

Herbert Smith

Abu Dhabi

Herbert Smith LLP
Suite 302, 3rd Floor
Al Bateen Towers C2 Building
Al Bateen
PO Box 106178
Abu Dhabi UAE
T +971 2 412 1700
F +971 2 412 1701

Amsterdam

Stibbe
Stibbetoren
Strawinskylaan 2001
PO Box 75640
1070 AP Amsterdam
T +31 20 546 06 06
F +31 20 546 01 23

Bangkok

Herbert Smith (Thailand) Ltd
1403 Abdulrahim Place
990 Rama IV Road
Bangkok 10500
T +66 2657 3888
F +66 2636 0657

Beijing

Herbert Smith LLP
Units 1410-1419
China World Tower 1
1 Jianguomenwai Ave
Beijing 100004
T +86 10 6505 6512
F +86 10 6505 6516

Berlin

Gleiss Lutz
Friedrichstrasse 71
10117 Berlin
T +49 30 800 979-0
F +49 30 800 979-979

Brussels

Herbert Smith LLP
Central Plaza
Rue de Lozum 25
1000 Brussels
T +32 2 511 7450
F +32 2 511 7772

Gleiss Lutz
Central Plaza
Rue de Lozum 25
1000 Brussels
T +32 2 551 1020
F +32 2 551 1039

Stibbe
Central Plaza
Rue de Lozum 25
1000 Brussels
T +32 2 533 5211
F +32 2 533 5212

Budapest

Gleiss Lutz
Cooperation partner:
Bán, S. Szabó & Partners
József nádor tér 5-6
HU-1051 Budapest
T +36 1 266-3522
F +36 1 266-3523

Dubai

Herbert Smith LLP
Dubai International Financial
Centre
Gate Village 7, Level 4
P.O. Box 506631
Dubai UAE
T +971 4 428 6300
F +971 4 365 3171

Frankfurt

Gleiss Lutz
Mendelssohnstrasse 87
60325 Frankfurt/Main
T +49 69 95514-0
F +49 69 95514-198

Hong Kong

Herbert Smith
23rd Floor, Gloucester Tower
15 Queen's Road Central
Hong Kong
T +852 2845 6639
F +852 2845 9099

Jakarta

Herbert Smith
Associated firm
Hiswara Bunjamin and
Tandjung
23rd Floor, Gedung BRI II
Jl. Jend. Sudirman Kav. 44-46
Jakarta, 10210
T +62 21 574 4010
F +62 21 574 4670

London

Herbert Smith LLP
Exchange House
Primrose Street
London EC2A 2HS
T +44 20 7374 8000
F +44 20 7374 0888

Stibbe
Exchange House
Primrose Street
London EC2A 2ST
T +44 20 7466 6300
F +44 20 7466 6311

Moscow

Herbert Smith CIS LLP
10 Ulitsa Nikolskaya
Moscow 109012
T +7 495 363 6500
F +7 495 363 6501

Munich

Gleiss Lutz
Prinzregentenstrasse 50
80538 Munich
T +49 89 21667-0
F +49 89 21667-111

New York

Stibbe
489 Fifth Avenue, 32nd Floor
New York, NY 10017
T +1 212 972 4000
F +1 212 972 4929

Paris

Herbert Smith LLP
66, Avenue Marceau
75008 Paris
T +33 1 53 57 70 70
F +33 1 53 57 70 80

Prague

Gleiss Lutz
nám. Republiky 1a
110 00 Prague 1
Czech Republic
T +420 225 996 500
F +420 225 996 555

Saudi Arabia

Herbert Smith
Associated firm
Al Ghazzawi Professional
Association
Al Ghazzawi Building
Al Andalus Street
PO Box 7346
Jeddah 21462
T +966 2 6531576
F +966 2 6532612

Herbert Smith
Associated firm
Al Ghazzawi Professional
Association
Arabian Business Center
Prince Muhammad Street
PO Box 381
Dammam 31411
T +966 3 8331611
F +966 3 8331981

Herbert Smith
Associated firm
Al Ghazzawi Professional
Association
King Faisal Foundation
North Tower, 4th Floor
K. Fahd Road
PO Box 9029
Riyadh 11413
T +966 1 4632374
F +966 1 4627566

Shanghai

Herbert Smith LLP
38th Floor, Bund Center
222 Yan An Road East
Shanghai 200002
T +86 21 2322 2000
F +86 21 2322 2322

Singapore

Herbert Smith LLP
50 Raffles Place
#24-01 Singapore Land Tower
Singapore 048623
T +65 6868 8000
F +65 6868 8001

Stuttgart

Gleiss Lutz
Maybachstrasse 6
70469 Stuttgart
T +49 711 8997-0
F +49 711 855096

Tokyo

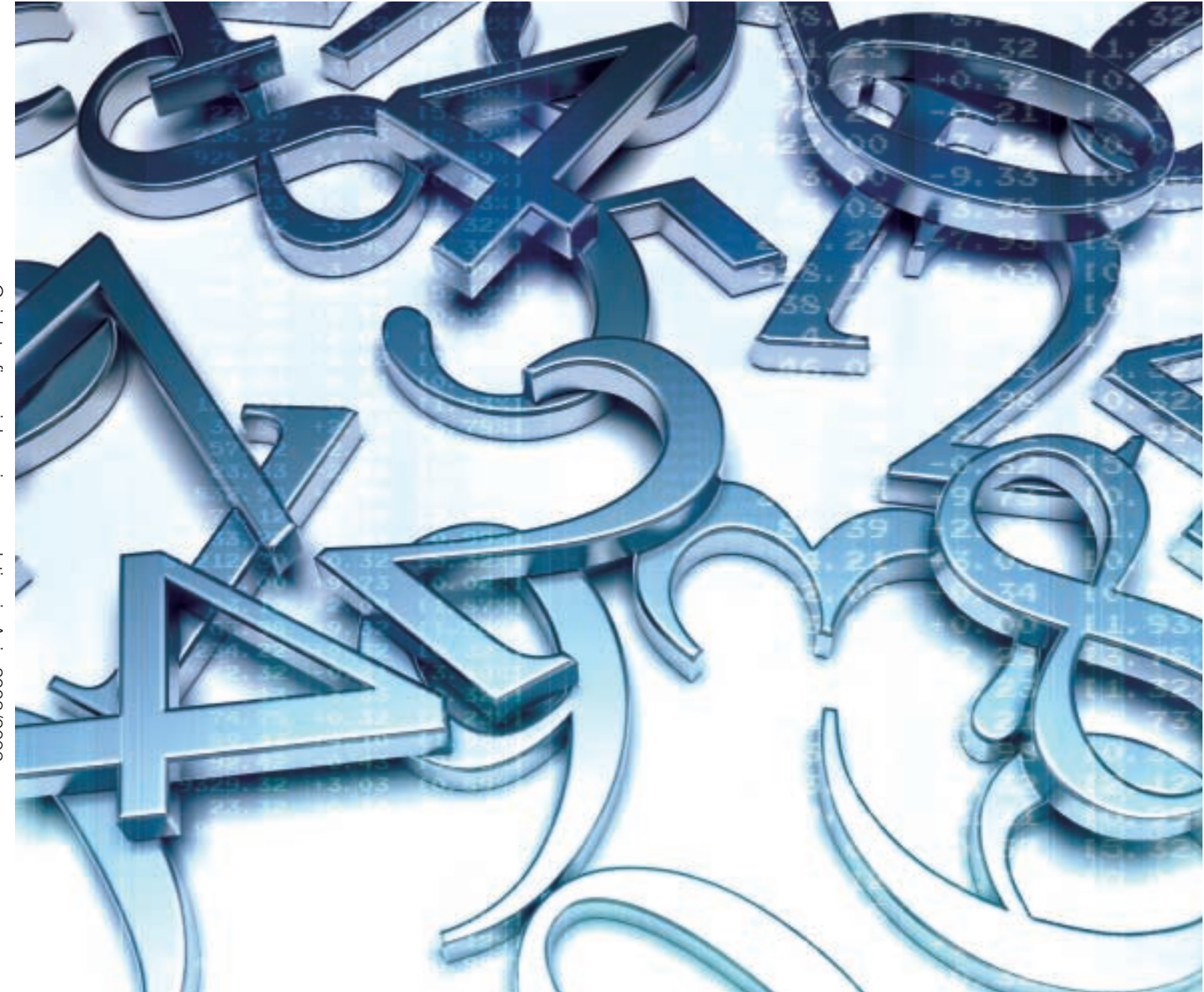
Herbert Smith
41st Floor, Midtown Tower
9-7-1 Akasaka, Minato-ku
Tokyo 107-6241
T +81 3 5412 5412
F +81 3 5412 5413

Warsaw

Gleiss Lutz
ul. Zlota 59
00-120 Warsaw
T +48 22 22242-00
F +48 22 22242-99

www.herbertsmith.com
www.gleisslutz.com
www.stibbe.com

Guide to financial services regulation in Asia 2008/2009



Herbert Smith

Guide to financial services regulation in Asia

2008/2009

Herbert Smith LLP, Gleiss Lutz and Stibbe are three independent firms which have a formal alliance.

Contents

Guide to financial services regulation in Asia

Introduction		1
China	Herbert Smith LLP	2
Hong Kong	Herbert Smith	11
India	Amarchand & Mangaldas & Suresh A. Shroff & Co.	19
Indonesia	Hiswara Bunjamin & Tandjung (in association with Herbert Smith LLP)	27
Japan	Herbert Smith Tokyo in conjunction with Nagashima Ohno & Tsunematsu	34
Korea	Kim & Chang	44
Macau	João Nuno Riquito - Advogados	49
Malaysia	Skrine	55
Pakistan	Orr, Dignam & Co.	64
Philippines	SyCip Salazar Hernandez & Gatmaitan	73
Singapore	Engelin Teh Practice LLC	79
Taiwan	Lee and Li	87
Thailand	Herbert Smith (Thailand) Limited	94
Vietnam	LWA Vietnam, Ho Chi Minh City Branch	101
Profiles		108

Published by Herbert Smith

23rd Floor, Gloucester Tower

15 Queen's Road Central

Hong Kong

Tel: +852 2845 6639

Fax: +852 2845 9099

www.herbertsmith.com

No photocopying

The information provided in this publication is general and may not apply to any specific situation. Legal advice should always be sought (where appropriate, from local advisers) before taking any action based on the information provided. The publisher and authors bear no responsibility for any acts or omissions contained herein. Information provided is accurate as at July 2008.

© Herbert Smith LLP 2008

Introduction

Welcome to the third edition of the Guide to Financial Services Regulation in Asia. As with previous editions, the guide is aimed at business people and lawyers who require concise information as to the identity, jurisdiction and powers of the key financial services regulators in Asia.

As part of an ongoing global trend, there have been a number of major regulatory developments in many jurisdictions across the Asian region. This edition contains a new section on various reforms that are underway. We trust this provide a useful insight into the specific regulatory issues in each jurisdiction.

This edition also includes a new chapter on financial services regulation in Vietnam prepared by LWA Vietnam. We greatly appreciate the support and contributions of the leading firms who have contributed the country chapters. They are noted for their expertise in their respective jurisdictions and we are delighted to work with them once again.

Herbert Smith also publishes the *Guide to dispute resolution in Asia* and the *Guide to anti-corruption regulation in Asia*. These publications form part of our comprehensive series of Asian guides. Please contact Lydia Lam at lydia.lam@herbertsmith.com if you would like hard copies of the Guides.

We hope that the Guide will prove to be a useful resource. As always, we welcome any feedback from readers. Please contact me if you have any suggestions or comments.

Mark Johnson
Head of dispute resolution, Asia
Herbert Smith

China

Herbert Smith LLP

1 What are the main bodies responsible for regulating financial services in the PRC?

The China Securities Regulatory Commission (CSRC), the China Banking Regulatory Commission (CBRC), the China Insurance Regulatory Commission (CIRC), and the People's Bank of China (PBOC).

2 What does each of these bodies regulate?

The CSRC has ultimate responsibility for regulation in relation to the stock markets in Shanghai and Shenzhen, the futures exchange in Shanghai and the commodities exchanges in Zhengzhou and Dalian, with the local exchanges retaining certain frontline regulatory functions under CSRC supervision. The CSRC:

- sets regulations governing the markets;
- regulates listed companies, securities and futures brokers;
- oversees stock and bond issues;
- supervises the establishment and operation of investment funds;
- has jurisdiction over the auditors of publicly listed companies and law firms which provide advice in relation to the issue, listing or trade of securities;
- appoints the head of each exchange; and
- approves the directors and senior officers of securities companies.

Since 2003, banking regulation has primarily been carried out by the CBRC. It has broad supervisory and disciplinary functions in relation to banking activities in mainland China: amongst other things, it licenses banking institutions, sets their authorised business scope and formulates and enforces regulations governing their operation. In addition to its role in relation to monetary policy, the PBOC (the central bank of China) retains responsibility for the inter-bank lending, bonds and foreign exchange markets, and is the lead agency for anti-money laundering activities.

The CIRC regulates the mainland Chinese insurance market. In addition to setting regulations, it oversees the establishment and operation of insurance companies and their subsidiaries and monitors the standard of insurance agents and insurance companies' senior management.

The PBOC is the central bank of China. Its functions include controlling monetary policy and regulating financial institutions in the capacity of a central bank.

3 What is the source of financial services regulations in the PRC?

Securities: principally, the Securities Law, the Company Law and supplemental regulations issued by the CSRC.

Banking: principally, the Commercial Bank Law, the Law of the People's Bank of China, the Banking Supervision Law, the Regulations on the Administration on Foreign-funded Banks and supplemental regulations issued by the CBRC and the PBOC.

Insurance: principally, the Insurance Law and supplemental regulations issued by the CIRC.

Jurisdictional overlaps and ambiguities are often resolved by the issuance of joint regulations by two or more authorities.

4 Do all the regulatory bodies described above have the same powers of enforcement?

No.

5 What powers of investigation do these bodies have?

Securities

The CSRC may:

- conduct on-site routine checks into securities companies and organisations and listed companies;
- conduct investigations and collect evidence at sites where it suspects that illegal activities have occurred;
- interview individuals or entities under investigation, or other individuals or entities related to the matters under investigation, and require them to explain those matters;
- review and copy documents related to events under investigation and seal / copy any such documents which might be moved, concealed or destroyed; and
- inspect financial information related to the parties under investigation or third parties related to the investigation and relevant to the matters under investigation.

Banking

The CBRC may:

- demand information relating to a banking institution's operations and risk management control and copies of its accounting and financial statements, including its asset-liability and profit statements;
- conduct on-site routine checks into banking institutions;
- interview the employees or senior managers of an institution under investigation and require them to explain the matters under investigation;
- examine the institution's operation data management computer system; and
- copy relevant documents and files in the possession of the banking institution and seal / copy any such documents and materials which might be moved, concealed or destroyed.

Once it suspects conduct capable of constituting a financial crime, the CBRC's investigative powers are increased. It may then exercise the powers listed above (other than conducting an onsite investigation and examining the computer system) in relation to individuals and entities other than banking institutions suspected of being involved in the illegal acts. It may also then inspect the bank accounts of a banking institution or other individual or entity suspected of conducting illegal financial operations.

The PBOC has the power to investigate the activities of financial institutions and other entities and individuals regarding issues relating to currency management, foreign exchange management, gold management, the state exchequer and money laundering. Under the Anti-Money Laundering Law enacted in December 2006, the PBOC has power to carry out on-the-spot investigations and to interview key personnel in financial institutions in relation to suspicious transactions. The investigators may also seal / copy any documents to prevent them from being disposed of, concealed, tampered with or destroyed.

Insurance

The investigative powers of CIRC are more limited than the powers granted to the CSRC and the CBRC. It may:

- investigate the operations, financial status and capital use of an insurance company;

- require an insurance company to provide information and reports; and
- investigate funds and accounts held by insurance companies.

Whilst the CIRC has no explicit power to interview, or to require explanations from, an insurance company or its employees, it is generally accepted that entities subject to its jurisdiction are required to co-operate with its enquiries and answer any questions truthfully.

6 Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

Employees of the regulatory bodies are required to keep state and commercial secrets obtained during investigations confidential (see Article 182 of the Securities Law, Articles 11 and 43 of the Banking Supervision Law, Articles 15 and 50 of the Law of the People's Bank of China and the CIRC Announcement of Certain Issues regarding Investigation of the Insurance Regulatory Authority against Deposits Made to Financial Institutions by Insurance Companies).

CSRC is required to keep confidential any information obtained during investigations relating to personal data, state and commercial secrets. Whilst the other regulatory bodies are not subject to similar restrictions, they will usually keep such information confidential unless disciplinary measures are taken or where potential criminal activity is suspected and reported to the relevant judicial organisation.

7 Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

Individuals and entities are required to co-operate with any investigation carried out by regulatory bodies by providing any documents and information requested and may not conceal facts or evidence (see Articles 183 and 230 of the Securities Law, Articles 42, 46 and 49 of the Banking Supervision Law and, in relation to CIRC, the general understanding referred to in question 5 above). There is no exemption from the duty to co-operate and provide information on the ground of potential self-incrimination or legal professional privilege.

Parties do not have an explicit right to legal representation during regulatory investigations; in practice, legal representation may be permitted but is sometimes regarded as an indication of an unwillingness to co-operate with the investigation.

8 Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

Yes. The regulatory bodies may pass evidence of irregular market conduct and other suspected criminal acts to the relevant judicial authority, be it the Public Security Bureau (PSB - in effect, the Chinese police), procuratorate or court. Indeed, each of the regulatory bodies is required to transfer cases of suspected criminal activity to the relevant judicial authority.

9 What actions may these bodies take in exercising their regulatory functions?

In addition to the matters mentioned in the responses to questions 5, 8 and 10:

Securities

(i) Asset freezing

The CSRC may freeze or secure funds or accounts which are related to the events under investigation or belong to the subjects of an investigation if it has evidence which suggests that those funds may otherwise be removed or dissipated.

(ii) Operational restrictions

The CSRC may, when investigating any major securities irregularity (including manipulation of the securities market or insider trading), temporarily bar the subjects of an investigation from dealing in securities and futures pending conclusion of the investigation, for a maximum period of 15 trading days (subject to an extension of 15 days in complicated cases).

If a securities company breaches the net assets requirement or other applicable risk management standard, the CSRC may require it to rectify the breach within a certain period of time. If the securities company does not do so, or in any event if the breach has a serious impact on the interests of investors or the securities market, the CSRC may (until the problem has been rectified):

- restrict the company's business operations (by, for example, ordering it to suspend some business operations);
- restrict the company's ability to declare dividends or pay remuneration to its directors, supervisors and senior managers;
- restrict its ability to transfer property;
- order it to change its directors, supervisors or senior managers;
- order the company's controlling shareholder to transfer its shares or restrict that shareholder's ability to exercise its shareholder's rights; or
- revoke the company's business licence.

(iii) Takeover, suspension and compulsory liquidation

If a securities company commits an illegal act or breaches the applicable risk management standards and that act or breach seriously disturbs the order of the securities market or seriously injures the interests of investors, the CSRC may suspend the company's business, or take over the company until the problem is rectified, or put it into compulsory liquidation.

In such circumstances, the CSRC may also impose restrictive measures on the security company's directors, senior management or other personnel held to be directly responsible for the breach, such as requesting the immigration authorities to prevent them from leaving the country or asking the relevant judicial organisation to restrict their ability to transfer property.

Banking

(i) Asset freezing

Whilst the CBRC has no power to freeze assets, it may request the relevant judicial organisation (most likely the PSB or the procuratorate) to investigate or freeze bank accounts or funds relevant to an investigation or belonging to the subjects of an investigation if it has evidence which suggests that those funds may otherwise be dissipated or removed.

In cases of suspected money laundering, the PBOC may order a financial institution to freeze an account for up to 48 hours, after which the account must be released unless the relevant "investigation organisation" (which, depending on the nature of the underlying crime, could be the PSB, procuratorate or national security bureau) confirms the freezing injunction.

(ii) Operational restrictions

If a banking institution is not being operated in a prudent way (as defined in the CBRC's regulations and including in relation to issues such as risk management and capital adequacy ratio), the CBRC may order it to rectify the problem within a certain time period. If the institution fails to do so, or in any event if the institution's failure has a serious impact on the operation of the bank or the interests of the bank's creditors, the CBRC may (until the problem has been rectified):

- order it to cease operating parts of its business;
- restrict its ability to distribute profits or other revenues;
- limit the transfer of its assets;
- require it to replace its directors or senior management;
- prohibit it from establishing any new branches; and
- order the company's controlling shareholder to transfer its shares or restrict that shareholder's ability to exercise its rights.

(iii) Takeover, merger or compulsory liquidation

If a banking institution is facing a serious credit crisis (for example, where there is evidence suggesting that the institution is unable, or will likely become unable, to pay its debts or will temporarily cease repaying its debts), the CBRC may take over the bank until the crisis has been resolved (subject to a maximum period of two years) and encourage it to accept a takeover or merger bid by another company.

If a banking institution conducts illegal operations or its management is severely defective, so that it will seriously prejudice the financial order and interests of the general public unless it is liquidated, the CBRC may place it in compulsory liquidation.

In any of these situations, the CBRC may also impose restrictive measures on the directors and senior management of the bank, such as requesting the immigration authorities to prevent them from leaving the country if the CBRC suspects that they are likely to flee the jurisdiction and permitting them to leave would cause serious harm to the interests of the state, or by asking the relevant judicial organisation to restrict their ability to transfer property.

Similarly, if a banking institution is facing difficulties in making payments, which are likely to result in a financial crisis in terms of maintaining the stability of the financial market (which implies a higher threshold than the existence of a "serious credit crisis", which would trigger the CBRC's power referred to above), the PBOC may examine and supervise the banking institution subject to the approval of the State Council.

Insurance

(i) Asset freezing

Whilst the relevant laws contain no express provision allowing the CIRC to request the relevant judicial authority to freeze or secure accounts or funds (akin to that granted to the CBRC discussed above), in practice the judicial authorities would likely be receptive to such a request from CIRC.

(ii) Operational restrictions and compulsory takeover

The CIRC may order an insurance company to:

- create or maintain reserves;
- obtain reinsurance;
- rectify any illegal use of funds; and
- change its senior management personnel.

If the company fails to comply with such an order, the CIRC may (until the company rectifies the problem) send personnel to overhaul and supervise the company and may prevent the company from underwriting new policies, suspend part of the company's operations or adjust its use of funds.

If an insurance institution's breach of applicable regulations has jeopardised the public interest and prejudiced that institution's ability to cover its liabilities, the CIRC may take over the institution for no more than two years and may apply for court order to declare the company insolvent if the company is unable to cover its debts.

10 What disciplinary sanctions may these bodies impose?

Whilst the precise sanctions available depend on the circumstances, all of these regulatory bodies may issue warning orders and public or private reprimands, require wrongdoers to rectify mistakes within a certain time period, impose fines and confiscate income derived from illegal activities. They may also warn and fine individuals involved in the illegal acts. In addition, in certain circumstances:

Securities

The CSRC may withdraw an institution's securities business licence and revoke the securities qualification or practising licence of the individuals responsible for, or directly involved in, the wrongful conduct. Individuals who have their securities qualification revoked are barred from acting as directors, supervisors or senior managers of securities companies for five years. The CSRC is required to publicise any disciplinary punishments it imposes, although it also issues "internal" reprimands (which arguably fall short of punishments), which are typically announced without identifying the institution involved.

If a law or accounting firm providing advice in relation to the issue, listing or trade of securities breaches an applicable regulation, the CSRC may fine it, issue it with a warning or rectification order or bar it from providing securities related advice. The CSRC may also fine, warn or disqualify from dealing in securities the individuals responsible for or directly involved in the breach.

The CSRC may order a listed company to rectify any breach of applicable regulations and may fine or warn the company. It may also impose similar punishments on the individuals responsible for or directly involved in the breach and on the listed company's controlling shareholder, if that shareholder instigated the breach. Whilst the Securities Law only provides for such sanctions to be imposed in relatively limited circumstances, the CSRC is reported to be in the process of drafting new regulations which may broaden the potential liability of listed companies and their directors.

Banking

Similarly, the CBRC may suspend or withdraw the licence of a banking institution and bar (for life if appropriate) directors, managers and other personnel who were directly responsible for the breach of the regulations from working in the sector.

Insurance

The CIRC may prohibit an insurance institution from undertaking new insurance business, impose a restriction on the scope of its business and withdraw an insurance institution's licence. However, its power to revoke an individual insurance agent's licence to practice is limited to cases of fraud.

11 Is it possible to enter into a settlement to resolve any enforcement action taken by any of these bodies?

Not as such. It remains to be seen whether or not the State Council will in due course allow the regulatory bodies to enter into settlements for the purpose of carrying out its 10-year plan to "enhance administrative efficiency, decrease administrative costs, and encourage innovative regulatory methods".

