies or disasters. The contingency plan should be documented, maintained and periodically tested to ensure that it is viable and adequate. A plan for dealing with media and regulatory enquiries should be formulated and the Share Registrar should have competent and trained staff to deal with such matters.
- (b) The Share Registrar should ensure that its back-up site and systems are protected and operational in the event of systems failure. As a minimum, the Share Registrar should have -
 - (i) A back up site or other suitable facility which will enable the Share Registrar to maintain critical functions in the event of an emergency;
 - (ii) Back up records, servers and supporting securities documentation which are located in separate premises;
 - (iii) Back up client and transaction databases which are kept in an off-line medium such as computer tapes, which are preferably stored off-site. Offsite storage is generally expected to be subject to proper security measures, and be fire and waterproof;
 - (iv) Back-up functions which are preferably performed after each updating of information for critical data relating to Clients and Registered Owners of Securities; and
 - (v) Back up printing facilities or printers for the production of securities or other related client documentation.

5. Information for Clients

5.1 Client agreement

A Share Registrar shall enter into a written agreement with its Clients before providing services to the Client. The written agreement should, as a minimum, include a description of the nature of services to be provided to the Client.

5.2 Fees and charges and the disclosure of fees

A Share Registrar should disclose the basis and the amount of fees and charges for services to its Clients and Registered Owners of Securities. The fees and charges should, where applicable, comply with requirements set out in the Listing Rules or be reasonable and adhere to the fees recommended by the Federation.

5.3 Information about the firm : general

A Share Registrar should upon request provide Clients with adequate and appropriate information about its business, including contact details, services available and fees structure.

5.4 Recordkeeping and reporting

- (a) A Share Registrar should at all times maintain each register for which it is responsible properly and accurately. The information for each Registered Owner of Securities should also be properly and accurately maintained. In addition, the registers of securities should be updated in a timely manner. The management of this information, both in physical and electronically stored form should be assigned to qualified and experienced staff members.
- (b) A Share Registrar should notify the Federation in writing of the location of the premises at which it conducts its business.
- (c) A Share Registrar should establish and maintain record retention policies which ensure that all relevant legal and regulatory requirements are complied with and which enable the Share Registrar, its auditor and regulators to carry out routine and ad hoc comprehensive reviews or investigations.
- (d) A Share Registrar should provide information in relation to the provision of its services to the Commission upon request.

5.5 Communications between Clients and Registered Owners of Securities through the Share Registrar

- (a) A Share Register should ensure that all communications between the Client and Registered Owners of Securities (and, as the case may be, including non-

Registered Owners of Securities who hold their securities through Hongkong Clearing) are distributed in a timely, accurate and appropriate manner. These communications may include the distribution of the share certificates from an initial public offering or a rights issue, company's interim/annual reports, notifiable transactions circulars, and corporate activity documents such as bonus issues, mergers and acquisitions, cash offers, preferential share offers, meetings convened under the direction of the Courts, etc.

- (b) A Share Registrar should ensure that it has documented procedures with regard to its handling of communications (including payments) between a Client and the Registered Owners of Securities in the performance of the Share Registrar's business or services. In particular, these procedures should address how the Share Registrar should handle changes of instructions in relation to payments to Registered Owners of Securities and the return of important communications to Registered Owners of Securities.
- (c) The Commission expects a Share Registrar to, as far as practicable, conduct investigations when important communications to Registered Owners of Securities are returned in unusual or suspicious circumstances.
- (d) A Share Registrar should ensure that it has arranged to make available facilities, adequate resources and, as far as possible, documented procedures for the handling of inquiries (such as obtaining shareholding histories, dividend claims, lost items applications, title disputes, instructions to be taken in corporate actions and general questions about corporate announcements and dividend timetables) from Registered Owners of Securities via telephone calls, letters, faxes, personal visits or other communication methods. A Share Registrar should handle the inquiries in a timely and appropriate manner as well as ensure that the instructions of the Registered Owners of Securities are properly carried out.
- (e) A Share Registrar should ensure that the registers of securities under its maintenance are updated in a timely and accurate manner.

6. Conflicts of Interest

6.1 Conflicts of interest

A Share Registrar should at all times, and insofar as it is consistent with the integrity of the market, act in the best interests of its Clients. The Share Registrar should try to avoid conflicts of interest, and when conflicts cannot be avoided, it should ensure that the interests of its Clients are fairly treated.

