

# October 2018 Legal and Regulatory Update

## Top stories

### SFC enforcement updates

SFC's Head of Enforcement gave a speech at a regulatory summit regarding its strategic approaches in enforcement. (Click: [speech](#)).

SFC is **partnering with other enforcement agencies (ICAC, the police)** in targeting **“nefarious networks”**. These groups of highly organized people (controlling listed companies, licensed dealers, money lenders, financial advisory services and placing agents) enrich themselves at the expense of investors.

Methods used include **“share warehousing”**, use of **nominees to disguise actual voting control**, sale of **assets with extreme pricing**, usually coupled with some form of **“market manipulation”**.

SFC also issued a **circular to intermediaries**, reminding them of the **improper use of “nominees and share warehousing arrangements”** to facilitate market and corporate misconduct. Intermediaries should be mindful of “red flags”, make proper enquiries with clients, and report promptly to SFC where needed. (Click: [circular to intermediaries](#)).

In the meanwhile, SFC introduced **online forms** via its website to make it **easier** for the **public to report** (i) suspected corporate fraud and market misconduct, and (ii) information about key suspects SFC is trying to locate. (Click: [press release](#); [“Reporting corporate fraud/market misconduct” webpage](#); [“Have you seen these people” webpage](#))

### *What you should know:*

- **“Traditional” approach to enforcement**
  - Focus: **Corporate fraud**
  - Aim: complete investigations of around 100 more entities by year-end
  - Aim: **legal proceedings against 60 companies and individuals by 1H 2019**
  - **Deterrent message: since 2017, doubled the number of directors removed/banned for fraud/misfeasance/breaches under the Securities and Futures Ordinance**
- **“Non-traditional” approach to enforcement**
  - **“Front-loaded” approach**
  - **“Nefarious networks”**
  - Partnering with **ICAC, the police**

## Also in this issue

### Legislation

The **Competition Commission** published a decision that the **“Code of Banking Practice”** is **not excluded from the “First Conduct Rule”**, by virtue of the **“legal requirements exclusion”** under the Competition Ordinance (“CO”). It is in response to an application of 14 Authorized Institutions (“AIs”) seeking exclusion on this ground.

The Commission also confirmed that it has **no current intention to pursue further investigative/ enforcement action** regarding the Code. (Click: [press release](#); [Statement of Reasons](#)).

### *What you should know/watch out for:*

- Background
  - The Code is an industry code of practice jointly issued by the Hong Kong Association of Banks and the Hong Kong Association of Restricted Licence Banks and Deposit-taking companies, and endorsed by HKMA
  - Relates to AIs’ provision of services to private HK customers; recommendations on banking practice covering various services
  - Stated to be voluntary and non-statutory
  - Certain provisions relate to imposition and **level of fees/ interest rates/ charges**. E.g. should not in specific circumstances impose particular fees or charges on customers).
- Case focus: the **“legal requirement” exclusion**
  - **Not** assessing the Code for **compliance with “First Conduct Rule”**
- **Commission: no current intention to pursue further actions**
  - Its **enforcement policy targets conduct that is clearly harmful to competition and customers in HK**
  - **The Code** may in fact **benefit customers** in particular ways; intended to **promote good banking practices**
- **“Legal requirement” exclusion narrowly construed**
  - Not a legal requirement **imposed “by” or “under” the Banking Ordinance** within the meaning of the CO
  - Existence of **monitoring procedures not sufficient** to demonstrate a **“legal requirement” to comply with the Code**
- Read more: [analysis of specialist law firm](#)

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