12 Are there provisions for persons to appeal against any enforcement action taken against them?

If an institution or individual is not satisfied with the decision of any of these regulatory bodies, it may either:

- make an application to the relevant regulatory body for an administrative review of the decision. The ruling resulting from that administrative review may be either appealed to the State Council, which will make the final ruling on the matter, or submitted to a first instance court for judicial review and, in turn, be appealed to a higher court for a final ruling; or

- submit the regulatory body's decision directly to the courts for judicial review. That court's decision may then be appealed to a higher court for a final ruling.

13 Is securities and futures market misconduct (eg, insider dealing, market manipulation etc) a criminal offence or a civil action?

It depends on the circumstances.

Insider dealing is criminal:

- if the value involved exceeds RMB500,000 (securities) and RMB300,000 (futures contracts);
- if the profit gained or avoidance of loss exceeds RMB150,000;
- where there are repeated acts of insider dealing or disclosure of insider information; or
- other serious circumstances.

Making false statements is criminal if the false statement:

- causes shareholders, creditors or third parties to suffer direct economic losses in excess of RMB500,000;
- increases or decreases the company's asset and profit figures by 30% or more from the latest disclosed accounting statements;
- results in suspension of trades or delisting of the underlying security;
- enables a company to obtain approvals for a public offering or to be listed, which it would not be able to do so otherwise;
- relates to accounting statements and material information which must be disclosed; or
- significantly impacts on the market.

Market manipulation is criminal if:

- it is caused by a listed company's directors, supervisors, senior management, actual controllers, controlling shareholders or any other persons connected to the company taking advantage of insider information to manipulate the price or trading volume of the underlying securities; or
- trading volumes in the underlying securities or future contracts exceed certain percentages over a prescribed period (ranging from 20% to 50% or above of the overall trading volume: see article 4 of the Supplemental Provisions issued by the Supreme People's Procuratorate and Ministry of Security on Standard for Prosecution for Economic Crimes).

There is significant prosecutorial discretion in practice in determining whether to treat conduct as criminal or otherwise.

14 What civil remedies are there for investors?

Yes. The Securities Law allows investors to take civil action against those who commit acts of market misconduct (including insider trading, market manipulation, making false statements, fraud and cheating) for damages suffered as a result of the acts.

15 Do the police assist these regulatory bodies in investigations?

If criminal behaviour is suspected, the PSB (usually acting through a regional financial crime investigation division) will be involved in the investigation and the case may be transferred by the regulatory body to the relevant judicial authority.

16 How do these regulatory bodies interact with overseas regulators?

The CSRC is a member of the International Organisation of Securities Commissions (IOSOC). China also signed the IOSOC Multilateral MoU in April 2007 (under which signatories agree to assist one another in enforcement investigations and prosecutions by collecting and sharing enforcement-related information, eg, bank and brokerage account information and witness testimony). As at May 2008, the CSRC is party to bilateral MoUs with the regulatory authorities of 39 countries and regions (including Hong Kong). Similarly, as at May 2007, the CBRC and the CIRC are party to bilateral MoUs or bilateral regulatory co-operation agreements with 25 and 6 countries and regions (including Hong Kong) respectively.

However, most of the MoUs between the CSRC (for example) and other securities regulators focus on the technical support provided by the non-Chinese regulator (which typically operates in a more developed securities market) to the CSRC. Actual co-operation between the CSRC and other regulators as a matter of practice remains limited, although there are ongoing efforts to improve this position as between (say) mainland China and Hong Kong. For example, the Hong Kong Securities and Futures Commission and the CSRC in April 2007 exchanged side letters to their MoU designed to improve and facilitate cross-border investigations of securities crimes or regulatory breaches, without however imposing obligations of co-operation on either side.

The State Council has authorised the PBOC to co-operate with foreign states and international organisations in combating money laundering on behalf of the Chinese government.

17 Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

The PBOC is the lead agency in relation to anti-money laundering. The CSRC, CBRC, and CIRC are required to report any suspected money laundering within their respective sectors to the PBOC.

Terrorist financing unrelated to money laundering falls within the responsibility of the National Security Bureau. The people's procuratorates are responsible for the prosecution of all crimes, and also for the investigation of corruption committed by civil servants. Other financial crimes are investigated by the PSB's specialised Economic Crime Bureau.

18 Are there any laws or regulations imposing obligations on persons to “whistle-blow” or disclose suspected financial services-related wrongdoing within an organisation?

The Anti-money Laundering Law imposes various obligations on financial institutions designed to combat money laundering, including an obligation to report large or suspect transactions. Any board director, senior manager or other employee who is directly responsible for a breach of this obligation (for example, an employee who had doubts as to the legitimacy of a particular transaction but fails to report it) could be held personally liable to pay a fine ranging from RMB50,000 to RMB500,000 and / or could be disciplined, removed from their current post or barred from engaging in financial work.

Outside the anti-money laundering context, individuals also have the right (but not an obligation) to tip off the relevant regulatory bodies of any suspected irregular behaviour.

19 How are hedge funds regulated?

The kinds of activities typically carried out by hedge funds are not yet permitted to be carried out from mainland China. However, CBRC has established a project research team on hedge funds, so further developments in this regard may be forthcoming.

20 Are there likely to be any significant procedural reforms in the near future?

There has been some debate on the merger of CSRC, CBRC and CIRC into one financial supervision authority. Some researchers affiliated with the Central Financial Working Committee of the Chinese Communist Party Central Committee have proposed the establishment of a consolidated China Financial Supervision Commission under the direct leadership of the State Council. It remains to be seen whether and when this recommendation might be implemented.

Herbert Smith LLP

Contacts	Graeme Johnston 38th Floor, Bund Center, 222 Yan An Road East, Shanghai 200002, China
Phone	+86 21 2322 2000
Fax	+86 21 2322 2322
Email	graeme.johnston@herbertsmith.com
Website	www.herbertsmith.com

Herbert Smith's Shanghai office has extensive experience of providing legal advice for PRC-related investment, projects and commercial matters. It has particular expertise in corporate finance and M&A. The Shanghai office works in close collaboration with the Beijing and Hong Kong offices, and provides top-tier legal advice for both Chinese domestic enterprises and international corporations.

Our mainland dispute resolution practice is staffed by lawyers with experience of handling contentious process both inside and outside China. Building on the strong relationships we have established with the leading global investment banks and financial institutions, we have a unique understanding of the regulatory issues faced by these clients and are able to provide them with both contentious and non-contentious advice.

Herbert Smith LLP is licensed to operate as a foreign law firm in China by the Ministry of Justice. Under Ministry of Justice regulations, foreign law firms in China are permitted, amongst other things, to provide consultancy services on non-Chinese law and on international conventions and practices, and to provide information on the impact of the Chinese legal environment. Under the same regulations, foreign law firms in China are not permitted to conduct Chinese legal affairs, including rendering legal opinions upon Chinese law. The contents of this chapter do not constitute an opinion upon Chinese law. If you require such an opinion you should obtain it from a Chinese law firm (we would be happy to assist in arranging this).

Hong Kong

Herbert Smith

1 What are the main bodies responsible for regulating financial services in Hong Kong?

These are the:

- Securities and Futures Commission (“SFC”);
- Stock Exchange of Hong Kong Limited (“Stock Exchange”);
- Hong Kong Futures Exchange Limited (“Futures Exchange”);
- Hong Kong Monetary Authority (“HKMA”); and
- Office of the Commissioner of Insurance (“OCI”).

2 What does each of these bodies regulate?

The SFC is responsible for regulating the securities and futures market. In this regard, the SFC performs a number of supervisory roles and is accorded extensive regulatory powers to enable it to perform its functions. Firstly, the SFC is responsible for issuing licences to all corporations and individuals wishing to engage or engaging in a wide range of activities, namely dealing in securities and futures contracts, leveraged foreign exchange trading, advising on securities, futures contracts and corporate finance, providing automated trading services, securities margin financing and asset management.

The SFC also oversees the Hong Kong Exchanges and Clearing Limited (“HKEx”), which is the holding company of the Stock Exchange and the Futures Exchange. The Stock Exchange is the front-line regulator of stock exchange participants and companies listed on the Main Board and Growth Enterprise Market (“GEM”) of the Stock Exchange. The Futures Exchange is primarily responsible for regulating futures exchange participants. The SFC retains regulatory supervision over the operations of listed companies in a number of ways, including decisions to exempt from prospectus requirements and investigating listed companies for suspected prejudicial or fraudulent transactions or for providing false or misleading information to the public. The SFC is also responsible for the discipline and sanctioning of sponsors and compliance advisers. The SFC also regulates all persons participating in securities and futures trading by investigating and taking action in respect of market misconduct and other breaches of securities and futures law.

The HKMA regulates the banking industry and generally performs the obligations of a central bank.

The OCI supervises a self-regulation system governing the insurance industry, with a view to protecting the interests of policyholders. Insurance intermediaries such as agents and brokers are required to be registered with various self-regulatory bodies which ensure their proper conduct. The OCI is responsible for granting authorisation to insurers to carry on insurance business and examining their financial statements and returns.

Where an individual or a corporation provides services falling within the jurisdiction of two or more regulators, they would be subject to the regulation by each of the regulators concerned. A number of Memoranda of Understanding (“MOUs”) have been signed by regulatory bodies setting out each regulator’s roles and responsibilities in situations where there is an overlap of jurisdiction.

3 What is the source of financial services regulations in Hong Kong?

The principal legislation regulating the financial services industry is the Securities and Futures Ordinance (“SFO”) and subsidiary legislation made under the SFO. The SFC also issues from time to time non-statutory codes and guidelines, including on specific areas relating to financial services such as money laundering and conflict of interests.

The Stock Exchange regulates by reference to the Rules of the Stock Exchange, the Listing Rules of both the Main Board and GEM, and the Option Trading Rules of the Stock Exchange. The Futures Exchange regulates by reference to the Rules of Hong Kong Futures Exchange Limited (“Futures Exchange Rules”) governing commodity exchanges. Persons who wish to hold trading rights and participate in the Stock Exchange and Futures Exchange are contractually bound to comply with these respective rules.

The banking activities of banks and deposit-taking companies (“authorised banks”) in Hong Kong are governed by the Banking Ordinance (“BO”) and guidelines issued by the HKMA.

The Insurance Companies Ordinance (“ICO”) prescribes a self-regulating regulatory framework for insurers and insurance intermediaries.

4 Do all the regulatory bodies described above have the same powers of enforcement?

No. The Stock Exchange may only take action against companies listed on the Main Board and GEM of the Stock Exchange while the Futures Exchange has powers of enforcement only against futures market participants. The enforcement powers of the HKMA are only exercisable against banks and deposit-taking companies and the OCI oversees enforcement against insurers and insurance intermediaries. Comparatively, the SFC’s enforcement powers have a much wider remit. The powers accorded by the SFO enable the SFC to take disciplinary action against corporations and individuals licensed by the SFC and any person who commits securities and futures market misconduct, even if that person is not licensed by the SFC.

5 What powers of investigation do these bodies have?

The SFC and HKMA have statutory powers of investigation under the SFO and BO respectively. Under the ICO, the OCI may obtain information and request authorised insurers to produce records and documents. The Stock Exchange and the Futures Exchange derive their powers of investigation from the contractual relationship between them and their respective exchange participants, including listed companies and their directors and officers, and securities and futures traders. The table below sets out the powers of investigation of these bodies:

Powers	SFC	HKMA	Stock Exchange	Futures Exchange	OCI
Who conducts the investigation	SFC	HKMA or an inspector appointed by the Financial Secretary	Listing Division or Board of Directors of the HKEx	Compliance Department	OCI
Require production of records and documents	Yes	Yes	Yes	Yes	Yes
Require a party to answer questions	Yes	Yes	Yes	Yes	Yes
Conduct interviews	Yes	Yes	No explicit contractual power to conduct interviews but the Stock Exchange may request meetings with exchange participants	No explicit contractual power to conduct interviews but the Futures Exchange may request meetings with exchange participants	No. But the OCI has the power to require a person to explain any documents produced at the OCI’s request
Conduct search at premises	Yes. The SFC may apply to court for a search warrant to enter premises. In the case of a SFC-licensure, the SFC may enter premises without a search warrant	No. However the police may apply for a search warrant when investigating an offence under the BO	No	No	No

Powers	SFC	HKMA	Stock Exchange	Futures Exchange	OCI
Who are required to assist in investigations	Any person	Authorised banks and their agents and officers	Exchange participants, including listed companies and their directors, sponsors and securities traders	Exchange participants, including their directors and futures traders	Any person in possession of relevant books and records
Statutory power to compel production of evidence and / or attendances of witnesses	Yes	Yes	No	No	Yes
Consequences of non-compliance	Criminal offence. Liable to a fine and imprisonment	Criminal offence. Liable to a fine and imprisonment	Breach of contractual obligations and a ground for disciplinary action	Breach of contractual obligations and a ground for disciplinary action	Criminal offence. Liable to a fine and imprisonment

6 Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

Any information in relation to investigations conducted pursuant to the provisions of the SFO is subject to stringent secrecy provisions under the SFO. Save for the categories of disclosure permitted by the SFO, the SFC and its employees and agents are required to preserve the secrecy of any information acquired by them by virtue of their appointment or performance of their functions. Where the SFC discloses information to a person in the course of its investigation in the performance of its functions or in carrying out the provisions of the SFO, the person to whom the SFC discloses information and other persons receiving the information from the person shall not disclose the information. The only exceptions are if the disclosure is with the SFC's consent, for the purpose of seeking legal advice, in connection with judicial or other proceedings in which a party or by way of court order or is in accordance with the law. A breach of the SFO's secrecy provisions constitutes a criminal offence.

7 Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

Persons required to attend interviews with regulatory bodies have a right to be accompanied by their legal advisers at the interview.

Persons required to furnish information to the regulatory bodies are not excused from answering questions posed by the regulators on the ground of privilege against self-incrimination. However, in SFC investigations the SFO provides that if a person required to provide information claims, prior to providing the information or answering a question that it might incriminate him, then the information provided and the question posed shall not be admissible in evidence against the person in criminal proceedings in a court of law. The only exceptions are if the person is charged with committing certain offences under the SFO for providing fraudulent or false information, or for perjury.

Documents which are subject to legal professional privilege are not required to be produced to these regulatory bodies. Generally, documents which are created upon the instructions of legal advisers and communications with legal advisers will be subject to legal professional privilege. Thus, an internal investigation should be structured in such a way that internal or external legal advisers would be in charge of running the investigation.

8 Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

Information obtained by the Stock Exchange and Futures Exchange can be provided to the SFC.

Notwithstanding the secrecy provisions surrounding investigations conducted under the SFO, BO and ICO, the SFC, HKMA and ICO are permitted to disclose information obtained in the course of their investigations for a number of

purposes. They include criminal proceedings, whether under this Ordinance or otherwise; civil proceedings arising out of the Ordinances, disclosing information to the police or the Independent Commission Against Corruption, at the request of the Secretary for Justice in relation to the proper investigation of any criminal complaint and to each other to enable the discharge of each regulator's functions.

9 What actions may these bodies take in exercising their regulatory functions?

The table below sets out the actions that these bodies may take in exercising their regulatory functions:

Bodies	Actions
SFC	<ul style="list-style-type: none"> • Conduct internal disciplinary proceedings • Commence civil or criminal proceedings against parties engaging in market misconduct • Apply for a court order to restrain or prohibit activities of any party contravening the SFO • Present a petition for a corporation to be wound up
HKMA	<ul style="list-style-type: none"> • Conduct internal disciplinary proceedings • Appoint an adviser or manager • The Financial Secretary may present a winding up petition against an authorised bank • Report to the Secretary of Justice if it appears that an offence may have been committed • Take any action or to do any act or thing in relation to an authorised bank's affairs, business and property
Stock Exchange	<ul style="list-style-type: none"> • Conduct internal disciplinary proceedings • Refer the case to the SFC for further investigation
Futures Exchange	<ul style="list-style-type: none"> • Conduct internal disciplinary proceedings • Refer the case to the SFC for further investigation
OCI	<ul style="list-style-type: none"> • Internal disciplinary proceedings • Appoint an adviser or a manager • Present a winding up petition against an authorised insurer • Take other actions in relation to the affairs, business and property of an authorised issuer • Impose requirements for protection of policyholders

10 What disciplinary sanctions may these bodies impose?

If a regulatory body considers that the conduct of a corporation or an individual does not meet the standard required of them in performing their respective functions and duties in the financial services industry, the following sanctions may be imposed:

Bodies	Sanctions
SFC	<ul style="list-style-type: none"> • Revocation or suspension of licence • Issuance of a public or private reprimand • Imposition of a fine • Prohibition of a corporation or an individual from engaging in activities in the securities and futures market
HKMA	<ul style="list-style-type: none"> • Revocation or suspension of authorisation • Take any action or to do any act or thing in relation to an authorised bank's affairs, business and property

Bodies	Sanctions
Stock Exchange	<ul style="list-style-type: none"> • Issuance of a private reprimand, public criticism or public censure • Reporting of the offender's conduct to the SFC, another regulatory authority or an overseas regulatory authority • Issuance of an order that the facilities of the market be denied for a specified period to that issuer and dealers be prohibited from acting for that issuer • Imposition of a suspension or ban on a listed corporation or the listed corporation's advisers (such as legal advisers, accountant, sponsors) carrying on activities in relation to the listing of the corporation's securities • Suspension or cancellation of the listing of the corporation's securities • Revocation or suspension of an exchange participant's registration • Imposition of a fine or restrictions on the rights of an exchange participant • Require rectification or other remedial action to be taken
Futures Exchange	<ul style="list-style-type: none"> • Issuance of a private reprimand, public criticism or public censure • Imposition of a suspension or ban on a listed corporation or the listed corporation's advisers (such as legal advisers, accountant, sponsors) carrying on activities in relation to the listing of the corporation's securities • Imposition of a prohibition or restriction on access to all of the Futures Exchange's facilities, including the suspension, withdrawal or revocation of right of access to the trading platform for all Futures Exchange products and stock options • Revocation or suspension of an exchange participant's registration • Imposition of a fine or restrictions on the rights of an exchange participant • Issuance of warning with, where appropriate, a requirement that certain actions be taken within the period specified and in default, imposing a sanction (including a fine, suspension or revocation) • Require rectification or other remedial action to be taken
OCI	<ul style="list-style-type: none"> • Take action in relation to the authorised insurer's affairs, business and assets • Any other action as the OCI thinks fit in order to safeguard the interest of policyholders

11 Is it possible to enter into a settlement to resolve any enforcement action taken by any of these bodies?

Yes. It is generally possible to conduct settlement negotiations with all the regulatory bodies mentioned to reach an appropriate and agreed sanction in disciplinary cases. The SFC and HKEx have issued guidance notes which outline their approach to settlement and the criteria thereof.

12 Are there provisions for persons to appeal against any enforcement action taken against them?

Disciplinary decisions of the HKMA and the SFC can be reviewed by the Securities and Futures Appeals Tribunal ("SFAT"). The SFAT is generally presided over by a current or former judge of the Court of First Instance or former Justice of Appeal and two other members, who shall not be public officers. A party dissatisfied with a decision of the SFAT may appeal to the Court of Appeal against the decision on a point of law.

Appeals from disciplinary decisions of the Stock Exchange and the Futures Exchange can be heard in some instances to another division within the relevant exchange which is set up specially to hear appeals from disciplinary decisions. There is no recourse for appeals from disciplinary decisions of the Stock Exchange and Futures Exchange to be heard by a court of law, save by way of Judicial Review.

The self-regulating bodies which insurance brokers and agents are required to register with under the self-regulatory regime governing insurance intermediaries provide for avenues to appeal against a decision of the disciplinary committees of each self-regulating body. However, the appeal lies to another division within the self-regulating body and is not to a court of law. An aggrieved person may avail themselves of the remedy of Judicial Review of the self-regulating body's decision.

13 Is securities and futures market misconduct (eg, insider dealing, market manipulation etc) a criminal offence or a civil action?

The SFO has created parallel civil and criminal regimes to combat market misconduct.

Pursuant to the SFO, the SFC may:

- recommend commencement of civil action by the Financial Secretary before the Market Misconduct Tribunal (“MMT”), a tribunal set up under the SFO to deal specifically with market misconduct. The MMT may impose a range of civil sanctions, including disgorgement of profits made or loss avoided; and
- institute criminal proceedings against parties engaging in market misconduct which may result in severe penalties on conviction, including up to 10 years’ imprisonment or a fine of up to HK\$10 million.

14 What civil remedies are there for investors?

Under the SFO, investors may take civil action against a person who:

- has committed an act of market misconduct, to seek recovery of any monetary loss sustained as a result; or
- is responsible for making a false or misleading communication to the public concerning securities or futures contracts or their prices which the investor has relied on and acted upon.

15 Do the police assist these regulatory bodies in investigations?

The Independent Commission Against Corruption (“ICAC”) and the Commercial Crimes Bureau of the police may become involved in an investigation in relation to the financial services industry.

All regulatory bodies may share the information obtained in the course of their investigations with each other and, in some cases, will jointly conduct investigations into misconduct in the financial services market.

16 How do these regulatory bodies interact with overseas regulators?

The SFC has entered into MOUs and co-operative agreements with various countries for mutual co-operation in the regulation of financial services markets including China, India, Indonesia, Japan, Malaysia, Philippines, Singapore, Taiwan and Thailand. The SFC is also a signatory to the International Organisation of Securities Commissions’ MOU. The MOUs and co-operative agreements entered into allow regulators to collect and exchange information in relation to investigations. Statistics published by the SFC reveal that co-operation between the SFC and foreign regulators has increased in recent years.

The HKMA has signed co-operative agreements with its counterparts in China and Macau and the OCI with Macau, Singapore, UK and China.

17 Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

The ICAC is the principal agency responsible for investigating and preventing corruption in Hong Kong.

The Narcotics Bureau or Organised Crime & Triad Bureau of the police, and the Customs Drug Investigation Bureau of the Hong Kong Customs & Excise Department, investigate money laundering offences under the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organised and Serious Crimes Ordinance.

The Narcotics Bureau is responsible for financial investigations arising out of the United Nations (Anti-Terrorism Measures) Ordinance.

18 Are there any laws or regulations imposing obligations on persons to “whistle-blow” or disclose suspected financial services-related wrongdoing within an organisation?

Yes, “whistle-blowing” obligations are imposed by a number of ordinances and regulations.

Under the SFO an auditor of a licensed corporation or an associated entity of an intermediary is obliged to report to the SFO, matters which adversely and materially affect the financial position of the licensed corporation or any of its associated entities, or which constitute a failure to comply with certain requirements prescribed in the SFO. Similar obligations to report to the HKMA are imposed on auditors of registered institutions under the BO.

Under the ICO, current and former auditors, actuaries and accountants of insurance companies have reporting obligations in different circumstances. These include situations where a person becomes aware of matters adversely and materially affecting the financial condition of an insurance company; matters creating a material risk that a fund maintained by an insurance company may be insufficient to meet the liabilities attributable to that fund, and evidence of a failure by the insurance company to comply with certain requirements or conditions prescribed under the ICO.

Under the Drug Trafficking (Recovery of Proceeds) Ordinance, the Organised and Serious Crimes Ordinance and United Nations (Anti-Terrorism Measures) Ordinance, any person who knows or suspects that any property is terrorist property, represents proceeds of or is used or is intended to be used in connection with drug trafficking or any other indictable offence is required to disclose the knowledge or suspicion to the Joint Financial Intelligence Unit, which is jointly run by the police and the Customs & Excise Department. A failure to disclose in accordance with these three ordinances is an offence and an offender is liable on conviction to a fine of HK\$50,000 and imprisonment for three months.

19 How are hedge funds regulated?

Hedge funds are subject to the rules in Chapter 8.7 of the SFC Code on Unit Trusts and Mutual Funds, and other guidelines and circulars issued by the SFC. Since May 2002, hedge funds can be offered to the retail public, provided that they are authorised by the SFC. Hedge funds offered exclusively to professional investors do not have to be authorised and are largely unregulated.

The SFC derives its fund authorisation powers from section 104 of the SFO. When considering applications for the authorisation of retail hedge funds, the SFC will consider a number of factors, including the choice of asset class and use of alternative investment strategies. Retail hedge fund managers are subject to strict requirements, for example the necessity to have five years’ hedge fund management experience and to maintain suitable internal controls, risk management systems and inspection regimes. Retail investors must subscribe to at least US\$50,000 for single hedge funds, whilst funds of hedge funds require a minimum investment of US\$10,000. No minimum investment is required for 100% capital guaranteed funds.

In June 2007 the SFC relaxed the licensing requirements for overseas fund managers. Firms serving professional investors only and which are already licensed or registered in the UK or the US can now expect expedited reviews of their licence applications, provided they have satisfactory compliance records. Firms that are not so licensed or registered may also benefit from the streamlined process if they have proven track records. Further, persons nominated as Responsible Officers of hedge fund managers may be exempted from the local examination if they have sufficient industry experience, or if they are already licensed or registered in the UK or the US.