6.2 Confidentiality

A Share Registrar should not disclose information in relation to its Clients and Registered Owners of Securities to any person or use this information for any purpose other than in the performance of its obligations as a Share Registrar.

7. Safeguarding of Client Assets

7.1 Establishment of review processes

A Share Registrar should establish and maintain appropriate procedures (this may include regular reconciliation) to prevent or detect errors, omissions, fraud and other unauthorised or improper activities.

7.2 Audit trails

Adequate audit trails should be maintained which will enable a Share Registrar to detect and investigate suspected improprieties so as to assist the Share Registrar in the prevention of any improprieties.

7.3 Safekeeping of documents and client information

- (a) A Share Register shall properly store and safe-keep Clients' assets. The Share Registrar should establish appropriate procedures for the handling of security documentation (such as blank security certificates or cheques) and information relating to Clients and Registered Owners of Securities.
- (b) Procedures should be established to document the handling movements of Clients' Assets and the assets of the Registered Owners of Securities. This may include procedures for:-
 - (i) Clear identification of staff member(s) and representatives of Clients (for client assets) with authority to make additions, deletions or changes or otherwise part with possession of Client Assets, and the parameters of such authority. The authority should be checked with respect to each movement recorded in the client registers and cheque withdrawal request;
 - (ii) Use of standardised and sequentially numbered documents or other appropriate methods to acknowledge and account for asset movements within client records;
 - (iii) Secure storage of the Share Registrar's and Clients' Assets, other important security or bank documents and controlled forms (e.g. cheque books) which are kept at the Share Registrar's premises;

- (iv) Prompt depositing of cheques, cashier orders and other negotiable instruments and securities into appropriate account(s) at banks or securities depositories. During the period in which physical scrip or cash is held at the Share Registrar's premises, routine audits should be conducted to ensure proper safeguarding of the Share Registrar's assets and Client Assets;
- (v) Payment of cheques in relation to dividend payments or refunds from IPOs. Such cheques should be crossed "Account Payee Only" and made payable to the Registered Owner of the Securities or the unsuccessful applicant in an IPO Offering.
- (vi) Maintenance and updating of the registers of securities it is responsible for in a timely and accurate manner.
- (vii) Clear definition and communication of authorisation requirements and authorised cheque signatories and applicable authority parameters to relevant banks. A Share Registrar should consider the need to require two or more authorised signatures. A Share Registrar's cheques should not be signed unless the date, specified payee and amount portions of the cheques are properly filled in.
- (viii) The existence of appropriate controls with respect to access to computer systems, facsimile transmission and telex devices where such devices are used to transmit important information. Clear policies should be established regarding confidentiality of passwords (e.g. passwords should be regularly changed and relevant passwords disabled upon a staff member(s) leaving the Share Registrar).

8. Compliance

8.1 Compliance

A Share Registrar shall comply with, and implement and maintain measures to comply with, the provisions of this Code and all applicable laws, codes and guidelines issued by any regulatory body which may be in force from time to time and the Share Registrar should ensure that its employees and agents comply with them.

8.2 Maintenance of an audit function

- (a) A Share Registrar should maintain an audit function to report on the adequacy and effectiveness of its management, operations and internal controls. The audit function should conduct regular reviews and audits to detect activities or conditions which may breach, or contribute to non-compliance by the Share Registrar and/or its staff with, legal and regulatory requirements, as well as with its own policies and procedures.
- (b) Where the size of the Share Registrar does not justify a separate internal audit function, the relevant roles and responsibilities should be performed or reviewed by the external auditors.

8.3 Handling of complaints and other requests

- (a) The Share Registrar should have properly documented procedures in relation to the timely handling of complaints and other requests from Clients or Registered Owners of Securities.
- (b) The Share Registrar should ensure that:-
 - (i) Complaints from Clients and Registered Owners of Securities are handled in a timely and appropriate manner;
 - (ii) Steps are taken to investigate and respond promptly to such complaints;
 - (iii) Where a complaint is not dealt with promptly, the complainant is advised of any further steps, which may be available to him under the regulatory system (this may include advice that the complaint may be made to the Commission); and
 - (iv) In the event that the complaint cannot be satisfactorily resolved between the Share Registrar and the complainant, the complainant is advised that he may, if he so wishes, escalate the complaint to the Commission.
- (c) A Share Registrar should at all times be responsible for the acts or omissions of his employees and agents in the conduct of its business.

