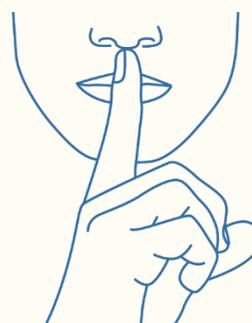


Secrecy Obligations and Disclosures

The licensed corporation has frequently asked the question as to the extent of secrecy obligations under section 378 of the Securities and Futures Ordinance (Chapter 571), Laws of Hong Kong (the “**SFO**”). This explanatory note is intended to summarize the secrecy obligations thereunder.

Summary of Secrecy Obligations and Exceptions

1. Section 378 of the SFO imposes complex secrecy obligations on the specified person (as defined in the SFO) who includes an investigator, a person under investigation by SFC or a person to assist providing information to the Securities and Futures Commission (the “**SFC**”) under the SFO.
2. Prior consent by the SFC to disclose information subject to secrecy obligations under section 378 of the SFO (the “**Secrecy Information**”) is required except for certain circumstances as elaborated hereinafter. A formal application for consent should be made to the SFC for consent to disclosure.
3. The Secrecy Information means all the information coming to the knowledge of a specified person, irrespective of the nature of information:
 - (i) by virtue of his appointment under any of the relevant provisions under the SFO;
 - (ii) in the performance of any function under any of the relevant provisions;
 - or
 - (iii) in the course of assisting any other person in carrying into effect all of the relevant provisions.



4. In addition, section 378(2) of the SFO lists several forms of disclosure of information that do not attract secrecy at all. These include disclosure of information which has already been made available to the public, or for the purpose of seeking professional advice from, or giving advice by, a counsel, or solicitor, or other professional adviser (e.g. a forensic accountant, trading specialist or listing agent acting in a professional capacity towards the person being advised).

5. Further, the SFC takes the view that under section 378 of the SFO, the SFC's consent to the following notifications (and only these) can be assumed without the need to make a formal application for consent by the person who is subject to the secrecy obligations:
 - (i) the fact that he (or it, in the case of a corporation) is bound by the secrecy obligation;
 - (ii) the general nature of the matter (but without revealing anything specific about it), which has given rise to the secrecy obligation;
 - (iii) the means by which he or it came to be bound by the secrecy obligations (e.g. upon receiving an investigator's notice under section 183 of the SFO);
 - (iv) the date, time and place at which he or it is required to provide information or documents to the SFC or attend an interview by an investigator, if disclosed to the following persons only: -
 - (a) in the case of an individual bound by the secrecy obligations, to his employer, spouse or partner and, where the individual is a regulated person, his firm's responsible officer or executive officer, compliance officer or in-house lawyer; and



- (b) in the case of a corporation bound by the secrecy obligations, to its board of directors, its holding company or indemnity insurers.



6. Also, the SFC's Frequently Asked Questions (the "**FAQ**") clarified that consent is not required for disclosure of supervisory information (please see explanation in paragraph 7 below) by the licensed corporation to an auditor if:
- (i) the auditor is appointed by the licensed corporation under section 153 of the SFO (i.e. the auditor appointed by the licensed corporation to carry out audit), or by the SFC under section 159 or 160 of the SFO in the specified circumstances; and
 - (ii) the supervisory information is disclosed by the licensed corporation to the auditor for the purpose of making relevant reports under the SFO. However, the auditor who receives the supervisory information from the licensed corporation shall not disclose such information to any other person, unless the SFC consents to such onward disclosure, or any other exception under section 378 of the SFO applies.
7. In accordance with the FAQ, supervisory information that might typically be subject to section 378 of the SFO includes:
- (i) the fact that on-site reviews will be, are being or have been conducted under section 180 of the SFO and the findings of such reviews;
 - (ii) the correspondence issued by Intermediaries Supervision Department of the SFC (the "**ISD**") to the licensed corporation, including requests for information and letters of deficiencies; and
 - (iii) the responses provided by the licensed corporation to the ISD which, given their nature, would usually reveal information on items (i) and (ii) above.

8. It appears that disclosure of supervisory information to auditor does not extend to disclosure of information under investigation or enforcement action commenced by the SFC to the auditor given that supervisory information is seemingly confined to those communications between the licensed corporation and the ISD in relation to on-site reviews and the information and correspondence pertaining to the on-site reviews.

Disclosure of Information to Auditor

In the event that the licensed corporation is asked by its auditor to disclose the Secrecy Information (except for supervisory information), it may disclose such information within the scope specified in paragraph 5 above. In case of the Secrecy Information falling within category of supervisory information, the licensed corporation may disclose to the auditor the supervisory information in accordance with paragraph 6 above. Otherwise, consent by the SFC should be sought.

Disclosure of Information to Holding Company

Where the Secrecy Information is requested by its holding company, it seems that the licensed corporation may disclose the Secrecy Information in accordance with scope as provided in paragraph 5 above. Consent by the SFC should be needed if more information is disclosed.



Disclosure of Information to Foreign Regulator

Pursuant to section 378(3)(g)(i) of the SFO, the SFC may disclose the Secrecy Information to an authority or regulatory organization outside Hong Kong. Before that, the SFC first has to be satisfied that such disclosure is in the interest of the investing public or in the public interest. The foreign regulator includes China Securities Regulatory Commission, PRC (the “**CSRC**”). Thus, the CSRC may seek disclosure of the Secrecy Information with respect to the investigation commenced by the SFC against the licensed corporation direct from the SFC, where necessary.

In case of any doubt, formal consent by the SFC prior to the disclosure should be sought.

Should you have any question, please contact our Mr. Lawrence Yeung on (852) 2854 3070 or email to lawrence.yeung@ycylawyers.com.hk.

Please be aware that this explanatory note is for information only and not intended to provide a formal legal advice.

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