20 Are there likely to be any significant procedural reforms in the near future?

The SFC intends to give statutory backing to certain Listing Rules, so as to address the lack in both policing powers and available penalties for breaches under the current regime. The relevant Listing Rules focus on core continuing disclosures of most concern to minority shareholders. The proposed approach is three tiered:

- broad general principles will state the standards expected of the market and the spirit behind the existing Listing Rules;
- further explanations of the principles will be added as a new Schedule to the SFO; and
- a non-statutory Listing Code will contain detailed and technical provisions.

The implementation of these proposals is still some way off, with a possible further public consultation in the pipe-line.

Further, the HKEx and SFC have proposed to introduce an express general power for the HKEx to gather information from listed companies. Under the proposals, a listed company must provide to the HKEx any information considered appropriate to protect investors or ensure the smooth operation of the market.

Herbert Smith

Contacts	Mark Johnson (Head of dispute resolution, Asia) 23rd Floor, Gloucester Tower, 15 Queen's Road Central, Hong Kong
Phone	+852 2845 6639
Fax	+852 2845 9099
Email	mark.johnson@herbertsmith.com
Website	www.herbertsmith.com

An international law firm with a network of offices across Europe and Asia, Herbert Smith established its first Asian office in Hong Kong in 1982. The office is the firm's largest single presence outside the UK and acts as the firm's regional headquarters, co-ordinating activities across all offices in Asia: Bangkok, Beijing, Shanghai, Singapore, Tokyo and an associated office in Jakarta.

Today, the Hong Kong office has more than 200 staff with some 100 lawyers and legal professional staff. The office's longstanding roots in Hong Kong's commercial and financial communities enable it to function locally as a full-service commercial law firm. In addition to the key practice areas of corporate, projects and banking and finance, our reputation for dispute resolution is unrivalled in the region.

India

Amarchand & Mangaldas & Suresh A. Shroff & Co.

1 What are the main bodies responsible for regulating financial services in India?

These are the:

- Securities and Exchange Board of India (“SEBI”);
- Reserve Bank of India (“RBI”);
- Ministry of Finance (“MoF”);
- Insurance Regulatory and Development Authority (“IRDA”); and
- Forward Markets Commission (“FMC”).

2 What does each of these bodies regulate?

SEBI is the apex body regulating the securities markets in India. It was established to protect the interests of investors in securities and to permit the development and effective regulation of the securities markets. SEBI regulates the business in stock exchanges and other securities markets. SEBI is responsible for registering and regulating the operations of various intermediaries in the securities markets including stockbrokers, foreign institutional investors, merchant bankers, underwriters, portfolio managers, depositories, and credit rating agencies. It also regulates venture capital funds and investment schemes including mutual funds. SEBI also has primary responsibility for preventing, prohibiting and punishing fraudulent and unfair trade practices relating to the securities markets.

RBI regulates the banking industry and generally performs the obligations of a central bank. Its functions include acting as a banker to the Government, regulating the issue of currency in India, acting as a banker to other commercial banks, exercising control over the volume of credit of commercial banks to maintain price stability, controlling advances granted by commercial banks and developing policies on the rates of interest on which advances may be granted by banks. RBI is also responsible for maintaining the official exchange rate of the rupee. RBI acts as the custodian of India’s international currency reserves and administers foreign exchange controls.

In addition to its traditional central banking functions, RBI has certain non-monetary functions including supervision of banks and non-banking institutions (whether or not such institutions receive deposits from the public), ensuring proper management of banks and promoting sound banking practices. The RBI also regulates transactions in derivatives, money and market instruments, other than derivatives / instruments traded on a recognised stock exchange.

IRDA regulates the insurance sector in India. It regulates, promotes and ensures the orderly growth of the insurance and re-insurance business. IRDA also administers legislation governing the operation of insurance companies and insurance intermediaries with a view to protecting the interests of policyholders.

FMC is the primary regulatory authority of the forward commodities market. Its functions, which are mainly advisory, are administered by the Ministry of Consumer Affairs and Public Distribution. The FMC advises the Central Government in relation to the recognition or withdrawal of recognition of intermediaries, associations and other participants in the forward market. It also has responsibility to keep the forward market under observation, collect information and make recommendations for improvements in the working of the forward market. The forward market is also regulated by rules and by laws of registered associations.

The MoF also plays an important role in the financial sector. Prior to the reforms of the 1990’s, MoF was responsible for supervising the rules and regulations governing the banking and securities market. MoF is involved in legislative issues and policy matters that are beyond the domain of any one regulator.

3 What is the source of financial services regulations in India?

The principal legislation regulating the securities market is the Securities and Exchange Board of India Act, 1992 (“SEBI Act”), the Securities Contracts (Regulation) Act, 1956 (“SCRA”) and associated subsidiary legislation. SEBI also issues guidelines and circulars regulating specific issues such as investments by foreign institutional investors and foreign venture capital funds. SEBI also monitors stock exchanges through subsidiary legislation under the SEBI Act and the SCRA. Stock exchanges, on the other hand, regulate the securities markets on the basis of contractual arrangements that make its rules and the listing agreement binding on listed entities and member intermediaries like stock brokers.

The banking sector is primarily governed by the Reserve Bank of India Act 1935 and the Banking Regulation Act 1949. RBI also issues various directions, notifications, guidelines and circulars under these statutes from time to time. This subsidiary legislation plays an important part in the regulation of institutions in the financial sector including banks and non-banking financial companies.

The substantive rules governing the insurance sector are contained in the Insurance Act 1938 and the Insurance Regulatory and Development Authority Act 1999 (“IRDA Act”). The IRDA Act along with subsidiary legislation governs insurers, re-insurers and insurance intermediaries.

The legislations governing the forward commodities market are the Forward Contracts (Regulation) Act 1952 (“FCRA”) and the Forward Contracts (Regulation) Rules, 1954. The FCRA empowers the Central Government (in consultation with FMC) to regulate commodity exchanges and permitted forward contracts in specified commodities.

4 Do all the regulatory bodies described above have the same powers of enforcement?

No. For instance, both RBI and SEBI can impose fines and initiate actions that may result in imprisonment. On the other hand, FMC, by itself, has no power of enforcement although the Central Government may direct enforcement under the FCRA. IRDA has limited penal powers that are not as wide as those vested in RBI and SEBI. Except in the case of FMC, all regulators have the power to take action against any person who violates the rules and regulations enforced by them.

5 What powers of investigation do these bodies have?

All the above regulatory authorities have powers of investigation including inspection of accounts, examining persons on oath and calling for information. The table below sets out the powers of investigation of each body:

Powers	RBI	SEBI	IRDA	FMC
Who conducts the investigation	RBI	SEBI or any person appointed by SEBI	IRDA or any person appointed by IRDA	FMC
Require production of records and documents	Yes	Yes	Yes	Yes
Require a party to answer questions	Yes	Yes	Yes	Yes
Conduct interviews	Yes	Yes	Yes	Yes
Conduct search at premises	No	Yes. SEBI has powers of search and seizure for documents, etc, by obtaining a warrant from a magistrate on non-compliance with an order for production	Yes. The chairperson authorises an officer to search premises for documents, etc.	No

Powers	RBI	SEBI	IRDA	FMC
Who are required to assist in investigations	Director or officer of a banking company or a non-banking institution	Every manager, managing director, officer and employee of a company / intermediary	Any manager, managing director or other officer of the insurance company	Any person
Statutory power to compel production of evidence and / or attendances of witnesses	Yes	Yes	Yes	Yes
Consequences of non-compliance	Liable to a fine / initiation of court proceedings that may result in imprisonment and / or fine	Criminal offence. Liable to a fine and imprisonment	Liable to a fine	FMC has the powers of a civil court in terms of production of documents, information and attendance of persons

6 Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

Generally, credit information provided by banks to the RBI and information relating to non-banking financial companies contained in any statement or obtained through audit, inspection or otherwise by the RBI will be treated as confidential and cannot be disclosed.

Save for the categories of disclosure permitted, employees and agents of SEBI and the IRDA are required to preserve the secrecy of any information acquired by virtue of their appointment or performance of their functions.

In addition, in certain circumstances, a civil court may grant an injunction to prevent the dissemination of any confidential information.

7 Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

The privilege against self incrimination and the right to legal representation at interviews is not ordinarily available in investigations being conducted by regulators.

Under the Indian Evidence Act 1872, a legal professional adviser cannot be compelled to disclose any communications made to him, during the course of his employment, without the client's express consent.

8 Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

Yes, in normal circumstances such information can be used by the regulatory bodies for other purposes including in proceedings in a court of law.

9 What actions may these bodies take in exercising their regulatory functions?

The table below sets out the actions that RBI, SFC, IRDA and FMC may take in exercise of their regulatory functions:

Bodies	Actions
RBI	<ul style="list-style-type: none"> • Prohibit banking companies from accepting fresh deposits • Give general or specific directions to banking companies, which are required to be complied with • Caution or prohibit banking companies from entering into particular transactions • Remove managerial and other persons from office in banking companies and appoint additional directors for proper management of the company • Present a petition for a banking company or a non-banking financial company to be wound up
SEBI	<ul style="list-style-type: none"> • Suspend the trading of any security on a recognised stock exchange • Restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities • Suspend any officer of any stock exchange or self-regulatory organisation from holding such position • Impound and retain the proceeds or securities in respect of any transaction which is under investigation • Attach one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of law • Direct a person not to alienate an asset forming part of any transaction which is under investigation • Prohibit / restrict any company from issuing a prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities • Issue directions to any person or any class of persons to protect the rights of investors or secure proper functioning of the securities market • Issue an order to cease and desist from committing a violation of securities laws • Any other appropriate direction in the interests of investors and the securities market
IRDA	<ul style="list-style-type: none"> • Give general or specific directions to insurance companies in relation to compliances • Caution or prohibit insurance companies from entering into particular transactions • Remove managerial and other persons from office in insurance companies and appoint additional directors for proper management of the company • Present a petition for an insurance company to be wound up
FMC	<ul style="list-style-type: none"> • Advise the Central Government in respect of the recognition of, or the withdrawal of recognition from, any association • Forward information to the Central Government in relation to initiation of investigation and prosecution of offences

10 What disciplinary sanctions may these bodies impose?

If a regulatory body considers that the conduct of a corporation or an individual does not meet the standard required of them in performing their respective functions and duties in the financial services industry, the following sanctions may be imposed:

Bodies	Sanctions
RBI	<ul style="list-style-type: none"> • Cancellation of licence • Imposition of a fine • Initiation of criminal proceedings against a banking company or non-banking financial company by filing a complaint in court

Bodies	Sanctions
SEBI	<ul style="list-style-type: none"> • Suspension or cancellation of a certificate of registration • Adjudication followed by levy of penalties • Imposition of a fine • Imprisonment and / or fine for: <ul style="list-style-type: none"> (i) contravention of rule, regulations, etc; (ii) failure to pay penalty imposed; and (iii) failure to comply with direction / order of adjudicating officer
IRDA	<ul style="list-style-type: none"> • Withdrawal, suspension or cancellation of registration • Imposition of a fine • Initiation of criminal proceedings
FMC	<ul style="list-style-type: none"> • Suspension of membership with any recognised association or prohibition on a member from entering into any forward contract

11 Is it possible to enter into a settlement to resolve any enforcement action taken by any of these bodies?

While strictly it is not possible to enter into a settlement with SEBI, offences which are not punishable with imprisonment only, or punishable with imprisonment and fine, may be compounded by the Securities Appellate Tribunal (“SAT”) or a court before which proceedings are pending.

12 Are there provisions for persons to appeal against any enforcement action taken against them?

Decisions by SEBI can be reviewed by the SAT. SAT is presided over by a retired or sitting judge of either a High Court or the Supreme Court of India. Other members of SAT must have demonstrable experience in dealing with problems relating to the securities market and have qualifications and experience in corporate law, securities law, finance and economics. Decisions of certain other regulatory bodies may be appealed to relevant courts.

13 Is securities and futures market misconduct (eg, insider dealing, market manipulation etc) a criminal offence or a civil action?

Securities market misconduct gives rise to various criminal offences with heavy penalties. The SEBI Act prescribes penalties in respect of various securities market misconduct. Misconduct in forward markets is also a criminal offence however the penalties imposed under the FCRA are far less stringent than those under the SEBI Act.

14 What civil remedies are there for investors?

Statutory rights of investors can be enforced by civil remedies including injunctions and compensation in the courts. The statutes also specifically provide for certain cases of civil liabilities. Some grievances (especially in the capital markets) can be taken up directly with the regulators.

15 Do the police assist these regulatory bodies in investigations?

Yes. The police assist the regulators in investigation of offences under the respective statutes. Most state police departments have “Economic Offences Wings” that specifically deal with offences in the financial sector.

16 How do these regulatory bodies interact with overseas regulators?

SEBI is actively involved in coordination with overseas regulators. It has entered into Memoranda of Understanding / letters of intent with various countries (including Hong Kong, Malaysia, Singapore and China) for mutual cooperation in the regulation of financial services markets. These Memoranda of Understanding enable the regulators to collect and exchange information in relation to various matters including investigations.

SEBI is a prominent member of the International Organisation of Securities Commission (“IOSCO”) and the Executive Committee of IOSCO - the peak policymaking body of IOSCO, the Emerging Markets Committee and the South Asian Securities Regulators Forum.

The RBI is actively involved with international banking and financial fora like the Basel Committee on Banking Supervision and the Financial Stability Forum.

The FMC has entered into Memoranda of Understanding with its counterparts in other countries, including China and the United States of America. At a general level, the Ministry of Finance co-ordinates with foreign government departments and regulatory authorities.

In addition, under the Prevention of Money Laundering Act, 2002, the Central Government is empowered to enter into agreements with the Government of a country outside India (“Contracting State”). In the event the investigating officer and the Special Court are of the opinion that evidence can be obtained from a Contracting State, a letter of request may be issued to examine facts, forward evidence to the Special Courts and take such steps as the Special Court may request. When a letter of request is received from a Contracting State, the Special Courts will provide assistance to that state.

17 Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

The Central Vigilance Commission is the principal agency responsible for inquiring into corruption and bribery offences alleged to have been committed by: (i) public servants of the Central Government, (ii) statutory corporations, (iii) Government companies (ie, companies where 50% or more of the issued and paid up share capital is held by the Central Government), (iv) societies and local authorities owned or controlled by the Central Government; and (v) incidental and connected matters.

The State (provincial) Governments have also established Anti Corruption Bureaus / Vigilance Commissions to investigate corruption.

The Anti Corruption Division of the Central Bureau of Investigation is responsible for collection of intelligence in respect of corruption and enquires into complaints against Central Government employees or public servants working under the State Government entrusted to the Central Bureau of Investigation by the State Government.

The Adjudicating Authority and the Directors appointed under the Prevention of Money Laundering Act, 2002 investigate offences of money laundering. The RBI has issued ‘Know Your Customer’ guidelines to be followed by banks and financial institutions. These guidelines are intended to curb money laundering and terrorist financing. The SEBI has issued guidelines which must be followed by all market intermediaries, including stock brokers, share transfer agents, merchant bankers and investment advisers.

The Central Vigilance Commission, constituted under the Central Vigilance Commission Act, 2003, is the principal agency responsible for inquiring into offences alleged to have been committed by: (a) public servants of the Central Government, (b) statutory corporations, (c) Government companies (ie, companies where 50% or more of the issued and paid up share capital is held by the Central Government), (d) societies and local authorities owned or controlled by the Central Government; and (e) incidental and connected matters. The State (provincial) Governments have also established Anti Corruption Bureaus / Vigilance Commissions to investigate corruption. Furthermore, the Anti Corruption Division of the Central Bureau of Investigation is responsible for collection of intelligence with respect to corruption and enquires into complaints against Central Government employees or public servants working under the State Government entrusted to the Central Bureau of Investigation by the State Government.

The Prevention of Corruption Act (“PCA Act”) is the primary statute in relation to preventing corruption. The Indian Penal Code, 1860 deals with offences by public servants and those who aid them by way of criminal misconduct, but this was found inadequate and the PCA Act was introduced in 1988.

PCA Act empowers police officers above a certain rank to conduct investigations. Under the PCA Act central and state governments are authorised to appoint special judges to try offences punishable under this statute.

The authorities appointed pursuant to the Prevention of Money Laundering Act, 2002 are responsible for the prevention of money laundering and the confiscation of property derived from, or involved in, money laundering. They also have been given powers of survey, search, seizure, issue summons to effect arrests in the course of investigating and dealing with the offence of money laundering. The punishment for money laundering may be up to 10 years and a fine of Rs. 5 lakh. The RBI and SEBI have promulgated detailed and extensive guidelines on prevention of money laundering. These guidelines set out the obligations of registered intermediaries / banks / financial institutions, etc to *inter alia* report suspicious transactions, conduct appropriate client due diligence, maintain and retain client and transaction records, etc.

The financing of terrorism is prohibited by the provisions of the Unlawful Activities (Prevention) Act 1967. This statute prescribes punishment for raising funds by (i) inviting another person to provide money or other property, (ii) receiving money or other property, and (iii) providing money or other property with reasonable cause to suspect that it might be used for the purposes of furthering the activities of a terrorist organisation. It also declares illegal the raising of funds for the purpose of committing a terrorist act and knowingly holding any property derived or obtained from the commission of any terrorist act or acquired through the terrorist fund. The holding of any proceeds of terrorism is also prohibited and the proceeds are liable to be forfeited by the central government. Certain state level statutes are also in force.

18 Are there any laws or regulations imposing obligations on persons to “whistle-blow” or disclose suspected financial services-related wrongdoing within an organisation?

In 2001, the Law Commission made its report on Public Interest Disclosure and Protection of Informers. This report was a result of a request received from the Chief Vigilance Commissioner requesting the Commission draft a bill encouraging persons to disclose corrupt practices on the part of public functionaries and protecting honest persons from such disclosures. Subsequently, the Law Commission formulated the Public Interest Disclosure (Protection of Informers) Bill, 2002 (“Bill”). The Bill encourages the disclosure of information relating to the conduct of any public servant involving the commission of any offence under the Prevention of Corruption Act or any other law for the time being in force, abuse of official position or maladministration and to protect persons making such disclosures.

Pending enactment of this legislation, the central government authorised the Central Vigilance Commission, as the designated agency, to receive written complaints or disclosure on any allegation of corruption or of mis-use of office by certain public servants including any employees of government companies.

The Whistle Blowers (Protection in Public Interest Disclosures) Bill, 2006 has been passed by the Parliament but has not received the assent of the President and is therefore not yet in force. However the listing agreement, which is entered into by listed companies and the respective stock exchanges, recommends that listed companies establish a whistle blowing policy for employees to report unethical behavior, actual or suspected fraud or violation of the company’s code of conduct or ethics policy to the management.

It is also pertinent to note that the Indian legislature has enacted the Right to Information Act, 2005 which gives extensive rights to citizens to demand information from any public authority, which includes the right to inspect works, documents, records; take notes, extracts or certified copies of documents or records; and take certified samples of material.

19 How are hedge funds regulated?

Indian regulators have reservations about permitting overseas hedge funds in India. In absence of any specific regulations / guidelines regulating hedge funds in India, previously most overseas hedge funds limit would limit their participation in Indian markets to investment in Participatory Notes issued by Foreign Institutional Investors (“FIIs”). FIIs are registered under the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995. However in October, 2007, SEBI had announced new rules for foreign investments through Participatory Notes.

20 Are there likely to be any significant procedural reforms in the near future?

At present the Forward Contract Forward Contracts (Regulation) Amendment Bill, 2008 (“Amendment Bill”) is pending before the Indian parliament. The Amendment Bill seeks to strengthen the legal and regulatory framework in respect of commodity derivatives market and grant autonomy to the FMC from a governmental department to an independent regulator like SEBI. The main objective of the Amendment Bill is to permit and regulate the financial instruments that enable buyers and sellers of commodities to effectively manage risk from price fluctuation. Measures such as permitting of options trading is also envisaged under the Amendment Bill.

Amarchand & Mangaldas & Suresh A. Shroff & Co.

Contacts [Mr. Shardul Shroff \(Managing Partner\)](#)
 [Amarchand Tower, 216 Okhla Industrial Estate, Phase-II](#)
 [New Delhi-110020, India](#)

Phone [+91 11 2692 0500](#)
Fax [+91 11 2692 4900](#)
Email shardul.shroff@amarchand.com

We have particular expertise in the field of laws relating to financial services and securities laws in India. We advise local and international clients in relation to these laws and all forms of transactional matters.

Indonesia

Hiswara Bunjamin & Tandjung (in association with Herbert Smith LLP)

1 What are the main bodies responsible for regulating financial services in Indonesia?

These are the:

- Capital Markets Financial Institutions Supervisory Agency (“BAPEPAM-LK”);
- Bank Indonesia (“BI”); and
- Department of Finance of the Republic of Indonesia (“DOF”).

2 What does each of these bodies regulate?

BAPEPAM-LK has extensive regulatory powers in respect of all entities and individuals involved in the securities and capital markets sector (Note: The two stock exchanges, the Jakarta Stock Exchange and the Surabaya Stock Exchange, have been merged into the Indonesian Stock Exchange (abbreviated “IDX”). BAPEPAM-LK supervises the issue of business licences to Indonesian Stock Exchange and to various securities sector participants such as securities companies, public investment funds and clearing and guarantee institutions, and in relation to finance sector activities under delegation from DOF (see below). BAPEPAM-LK also oversees the issue of individual licences to professionals working in the securities industries such as investment advisors, broker-dealers and underwriters.

In recent years, BAPEPAM-LK’s primary goal has been to develop the Indonesian capital markets to ensure it becomes internationally competitive. To this end, BAPEPAM-LK has been carrying out legal reforms which include increased corporate governance requirements, protection for minority shareholders and greater efficiency in public offering and listing procedures.

BI is Indonesia’s central bank and it regulates the banking industry and performs all the obligations of a central bank.

DOF has extensive powers in respect of all companies engaged in finance sector activities. Specifically, DOF directly regulates companies in the finance and insurance sectors. DOF has delegated some of its authorities to BAPEPAM-LK, who will then act on behalf of DOF in relation to these areas.

3 What is the source of financial services regulations in Indonesia?

Each of the three financial services sectors, namely, capital markets and securities, banking and finance and insurance, are governed by specific legislation and regulations.

The principal legislation regulating capital markets and the securities industry is Law No. 8 of 1995 on Capital Markets (“Capital Markets Law”). The DOF and BAPEPAM-LK also promulgate rules and regulations on specific capital markets issues and participants including public companies, public offerings of securities, securities companies and professionals operating in the capital markets field. The Indonesian Stock Exchange and the Clearing Guarantee Corporation and the Central Securities Depository also issue their own compliance rules.

The banking activities of banks operating in Indonesia are governed by the Law and regulations issued by BI.

DOF, through the Minister of Finance and BAPEPAM-LK, issues regulations governing the financial institutions and insurance industries.

4 Do all the regulatory bodies described above have the same powers of enforcement?

No. BAPEPAM-LK has broad enforcement powers which enable it to take disciplinary action against issuers and public companies, stock exchange, securities companies, custodians, clearance and guarantee companies and capital

market sector professionals. However, the Indonesian Stock Exchange only has power to take disciplinary action against member companies and all public companies which are listed in the Indonesian Stock Exchange.

Furthermore, DOF and BAPEPAM-LK may exercise their powers over finance and insurance companies and BI may exercise their powers over banks pursuant to the respective relevant legislation.

5 What powers of investigation do these bodies have?

BAPEPAM-LK, BI and DOF are all vested with extensive powers of investigation into potential breaches of its laws and regulations. The table below sets out the powers of investigation of these bodies:

Powers	BAPEPAM-LK	BI	DOF	
			BAPEPAM-LK	
			Financial Institutions	Insurance Companies
Who conducts the investigation	BAPEPAM-LK	BI	DOF	DOF
Require production of records and documents	Yes	Yes	Yes	Yes
Require a party to answer questions	Yes	Yes	No explicit power. However, in practice, DOF may compel a finance company to answer questions	Yes
Conduct interviews	Yes	Yes	No explicit power. However, in practice, DOF may require finance company representatives to explain certain documents	Yes
Conduct search at premises	Yes	No. However, the police may apply for and execute a search warrant when investigating an offence	No. However, if a criminal offence has allegedly occurred, legal proceedings will be conducted pursuant to the Indonesian Criminal Code	Yes
Who are required to assist in investigations	Any person	Banks and their agents and officers	Any person	Any person
Statutory power to compel production of evidence and / or attendances of witnesses	Yes	Yes	No	Yes, statutory power to compel production of evidence but no power to compel the attendance of witnesses
Consequences of non-compliance	Criminal offence. Liable to a fine and imprisonment	Criminal offence. Liable to a fine and imprisonment. Suspension and / or revocation of banking licence. Suspension and / or cancellation of particular banking activities	Disciplinary action depending on the severity of the offence	Disciplinary action depending on the severity of the offence

6 Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

Pursuant to the Capital Markets Law and the Government Regulation concerning “Capital Market Formal Investigative Procedures”, any information disclosed to BAPEPAM-LK officials during the course of an investigation must not be disclosed to any other person, except if authorised by BAPEPAM-LK or if otherwise required by the law. The Government Regulation also empowers a BAPEPAM-LK investigator to order “persons under investigation to do or not to do certain activities”. Such orders may include ordering persons under investigation to keep confidential any information relating to an investigation.