8.4 Notification

A Share Registrar should report to the Federation and the Commission immediately upon the occurrence of any material breach, infringement of or non-compliance with any law, rules, regulations and codes administered by the Commission or which apply to it or where it suspects any such breach, infringement or non-compliance has occurred.

9. Responsibility of Senior Management

9.1 Responsibility of senior management

- (a) Senior management of a Share Registrar should understand the nature of the Share Registrar's business and its internal control procedures. They should clearly understand the extent of their authority and responsibilities.
- (b) In determining the responsibility of particular individuals, the principles in General Principle 7 will be applied.

10. Disciplinary Proceedings

10.1 The Share Registrars' Disciplinary Committee ("Disciplinary Committee")

- (a) The Disciplinary Committee is a committee of the Commission established under section 6(1) of the Securities and Futures Commission Ordinance, Cap. 24.
- (b) The Disciplinary Committee shall hear and determine disciplinary matters in the first instance.
- (c) The Disciplinary Committee shall consist of up to 26 members of whom up to 4 may be Executive Directors or staff of the Commission and the balance representatives of HKEx, financial institutions and other constituencies with an interest in the share registrar industry.
- (d) The quorum for the Committee is 5 including a Chairman. No more than 2 members who are Executive Directors or staff of the Commission may sit on any disciplinary hearings.
- (e) Members of the Committee are appointed and may be removed by the Commission. They shall normally hold office for a year but may be re-appointed at the end of each term.
- (f) The Committee may co-opt other persons to assist in specific circumstances.
- (g) The Committee shall have a Chairman and one or more Deputy Chairmen, who may not be Executive Directors or staff of the Commission. The Chairman of each hearing of the Disciplinary Committee shall either be the Chairman or a Deputy Chairman of the Committee, or if neither is available, such other member as may be appointed by the Chairman. The Chairman of each hearing of the Committee will have a deliberative and casting vote.

- (h) The Committee will appoint a secretary who will be a staff member of the Commission.
- (i) Each member of the Committee and where applicable, his firm is required to comply with conflict of interest guidelines issued by the Commission from time to time.

10.2 Disciplinary proceedings

- (a) The Executive may institute disciplinary proceedings before the Disciplinary Committee when it considers that there has been a breach of this Code.
- (b) Paragraph 10.2(a) shall not prejudice the right of the Executive to institute disciplinary proceedings in relation to breaches of this Code by a Share Registrar who was at the relevant time a Share Registrar but has since ceased to be, if the Executive considers that there are reasonable grounds to do so.
- (c) Each Share Registrar and the Federation shall cooperate with the Commission, the Executive, the Disciplinary Committee and the Disciplinary Appeals Committee and provide such assistance as they (or any of them) may require for the purposes of disciplinary proceedings under this Code. This paragraph shall survive any suspension or termination of membership of a Share Registrar.

10.3 Penalties the Disciplinary Committee may recommend

The Disciplinary Committee may impose one or more of the following penalties in relation to any matter it hears after it has made a finding of fact–

- (a) revoking the Share Registrar’s membership with the Federation;
- (b) prohibiting the Share Registrar from soliciting or accepting new clients and/or new business for such period and on such terms as the Disciplinary Committee consider fit;
- (c) privately or publicly reprimanding the Share Registrar or any director, executive or person concerned in the management of the Share Registrar;
- (d) requiring the Share Registrar to take remedial action within a prescribed period and specifying the consequences for the Share Registrar’s failure to do so; and
- (e) such other action against the Share Registrar as the Disciplinary Committee consider appropriate in the circumstances.

10.4 Hearings of the Disciplinary Committee

- (a) Notice of hearing shall be given to the person under inquiry or investigation at least 14 days prior to the date of the hearing and such person shall have the right to attend the hearing and explain his conduct and action.
- (b) A person under inquiry or investigation may attend the hearing and be represented by a solicitor provided that he shall give at least 10 day prior written notice to the Disciplinary Committee setting out the details relating to the solicitor which the Disciplinary Committee may reasonably require. Where the person under inquiry or investigation is a corporation, an officer or employee duly authorised by the corporation may attend the hearing on its behalf.
- (c) The Disciplinary Committee may inquire into any matter it considers relevant to each case.
- (d) Hearings shall be informal and conducted in private.
- (e) The Disciplinary Committee may call any witness and require the production of any documents, records, books and/or other materials which the Disciplinary Committee considers relevant to the case.
- (f) The Disciplinary Committee may at any time during the hearing allow any witness to give evidence. The rules of evidence shall not apply to the hearing and the Disciplinary Committee may receive any evidence which it considers relevant to the case in such manner or by such means as the Disciplinary Committee considers fit.
- (g) If a person under inquiry or investigation fails to appear at the hearing by himself or by an authorized representative, the Disciplinary Committee shall be entitled to decide the case in his absence.
- (h) The Disciplinary Committee may at any time either on its own initiative or at the request of a party to the hearing adjourn the hearing on such terms as it considers fit.
- (i) Where it is not specifically set out in this section the practice and procedures for the hearings shall be determined by the Disciplinary Committee either generally or in respect of a particular hearing as it considers appropriate.