In general any information disclosed during an investigation must be kept confidential, unless required otherwise under the prevailing law.

7 Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

Pursuant to the Government Regulation concerning “Capital Market Formal Investigative Procedures”, a BAPEPAM-LK investigator may request information or evidence from persons under investigation, enter the premises of such person(s) and copy records, books and other documents. A corporation under BAPEPAM-LK investigation must be represented by an agent or other authorised person (which may include a legal representative) when the investigations are taking place. Where a person under investigation is not represented, the investigation will be postponed. If, after the postponing of an investigation, the person under investigation together with their agent or authorised representative does not appear at the relevant time for the investigation, BAPEPAM-LK is empowered to continue the investigation after requesting an employee of the person under investigation to facilitate the investigation.

A court order may need to be obtained by a respondent to an investigation which is being conducted by BI or DOF, or where such regulatory authority intends to inspect or seize personal documents. In addition, a person involved in such investigation may request (or the regulatory authority may require) that a lawyer be in attendance during the course of an investigation to represent that person.

Indonesia does not have an express privilege against self-incrimination, nor is there an express doctrine of legal professional privilege attaching to documents.

8 Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

Yes. Information obtained by BAPEPAM-LK, BI or DOF during the course of an investigation may be used in proceedings brought by them in a court of law. In most cases, where the investigation conducted by a regulatory body relates to a civil or “administrative” matter, any disciplinary action will be imposed by the regulatory authority and generally, there is no formal recourse for an appeal to a court of law. In practice, an aggrieved party may try to submit to the court an objection against the regulatory body’s decision (eg, by challenging it in the Administrative Court), in an attempt to avoid or postpone the disciplinary action.

If a criminal investigation is conducted by a regulatory authority, and court proceedings are subsequently commenced, any information obtained during the course of the investigation may be used in the court proceedings.

9 What actions may these bodies take in exercising their regulatory functions?

The table below sets out the actions that these bodies may take in exercising their regulatory functions:

Bodies	Actions
BAPEPAM-LK	<ul style="list-style-type: none"> • Conduct an investigation • Issue a warning letter • Impose a fine • Impose restrictions on business activities

Bodies	Actions
	<ul style="list-style-type: none"> • Suspend or revoke a securities licence • Cancel registration • Prohibit a corporation or individual from engaging in activities in the capital markets sector or participating in other financial services operations
BI	<ul style="list-style-type: none"> • Conduct internal disciplinary proceedings • Impose administrative sanctions • Suspend or revoke a banking licence • Impose other internal disciplinary action including requiring the performance of any act or thing in relation to a bank's affairs, business or property
DOF	<p>Insurance companies</p> <ul style="list-style-type: none"> • Conduct internal disciplinary proceedings • Issue a warning letter, restrict a company's activities or suspend or revoke a business licence • Apply for a court order for a bankruptcy declaration • Impose a fine or other administrative sanction • Impose criminal sanctions including the imprisonment of board members <p>Financial Institutions</p> <ul style="list-style-type: none"> • Internal disciplinary proceedings • Issue a warning letter • Restrict a company's activities • Suspend or revoke a business licence

10 What disciplinary sanctions may these bodies impose?

If a regulatory body considers that the conduct of a corporation or an individual does not meet the standard required of them in performing their respective functions and duties in the financial service industry, the following sanctions may be imposed:

Bodies	Sanctions
BAPEPAM-LK	<ul style="list-style-type: none"> • Issuance of a warning letter • Imposition of a fine • Imposition of restrictions on business activities • Suspension or revocation of licence • Cancellation of registration • Prohibition on a corporation or individual from engaging in activities in the capital markets sector or participating in other financial services operations
BI	<ul style="list-style-type: none"> • Suspension or revocation of a banking licence • Imposition of administrative sanctions • Take any other internal disciplinary action including the performance of any act or thing in relation to a bank's affairs, business or property

Bodies	Sanctions
DOF	<p>Insurance companies</p> <ul style="list-style-type: none"> • Commence internal disciplinary proceedings, such as issuing a warning, restricting a company's activities or suspending or revoking a business licence • Apply for a court order for a bankruptcy declaration • Impose administrative sanctions • Impose a fine • Impose criminal sanctions including imprisonment of board members
	<p>Financial Institutions</p> <ul style="list-style-type: none"> • Commence internal disciplinary proceedings, such as issue a warning letter restricting a company's activities or suspending or revoking a business licence

11 Is it possible to enter into a settlement to resolve any enforcement action taken by any of these bodies?

Yes. It is possible in practice to conduct settlement negotiations with all the regulatory bodies to reach an appropriate and agreed sanction in disciplinary cases, except for criminal cases.

12 Are there provisions for persons to appeal against any enforcement action taken against them?

Where an investigation concerns a civil or “administrative” matter, and a breach of the relevant laws or regulations is found to have occurred, the regulatory body will impose administrative sanctions. In these circumstances, an appeal against enforcement action may be made to the highest level within the regulatory body, such as the Chairman of BAPEPAM-LK. In certain cases the decision may be challenged in the Administrative Court.

Where an investigation relates to a criminal matter, and a breach of the relevant laws or regulations is found to have occurred, the regulatory body will request that the Attorney General commence criminal proceedings in a court of law. In such circumstances, any appeal against enforcement action by the courts may only be made to a superior court.

13 Is securities and futures market misconduct (eg, insider dealing, market manipulation etc) a criminal offence or a civil action?

Securities market misconduct such as engaging in insider trading or market manipulation may be subject to administrative sanctions and may also constitute a criminal offence. Where there are allegations of criminal misconduct, BAPEPAM-LK may institute criminal proceedings against those allegedly involved. Sanctions for securities market misconduct include imprisonment for up to 10 years or a maximum fine of up to Rp.15 billion.

14 What civil remedies are there for investors?

Under the Capital Markets Law, investors may take civil action against a person in breach of the capital markets legislation. No similar provision is available to investors under the banking, finance or insurance regulations. However, Indonesia's general tort laws provide a right to compensation for unlawful conduct in certain circumstances. This may cover damages for breach of legislation.

15 Do the police assist these regulatory bodies in investigations?

The following regulatory authorities may become involved in an investigation regarding a financial services industry participant, depending on the circumstances:

- Commission for Eradication of Corruption (“KPK”);
- Financial Transactions and Report Analysis Centre (“PPATK”);

- Indonesian Police; and
- Tax Office.

The regulatory bodies may share the information obtained in the course of their investigations in practice but co-ordination between departments and regulating bodies is limited. Where appropriate, regulatory authorities may also conduct joint investigations.

16 How do these regulatory bodies interact with overseas regulators?

At present, there are few Memoranda of Understanding or agreements for mutual co-operation which enable Indonesian and overseas regulators to collect and exchange information in relation to investigations.

17 Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

The KPK is the regulatory body charged with combating corruption in Indonesia. It is an independent body, reporting ultimately to the President. It can conduct its own investigations, interrogations and prosecutions where corruption is alleged to have occurred.

PPATK is the regulatory body established to eradicate international organised crime such as money laundering and terrorist financing. PPATK is tasked with collecting, recording and analysing suspicious transactions occurring through banks and non-banking financial institutions.

Both the KPK and the PPATK are responsible to the President of the Republic of Indonesia.

18 Are there any laws or regulations imposing obligations on persons to “whistle-blow” or disclose suspected financial services-related wrongdoing within an organisation?

Generally, there are no laws or regulations with respect to persons or entities which are regulated by BAPEPAM-LK, BI or DOF that impose obligations on persons to “whistle blow” or disclose suspected financial services-related wrongdoing within an organisation.

However, pursuant to the Money Laundering Law in Indonesia, financial services providers are obliged to report the following to PPATK:

- Suspicious financial transactions;
- Cash transactions in the amount equals or is greater than IDR500 million (whether in rupiah or in foreign currency).

19 How are hedge funds regulated?

Indonesia has detailed rules regarding local investment funds in general (reksadana) prescribed by BAPEPAM-LK. However there are currently no specific rules concerning Indonesian hedge funds. Therefore, offering of interest in funds would be subject to the general Indonesian rules regarding public offering of securities.

20 Are there likely to be any significant procedural reforms in the near future?

There have been no announcements regarding proposed major regulatory reforms in these areas. The government may issue further implementing regulations under the existing laws relevant to these issues.

Hiswara Bunjamin & Tandjung (in association with Herbert Smith LLP)

Contacts	Tjahjadi Bunjamin, Partner David Dawborn, Senior international counsel 23rd Floor, Gedung BRI II, Jalan Jenderal Sudirman, Kav 44-46 Jakarta 10210, Indonesia
Phone	+62 21 574 4010
Fax	+62 21 574 4670
Email	tjahjadi.bunjamin@hbtlaw.com david.dawborn@hbtlaw.com
Website	www.hbtlaw.com

Hiswara Bunjamin & Tandjung (HBT) is a full-service Indonesian law firm. We aim to provide consistent, high quality and innovative Indonesian legal services to an international standard, based on informed and commercially relevant local knowledge and advice. We have good relations with major Indonesian Government departments and agencies including the Capital Investment Coordinating Board (BKPM), and are licensed by the Indonesian Capital Markets Supervisory Agency (BAPEPAM-LK).

We are associated with Herbert Smith LLP, and are fully supported by experienced Herbert Smith lawyers. Herbert Smith partner, David Dawborn, is seconded to HBT in Jakarta as senior foreign counsel. Corporate associates, Brian Scott and Robin Carvell are also seconded by Herbert Smith to HBT.

Japan

Herbert Smith Tokyo in conjunction with Nagashima Ohno & Tsunematsu

Introduction: FIEL brings a new regulatory regime, spirit and tone

Those provisions of Japan's new Financial Instruments and Exchange Law ("FIEL") that relate to financial regulation were implemented on 30 September 2007, ahead of the prescribed 13 December 2007 deadline. The reforms were, arguably, the most significant change in the regulation of Japan's financial sector since 1948.

We review the major elements of the legislation below, but of at least equal importance has been the change in regulatory spirit and tone that has accompanied implementation. The major goal of FIEL is to enhance investor protection for different types of customer across many financial instruments, but Japan's regulators are also asking financial institutions operating in Japan to take greater responsibility for their own actions and build a relationship with regulators based on trust. Financial services regulation in Japan therefore appears to be shifting from a "rules-based" style of regulation, based on the US model, towards a more "principles-based" style of regulation, based on UK and continental European models, with the goal of developing an optimal "Japanese" balance between these opposing styles. The potential benefit for the financial sector in Japan is a better working relationship with regulators and increased consultation regarding future regulatory developments. The disadvantage over time may be the re-emergence of a more discretionary approach to regulation in which sanctions are imposed for perceived breaches of regulatory ethics and good behaviour rather than strict legal violations. For those institutions who behave responsibly and maintain good – some might recommend confessional – relations with regulators in the future, the environment is improving, with further beneficial legislative reforms apparently in the pipeline.

FIEL was passed on 7 June and promulgated on 14 June 2006. In addition to the reform of financial sector regulation, which came into effect in late 2007, the legislation addressed other problematic issues. Criminal penalties and fines for market abuse and unfair trading were increased with effect from 4 July 2006. Various reforms to the conduct of tender offers and the reporting of large shareholdings were implemented in stages on 13 December 2006, 1 January 2007 (shortened time frame for reports) and 1 April 2007 (electronic filing rules). Finally, provisions to require quarterly reporting and management reports on internal controls over financial reporting are applicable from fiscal year 2008 for listed companies (ie, 1 April 2008 onwards). This last element has been dubbed "J-SOX" given the similarity of its goals to those of the Sarbanes-Oxley Act. However, the changes applicable from 30 September 2007 to the regime of financial sector regulation represent the bulk of the new legislation and, will arguably be the most significant element in the long run.

The following four major laws were abolished and consolidated into FIEL:

- Financial Futures Trading Law;
- Law Concerning Foreign Securities Firms;
- Law Concerning the Regulation of Investment Advisory Services Relating to Securities; and
- Law Concerning the Regulation of Mortgage Business.

Eighty-nine laws were amended in total, some parts of which were consolidated into FIEL.

FIEL focuses on improving investor protection

A Cross-sectional Legislative Framework: the new regulatory regime set out in FIEL cuts across industry sectors to enhance user protection. This is a significant departure from the previous vertical approach taken in the past whereby different sectors in the financial services industry had been separately regulated. This new approach means that: FIEL will apply flexibly to a broader range financial instruments than the previous regulatory regime; the different sectors of the financial services industry will be regulated on a cross-sectional basis; there will be more flexible rules for entry into the financial instruments business (see below); the regulation of the conduct of “financial instruments business” will be reorganized and will depend on investor classification; and investor protection systems will be enhanced. FIEL introduces a new term, Financial Instruments Firm, to cover these companies engaging in a Financial Instruments Business (FIB) – such as securities, commodity fund sales, derivatives transactions or investment management – that require FSA regulation. Sales and solicitation of securities and derivatives are divided into First and Second-type FIBs with regulation based on the type and liquidity of the product and the degree of the investor’s professionalism. Investment management or investment advisory businesses must also be registered as FIBs. Capital requirements and regulations on businesses vary by the different categories of FIB.

Investor Protection: financial products, associated sales activity, advertising and documentation should be appropriate to the type of investor. Customers are to be categorised into four groups:

- professional investors who cannot migrate to general investor status;
- professional investors who can migrate to general investor status;
- general investors (ie, retail investors) who can migrate to professional investor status; and
- general investors who cannot migrate to professional investor status.

Regulated entities are expected to sell products that are suitable to these different investor groups, explain them properly and provide documentation to investors in advance. Organisations or individuals that sell inappropriate products or lack internal managerial controls to prevent such sales are likely to be the focus of FSA investigation.

An interesting development is the creation of a category of “Qualified Institutional Investors”, such as major financial institutions or foreign governments who, along with the Government and Bank of Japan, comprise professional investors who cannot migrate to amateur status. If securities are only offered to this group, minimal solicitation or explanatory procedure requirements apply.

A more discretionary regulatory environment: FIEL includes considerable detail regarding investor classification and the contents of documents to be supplied to investors (which were also the subject of the simultaneously revised Law on Sales of Financial Products). However, FIEL also includes articles that give regulators broad discretionary powers, of which we highlight (with our added emphasis):

- Article 40(1) requires persons engaged in financial instrument business not to “prejudice the protection of investors by engaging in inappropriate solicitation in the **light of the knowledge, experience, financial condition and purpose to enter into the financial instruments trade**, resulting in a lack of customer protection **or may likely result in such**”

- Article 51 gives the Prime Minister (effectively his agency, the FSA) authority as follows: “if he deems it necessary and appropriate for public interest or the protection of investors...may order the said person engaged in the business of financial instruments business to change the method of conducting business and take other actions necessary for improvement in the business operations ...to the extent necessary.”

These articles were based on previous Japanese court rulings that were established in claims for damages for the protection of investors, as well as former regulations in respect of financial futures traders or investment managers. These principles of discretionary power have now been integrated into FIEL at the FSA's suggestion as administrative regulations and have been broadened to be applicable to any financial instruments firms. These new rules, among others, give regulators broad powers to sanction those institutions that they deem to have behaved unsuitably or have facilitated behaviour with a dubious purpose.

Operation of pre-existing regulatory regimes

FIEL has replaced the Securities and Exchange Law of 1948 (“SEL”), but a complete change of the regulatory landscape was not practical. Therefore, the existing regulatory regime will continue to regulate certain financial services such as banks and insurance companies. However, the Banking Law and the Insurance Business Law have been amended to bring them into line with FIEL with regards to the sale and solicitation of deposits and insurance that possess “strong investment characteristics”. FIEL has also enhanced and strengthened the regulatory functions of existing sectoral self regulatory organisations (“SROs”), such as various Japanese securities exchanges and the Japan Securities Dealers Association.

Future regulatory changes

As Japanese banks and insurance companies are increasingly able to sell similar financial products to Japanese investors it is possible that the FSA might eventually move to abolish the distinction between these business categories and permit broadly-based financial holding companies to operate under one consistent regulatory regime. However, the issues regarding capital adequacy for different types of financial services firms, amongst many others, are problematic. In the shorter term reform goals are more modest and focus on certain measures to improve the competitiveness of the Japanese financial sector such as the alleviation of some of the stricter requirements on firewalls (see Question 20, below).

1 What are the main bodies responsible for regulating financial services in Japan?

These are the:

- Financial Services Agency (“FSA”), which includes planning, supervisory and inspection functions;
- Securities and Exchange Surveillance Committee (“SESC”), which is part of the FSA and works closely with its inspection function; and
- SROs, such as the various Japanese securities exchanges and the Japan Securities Dealers Association.

The FSA and SESC are under the direction of the Commissioner of the FSA, who reports to the Minister for Financial Services.

2 What does each of these bodies regulate?

The FSA is an external organ of the Cabinet office and is responsible for financial services supervision. This includes:

- maintaining the stability of the financial system in Japan, protecting depositors, insurance policy holders and securities investors;

- planning and policy making concerning financial systems;
- inspecting and supervising private-sector financial institutions (such as banks, securities companies, insurance companies and market participants, including securities exchanges);
- establishing rules for trading in securities markets;
- participating in international forums, contributing to the coordination of international financial administration policy;
- engaging in surveillance of compliance with rules governing securities markets; and
- administering financial regulations by issuing orders of revocation or suspension of licences, imposing disciplinary sanctions or ordering remedial measures.

The FSA consists of a number of organs, including the SESC and the Certified Public Accountants and Auditing Oversight Board (“CPAFOB”), each of which is responsible for a particular area of financial regulation.

The SESC operates to protect investors and ensure the integrity of financial markets. It is tasked with ensuring that companies engaging in financial instrument businesses comply with FIEL or other related regulations. The SESC is also empowered to conduct compulsory and non-compulsory inspections of entities suspected of involvement in criminal activity, such as violations of disclosure regulations, market manipulation and insider trading. Compulsory inspections, which include detailed searches of a suspect’s premises and the seizing of evidence, require the SESC to obtain a warrant from a judge. Where investigations reveal that an entity has been acting in contravention of regulations, the SESC may file a formal complaint which can lead to criminal prosecution.

SROs, such as the various securities exchanges and the Japan Securities Dealers Association (“JSDA”) also play a significant part in regulating financial services in Japan. These organisations are established voluntarily and set their own regulatory framework within the remit set out by primary legislation. Their primary aim is to ensure fairness in trading and to protect the interests of investors. For example, the securities exchanges regulate their member securities companies by means of rules governing the trading and settlement of listed securities, as well as rules in relation to listing conditions and procedures. The JSDA regulates its member securities companies (effectively all securities companies in Japan since all are members of the organisation) by its rules, which regulate, among other things, over-the-counter securities transactions, solicitation of investments to customers and securities underwriting.

There are no SROs for the insurance sector in Japan.

3 What is the source of financial services regulations in Japan?

The three main financial industries in Japan, namely securities, banking and insurance, are each subject to a separate body of laws and regulations, although the categories are increasingly beginning to blur as financial products are sold across boundaries. FIEL regulates financial instruments businesses, including securities businesses, while banking and insurance businesses are regulated by the Banking Law and the Insurance Business Law. However, sales and solicitation of financial products sold by banks or insurers that have investment characteristics are now subject to the same regulations under FIEL.

FIEL and rules and regulations enacted under FIEL impose registration requirements on FIBs, as well as defining the scope of the business that they and their subsidiaries are permitted to undertake depending upon the type of financial instruments business. They also require companies to meet a number of other obligations, including the disclosure of business results, maintenance of a certain capital adequacy ratio and compliance with regulations governing the day-to-day operation of securities companies (including securities dealings, customer relationships and the organisational structure of securities companies) for First Type FIBs. FIEL also regulates securities transactions, both within and outside the securities exchanges. It sets out disclosure requirements for public and private offerings, continuous disclosure requirements, tender offer rules, substantial shareholding reporting requirements, and anti-insider trading and market manipulation provisions (see Introduction, above, for more detail).

The Banking Law regulates the banking industry and lays down requirements which must be followed by any entity seeking to engage in banking businesses. It requires banks to obtain licences before commencing operations, sets out the scope of business of banks and their subsidiaries, establishes conditions for the holding of shares in banks, requires banks to disclose business results, obliges banks to maintain a certain capital adequacy ratio, regulates the holding of shares of other companies by the banks and restricts the concentration of borrowers. In addition, trust businesses operated by banks are regulated by the Concurrent Business Law. Banks are also subject to special legislation adopted in response to the demise of several financial institutions and the so-called Japanese "Big Bang" in the 1990s. These regulations were introduced to rehabilitate financial institutions and stabilise financial markets. Of particular importance were amendments to the Deposit Insurance Law, the Law Concerning Emergency Measures for Stabilisation of Financial Functions and the Special Measures Law Concerning Facilitation of Reorganisation by Financial Institutions. The legislation introduced, amongst other things, a mandatory injection of public funds into financial institutions, a "self assessment" program for banks' assets, establishment of a prompt corrective action system and simplified procedures for certain types of reorganisations or restructuring. The Bank of Japan is also empowered to supervise, examine and carry out audits of banks pursuant to agreements with those banks for the maintenance of accounts held at the Bank of Japan.

Like FIEL and the Banking Law, the Insurance Business Law and rules and regulations enacted under it oblige companies to obtain a licence before they are permitted to commence trading in the insurance industry. The act also defines the permitted scope of business for life insurance companies, non-life insurance companies and their respective subsidiaries. Insurance companies are subject to other obligations, relating to disclosure of business results and maintenance of a certain capital adequacy ratio, as well as those governing day-to-day operations, including dealings with insurance products, customer relationships and the organisation and structure of insurance companies.

The FSA also issues guidelines and inspection manuals under each of FIEL, the Banking Law and the Insurance Business Law.

Consumers investing in financial products are protected by the Law Concerning Sales of Financial Products, which requires sellers of financial products to explain to their potential customers certain "important matters", including the nature and magnitude of risks inherent in particular products. Failure to do so will expose the seller to strict liability for any resulting losses suffered by the customer.

4 Do all the regulatory bodies described above have the same powers of enforcement?

Whilst the SESC and CPAAOB are organs of the FSA, the extent and scope of their powers of enforcement vary.

The FSA has the power to investigate financial institutions' compliance with the licensing and registration requirements of the laws and regulations, and to take disciplinary measures in the event of non-compliance.

The FSA also delegates power to the SESC enabling the latter to inspect securities companies, securities exchanges and other financial instruments firms, as well as investigating insider trading allegations, market manipulation and falsified financial statements. The SESC is empowered to file complaints for disciplinary proceedings with the FSA to enforce compliance or administrative orders, including administrative surcharges for insider trading. The SESC is also empowered to file such complaints with public prosecutors who may then investigate and indict a party for possible criminal sanctions.

By contrast, SROs, as voluntary organisations, do not have the same far-reaching powers of investigation and enforcement. Rather, they can order their members to report on any matter at issue but cannot inspect their business and therefore cannot verify the contents of the report unless the SROs have the member's consent to do an inspection. Where a member has violated either a law or regulations or internal rules of the SRO, the SRO may suspend or expel that member from the relevant organisation.

5 What powers of investigation do these bodies have?

The FSA and SESC have statutory powers of inspection, including on-site inspection under FIEL, the Banking Law, the Insurance Business Law and the Certified Public Accountant Law. These bodies have the power to request reports and information from the financial institutions that they regulate. An SROs' power to request reports and information derives from the contractual relationship that exists between its members, the basic principles of which are regulated by FIEL and other related legislation. The table below sets out the powers of inspection exercised by these bodies:

Powers	FSA	SESC	SROs
Who conducts the investigation	FSA staff	SESC staff	The SROs' staff
Can require production of records and documents	Yes	Yes	Yes, but not compulsory
Can require a party to answer questions	Yes	Yes	Yes, but not compulsory
Can conduct interviews	Yes	Yes	Yes, but not compulsory
Can conduct searches at premises	Yes	Yes, when a warrant has been obtained	Not without consent
Who is required to assist in investigations	Regulated financial institutions such as banks and insurance companies	Financial business firms and any person under suspicion of having acted in violation of FIEL	Member companies and listing companies in the case of securities exchanges
Have statutory power to compel production of evidence and / or attendance of witnesses	Yes	Yes	No
Consequences of non-compliance	<ul style="list-style-type: none"> Certain types of non-compliance are criminal offences – liable to a fine or imprisonment, or an administrative surcharge Disciplinary action, including suspension of business or revocation of licence or authorisation 	<ul style="list-style-type: none"> Certain types of non-compliance are criminal offences – liable to a fine or imprisonment, or an administrative surcharge Disciplinary action, including suspension of business or revocation of licence or authorisation 	Suspension or expulsion from the SRO

6 Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

There are no specific legal provisions requiring financial institutions to keep any information disclosed during the course of investigations confidential.

The FSA, the SESC, SROs and their officers and employees are required to keep any information obtained through investigations of financial institutions confidential. Breach of this duty amounts to a criminal offence.

In practice, the FSA, the SESC and SROs require those financial institutions under investigation to keep any information they provide for the investigations confidential.

7 Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

As a general point, there is no right to legal representation at interviews.

Both the right to remain silent and privilege against self-incrimination are available. Any information provided without claiming this privilege may be used in any proceedings brought as a result of the investigation. In addition, the right will not prevent disciplinary action being brought against financial institutions of which the person claiming the right is an employee.

There is no attorney-client privilege available in relation to a compulsory investigation.

8 Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

Information obtained by the SESC or SROs can be supplied to the FSA. Each regulatory body may also provide information to the public prosecutors for the purpose of bringing criminal charges against financial institutions or to instigate criminal investigations.

Each regulatory body, and its officers and employees, are required pursuant to a warrant issued by the court, or by a court order issued for the purpose of criminal or civil court proceedings, to provide information obtained through their investigations of financial institutions to the police or the public prosecutor.

9 What actions may these bodies take in exercising their regulatory functions?

The FSA is entitled to bring disciplinary proceedings against any individual or entity which is subject to its regulation and has contravened FIEL and other related laws or regulations. The FSA has the power to issue administrative orders, such as suspension of business or business improvement orders. The FSA is also empowered to impose administrative surcharges in cases where an entity's violation consists of a failure to meet disclosure obligations, involvement in market manipulation or related activities, a failure to file a formal complaint with the public prosecutors office where criminal proceedings should be brought, or to apply for a court order to restrain or prohibit activities in violation of regulations.

The FSA is also empowered to take a variety of measures for the rehabilitation, reorganisation or liquidation of certain troubled financial institutions, such as banks, including ordering an injection of public funds or even taking over the administration of the relevant institution.

The SESC may file a formal complaint with the public prosecutor's office to initiate criminal proceedings and make recommendations to the FSA as to disciplinary actions to be taken.

SROs may take internal disciplinary proceedings against their member financial institutions, or, in the case of securities exchanges, may suspend or delist offending members' securities from the market.

10 What disciplinary sanctions may these bodies impose?

If a regulatory body considers that the conduct of a corporation or an individual is in violation of the rules and regulations, or fails to meet the standard required in performing their duties and functions, the following sanctions may be imposed:

Bodies	Actions
FSA	<ul style="list-style-type: none"> • Revocation or suspension of licence, registration or authorisation • Issuance of a public or private reprimand • Imposition of administrative surcharges • Prohibition of a corporation or an individual from engaging in activities in the particular financial industry or market • File a formal complaint with the public prosecutor's office for a criminal offence
SESC	<ul style="list-style-type: none"> • Recommend that the FSA takes disciplinary action • File a formal complaint with the public prosecutor's office for a criminal offence
SROs	<ul style="list-style-type: none"> • Suspend or expel the member from the organisation • Impose financial penalties • Suspend or delist market-listed securities (in the case of the securities exchanges)

The SESC publishes a list in anonymised form on its website of suspect actions or minor breach of regulations that were uncovered during inspections, as a form of official guidance (*shitek*). The list is seen as a means to improve practice at the offending institution and across the industry by example, without the need for formal disciplinary sanctions.

11 Is it possible to enter into a settlement to resolve any enforcement action taken by any of these bodies?

It is not possible to enter into a settlement to resolve any enforcement actions taken by any of the regulatory bodies.

The regulatory bodies are required by law to grant financial institutions under enforcement actions the opportunity for an official hearing. Prior to this hearing, the supervisory guidelines pursuant to the laws and regulations provide that financial institutions are given an opportunity to exchange views and opinions with the FSA.

It should also be noted, as a practical matter, that the FSA does not always impose sanctions on institutions which have confessed to regulatory breaches, particularly of the “honest mistake” variety, and have shown a willingness to take appropriate steps to rectify the breach before contacting the FSA. Such rewards for evidence of responsible self-regulation cannot be guaranteed in advance, but can, in effect, amount to a settlement action. The FSA currently wants to reward openness and virtue that are evidence of honest and responsive management, as well as build trust with regulated businesses.

12 Are there provisions for persons to appeal against any enforcement action taken against them?

Financial institutions or their employees may appeal to the relevant governmental agency or body for a review of the legality or appropriateness of such enforcement actions. Financial institutions or their employees may also appeal to the court to cancel any government actions taken in violation of the relevant laws and regulations.

SROs do not have a system of review for enforcement actions. However, judicial review of SROs’ decisions is available to aggrieved parties.

13 Is securities and futures market misconduct (eg, insider dealing, market manipulation etc) a criminal offence or a civil action?

Under FIEL, insider trading, market manipulation and other market misconduct all constitute criminal offences. People convicted of market manipulation with a view to obtaining a profit may receive up to 10 years’ imprisonment and / or a criminal fine of up to ¥10 million (approximately US\$100,000). Those convicted of engaging in insider trading may be subject to up to five years’ imprisonment and / or a criminal fine of up to ¥5 million (approximately US\$50,000).

Amendments to SEL in 2004 created a new penalty – an “administrative surcharge” – aimed at combating fraudulent disclosure, market manipulation and insider trading. The basis for calculating this penalty is the economic benefit obtained by a party from their contravention of SEL, which has now been superseded by FIEL. The FSA is empowered to bring proceedings in order to impose this administrative surcharge. The SESC and the FSA are becoming more active in imposing administrative surcharges on insider trading and fraudulent disclosure and currently propose to increase the scope and amount of administrative surcharges.

Market manipulation is also subject to a special civil action under which the person convicted is liable to all investors who purchased securities at the manipulated price created by that person’s behaviour. There is no special civil action in relation to insider trading. Under FIEL however, directors, executives, corporate auditors and substantial shareholders of a company may be obliged to account for any profits they have acquired within six months of the violation in question to the company.

14 What civil remedies are there for investors?

In respect of market manipulation, any purchaser of securities at an artificially created price may claim damages for losses incurred from the person who caused the market manipulation.

An investor who acquires securities by means of a public offering may claim damages from the issuer and / or the underwriters where the prospectus or other offer documents contained false information or were misleading and where the investor invested in ignorance of this fact. An investor who acquires securities upon the information disclosed by the issuer through the continuous disclosure requirements under FIEL may also claim damages from the issuer where such disclosure documents contained false information or were misleading and where the investor invested in ignorance of such fact.

Under the Law on Sales of Financial Products, investors who purchased financial products from those who engage in financial products sales business may claim damages from those who solicited the trade on the basis that they did not disclose material matters as stipulated under the law or solicited the trade by making exaggerated claims in respect of the investment.

Otherwise, there are no special civil remedies available in relation to market misconduct, including insider trading. The remedy for insider trading is limited to a claim in tort under the Japanese Civil Code.

15 Do the police assist these regulatory bodies in investigations?

The police do not generally assist these regulatory bodies in the course of their investigations. However, they may assist in investigations carried out by the public prosecutor's office when that office considers it necessary to investigate cases filed by the FSA or the SESC with a view to criminal prosecutions, such as frauds.

16 How do these regulatory bodies interact with overseas regulators?

The FSA aims to achieve close co-operation with overseas financial supervisory authorities and to promote the exchange of information in order to properly respond to the increasing internationalisation of finance and financial services. The FSA's international activities include sharing information concerning the regulation and monitoring of money laundering, and contributing to the formulation of international rules for financial supervision through the Basel Committee on Banking Supervision, the International Organisation of Securities Commissions and the International Association of Insurance Supervisors.

It is an explicit goal of the FSA's new policy of "better regulation" to increase the contacts that it has with overseas regulatory authorities and to facilitate joint investigations if they are required to deal with a current regulatory issue of international significance.

17 Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

Each regulatory body has the power to investigate and combat corruption, money laundering and financing terrorism. The FSA, which regulates almost all financial institutions, has the most important responsibility to combat such activities by financial institutions, and co-operates with the public prosecutors in criminal investigations of such activities.

18 Are there any laws or regulations imposing obligations on persons to "whistle-blow" or disclose suspected financial services-related wrongdoing within an organisation?

"Whistle-blowing" obligations are imposed on financial institutions and other certain institutions as well as specified individuals under the Law for Prevention of Transfer of Criminal Proceeds, which was newly enacted in 2007 and came into force in March 2008, and other laws and regulations. Public officials also have an obligation to report criminal offences which they become aware of during the course of their duties.

Each financial institution subject to these "whistle-blowing" obligations must file a report in a prescribed form with the relevant regulatory bodies when it – or its officers / employees – suspects that any property received during the course of a transaction represents the proceeds of criminal activity. They are also required to confirm the identity of customers and keep records of such confirmation.

Any financial institution which fails to maintain proper internal systems for the purpose of reporting suspect transactions, or fails to report such transactions, may be subject to an improvement order or other administrative sanctions.

19 How are hedge funds regulated?

Hedge funds are generally classified as securities under FIEL, although it would depend upon the exact structure of the fund in question. Hedge funds classified as financial instruments businesses may therefore be marketed and distributed to relevant classes of investors under the same regulatory regime that applies to other financial instruments businesses. This includes local Japanese registration and reporting requirements, unless exemption from such requirements is available. To market such hedge funds in Japan as underwriter, broker-dealer or otherwise through “self-solicitation”, requires registration as the relevant type of financial instruments business.

It should be noted however, that where the sale of a hedge fund is made directly from overseas without any marketing activities having been carried out in or toward Japan or Japanese investors, a foreign broker-dealer authorised overseas but not in Japan may sell that hedge fund to certain designated institutional investors in Japan.

20 Are there likely to be any significant procedural reforms in the near future?

Whilst FIEL has enhanced investor protection, there is a growing awareness that it has increased the compliance burden on many financial services companies operating in Japan. The concurrent steep drop in Japan’s stock market indices has served to highlight that additional policy measures are necessary to resurrect the status of Tokyo as a significant world capital market and to reduce certain regulatory barriers.

To this end, the FSA published a “Plan for Strengthening the Competitiveness of Japan’s Financial and Capital Markets” (the “Plan”) on 21 December 2007. Various measures are envisaged including:

- a revision of the regulatory firewalls between banks, insurers and securities companies (previously managers could not have dual managerial responsibilities);
- broadening of the range of tradable financial products: more Exchange Traded Funds, specialist products for specific investor groups such as Qualified Institutional Investors, as well as new product categories such as Islamic finance issues, emissions rights trading; and
- broadening the scope and amount of administrative surcharge on insider trading and market manipulation, and non-filing of or material misstatement in disclosure documents.

The proposals are still being finalised but the most unpredictable element remains the timing of passage through the Japanese Parliament (The Diet). Opposition control of the Upper House is delaying most significant legislation, so passage through this year’s Ordinary Session, before the summer recess (end of June), cannot be guaranteed despite the Government’s strong control of the Lower House. FSA officials still seem to hope for implementation in Autumn 2008.

These measures are portrayed as complementary to FIEL and the FSA’s accompanying focus on self-regulation. A gradual relaxation of controls is likely for those institutions that build a relationship of trust with regulators.

Herbert Smith Tokyo in conjunction with Nagashima Ohno & Tsunematsu

Contact	Peter Godwin, Partner, Head of dispute resolution 41st Floor, Midtown Tower, 9-7-1 Akasaka, Minato-ku Tokyo 107-6241
Phone	+81 3 5412 5412
Fax	+81 3 5412 5413
Email	peter.godwin@herbertsmith.com
Website	www.herbertsmith.com

Herbert Smith’s Tokyo office has leading practices in the fields of dispute resolution, M&A and projects. The office is widely recognised as having the No.1 international dispute resolution practice in Japan. Our large team of lawyers – expert in litigation, arbitration, alternative dispute resolution and regulatory matters – is dedicated to assisting our clients to successfully resolve commercial disputes. We combine our global strength in dispute resolution with our comprehensive knowledge of Japan to provide a global-standard service to both our international and Japanese clients.

Korea

Kim & Chang

1 What are the main bodies responsible for regulating financial services in Korea?

These are the:

- Financial Services Commission (“FSC”);
- Financial Supervisory Service (“FSS”);
- Securities and Futures Commission (“SFC”);
- Ministry of Strategy and Finance (“MOSF”); and
- Bank of Korea (“BOK”).

2 What does each of these bodies regulate?

Korea’s financial supervisory system was reorganised as an integrated financial supervisory system in 1998. Under the system, the FSC (formerly the Financial Supervisory Service) and its executive arm, the FSS, are in charge of setting financial policy, supervising all financial institutions, including banks and non-banking financial institutions.

The FSC is the integrated financial supervisory body in Korea and has overall authority to establish financial policy, and license, supervise and inspect financial institutions. The FSC is authorised to grant licences to financial institutions intending to carry out financial business, review the opening or closing of overseas branches or offices of financial institutions, and approve mergers or dissolutions of financial institutions. The FSC is supported by the FSS which is responsible for the actual supervision and inspection of financial institutions. The SFC was set up under the FSC to oversee securities and futures markets. Its primary function is to investigate market abuses such as insider trading and market manipulation in the securities and futures markets and oversee accounting standards and audit reviews.

The MOSF is responsible for the fiscal policy, tax policy and international finance. The MOSF also supervises the foreign exchange business of financial institutions, including authorisations and permissions.

The BOK’s primary function is to seek price stability and contribute to the sound development of the national economy by drawing up and implementing effective monetary and credit policy. To this end, the BOK undertakes various tasks, including the operation and management of payment systems, inspection of financial institutions, foreign exchange management and performance of the general functions of a central bank.

3 What is the source of financial services regulations in Korea?

The principal legislation regulating the securities business is the Securities and Exchange Act (“SEA”). The SEA regulates the securities businesses and listed companies’ corporate finance, governance, and disclosure obligations. The SEA divides Korea’s securities businesses into three basic areas: brokerage, dealing and underwriting. In order to ensure fairness in securities issuance and corporate disclosure, the SEA requires corporations to register with the FSC and FSS in order to trade their shares listed on the Korea Exchange (“KRX”). The SEA also provides for disclosure of securities issuers and the functions and roles of self-regulated securities-related organisations, such as the KRX and the Korea Securities Dealers Association (“KSDA”) to ensure fair and equitable pricing and trading of securities. The SEA proscribes unfair trading such as insider trading and price manipulation as illegal activities.

The financial industry in Korea consists of a number of distinct and separate financial institutions, each of which is currently governed by a separate law or a separate set of related laws. On August 3, 2007, however, the Financial Investment Services and Capital Markets Act (“FICA”), was promulgated, pursuant to which Korean financial institutions (other than banks and insurance companies) which had been governed by separate law (including the SEA) will be governed thereby. The FICA will take effect on February 4, 2009. Korea has not adopted a universal banking system. They are required to conduct only those business activities falling within the scope of their licence or registration.

The Bank Act is the principal source of bank regulation in Korea. The Bank of Korea Act also contains various provisions relating in particular to the authority of the BOK, as the central bank, over the operations of banking institutions concerning monetary control.

The Indirect Investment Asset Management Business Act currently regulates all the indirect investment services such as securities investment trusts, mutual funds, bank trusts, variable insurance and investment advisory services but will be replaced in its entirety by the FICA on February 4, 2009.

The Insurance Business Act prescribes the regulatory framework for insurers and insurance intermediaries and provides for the supervision of insurance companies to ensure protection of policyholders.

4 Do all the regulatory bodies described above have the same powers of enforcement?

No. The FSC, as a unified regulator overseeing the entire financial industry, exercises the broadest enforcement powers amongst the financial regulatory bodies in Korea. As an executive body of the FSC, the FSS is responsible for the actual supervision and examination of all financial institutions in Korea. The FSS has the authority to examine and inspect financial institutions and request relevant documents and record or hear personal testimony necessary for the purposes of the examination. Failure to provide these materials or providing false materials constitutes an offence under the relevant acts and regulations. Upon approval from the FSC, the FSS may also recommend dismissal of corporate officers responsible for the violation of regulations, or suspension of all or part of the institution’s business operations.

Matters relating to the securities and futures markets are largely delegated by the FSC to the SFC. The SFC is tasked with the supervision of the securities and futures markets. Its principal role is to investigate market abuses such as insider trading and market manipulation in the securities and futures markets.

The BOK has limited authority to supervise financial institutions. If deemed necessary for the implementation of its monetary and credit policy, the BOK may only request the FSS to examine a financial institution within a specific scope or to have BOK employees participate in the FSS’ examination on a joint basis.

5 What powers of investigation do these bodies have?

Regulatory Bodies	Investigatory Powers
FSC	<ul style="list-style-type: none"> Investigatory powers over financial institutions delegated to its executive arm, the FSS
FSS	<ul style="list-style-type: none"> Require the delivery of information and documents from financial institutions Summon and interview employees and officers of financial institutions Conduct on-site investigations and inspections of financial institutions Require financial institutions to disclose details of financial transaction
SFC	<ul style="list-style-type: none"> Investigatory powers over securities and futures markets delegated to the FSS
MOFE	<ul style="list-style-type: none"> Investigatory powers in connection with foreign exchange laws and regulations delegated to the FSS
BOK	<ul style="list-style-type: none"> Investigatory powers similar to those enjoyed by the FSS in respect of matters requiring BOK approvals / reports in connection with Korean foreign exchange controls

6 Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

Paragraph(2) of Article 35 of the Act on the Establishment of Financial Services Committee, pursuant to which the FSC and the FSS were established, provides that employees and officers are prohibited from using or disclosing information obtained in the course of investigations.

7 Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

No statutory / regulatory provision exists that expressly prohibits or allows such protections. However, in practice, persons being investigated have legal representation.

8 Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

Information provided during interviews with the FSS and the FSC may be used in civil and disciplinary proceedings, for instance, by way of court's information disclosure process or the FSC filing a complaint with the prosecutors' office. This information may also be used in criminal proceedings subject to strict rules regarding evidence.

9 What actions may these bodies take in exercising their regulatory functions?

Please see question 5 above.

10 What disciplinary sanctions may these bodies impose?

Under the SEA, any person (including financial institutions) that fails to co-operate with a request made by the FSC / SFC (delegated to the FSS) in connection with an investigation into a violation of Korean securities laws and regulations is subject to imprisonment for up to three years and a fine of no more than 20 million Won.

Similar penalties are applicable to persons refusing to co-operate with an investigation concerning a violation of Korean foreign exchange controls.

11 Is it possible to enter into a settlement to resolve any enforcement action taken by any of these bodies?

No.

12 Are there provisions for persons to appeal against any enforcement action taken against them?

An enforcement action can be appealed either directly to a Korean court or to the Administrative Judgment Tribunal. Findings of the Administrative Judgment Tribunal can subsequently be appealed to a Korean court.

13 Is securities and futures market misconduct (eg, insider dealing, market manipulation etc) a criminal offence or a civil action?

Insider trading on the securities or futures market is subject to criminal penalties including imprisonment for up to 10 years and / or a fine up to 20 million Won. If the profit earned, or the loss avoided, through the insider trading exceeds 20 million Won, the fine may be up to three times such profit or loss.

The SEA and the Futures Trading Act prohibit market manipulation such as "wash sales" and "matched orders" effected for the purpose of creating a misleading appearance of active-trading or causing others to make a misjudgment as to securities listed on the KRX. Conviction of these activities will result in imprisonment for up to three years and a fine of up to three times the profit earned from the transaction or 20 million Won, whichever is greater.

In addition, if profits earned or losses avoided from insider trading or market manipulation are 500 million Won or more, the penalty may be life imprisonment, depending on the amount of such profits or losses. In cases of market manipulation, compensation must be made to a person who traded, or conducted other transactions with respect to the securities at the price resulting from the violation for any loss incurred by them in connection with such trading or other transactions. Insider trading is also subject to claims by general investors for damages.

14 What civil remedies are there for investors?

Investors may bring a civil action against individuals involved in insider trading or market manipulation. Under the Securities Class Action Act, insider trading and market manipulation on securities market committed since 1 January 2005 may be subject to class action procedures at the request of a qualified representative group, with the approval of a court.

15 Do the police assist these regulatory bodies in investigations?

The police may assist regulatory bodies or initiate its own investigation (although not common). Rather, the more general course of event is that if the FSS finds evidence of misconduct during its investigation of a financial institution, it may file a complaint with or notify the Prosecutors' Office. The prosecution then may request assistance from the police in bringing a criminal action against the financial institution.

16 How do these regulatory bodies interact with overseas regulators?

The FSS has entered into Memoranda of Understanding and confidential undertakings with various countries for mutual co-operation in the regulation of financial services markets. The FSS has entered into Memoranda of Understanding with Great Britain, Japan, Germany, Vietnam, France, China and Malaysia.

17 Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

The Financial Intelligence Unit is empowered to investigate and combat money laundering under the Financial Transactions Reports Act and the Proceeds of Crime Act. No specific governmental agency has been established to investigate terrorist financing.

18 Are there any laws or regulations imposing obligations on persons to “whistle-blow” or disclose suspected financial services-related wrongdoing within an organisation?

None except in respect of some internal guidelines issued by the FSC that provide that persons engaging in such “whistle-blowing” activities should not be treated “unfairly” by the employer company.

19 How are hedge funds regulated?

Hedge funds are subject to the Indirect Investment Asset Management Business Act and its subordinate regulations (collectively, “AMBA”).

The sale of offshore hedge fund interests is subject to registration with the FSC after meeting certain eligibility criteria such as it having to be established in an OECD country, Hong Kong or Singapore. Foreign hedge fund interests offered to qualified investors (as defined under AMBA) is exempt from this registration requirement but is subject to other requirements such as the use of a company licensed in Korea to distribute fund products.

The sale of offshore hedge fund interests is also regulated by Korean foreign exchange regulations. In particular, it is not clear under such regulations whether a non-institutional investor (as defined therein) may invest in unregistered offshore fund interests even if falling under the definition of qualified investor under AMBA.

The FSS regulates the offer and sale of hedge funds (established on or offshore).

20 Are there likely to be any significant procedural reforms in the near future?

The FICA consolidates various existing laws regulating capital markets and will take effect on February 4, 2009. Existing businesses which are subject to the FICA will have to initiate certain steps before the effective date. The specific details of the FICA will be set forth in the related presidential decree and regulations, a draft of which was issued by the government on April 7, 2008.

Currently, there are separate laws regulating various types of financial institutions depending on the type of financial institution (eg, whether it is a securities company, a futures company or an asset management company, etc.) and subjecting financial institutions to different licensing and ongoing regulatory requirements (eg, the SEA the Futures Business Law, the Indirect Investment and Asset Management Business Law, etc.). The FICA attempts to improve and address issues caused by the current legal system by applying a uniform set of rules to the same financial businesses with the same economic function. To this end, the FICA categorizes current capital market-related businesses into six (6) different functions as follows:

- (i) Dealing (trading and underwriting of financial investment products (as defined below)),
- (ii) Brokerage (brokerage of financial investment products),
- (iii) Collective Investment (establishment of collective investment schemes and the management thereof),
- (iv) Investment Advice,
- (v) Discretionary Investment Management, and
- (vi) Trust (together with the five businesses set forth above, the “Financial Investment Businesses”).

In an effort to encompass the various types of securities and derivative products available in the capital markets, the FICA sets forth a comprehensive term “financial investment products,” defined to mean all financial products with a risk of loss in the invested amount (in contrast to “deposits” which are financial products for which the invested amount is protected or preserved). Financial investment products are classified into two major categories, (i) “securities,” (relating to financial investment products where the risk of loss is limited to the invested amount) and (ii) “derivatives” (relating to financial investment products where the risk of loss may exceed the invested amount). As a result of the general and open-ended manner in which “financial investment products” is defined, any future financial product could potentially come within the scope of the definition of “financial investment products”, thereby enabling financial institutions subject to the FICA to handle a broader range of financial products subject to satisfying relevant regulations (eg, adequate Chinese Walls).

There are various other changes covered by the FICA such as the improvement of investor / customer protection mechanisms. The FICA specifically covers the product guidance duty, know-your-customer rules and suitability rules and rules to prevent conflicts of interest.