10.5 Findings and recommendations to be made to Federation

If the Disciplinary Committee is satisfied that the allegations against a Share Registrar are proved, it shall make a finding of fact and impose a penalty against the Share Registrar or other person as it considers appropriate subject to paragraph 10.3. The written finding of fact and penalty with reasons therefor shall be served on the person under inquiry or investigations and the Federation within 7 days of the Disciplinary Committee's decision.

10.6 Appeals

- (a) A Share Registrar against whom the Disciplinary Committee has imposed a penalty may appeal to the Disciplinary Appeals Committee in respect of the penalty imposed by the Disciplinary Committee.
- (b) An appeal should be made in writing setting out the reasons and grounds for appeal and attaching a copy of the Disciplinary Committee's decision. These should be served on the Disciplinary Appeals Committee within 14 days after the service of the Disciplinary Committee's written decision under paragraph 10.5.
- (c) The appellant shall lodge a copy of the appeal with the Federation and the Executive.

10.7 The Share Registrars' Disciplinary Appeals Committee ("Disciplinary Appeals Committee")

- (a) The Disciplinary Appeals Committee is a committee of the Commission established under section 6(1) of the Securities and Futures Commission Ordinance, Cap. 24.
- (b) The Disciplinary Appeals Committee shall review decisions made by the Disciplinary Committee for the sole purpose of determining whether any sanction imposed by the Disciplinary Committee was unfair or excessive based on the Disciplinary Committee's findings of fact.
- (c) The Chairman and the Deputy Chairman of the Securities and Futures Appeals Panel are the Chairman and Deputy Chairman respectively of the Disciplinary Appeals Committee. The other members of the Disciplinary Appeals Committee shall consist of members of the Disciplinary Committee other than the representatives of the Commission, together with members of the Securities and Futures Appeals Panel who have legal training and experience.
- (d) Each hearing of the Disciplinary Appeals Committee is presided by the Chairman or Deputy Chairman; or another member of the Securities and Futures Appeals Panel who has legal training and experience and who is designated by the Chairman when he considers it inappropriate that he or the Deputy Chairman should chair a particular hearing.
- (e) Each hearing of the Disciplinary Appeals Committee shall consist of 3 members, namely the person presiding over the hearing and 2 members who did not participate in the hearing before the Disciplinary Committee.

10.8 Findings and recommendations which the Disciplinary Appeals Committee may make

The Disciplinary Appeals Committee may confirm, vary or reverse the penalty recommended by the Disciplinary Committee. The decision of the Disciplinary Appeals Committee shall be final and binding on the parties in question.

10.9 Hearings

- (a) The practice and procedures applicable to hearings of appeals which are set out in paragraph 10.4 shall apply to the hearing of appeals by the Disciplinary Appeals Committee except where the Disciplinary Appeals Committee prescribed otherwise.
- (b) The Disciplinary Appeals Committee may refuse to hear any appeal which it considers frivolous.

10.10 Notification of findings and recommendations

The Disciplinary Appeals Committee shall serve its written decision with reasons therefor on the appellant and the Federation within 7 days after the hearing of the appeal is concluded.

10.11 The Federation to implement recommendations made by the Disciplinary Committee or the Disciplinary Appeals Committee

- (a) The Federation shall implement any decision made by the Disciplinary Committee or, as the case may be, the Disciplinary Appeals Committee under paragraphs 10.5 or 10.10 to revoke the membership of a Share Registrar or to prohibit the Share Registrar from soliciting or accepting new clients and/or business.
- (b) The Federation shall not take any disciplinary action against a Share Registrar before the expiry of the period for appeal under paragraph 10.6 or if an appeal has been submitted pursuant to this section, until the written decision of the Disciplinary Appeals Committee has been served on the Federation.