Kim & Chang

Contact	K. S. Chung / T. H. Yoon Seyang Building, 223 Naeja-dong, Jongno-gu, Seoul, Korea 110-720
Phone	+82 2 3703 1114
Fax	+82 2 737 9091~3
Email	lawkim@kimchang.com
Website	www.kimchang.com

Founded in 1973, Kim & Chang is the largest and the most specialised law firm in Korea. It is a full service law firm based in Seoul with approximately 650 professionals including lawyers, tax lawyers and accountants, patent and trademark attorneys. Its professionals are top graduates of prestigious universities in Korea and abroad, including the United States, Europe and Japan. Many of its attorneys have practised with major law firms abroad, adding their wealth of experience and expertise in specialised practice areas to the firm’s resources.

The expertise and multi-cultural background of Kim & Chang’s professionals make the firm the recognised leader in providing specialised legal services for cross-border transactions and uniquely qualified to address the legal needs of international companies doing business in Korea. The firm is active in practically all areas of commercial practice. Its practice groups include securities, capital markets and banking, mergers and acquisitions, privatisation, foreign investment, bankruptcy / corporate restructuring, human resources, antitrust and fair trade, international trade, product liability, real property / construction, environment, telecommunications, health care, intellectual property, litigation and arbitration, tax and maritime. Kim & Chang handles legal matters in English, German, French, Japanese, Chinese, Spanish and Swedish, as well as Korean.

Macau

João Nuno Riquito - Advogados

1 What are the main bodies responsible for regulating financial services in Macau?

They are the:

- MSAR Chief Executive (*Chefe do Executivo da RAEM*) (www.gov.mo/)
- AMCM - Monetary Authority of Macau (*Autoridade Monetária de Macau*) (<http://www.amcm.gov.mo/>)

2 What does each of these bodies regulate?

The regulation of financial services in Macau is highly centralised, the MSAR Chief Executive (“Chief Executive”) and the AMCM both being responsible for regulating the financial and foreign exchange markets, as well as insurance activity and business conducted by authorised institutions.

The AMCM acts under the Chief Executive’s co-ordination as the executive body responsible for formulating policy on monetary, financial, exchange-rate and insurance matters, as well as for the supervision and inspection of the financial markets and its players.

The Chief Executive is responsible for establishing the financial policies and for issuing authorisations (on prior advice from the AMCM), for the incorporation of credit and insurance institutions, as well as for respective local branches, subsidiaries and representative offices. The AMCM retains front-line regulatory supervision over the operations and personnel of authorised institutions, in order to ensure compliance with relevant legal requirements, the adoption of correct standards of ethical business practices and suppression of all practices incompatible with a clear and proper running of the markets.

The AMCM also performs the role of central bank (all within the policies established by the Chief Executive), acting as a central depository and manager of foreign-exchange reserves and providing the internal monetary stability and the external solvency of the local currency (MOP - Macau Pataca). It is also the lender of last resort.

3 What is the source of financial services regulations in Macau?

The primary legislation regulating the financial services industry is the Macau Financial System Act (*Regime Jurídico do Sistema Financeiro* (Decree-Law no. 32/93/M)).

Financial Services companies, establishments and activities must comply with the *Regime Jurídico das Sociedades Financeiras - RJSF* (Decree-Law no. 15/83/M). Offshore financial activity is regulated by Decree-Law no. 58/99/M.

The AMCM can also establish guidelines, issue technical instructions and lay down regulations and regulatory instructions. These regulations are binding and must be complied with.

The main piece of legislation regulating the insurance industry is the Macau Insurance Ordinance (Decree-Law no. 27/97/M), together with the Insurance Agents and Brokers Ordinance (Decree-Law no. 38/89/M) and several other ordinances and regulations on Compulsory Insurances.

Futures and securities exchange companies and activities are also regulated in the RJSF.

All financial rules and regulations can be found, in both English and Portuguese, at http://www.amcm.gov.mo/rules_and_guidelines/rules.htm.

4 Do all the regulatory bodies described above have the same powers of enforcement?

The AMCM does not have coercive prerogatives. It only has statutory powers of investigation.

In the exercise of its inspective functions, and if faced with signs of illegal activity, the AMCM can institute proceedings for violations of the legislation and regulations governing credit, banking, foreign-exchange and insurance activities, as well as for any misconduct which disturbs the regular operations of the markets.

Nevertheless, it is the sole and exclusive competence of the Chief Executive to take disciplinary action against infringing institutions, either by applying appropriate sanctions or implementing the foreseen extraordinary or intervention measures (on prior recommendation of the AMCM).

5 What powers of investigation do these bodies have?

The AMCM is the only body that has statutory powers of investigation under the *Estatuto da Autoridade Monetária e Cambial de Macau* (the Rules of Monetary and Foreign Exchange Authority of Macau; Decree-Law no. 14/96/M) and RJSF. When duly identified, and in exercising respective inspection and supervision powers, it has the same status as a public authority.

Powers	AMCM
Who conducts the investigation	AMCM
Require production of records and documents	Yes. At any time, with or without prior notice to the parties
Require a party to answer questions	Yes
Conduct interviews	Yes
Conduct search at premises	Yes. The AMCM may enter premises without a search warrant, with or without prior notice, being allowed to confiscate any documents or assets which are considered the subject of an offence or which are deemed necessary to further the corresponding legal proceedings
Who are required to assist in investigations	Any person
Statutory power to compel production of evidence and / or attendances of witnesses	Yes
Consequences of non-compliance	Contraventional offence (misdemeanour). Liability to a fine and / or suspension of voting rights / prohibition to hold board positions

6 Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

Yes. Any information gathered by statutory bodies, workers, auditors or any other agents of AMCM exclusively in the performance of their functions under the AMCM Rules, is subject to strict professional secrecy.

In exceptional and duly justified situations, and when that same information is not subject to bank secrecy as established in the RJSF, the Chief Executive may consent to the disclosure of that information.

Where the AMCM, by virtue of a specific legal provision, discloses information to any other entities, these entities are also subject to the secrecy obligations.

Nevertheless, this rule has an important exception. In the event of criminal proceedings, the legal duty of full co-operation with the Justice overrides the professional secrecy obligations, obliging the AMCM to disclose all information acquired as directed by a Court of Law.

Violation of professional secrecy obligations is subject to disciplinary, civil and criminal liability.

7 Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

Persons under investigation have the right to be accompanied by a lawyer. Further, every person required to take part in regulatory proceedings can be excused from answering questions pursuant to the privilege against self-incrimination.

All documents, communications and information supplied to legal advisers are subject to legal professional secrecy and can only be disclosed with the permission of the Law Society (*Associação dos Advogados de Macau - AAM*) or by virtue of a positive decision of an upper court in attendance of the criminal proceeding rules.

8 Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

Yes. Information obtained by the AMCM can be disclosed and used in criminal proceedings if deemed necessary by the Justice.

Furthermore, the AMCM is obliged, under the Money Laundering legislation (*Law no. 2/2006*), to identify, inform and co-operate with the criminal police (*Polícia Judiciária - PJ*) and the Commission Against Corruption (*Comissariado Contra a Corrupção - CCAC*) in potential money laundering operations.

9 What actions may these bodies take in exercising their regulatory functions?

The table below sets out the actions that these bodies may take in exercising their regulatory functions:

Bodies	Actions
Chief Executive	<ul style="list-style-type: none"> • To revoke or suspend authorisations issued to the incorporation of credit and insurance institutions • To impose share capital reductions • To authorise the division, merger or reorganisation of credit institutions <p>Before unstable situations regarding forming or running company boards or liquidity or solvency problems of specific credit institutions:</p> <ul style="list-style-type: none"> • To order investigations for clarifying their activity • To impose temporary restrictions on their activity or to order the adoption of certain practices or measures • To appoint decision-making advisers • To preventively suspend directors • To provide monetary or financial support

Bodies	Actions
	<ul style="list-style-type: none"> To temporarily waive the fulfilling of obligations To issue conditions for reimbursement of deposits To implement the intervention status (eg, appointing an administrative committee or closing up service counters) and the extra-judicial winding up provided for in the RJSF To request the Attorney General (<i>Ministério Público - MP</i>) to require a court declaration of bankruptcy
AMCM	<ul style="list-style-type: none"> To control the register of all the necessary registral acts To verify the aptitude of the qualified shareholders and board directors To control the performance of duties of the board of directors or of any other person with management functions To admit and control the activity of the institution's external auditors To carry out special audits on the institutions To suspend or insert amendments on the credit and insurance institutions advertising campaigns To approve any proposed amendments to the institutions memorandum and articles of association To conduct the proceedings arising from the violations foreseen on the RJSF

10 What disciplinary sanctions may these bodies impose?

If the Chief Executive considers that the conduct of a corporation or an individual does not meet the standard required in performing its respective functions and duties in the financial services industry, the following sanctions (on prior recommendation of the AMCM) may be imposed:

Bodies	Sanctions
Chief Executive	<ul style="list-style-type: none"> Imposition of a fine (between MOP 10,000 and MOP 5,000,000) Suspension of shareholder voting rights (from a period between one to five years) Prohibition of holding board positions or management functions (from a period between six months to five years) Issuance of a reprimand together with a rectification requirement Revocation or suspension of the authorisations issued

11 Is it possible to enter into a settlement to resolve any enforcement action taken by any of these bodies?

There is no express formal settlement procedure for resolving enforcement actions.

Nevertheless, a disciplinary sanction can be suspended by the Chief Executive (taking into account the degree of fault, prior conduct and specific circumstances of the offence), subject to the fulfilment of certain obligations deemed necessary to discipline the offending entity or to normalise irregular situations.

12 Are there provisions for persons to appeal against any enforcement action taken against them?

An entity or person against whom a disciplinary decision of the Chief Executive has been made may appeal to a Court of Justice. In case, to the *Tribunal Administrativo de Macau* (Macau's Administrative Court).

13 Is securities and futures market misconduct (eg, insider dealing, market manipulation etc) a criminal offence or a civil action?

Macau does not have an established securities and futures market. Nevertheless, the provision of misleading or false information (even if only negligently supplied) is subject to a civil action under which the person who supplied that information is responsible for any losses caused. Pursuant to Section 478 of Macau Civil Code.

14 What civil remedies are there for investors?

There are no special civil remedies available in relation to market misconduct.

Investors who have had patrimonial losses may claim damages for losses from the person who offered false or misleading information under the general rules of Macau's Civil Code.

In certain extremely exceptional circumstances, namely in the context of winding-up measures decreed against financial institutions, the Chief Executive may, at his discretion, order the implementation of special measures of protection, namely for small investors / creditors.

15 Do the police assist these regulatory bodies in investigations?

The police do not generally assist AMCM investigations. However, the AMCM has the statutory prerogative to, in performing its functions, request the assistance or co-operation of any other public entity, including the criminal police under the limits of their respective statutes and criminal powers of investigation.

16 How do these regulatory bodies interact with overseas regulators?

The AMCM has signed co-operative agreements with its financial and insurance regulatory counterparts in Hong Kong and a Memorandum of Understanding on Regulatory Co-operation with the China Banking Regulatory Commission.

AMCM is a member of the *Offshore Group of Banking Supervisors* (OGBS) and has joined the FMI's *General Data Dissemination System* (GDDS) on late 2007.

More recently, co-operation agreements have also been signed with Angola and Mozambique's Central Banks and with the Angolan Insurance Regulatory Body.

The AMCM is also a member of *ASEL - Associação dos Supervisores de Seguros Lusófonos* (the Portuguese Speaking Countries Insurance Regulatory Bodies Association) and the International Association of Insurance Supervisors.

17 Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

The regulatory body empowered to investigate and combat corruption and money laundering in Macau is the Committee Against Corruption (*CCAC - Comissariado Contra a Corrupção*).

The CCAC is responsible not only for implementing a corruption prevention program, but also for investigating corruption and money laundering in financial institutions. The CCAC is subject to the same rules as those governing the actions of the Public Prosecutor's Office, within the statutory powers of a criminal police authority.

Both the AMCM and its supervised financial institutions are obliged to inform the CCAC of any suspicious operations they may come across in the performance of their duties under *Law no. 2/2006* (Anti-Money Laundering Law).

18 Are there any laws or regulations imposing obligations on persons to “whistle-blow” or disclose suspected financial services-related wrongdoing within an organisation?

“Whistle-blowing” obligations are imposed on financial institutions and other specified individuals under RJSF, the Money Laundering Law and by several AMCM Regulations.

For example, external auditors of listed financial institutions are obliged to immediately report to the AMCM any facts that may cause severe damage to the institution or to Macau's credit system, such as: criminal activities, money laundering operations, irregularities that may put at stake the institution's liquidity or solvency and forbidden operations.

Financial institutions are also obliged to report immediately to the AMCM any difficulties in forming or running the board or any other unstable situations regarding liquidity or solvency that might risk the normal performance of the monetary, financial and exchange-rate markets.

With regard to suspected money laundering and terrorist financing activities, financial institutions and the AMCM are legally bound to report (under Law no. 2/2006) to the CCAC the nature, complexity and values involved.

In order to provide financial institutions with sufficient information to identify such information, the AMCM has established several regulating principles in the form of circulars. For example *Circular no.s 072/B/2002, 075/B/2002, 169/B/2002 and 007/B/2005*.

19 How are hedge funds regulated?

There are currently no specific rules which regulate hedge funds in Macau. Hedge funds are however subject to the general rules applicable to investment funds. These are regulated by Decree Law no. 83/99/M.

20 Are there likely to be any significant procedural reforms in the near future?

There are no significant reforms foreseen in the near future.

However, a legislative proposal to modify the Insurance Contract Rules is currently under analysis (Chapter VIII of the Commercial Code).

João Nuno Riquito - Advogados

Contact [João Nuno Riquito \(Managing Partner\)](#)
[AIA Tower, Unit 1004, 251-A – 301, Avenida Comercial de Macau](#)
Phone [+853 2838 9918](#)
Fax [+853 2838 9919](#)
Email jnr@jnradvogados.com
Website www.jnrlegal.com

An international law firm with offices in Portugal and Macau SAR, working also in collaboration with an associate office in Italy.

JNR Advogados provides a full range of legal services, with a significant track record in corporate and contract law, M&A, real estate, urban planning, licensing and construction, foreign investment, civil and commercial litigation.

Malaysia

Skrine

1 What are the main bodies responsible for regulating financial services in Malaysia?

The main bodies are the:

- Securities Commission (“SC”);
- Central Bank or Bank Negara Malaysia (“BNM”);
- Stock exchanges, namely Bursa Malaysia Securities Berhad (“Bursa Securities”) and Bursa Malaysia Derivatives Berhad (“Bursa Derivatives”);
- Companies Commission of Malaysia (“CCM”); and
- Labuan Offshore Financial Services Authority (“LOFSA”).

2 What does each of these bodies regulate?

The SC is the main regulatory authority responsible for the securities and futures market in Malaysia. The SC monitors compliance with securities laws, regulates takeovers and mergers of companies, unit trust schemes, oversees the clearing house and the central depository and is responsible for licensing and supervising the conduct of intermediaries and participants in the securities and futures market.

The SC also oversees Bursa Malaysia Berhad (“Bursa Malaysia”), the holding company of, *inter alia*:

- Bursa Securities, which is responsible for regulating stock exchanges in Malaysia, companies whose securities are listed on and participants of the main board, second board and the Malaysian Exchange of Securities Dealing and Automated Quotation market (“MESDAQ”);
- Bursa Derivatives, a futures and options exchange covering financial, equity and commodity-related instruments;
- Bursa Malaysia Securities Clearing Sdn Bhd, which provides, operates and maintains a clearing house for the securities exchange; and
- Labuan International Financial Exchange (“LFX”), a self-regulatory international offshore financial exchange based in Labuan, Malaysia’s international offshore financial centre. The LFX, established in 2000 to complement various offshore financial services, provides a funding mechanism for international companies operating in the Asia-Pacific region and caters for the listing of multi-currency financial instruments.

The BNM regulates financial institutions, related companies and scheduled financial activities. The insurance industry is also under the supervision of BNM. The CCM regulates businesses and companies incorporated in Malaysia and foreign companies operating a business in Malaysia. LOFSA is the regulatory body established to develop Labuan as an international offshore financial centre. It supervises the activities of the offshore financial services industry in Labuan, including offshore banking, offshore insurance, offshore trust and fund management and the incorporation of offshore companies and registration of foreign companies in Labuan.

3 What is the source of financial services regulations in Malaysia?

The Capital Markets & Services Act 2007 (“CMSA”), which came into force on 28 September 2007, consolidated the Securities Industry Act 1983, Futures Industry Act 1993 and Part IV of the Securities Commission Act 1993 (“SCA”). The CMSA now governs all matters relating to the formation and conduct of stock and futures exchanges, clearing houses, relations between the exchanges and members and issuers of securities, licensing and conduct of market

participants, prohibited practices in securities dealings, regulation of intermediaries and participants in the futures industry and fund raising activities. The Rules of Bursa Malaysia Depository Sdn Bhd, Bursa Securities Clearing Sdn Bhd and Bursa Securities deal with compliance by participating organisations such as dealers and brokers. The Listing Requirements of Bursa Securities (“LR”) must be complied with by issuers whose securities are listed and quoted on the Main Board and Second Board of Bursa Securities and their directors, officers and advisers. The LR covers a variety of matters including the minimum requirements in relation to the issued share capital of listed issuers, pre and post-listing obligations, disclosure of financial reports and the enforcement powers of Bursa Securities in relation to breaches of the LR. Similarly, the MESDAQ Listing Requirements must be complied with by issuers whose securities are listed and quoted on the MESDAQ market.

The LFX is regulated by the Labuan Offshore Securities Industry Act 1998 (“LOSIA”). The procedures and regulations governing the listing and trading of financial instruments on LFX are contained in the Rules of Labuan International Financial Exchange.

Banking activities and the licensing of financial institutions are regulated by the BNM under the Banking and Financial Institutions Act 1989 (“BAFIA”) and various guidelines, rules, guidance notes and notices issued by BNM.

Insurance activities in Malaysia are governed by the Insurance Act 1996 (“IA”) and various guidelines, rules and circulars issued by BNM.

The LOFSA is responsible for administering the provisions of offshore legislation such as the Offshore Companies Act 1990 (“OCA”), the Offshore Banking Act 1990, the Offshore Insurance Act 1990 (“OIA”), the Labuan Trust Companies Act 1990 (“LTCA”), the Labuan Offshore Trusts Act 1996 (“LOTA”), the Labuan Offshore Limited Partnerships Act 1997 (“LOLPA”) and the LOSIA in respect of the offshore securities industry.

In relation to companies, the Companies Act 1965 (“CA”) contains provisions including dealing with the lodging of prospectuses with the CCM, officers’ dealings in securities, disclosures of interests by directors and also securities law offences by companies, directors, auditors and debenture holders.

4 Do all the regulatory bodies described above have the same powers of enforcement?

No. Generally, the BNM has powers under the BAFIA (to regulate financial institutions and scheduled financial activities) and the IA (to regulate insurance industry) whereas the SC is accorded powers under the SCA and CMSA (to regulate the securities and futures market and the conduct of intermediaries and participants). The LOFSA regulates offshore financial services activities. Bursa Securities on the other hand, also regulates a range of exchange-related services, including trading, clearing, settlement and depository services.

5 What powers of investigation do these bodies have?

The powers of investigation of the SC, BNM, Bursa Securities and LOFSA are set out in the table below:

Powers	SC	BNM	Bursa Securities	LOFSA
Who conducts the investigation	SC and persons appointed by the SC as investigating officers	BNM or any person appointed by BNM who is not an officer or employee of BNM	<ul style="list-style-type: none"> Bursa Securities, Bursa Malaysia; and / or a qualified accountant or advocate and solicitor appointed by Bursa Securities (pursuant to the BMSB Rules) Committee sub-committee, or any officer of Bursa Securities or of Bursa Malaysia (pursuant to the LR) 	<ul style="list-style-type: none"> LOFSA or any other suitable person appointed by LOFSA (in exercising its general supervisory functions) Any person authorised by the Minister of Finance to assist LOFSA (in relation to trust companies) LOFSA or a representative of LOFSA (in relation to the insurance sector) LOFSA’s members or officers (in relation to limited partnerships) LOFSA (in relation to the securities industry)

Powers	SC	BNM	Bursa Securities	LOFSA
Require production of records and documents	Yes	Yes	Yes	Yes
Require a party to answer questions	Yes	Yes	Yes	Generally no (except in relation to trust companies)
Conduct interviews	Yes	Yes	Yes	Generally no (except in relation to trust companies)
Conduct search at premises	Yes	Yes	No	Generally no (except for purposes of the LOSIA and proper conduct of business of the LFX)
Who are required to assist in investigations	Any person	Any person	<ul style="list-style-type: none"> Participating organisations (ie, dealers and universal brokers), their employees and / or any person required to be registered under the BMSB Rules (pursuant to the BMSB Rules) Applicant, listed issuer, management company, trustee, its directors, officers, employees or advisers or any other person to whom the LR are directed (pursuant to the LR) 	<ul style="list-style-type: none"> Any officer in the company or limited partnership (in relation to offshore companies, offshore trust companies, offshore insurance sector and offshore limited partnerships) Any person (in relation to LOFSA in exercising its general supervisory function in respect of offshore financial services ie, offshore companies, offshore trust companies, offshore banks, offshore insurance sector, offshore limited partnerships and the securities industry)
Statutory power to compel production of evidence and / or attendances of witnesses	Yes	Yes	Yes	No
Consequences of non-compliance	Criminal offence. Liable to a fine and imprisonment	Criminal offence. Liable to a fine and imprisonment	<ul style="list-style-type: none"> Disciplinary action may be taken (pursuant to the BMSB Rules) After consultation with the SC (where required), actions can be taken or penalties imposed (pursuant to the LR) 	<ul style="list-style-type: none"> Criminal offence. Generally liable to a fine and imprisonment but in relation to offshore trust companies, liable to fine only

6 Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

Save for any of the purposes under the securities law or for the purpose of any civil or criminal proceedings under any written law or otherwise authorised by the SC, the SC, members of its committees or any officers, servants, agents of the SC cannot disclose information obtained in the course of his duties and which is not published pursuant to the securities law. Contravention of such provisions is a criminal offence which is punishable on conviction with a fine and / or a term of imprisonment.

Any information obtained by the LOFSA in the course of its investigation shall be kept confidential between the LOFSA and the person supplying the information. Any other person who has any information or document which to their knowledge has been disclosed in contravention of the LOFSA Act shall not disclose the information or document to any other person. Contravention of the relevant provision is a criminal offence which is punishable on conviction with a fine and / or a term of imprisonment.

Further, all proceedings (other than criminal proceedings) relating to any offshore company or foreign offshore company commenced in any court, either under the provisions of the OCA or for the purpose solely of determining the rights or obligations of officers, members or holders of debentures shall, unless the court otherwise orders, be heard in camera and no details of the proceedings shall be published by any person without leave of the court.

7 Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

Yes. Information given in the course of assisting an investigation by the SC, BNM or LOFSA shall not be disclosed or used to incriminate the person who provided the information before any court or other authority.

Where a book containing privileged communication made by or on behalf of or to an advocate and solicitor is required by the SC to be produced for the purpose of carrying out its functions, the advocate and solicitor is entitled to refuse to comply. However, if the person to whom or by or on behalf of whom the communication was made agrees to the advocate and solicitor complying with the requirement, the advocate and solicitor is required furnish in writing to the SC the name and address of the person to whom or by whom the communication was made.

Neither the CMSA, SCA, BAFIA, BMSB Rules nor the offshore legislation makes provision for a right of legal representation for persons who are required by the respective regulatory bodies to attend interviews and examinations, for the purpose of carrying out an investigation.

However, a participant of the Bursa Securities may request an oral hearing before Bursa Securities in a disciplinary action against them, make submissions and procure the attendance of witnesses to answer a case made against them by Bursa Securities.

The BNM shall not make an order against any licensed institution, officer or director of such licensed institution unless a reasonable opportunity has been given to make representations against the order. Where in BNM's opinion the delay in making an order would be detrimental to the licensed institution, an order may be made first, and an opportunity to make representations may be given immediately following the order. The order may, in consequence of such representations, be confirmed, modified, amended, varied, altered or revoked.

8 Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

The findings and results of all investigations under the BMSB Rules are confidential. They may not be revealed to any authority other than Bursa Securities, Bursa Malaysia, the SC or any investigating governmental authorities. Such findings or results shall not be used, except in connection with a hearing, whether conducted by Bursa Securities, Bursa Malaysia, the SC or a court of law.

Notwithstanding the obligation of secrecy, the SC and the BNM may, at their own initiative or at the request of a public officer, supply to the police officer or any other public officer, information obtained by them in the course of their investigation. This information shall be for the use of such police officer or public officer in the discharge of their duties in respect of any person. Upon receiving a written request, the SC may also provide assistance to a foreign authority exercising similar functions to the SC or any person outside Malaysia exercising regulatory functions which the SC considers it necessary to assist for the purpose of carrying out investigations of any alleged breach of the legal or regulatory requirements which the foreign authority enforces.

Where LOFSA is satisfied a fraud or a criminal offence has been or is likely to be committed, it may give such information to the relevant supervisory authority of a country or place outside Malaysia which exercises functions corresponding to those of the BNM over the operations of a licensed offshore bank, the BNM, the Royal Malaysia Police or any body or authority which is responsible for the supervision of a licensee in any country.

9 What actions may these bodies take in exercising their regulatory functions?

The actions which may be taken by these bodies are set out below:

Bodies	Actions
SC	<ul style="list-style-type: none"> • Institution of criminal prosecution with the written consent of the public prosecutor • Institution of civil proceedings on behalf of a person who suffered loss or damage where it is in the public interest to do so • Application to court for an order for example, to restrain a person from carrying on the business of dealing in securities or futures contract or to remove the chief executive or a director of a public company from office • Application to court for a declaration that particular transactions contravene securities laws or a futures contract as void or voidable • Presentation of a winding up petition against a company
BNM	<ul style="list-style-type: none"> • In administering its functions under the BAFIA, the BNM may make an application to the court to appoint a receiver or manager to manage the business, affairs and property of the institution or recommend to the Minister of Finance that BNM assumes control of the property, business and affairs of the institution • In administering its functions under the IA, the BNM may recommend that the Minister of Finance prohibits the insurer from carrying all or part of its business, suspends the insurer's licence, or applies to court for an order staying commencement of civil proceedings by or against the insurer for not exceeding six months • Presentation of a winding up petition against the institution or insurer
LOFSA	<ul style="list-style-type: none"> • Provide information relating to the commission of an offence to the relevant supervisory authority of a country or place outside Malaysia exercising functions corresponding to those of the BNM over the operations of a licensed offshore bank, the BNM, the Royal Malaysia Police or any body or authority responsible for supervising a licensee in any country
Bursa Securities	<ul style="list-style-type: none"> • Take disciplinary action • Application to court to appoint a manager or receiver to facilitate the performance of outstanding contracts

10 What disciplinary sanctions may these bodies impose?

Bodies	Sanctions
SC	<ul style="list-style-type: none"> • Direct the person in breach to comply with securities laws • Impose a fine • Reprimand the person in breach • Require the person in breach to take such steps as the SC may direct or to remedy and mitigate the breach, including making restitution to any person aggrieved by the breach, including making restitution to any other person aggrieved by such breach • Refuse to accept or consider any submission under Part VI of the CMSA • Impose a moratorium on or prohibit any trading of or dealing in securities by a promoter, director or any person connection to them
BNM	<ul style="list-style-type: none"> • Remove any directors or employees of the licensed institution or insurer from office and appoint a person as director or employee of that licensed institution or insurer • Appoint a person to advise the licensed institution or insurer in relation to the proper conduct of its business • In exercising its functions under the BAFIA, the BNM may require the licensed institution to take any steps or any action, to do or refrain from doing any act within a certain period of time or prohibit a licensed institution from extending any further credit facility for a specified period of time • In administering its functions under the IA, the BNM may terminate any contract, agreement or arrangement entered into by the licensed insurer with any person in relation to its business, require the person who defaults in complying with the provisions of the IA to make good the default, and require the licensed insurer to do or refrain from doing any act in relation to its business, directors or employees.

Bodies	Sanctions
Bursa Securities	<p>In exercising its functions under the BMSB Rules, Bursa Securities may:</p> <ul style="list-style-type: none"> • Reprimand a participant • Impose a fine • Suspend a participant from trading on or through the stock market of the Bursa Securities • Strike off a participant from the register of Bursa Securities • Impose restrictions on a participant's activities <p>In exercising its functions under the LR, Bursa Securities may:</p> <ul style="list-style-type: none"> • Issue a caution letter or a private or public reprimand • Impose a fine not exceeding RM1 million • Issue a letter directing the listed issuer, the adviser or person in default to rectify any non-compliance • Impose one or more condition(s) to be complied with • Refuse to accept applications or submissions, with or without conditions imposed (after consultation with the SC) • Impose condition(s) on the delivery or settlement of trades entered into in respect of the listed issuer's securities • Suspend trading of the securities • Impose a moratorium on or prohibition of dealings in the listed issuer's and / or other listed securities by a director, officer or other person • De-list a listed issuer or its securities • Take any other action which Bursa Securities may deem appropriate

11 Is it possible to enter into a settlement to resolve any enforcement action taken by any of these bodies?

The CMSA, SCA, the BMSB Rules and the BAFIA do not expressly provide for a person to enter into a settlement to resolve an enforcement action taken by them.

12 Are there provisions for persons to appeal against any enforcement action taken against them?

A participant against whom a decision has been made may appeal against such decision by notifying Bursa Securities of their intention to appeal within 14 days of the decision. Bursa Securities shall establish a committee to determine the appeal, comprised of persons appointed by Bursa Securities. None of the members shall have been involved in any other committee of Bursa Securities that made the decision which is the subject of the appeal ("Committee"). On appeal, such decision may be affirmed, varied or set aside and the decision on appeal shall be final and binding on the appellant.

A decision made by the SC may be reviewed by itself upon an application made by a person who is aggrieved by such decision. Such application shall be made within 30 days of the decision after the aggrieved person is notified of such decision. Any decision made by the Minister of Finance, whether original or a reviewed decision, shall be final.

Any person who is aggrieved by a decision of the BNM may appeal against such decision to the Minister of Finance. The decision of the Minister of Finance, whether an original decision or a decision on appeal from the BNM, shall be final.

A further appeal regarding the decision of the Committee, the reviewed decision of the SC or the decision of the Minister of Finance in respect of a licensed institution may be made to a court of law by way of judicial review.

13 Is securities and futures market misconduct (eg, insider dealing, market manipulation etc), a criminal offence or a civil action?

A person who contravenes the market misconduct provisions under the CMSA commits a criminal offence and may also be subject to civil action.

14 What civil remedies are there for investors?

Investors who suffer loss as a result of securities or futures market misconduct in contravention of the CMSA may institute civil proceedings against the party in breach to recover the loss. Civil proceedings may be commenced whether the party in breach has been charged with an offence in respect of the contravention or whether a contravention has been proven in a prosecution.

A person who suffers monetary loss due to the defalcation or fraudulent misuse of monies or property by a director, officer, employee or representative of a holder of a Capital Market Services Licence who carries on the business of dealing in securities that is at the time a participating organization or insolvency of a participating organisation may be entitled to compensation from a compensation fund established under the CMSA. A person who suffers monetary loss due to the defalcation or fraudulent misuse of monies or property by a director, officer, employee or representative of a holder of a Capital Market Services Licence who carries on the business of trading in futures contracts may be entitled to compensation from a fidelity fund established by the CMSA.

The CMSA also provides for the right to recover for loss or damages resulting from false or misleading information in the prospectus or from a material omission therein.

15 Do the police assist these regulatory bodies in investigations?

The Commercial Crimes Unit of the Royal Malaysian Police and the Anti-Corruption Agency of Malaysia under the Prime Minister's Department, which has all the powers and immunities of the police, may assist these regulatory bodies in investigations involving the financial services industry.

16 How do these regulatory bodies interact with overseas regulators?

The SC has, as at May 2008, signed 27 Memoranda of Understanding ("MOUs") with regulators of other countries including Thailand, Hong Kong, China, Taiwan, Australia, France, New Zealand, India, Indonesia, Korea and the United Arab Emirates. These MOUs provide for mutual assistance, cross-border co-operation and exchange of information to aid regulators in ensuring compliance with the laws and regulations of their respective countries. The SC is also a member of the International Organization of Securities Commissions.

17 Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

The Anti-Corruption Agency of Malaysia ("ACA"), established under the Anti-Corruption Act 1997, is the main regulatory body responsible for combating corruption in Malaysia. On 21 April 2008, the Prime Minister of Malaysia has announced that the ACA will be made a full-fledged commission an independent body by the end of 2008.

The Financial Intelligence Unit of the BNM was created by the Minister of Finance under the Anti-Money Laundering Act 2001 ("AML") to investigate money laundering offences under the AML. The SC has also issued Guidelines on Prevention of Money Laundering and Terrorism Financing for Capital Market Intermediaries which provide guidance to dealers, fund managers, futures brokers and futures fund managers on how to comply with the provisions of the AML.

Terrorism financing is a criminal offence under Sections 130N, 130O, 130P and 130Q of the Penal Code of Malaysia. Any person who directly or indirectly provides or makes available financial services or facilities to facilitate terrorist acts or for the benefit of any terrorist, terrorist entity or group shall be punished with death if the act results in death and with imprisonment for a term of not less than seven years but not exceeding 30 years and shall also be liable to a fine in any other case. "Financial services or facilities" includes the services and facilities offered by lawyers and accountants acting as nominees or agents for their clients (Section 130O of the Penal Code).

Money laundering and terrorism financing offences are also governed by the AML. Pursuant to the AML, the Minister of Home Affairs may make an order declaring an entity as a "specified entity" for committing or attempting to commit a terrorist act. This order will be made upon receipt of information regarding such an act from a police officer or where the Security Council of the United Nations decides, in pursuance of Article 41 of the Charter of the United Nations, on the measures to be employed to give effect to any of its decisions and calls upon the Government of Malaysia to apply those measures. For the purpose of implementing the order, the Minister of Home Affairs may consult and direct each of the BNM, the SC or the LOFSA to provide assistance to facilitate the order on the respective institutions it regulates and supervises.

18 Are there any laws or regulations imposing obligations on persons to “whistle-blow” or disclose suspected financial services-related wrongdoing within an organisation?

Under the CMSA, an auditor of a listed corporation has a statutory obligation to report to the SC and the stock exchange a situation where the auditor believes there has been a breach of the securities laws or rules of the stock exchange or any matter which may adversely affect the financial position of a listed corporation (Section 320 of the CMSA).

Section 321 of the CMSA also provides protection for specific employees of a publicly listed company who inform the SC and the exchange of any information relating to breaches of securities laws or the rules of the stock exchanges. This section does not impose a statutory obligation on the relevant officeholder to “whistle-blow” but in the event such an employee does make a disclosure in good faith and in the intended performance of their duties, the employee is accorded the statutory protection referred to in Section 321.

An auditor of a licensed institution has an obligation to immediately report to the BNM if in the course of their duties as an auditor of a licensed institution, they believe that:

- there has been a contravention of any provision of the BAFIA or that any offence which relates to dishonesty or fraud under any other law has been committed by the licensed institution;
- losses have been incurred by the licensed institution which would reduce its capital funds to an extent that the licensed institution is no longer able to comply with the specifications of the BNM; and
- any irregularity which would jeopardise the interests of depositors or creditors of the licensed institution, or any other serious irregularity, has occurred; or
- if they are unable to confirm that the claims of depositors or creditors are covered by the assets of the licensed institution (Section 40 of the BAFIA).

Under the IA, an auditor shall immediately report to the BNM if, in the course of their duties as an auditor of an insurance company, they are satisfied there has been a contravention of a provision of the IA; an offence involving fraud or dishonesty under any other written law has been committed by the insurance company or its employee; or where there is any irregularity which would jeopardise the interests of policy owners or creditors of the licensee (Section 82 of the IA).

Under the AMLA, every citizen of Malaysia and every company incorporated in Malaysia shall disclose immediately to the Inspector General of Police the existence of property in their possession or control that they have reason to believe is owned or controlled by or on behalf of a specified entity and shall disclose to the Inspector General of Police the information relating to such specified entity. Any person who fails to disclose such information commits an offence under the AMLA and shall be liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding one year or to both (Section 66B of the AMLA). The BNM, the SC and the LOFSA have obligations under the AMLA to immediately report to the Minister of Home Affairs if any person or class of persons under their regulation or supervision is found to be in possession or control of terrorist property or property owned or controlled by or on behalf of any specified entity (Section 66D of the AMLA).

19 How are hedge funds regulated?

Hedge funds, restricted investment schemes and other collective investment schemes are also regulated by the SC. Any issue, offer or invitation in relation to such scheme requires the approval of the SC. The establishment, administration and management of funds are also subject to the requirements of the CMSA and relevant guidelines and circulars issued by the SC, for example approval of the SC for establishment of the scheme, registration and lodgement of a trust deed and prospectus with the SC and appointment of a trustee approved by the SC. The SC has also prescribed minimum content requirements for prospectuses, and for trust deeds constituting the funds.

Funds are required to be managed and administered by a management company approved and licensed by the SC. Fund managers are themselves also subject to strict requirements including the duties as prescribed under the CMSA, restrictions on business activities and minimum shareholders' funds requirements.

The channels of marketing and distribution of the funds also require the approval of the SC and must comply with the requirements of the relevant guidelines issued by the SC (for example persons engaging in the marketing and sale of units of the Funds are required to be registered with the Federation of Malaysian Unit Trust Managers).

20 Are there likely to be any significant procedural reforms in the near future?

Division 2 of Part VI of the CMSA (which is currently not yet in force) contains provisions relating to takeovers and mergers and will supersede Division 2 of Part IV of the SCA once it comes into force. Further, the SC may also issue a new code on takeovers and mergers or amend the existing Code to take into account the changes.

The proposed changes include (i) lowering of the threshold for “control” from 33% voting shares to 30% voting shares, and (ii) changes to the threshold relating to compulsory acquisition (from 90% of offer shares to 90% of total paid-up capital ie, including shares already held by the bidder and its concert parties as at the date of the offer).

Skrine

Contact	Janet Looi Lai Heng 50-8-1, 8th Floor, Wisma UOA Damansara, 50 Jalan Dungun, 50490 Damansara Heights, Kuala Lumpur, Malaysia
Phone	+603 2081 3999
Fax	+603 2094 3211
Email	llh@skrine.com
Website	www.skrine.com

Skrine is one of the oldest and largest law firms in Malaysia. The firm provides a full range of legal services to a large international, as well as domestic client base in most industry groups.

The firm is divided into three principal divisions: litigation, corporate and intellectual property. Within each of three main departments are sub-departments with lawyers specialising in different areas of the law. Our litigation practice includes arbitration and mediation.

Pakistan

Orr, Dignam & Co.

1 What are the main bodies responsible for regulating financial services in Pakistan?

These are the:

- Securities and Exchange Commission of Pakistan (“SECP”) and
- State Bank of Pakistan (“SBP”).

2 What does each of these bodies regulate?

The SECP is responsible for the regulation of the corporate sector, capital markets and supervising corporate entities and persons connected with and engaged in securities, insurance, real estate investment trusts and trading markets.

The SECP oversees the Stock Exchanges in Pakistan, which consist of the Karachi, Lahore and Islamabad Stock Exchanges. The SECP has also established and specified the overall standards for their regulation. In addition to regulating the Stock Exchanges, the SECP has specified the manner in which brokers or agents shall conduct their business and effect transactions in securities. Pakistan also has a central depository system for the transfer of paper less securities, which is regulated by the SECP.

The SECP has established rules for the regulation of Non-Banking Finance Companies (“NBFCs”). NBFCs are non-deposit taking institutions licensed by the SECP to operate one or more of the following businesses:

- investment finance services;
- leasing;
- housing finance services;
- venture capital investment;
- private equity;
- discounting services;
- investment advisory services;
- asset management services; and
- any other form of business that the Federal Government may notify of from time to time.

The SBP is the central bank of Pakistan. The traditional functions of the SBP may be divided into two groups: (i) the issue of bank notes; regulation and supervision of the financial system; regulation and supervision of commercial banks; acting as banker’s bank; lender of last resort; banker to the Government, and conducting monetary policy, and (ii) management of public debt; management of foreign exchange; advising the Government on policy issues and maintaining relationships with international financial institutions.

The non-traditional developmental functions performed by the SBP include developing the financial framework, the institutionalisation of savings and investments, the provision of training facilities to bankers, and the provision of credit to priority sectors. The SBP has promoted the development of new financial institutions and debt instruments by establishing Development Financial Institutions (“DFIs”) and regulating these under subordinate regulation.

3 What is the source of financial services regulations in Pakistan?

The primary legislation regulating the financial services provided by the non-banking sector is the Companies Ordinance, 1984 (“Co. Ord.”), the Securities and Exchange Ordinance, 1969 (“SEO”) and the Securities and Exchange Commission of Pakistan Act, 1997 (“SECP Act”) together with the relevant subordinate legislation. This legislation not only prescribes the powers and functions of the SECP but also contains provisions relating to unethical practices, insider trading and penalties and liabilities for any breach of the same.

The rules in respect of the listing of companies and securities on the Stock Exchanges are laid out under the Listing Regulations of the relevant Stock Exchange. Further rules, guidelines and directives regulating brokers, their relationship with investors and dealing in securities in the Ready and Futures Market are notified by the SECP from time to time. Provisions have been made under the SEO to facilitate the establishment of Commodity Exchanges in Pakistan and the regulation of commodities futures contracts. It is expected that the first Commodity Exchange in Pakistan (at Karachi) will commence operations this year.

The SECP is also responsible for regulation under the Central Depositories Act, 1997 (“CDA”). The CDA prescribes the powers of the SECP to call for information and lays down the procedure for administrative actions and penalties.

All banking activities of Scheduled Banks (ie, banks notified by the SBP as commercial banks) are governed by the Banking Companies Ordinance, 1962 (“BCO”) and the State Bank of Pakistan Act, 1956 (“SBP Act”) and its subordinate legislation. The regulation of DFIs is also governed by certain specified provisions of the BCO and subordinate legislation under the SBP Act.

The SBP issues Prudential Regulations for prudent banking practices. To date, the SBP has prescribed these regulations for Corporate and Commercial Banking, Small and Medium Enterprise Financing, Consumer and Micro Financing, and Agriculture Financing. These regulations cover matters such as maintenance of financial ratios by borrowers, knowledge of customer criteria, steps for restricting money laundering, and criteria for selection of chief executives and directors.

4 Do all the regulatory bodies described above have the same powers of enforcement?

Whilst the laws and regulations discussed above provide the SECP and the SBP with broad overall regulatory powers, the SECP and SBP do not have exactly the same powers or authority.

5 What powers of investigation do these bodies have?

The SECP and SBP have fairly wide powers of investigation, including powers to inspect documents, enter, search and seize and to call for examination:

Powers	SEO	SECP Act	BCO	CO. Ord.	CDA
Who conducts the investigation	SECP	SECP	SBP	SECP	SECP
Require production of records	Yes	Yes	Yes	Yes	Yes
Require party to answer questions	Yes	Yes	Yes	Yes	Yes
Conduct interviews	Yes	Yes	Yes	Yes	Yes
Conduct search at premises	Yes	Yes	Yes	Yes, by the Registrar of Companies upon a Court Order to search and seize documents	Yes, same powers as under the Co. Ord.

Powers	SEO	SECP Act	BCO	CO. Ord.	CDA
Who are required to assist in investigation	All persons connected with the company being investigated	All persons connected with the company being investigated	All persons connected with the banking company being investigated	All persons connected with the company being investigated	All persons connected with the company being investigated
Statutory power to compel production of evidence and / or production of witnesses	Yes	Yes	Yes	Yes	Yes
Consequences of non-compliance	Civil and criminal offence. Liable to a fine and imprisonment	Liable to a fine only	Civil and criminal offence. Liable to a fine and penalty	Civil and criminal offence. Liable to a fine and penalty	Civil and criminal offence. Liable to a fine and penalty

6 Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

Yes. The SECP Act imposes a strict regime of confidentiality on the SECP and its personnel, including board members, commissioners, employees, consultants, advisers and any person duly authorised by the SECP to act on its behalf. Any person who uses, makes a record of or otherwise discloses any confidential information for purposes other than the performance of their functions under the SECP Act shall be guilty of an offence punishable with a fine, imprisonment or both.

As regards banking companies, the SBP Act also imposes a confidentiality obligation on the officers, employees and servants of the SBP. They are required to preserve secrecy with regard to all matters relating to the financial and monetary affairs of any institution, person or body of persons or any government or authority whether in Pakistan or abroad which has come to their knowledge in the performance of their duties. A person contravening this provision is liable to a fine, imprisonment or both.

7 Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

The SEO, SECP Act, CDA and BCO provide that all rights and remedies under these statutes are additional to other rights and remedies available under any other law for the time being in force. This would include, for instance, the right to claim privilege under the Code of Civil Procedure 1908, and the right to make presentations and file objections to an order for production.

Under the Co. Ord., no privileged communications of legal advisers of the company shall be disclosed. Furthermore, any information provided by bankers in respect of customers of the company being investigated shall also be privileged.

8 Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

Yes. Under the SECP Act, the Chairman of the SECP has a wide-ranging discretion to disclose confidential information if satisfied that such information will enable or assist (i) the Board of SECP to perform its functions or powers; (ii) the Government of Pakistan or an agency of the Government to perform its functions; (iii) a government or agency of a foreign government to perform its functions (conferred by a law in force in that foreign country); and (iv) to disclose any information required or permitted by any law in force in Pakistan or any other jurisdiction.

Confidential information may also be disclosed to other bodies in order to ensure compliance with any law, rules or regulations, provided that such disclosure is made to a person authorised by the Chairman. These bodies include (i) a Stock Exchange; (ii) a clearing house; (iii) a central depository; or (iv) such other body corporate as notified by the Government.

In addition to the above, the SECP Act also provides for instances of permitted disclosures which allows any person to:

- produce a document to a court in the course of legal proceedings;
- disclose any matter or thing to a court for the above purposes;
- produce a document or disclose information to a person to whom, in the opinion of the Commission, it is in the public interest to do so;
- produce a document or disclose information that is permitted to be disclosed by any law in force in Pakistan or any other jurisdiction; and
- produce a document or disclose information to the SECP.

The SBP is vested with wide powers to inspect and call for information from any banking company. In relation to any information received under the BCO, the SBP has a discretionary power to publish if it believes it is in the public interest. The SBP has further powers to publish declarations in newspapers and / or submit reports to the Government in cases where banking companies are found contravening the provisions of the BCO and / or the SBP Act.

9 What actions may these bodies take in exercising their regulatory functions?

The table below sets out some administrative actions the SECP and the SBP can take under the relevant laws:

Bodies	Actions
SECP under the SEO	<ul style="list-style-type: none"> • Direct any person found contravening any provision of the SEO to abstain from doing such an act • Impose civil and criminal liabilities against persons contravening the SEO • Suspend and cancel licences issued by the SECP to any person under its jurisdiction
SECP under the SECP Act	<ul style="list-style-type: none"> • Take any action necessary to enforce and give effect to the SECP Act and dispose of investors' complaints
SECP under the Co. Ord.	<ul style="list-style-type: none"> • Act through SECP's Enforcement Division to adjudge offences, contraventions and defaults to ensure compliance under the provisions of the Co. Ord
SECP under the CDA	<ul style="list-style-type: none"> • Impose fines on any person found to have knowingly and willfully contravened the provisions of the CDA • To proceed in a Court of Session (other than in the criminal jurisdiction) against any person charged with an offence under the CDA
SBP under the BCO	<ul style="list-style-type: none"> • Impose civil and criminal liabilities against persons contravening the BCO • Cancel licences granted to a banking company

10 What disciplinary sanctions may these bodies impose?

The following table sets out some sanctions and measures which a relevant regulator may take in respect of its respective functions and duties:

Bodies	Sanctions
SECP under the SEO	<ul style="list-style-type: none"> • Take disciplinary action against the Stock Exchanges • Delist securities • Exempt any person or transaction from any provision of this Ordinance • Declare void any contract or transaction made in contravention of the SEO • Order any person to abstain or refrain from doing any act which may contravene the SEO • Take civil proceedings against a person • Commence proceedings in respect of the fraudulent acts of any person • Report the matter to the court
SECP under the SECP Act	<ul style="list-style-type: none"> • Take any action necessary to enforce and give effect to the SECP Act and dispose of investors' complaints
SECP under the Co. Ord.	<ul style="list-style-type: none"> • Issue a direction in the public interest or to prevent affairs of NBFCs from being conducted in a detrimental manner • Remove any chairman or director or chief executive of an NBFC • Supersede the board of directors
SECP under the CDA	<ul style="list-style-type: none"> • Compel a central depository to assist the SECP, SBP, Registrar of Companies and Stock Exchanges in the performance of their functions and duties • Impose fines • Report the matter to the court • Review appeals • Order central depositories to comply with all orders and directives of the SECP
SBP under the BCO	<ul style="list-style-type: none"> • Issue a direction to banking companies either in the public interest or interest of depositors or to secure the proper management of any banking company • Grant or suspend / cancel licences of banking companies • Publish information in the public interest • Inspect any banking company and its books of accounts • Remove directors or other officers of a banking company • Supersede the Board of Directors of a banking company • Prosecute directors, chief executives and other officers • Prohibit a banking company from acting or taking steps that may contravene the BCO • Publish a declaration restraining a banking company or any person acting for such company from performing any function, or ceasing any transaction • Wind up banking companies • Appoint a banking <i>Mohhtasib</i> (Ombudsman) • Exempt banking companies from the operation of any provision of the BCO

11 Is it possible to enter into a settlement to resolve any enforcement action taken by any of these bodies?

There are no such provisions in the regulatory laws catering for a formal procedure for settlement once an official investigation has commenced. However, in relation to criminal proceedings initiated by National Accountability Bureau (NAB), the National Accountability Ordinance, 1999 (NAB Ordinance) provides for mechanisms relating to plea bargaining and voluntary return of assets. There are also certain provisions in the Criminal Procedure Code which empowers a court, in rare and exceptional cases, to pardon a person guilty of an offence punishable with up to 10 years' imprisonment in exchange for evidence against their associates who are directly or indirectly concerned with or privy to the offence.

12 Are there provisions for persons to appeal against any enforcement action taken against them?

The Co. Ord. makes provision for applications to the SECP for review and revision of orders passed by the Commission or the Registrar as well as for appeals to the High Court of the jurisdiction in which orders or directives are made or judgment is passed. Any person aggrieved by an order, directive or judgment has the option of either making a revision application to the Registrar, the Commission or the Federal Government or appealing to the High Court. Appeals to the High Court are based on a number of grounds, including that the decision is contrary to law, overlooks a material issue of law, or has been reached by way of substantial procedural error.

Under the SECP Act, an appeal may be made to both an Appellate Bench constituted under the same Act, and to the High Court in respect of an order of the SECP, provided that the appeal is filed within the prescribed time frame. A limitation period is also prescribed in the SEO whereby no suit shall lie after three years from the date of accrual of the cause of action.

Under the BCO, recourse to an appeal varies in accordance with the different provisions under which the SBP may impose sanction on a banking company. For example, where a director, officer or board of directors are removed from office or superseded by the order of Governor of the SBP, an appeal regarding that order can only be made to the Central Board of Directors of the SBP. In other cases, a person is prohibited from claiming compensation for any loss incurred, due to the operation of certain provisions. However, in relation to seizure of documents, information, assets or monies, a person may ask the High Court to determine whether they have a *bona fide* right to any property or asset acquired.

13 Is securities and futures market misconduct (eg, insider dealing, market manipulation etc) a criminal offence or a civil action?

The SEO prohibits any person "associated" with the company during the preceding six months from directly or indirectly dealing on the stock exchanges in any listed security of that company or causing any other person to deal with such securities, while they are in possession of information which:

- is not generally available;
- would, if it were available, be likely to materially affect the price of those securities; or
- relates to any transaction (actual or contemplated) involving such company.

Contravention of the above could expose any person to a fine which may extend to three times the amount of gain accrued or loss avoided and / or imprisonment for a term which may extend to three years.

14 What civil remedies are there for investors?

The investors may seek civil remedies based on the nature of the matter and their claim. The scope of such remedies may range from injunctive relief, monetary claims for damages, restitution, and may in certain cases even involve claims for defamation.

15 Do the police assist these regulatory bodies in investigations?

Under the BCO, the SBP or any person duly authorised by it to conduct any action or proceedings, may seek the assistance of police or any other civil authority in exercise of their powers and functions under the said Ordinance.

Beyond the above mentioned provisions, the National Accountability Ordinance was promulgated in 1999 to prevent corruption and corrupt practices. This Ordinance has given very wide jurisdiction to the National Accountability Bureau and applies to every person, whether natural or artificial, official or civilian. This Ordinance gives the National Accountability Bureau wide-ranging powers to investigate and prosecute individuals and entities. The Ordinance covers malpractices by officers and employees of financial institutions.

16 How do these regulatory bodies interact with overseas regulators?

SECP interacts with overseas regulators and SBP interacts with a host of international financial organisations including the International Monetary Fund, the Bank for International Settlement, the World Bank and Central Banks of foreign countries.

17 Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

The SBP and SECP have wide regulatory powers for investigating and regulating money laundering, terrorist financing and other corrupt or illegal dealings by or through financial institutions. Further measures have recently been taken to strengthen regulation and curb such activities.

The SBP has issued a range of regulations advising banks to follow specific guidelines so as to safeguard themselves against involvement in money laundering activities. The Prudential Regulations have introduced anti-money laundering measures that require a bank to thoroughly ascertain its customer's status and source of earnings, to confirm the identities and *bona fides* of remitters and beneficiaries, to retain internal records of transactions and ensure that cross border transactions are in compliance with the regulations of other countries. Banks must keep a history and pattern of transactions, deposits, withdrawals and transfers and promptly report any suspicious transactions to the SBP. For this purpose, SBP has issued guidelines to aid in the detection of suspicious transactions.

The NAB Ordinance also requires banks and financial institutions to report suspicious financial transactions and imposes a duty on them to be vigilant and take immediate notice of unusual financial transactions and report them to NAB. Failure to do so would result in criminal prosecution leading to a fine, imprisonment or both.

The Government has also promulgated, on 7 September 2007, a new 'Anti-Money Laundering Ordinance of 2007', which seeks to establish a National Executive Committee to combat money laundering. The National Executive Committee is to be headed by the Finance Minister, Governor of the SBP, Chairman of the SECP and Chairman of the NAB. It proposes the establishment of a Financial Monitoring Unit whose function shall be to monitor and analyse suspicious transaction reports.

18 Are there any laws or regulations imposing obligations on persons to “whistle-blow” or disclose suspected financial services-related wrongdoing within an organisation?

There is no all encompassing positive obligation on persons engaged in financial services to “whistle-blow”. However, as a general principle, directors and responsible officers of financial institutions are, prior to assuming office, required to fulfill their duties and responsibilities keeping in view their legal obligations under applicable laws and regulations. This is reinforced by the fact that directors or the management / personnel responsible for the administration and management of the affairs of a company are obliged to know the true state of affairs of their company or institution and are further responsible for any negligence in overseeing the lawful running of their organisation. However, there are provisions under the Co. Ord, BCO and the SECP Act granting powers to regulators to exercise their discretion in exempting or relieving any person from civil or criminal liability imposed or charged under the said laws.

19 How are hedge funds regulated?

There is no specific legislation for the regulation of hedge funds in Pakistan. Investment funds are generally regulated by the NBFC Rules where under provisions have been made for “closed-end schemes” and “open-ended schemes”, where these are offered to the public. The former is a scheme constituted by way of trust to raise funds through the issuance of certificates to the public for investment purposes for a definite or an indefinite period but which does not continuously offer certificates entitling the holder of such certificates to receive, on demand, their proportionate share of the net assets of the closed-end scheme. The latter is described as a unit trust scheme constituted by way of trust which continuously offers for sale a security which entitles the holder of such security on demand to receive their proportionate share of the net assets of the scheme. An NBFC has to be licensed by the commission to operate as an investment adviser to a closed-end or an open-ended fund. In addition, all such funds have to be authorised by SECP before being offered to the public.

Hedge funds offered exclusively to selected investors on a private placement basis are not regulated by the above-mentioned NBFC Rules.

20 Are there likely to be any significant procedural reforms in the near future?

There are certain significant legislative reforms likely to be implemented in 2008. Additionally, in the recent past some new laws have been promulgated that impact the financial services market in Pakistan. In the last quarter of 2007, two new laws were promulgated by way of ordinances to combat money laundering and electronic crimes. Further, a new Competition Commission has been established which has replaced the Monopoly Control Authority.

(i) Electronic Crimes

In December 2007, the President of Pakistan promulgated a ‘Prevention of Electronic Crimes Ordinance, 2007’, (“2007 Ordinance”) which seeks to prevent electronic crimes and proposes to establish a Federal Investigation Agency to investigate and prosecute electronic crimes. The 2007 Ordinance details what could constitute electronic crimes and prescribes punishments in respect to each offence. There are various types of electronic crimes, which, *inter alia*, include criminal access, criminal data access, system damage, electronic fraud, electronic forgery, cyber stalking and cyber terrorism. The proceedings or trial in contravention of the 2007 Ordinance will be brought before the Information and Communication Technologies Tribunal, a special tribunal established to adjudicate such crimes. Moreover, the 2007 Ordinance facilitates international co-operation with any foreign Government, Interpol or any other international agency with whom it has or establishes reciprocal arrangements for the purposes of investigations or proceedings concerning offences related to electronic crimes.

(ii) Competition Law

The Competition Ordinance of 2007, promulgated in October 2007, seeks to: ensure free competition in all spheres of commercial and economic activity; enhance economic efficiency; protect consumers from anti-competitive behaviour; and provide for the establishment of the Competition Commission of Pakistan (the “Commission”).

Although the Competition Ordinance does not directly deal with financial services, it does have a significant impact on mergers and amalgamation of undertakings. The Commission is empowered to disapprove any merger which substantially lessens competition by creating or strengthening a dominant position in the relevant market. Accordingly, merger parties are required to make an application for clearance from the Commission if they meet the merger notification threshold. The pre-merger thresholds are prescribed and mergers and amalgamations are regulated under the Competition (Merger Control) Regulation, 2007.

(iii) Demutualisation of Stock Exchanges

The Government has recently circulated a draft of ‘The Stock Exchanges (Corporatisation, Demutualisation and Integration) Ordinance, 2007’ (the “Demutualisation Bill”). The Demutualisation Bill is intended to provide a mechanism and a process for the corporatisation and demutualisation of stock exchanges in Pakistan and to facilitate the integration of these stock exchanges.

Since the stock exchanges in Pakistan are currently companies limited by guarantee, the Demutualisation Bill includes enabling provisions for the conversion of these entities to companies limited by shares. It is further intended that after demutualisation the shares of stock exchanges would be publicly listed. Moreover, the Demutualisation Bill empowers the SECP to approve any scheme of amalgamation of two or more stock exchanges without recourse to the High Court as required under the Co. Ord..

Orr, Dignam & Co.

Contact **Asim Nasim, Partner / Bulent Sohail, Associate**
Principal Office **1-B State Life Square, I.I. Chundrigar Road, Karachi, Pakistan**
Phone **+92 21 241 5384; +92 21 241 6003; +92 21 241 5086**
Fax **+92 21 241 6571; +92 21 241 8924**
Email **orrdig1@cyber.net.pk**
Website **www.orrdignam.com**

Islamabad Office **3-A, Street No.32, Sector F-8/1, Islamabad, Pakistan**
Phone **+92 51 226 0517-8; +92 51 225 4116; +92 51 225 3086**
Fax **+92 51 226 0653; +92 51 226 1722**
Email **orrdignam@comsats.net.pk**

Orr, Dignam & Co. is the largest institutional firm of lawyers in Pakistan, with fully operational offices in Karachi and Islamabad. The firm specializes in civil law, with particular emphasis on corporate and company law. The firm handles arbitrations (both domestic and international), having considerable experience of arbitration under the Pakistan Arbitration Act 1940 and International modes of arbitration, including the Rules of Arbitration and Conciliation of the International Chamber of Commerce and the London Court of International Arbitration. The firm also has an extensive civil litigation portfolio covering cases in the High Courts and the Supreme Court of Pakistan. The firm's other areas of practice cover privatisation, infrastructure projects, construction laws, banking, insurance and financial law, energy law (petroleum, gas and electrical power), commercial contracts, foreign investment laws, information technology and computer law, mergers and acquisitions, maritime and aviation law and charities and NGO laws.

The firm's principal office is in Karachi - the commercial centre of Pakistan. The firm also has a well-established office in Islamabad, the capital of Pakistan. This enables it to effectively represent its clients in negotiation with the Government of Pakistan and with regulatory agencies and to serve a large client base in the Province of Punjab and the North West Frontier Province.

The firm was established in 1952 and acts for multinational corporations operating within and outside Pakistan, foreign and local banks, multilateral agencies, financial institutions and consultants, leading Pakistani industrial and business houses and public sector corporations involved in a wide range of activities.

Philippines

SyCip Salazar Hernandez & Gatmaitan

1 What are the main bodies responsible for regulating financial services in the Philippines?

The main government bodies are the:

- *Bangko Sentral ng Pilipinas* (“BSP”);
- Philippine Deposit Insurance Corporation (“PDIC”);
- Insurance Commission (“IC”); and
- Securities and Exchange Commission (“SEC”).

2 What does each of these bodies regulate?

The BSP supervises the operations and activities of banks, quasi-banks, trust entities, and other financial institutions subject to BSP supervision under special laws.

The PDIC conducts examinations of banks with the prior approval of the BSP’s Monetary Board.

The IC is responsible for the faithful execution of all laws relating to insurance, insurance companies, mutual benefit associations, and trusts for charitable uses.

The SEC has supervisory control over all corporations, partnerships and associations, which are the recipients of primary franchises and / or licences or permits issued by the Philippine Government to operate a business in the Philippines. The SEC enforces all laws which affect corporations, partnerships and associations, and which are not otherwise vested in another government agency. The SEC also supervises self-regulatory organisations such as the Philippine Stock Exchange.

An Anti-Money Laundering Council was established to implement the Anti-Money Laundering Act. The Council is composed of the Governor of the BSP as chairman, and the Commissioners of the IC and the Chairman of the SEC as members.

3 What is the source of financial services regulations in the Philippines?

The principal laws regulating the banking industry, including non-banking financial institutions subject to BSP supervision are the New Central Bank Act; the General Banking Law of 2000 for universal and commercial banks; the Thrift Banks Act for thrift banks; the Rural Banks Act for rural banks; the Co-operative Code for co-operative banks; the Charter of Al-Amanah Islamic Investment Bank of the Philippines for the said Islamic bank; the Revised Charter of the Development Bank of the Philippines for the Development Bank of the Philippines, and the Land Bank Charter for the Land Bank of the Philippines. The BSP issues regularly circulars relating to the conduct and operation of the said entities. Most of these circulars and other issuances have been systematically compiled in two volumes - the Manual of Regulations for Banks and the Manual of Regulations for Non-banking Financial Institutions.

The PDIC Charter is Republic Act No. 9302, as amended. The PDIC rules are in the form of regulatory issuances to member banks.

The SEC mandate is derived from the Corporation Code, the Securities Regulation Code, the Investment Houses Law, the Investment Company Act, and certain other special laws. The SEC issues rules and guidelines to the corporations, partnerships and other associations subject to its jurisdiction.

The IC issues Insurance Memorandum Circulars to regulate the insurance industry pursuant to the Insurance Code.

4 Do all the regulatory bodies described above have the same powers of enforcement?

The regulatory bodies have different powers of enforcement, as described in questions 5, 9 and 10 below.

5 What powers of investigation do these bodies have?

The table below sets out the powers of investigation of these bodies:

Powers	BSP	PDIC	SEC	IC
Who conducts the investigation	BSP	PDIC	SEC	Insurance Commissioner or any designated officer who is empowered to administer oaths and affirmation
Require production of records and documents	Yes	Yes	Yes	Yes
Require a party to answer questions	Yes	Yes	Yes	Yes
Conduct interviews	Yes	Yes	Yes	Yes
Conduct search at premises	No	No	No	No
Who are required to assist in investigations	Authorised banks and other financial institutions under BSP supervision, and any person whose testimony is relevant to the investigation	The insured bank, and any person whose testimony is relevant to the investigation	The corporation, partnership or association, and any person whose testimony is relevant to the investigation	The insurance company, and any person whose testimony is relevant to the investigation
Statutory power to compel production of evidence and / or attendance of witnesses	Only to compel production of evidence	Only to compel production of evidence	Yes	Yes
Consequences of non-compliance	Contempt of court; if there is an administrative offence, the penalty is a fine and / or suspension of certain privileges; if there is a criminal offence, the penalty is a fine and / or imprisonment	Administrative fine	Contempt of the SEC; if there is an administrative offence, the penalty is a fine and / or suspension of certain privileges; if there is a criminal offence, the penalty is a fine and / or imprisonment	Contempt of court; if there is an administrative offence, the penalty is a fine and / or suspension or removal of directors, officers or agents of insurance company; if there is a criminal offence, the penalty is a fine and / or imprisonment

6 Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

None of the reports and other papers relevant to BSP examinations of banking and quasi-banking institutions are to be made public, except insofar as such publicity is incidental to the proceedings authorised under the New Central Bank Act or are necessary for the prosecution of violations in connection with the business of such institutions.

PDIC personnel are prohibited from revealing any information relating to the condition or business of any bank. The only exception is under an order of a court or when such information is given to the Board of Directors and the President of the PDIC, the Congress of the Philippines, any government agency authorised by law, or to any person authorised by any of them in writing to receive such information.

Under the Corporation Code, all interrogatories issued by the SEC and the answers thereto and the results of any examination made by the SEC of the operations, books and records of any corporation are to be kept strictly confidential. The only exception is where the law may require the same to be made public or where it is necessary to present such interrogatories, answers or results as evidence before any court.

On the other hand, under the Securities Regulation Code, all information filed with the SEC is generally available to the public, save for trade secrets or processes. However, any person filing or disclosing information (such as in the course of investigations) may make a written objection to the public disclosure of such information and, if the SEC sustains such objection, the information in question will be treated as confidential.

7 Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

Persons required to attend interviews with the regulatory bodies may be accompanied by legal counsel.

Under the Constitution of the Philippines, any person under investigation for the commission of an offence must be informed of their right to remain silent and to have competent and independent counsel preferably of their own choice. The privilege against self-incrimination is recognised.

8 Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

Information obtained by regulatory bodies in the course of investigations can be used in court proceedings.

9 What actions may these bodies take in exercising their regulatory functions?

The table below sets out certain actions that these bodies may take in exercising their regulatory functions:

Bodies	Actions
BSP	<ul style="list-style-type: none"> • Conduct examination of banks and other financial institution under BSP supervision • Initiate administrative proceedings • Initiate criminal action • Forbid institution from doing business • Place institution under conservatorship (a stage prior to receivership where the institution's operations are supervised) • Place institution under receivership and order liquidation if necessary
PDIC	<ul style="list-style-type: none"> • Conduct examination of member banks • Initiate corrective action • Act as receiver
SEC	<ul style="list-style-type: none"> • Conduct investigation • Initiate administrative proceeding • Issue cease-and-desist order • Institute criminal action • Dissolve corporation, partnership or association
IC	<ul style="list-style-type: none"> • Conduct investigation • Initiate administrative proceeding • Issue writ of execution of the decision of the Insurance Commissioner • Initiate criminal action

10 What disciplinary sanctions may these bodies impose?

The following sanctions may be imposed:

Bodies	Sanctions
BSP	<ul style="list-style-type: none"> • Imposition of a fine • Suspension of rediscounting privileges or access to BSP credit facilities • Suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments • Suspension of interbank clearing privileges • Revocation of licence • Suspension or removal of director or officer responsible for violation • Institution of criminal action against the director or officer responsible for violation • Place institution under Conservatorship • Place institution under Receivership and order liquidation
PDIC	<ul style="list-style-type: none"> • Imposition of a fine • Institution of corrective action
SEC	<ul style="list-style-type: none"> • Imposition of a fine • Dissolution of corporation • Revocation of licence • Suspension or removal of director or officer responsible for the violation • Institution of appropriate action against such director or officer, and the corporation
IC	<ul style="list-style-type: none"> • Imposition of a fine • Suspension or removal of director or officer responsible for the violation • Institution of criminal action against such director or officer, and the insurance company • Revocation of licence

11 Is it possible to enter into a settlement to resolve any enforcement action taken by any of these bodies?

It is possible to enter into a settlement to resolve any enforcement action taken by any of the regulatory bodies.

12 Are there provisions for persons to appeal against any enforcement action taken against them?

Final enforcement orders or resolutions of the BSP, PDIC, SEC and the IC may be appealed to the Court of Appeals and then to the Supreme Court.

13 Is securities and futures market misconduct (eg, insider dealing, market manipulation etc) a criminal offence or a civil action?

Under the Securities Regulation Code, securities and futures market misconduct is actionable by both criminal and civil proceedings.

14 What civil remedies are there for investors?

Investors can file civil actions under the following provisions of the Securities Regulation Code:

- Section 56 (for a false registration statement);

- Section 57 (for a false prospectus, false communications and reports);
- Section 58 (for fraud in connection with securities transactions);
- Section 59 (for manipulation of security prices);
- Section 60 (for fraud with regard to commodity futures contracts and pre-need plans); and
- Section 61 (for insider trading).

15 Do the police assist these regulatory bodies in investigations?

The police may be requested by the regulatory bodies to assist in the investigation.

The SEC, in particular, is expressly authorised to enlist the aid and support of all enforcement agencies of the Philippine Government, civil or military, in the performance of its powers and functions under the Securities Regulation Code.

16 How do these regulatory bodies interact with overseas regulators?

The BSP has presented a proposal on minimum ground rules for sharing of information with countries where Philippine banks have branches. The BSP has a bilateral agreement with the Bank of Negara of Malaysia.

The SEC has bilateral agreements with its counterparts in Indonesia and Hong Kong. An application has been lodged for the SEC to become a signatory to the Memorandum of Understanding of the International Organisation of Securities Commissions.

Under the Securities Regulation Code, the SEC may provide assistance, including the disclosure of information filed with or transmitted to the SEC, to an enforcement authority of a foreign country whose laws grant reciprocal assistance to the Philippines.

The IC is involved in negotiations with Japan, China and Korea, among other countries, on financial services co-operation.

Mutual assistance between states is encouraged under the Anti-Money Laundering Act.

17 Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

The Anti-Money Laundering Council (composed of the Governor of the BSP as chairman, and the Commissioner of the IC and the Chairman of the SEC as members) is the regulatory body empowered to investigate and combat terrorist financing and money laundering in relation to the financial services industry. Combating corruption is also part of the mandate of the Council, to the extent that such corruption constitutes a money laundering offence. Otherwise, the BSP, PDIC, SEC and IC are each involved in combating corruption in the financial services industry.

18 Are there any laws or regulations imposing obligations on persons to “whistle-blow” or disclose suspected financial services-related wrongdoing within an organisation?

Under the Anti-Money Laundering Act, all institutions covered by the same Act (entities supervised by the BSP, SEC and IC) are required to report to the Anti-Money Laundering Council all transactions covered by the Anti-Money Laundering Act, as well as suspicious transactions.

The IC encourages actuaries and auditors of an insurance company to report any information involving the financial situation of such company, or to disclose to the IC matters that may materially increase the risk assumed by such company.

Brokers are required by the Securities Regulation Code to report material weakness in internal control or a material inadequacy in the practices and procedures for safeguarding securities.

The BSP, SEC, IC and PDIC also have various reporting requirements, concerning the operations of the entities under their supervision.

19 How are hedge funds regulated?

There are no regulations specifically relating to hedge funds. However, interests in hedge funds are securities which, if offered within the Philippines, will be subject to the registration requirements under the Securities Regulation Code, unless they are sold to “qualified buyers” within the Philippines in which case the sale will be deemed an “exempt transaction” subject only to post-sale notification to the SEC.

20 Are there likely to be any significant procedural reforms in the near future?

The BSP will continue to encourage mergers and consolidations between banks and other financial institutions. Moreover, the full implementation of the Basel II-based capital adequacy guidelines is expected.

There will be more coordination and consultation among the BSP, the IC and the SEC in the supervision of their respective constituent entities and institutions, with a view to fostering transparency in transactions and enhancing accountability of corporate officers and management.

SyCip Salazar Hernandez & Gatmaitan

Contact	Rafael A. Morales (Head of Banking, Finance & Securities Department) 5th Floor, SSHG Law Centre, 105 Paseo de Roxas, Makati City 1226 Metro Manila, Philippines
Phone	+63 2 817 98 11-20
Fax	+63 2 817 3145
Email	ramorales@syciplaw.com
Website	www.syciplaw.com

SyCip Salazar Hernandez & Gatmaitan is the largest law firm in the Philippines, with its principal office in Makati City, the financial and business centre of Metropolitan Manila. It has branch offices in the Subic Freeport Zone in Northern Philippines, in Cebu City in Central Philippines, and in Davao City in Southern Philippines. The firm offers a broad and integrated range of legal services, from all aspects of commercial law practice to litigation, from matters involving constitutional issues to those dealing with family relations.

The firm has an active client base made up of, among others, top foreign and local corporations, international organisations and governments. As a full service firm, it has capabilities in every area of practice from criminal law to mergers and acquisitions. Throughout its history, the firm's ethic, its standards of excellence and diligence, and its sense of duty to its clients, have brought it time and again to the forefront of the country's development programs as well as the cutting edge of legal practice.

Singapore

Engelin Teh Practice LLC

1 What are the main bodies responsible for regulating financial services in Singapore?

The financial services industry in Singapore is governed by three main institutions:

- The Monetary Authority of Singapore (“MAS”);
- The Singapore Exchange Securities Trading Limited (“SGX”); and
- The Securities Industry Council (“SIC”).

2 What does each of these bodies regulate?

The MAS is Singapore’s central bank. It also regulates the securities, banking and insurance sectors.

The role of the MAS is to:

- conduct monetary policy and issue currency;
- administer various statutes pertaining to monetary, banking, insurance, securities and the financial sector in general;
- supervise the banking, insurance, securities and futures industries;
- manage the official foreign reserves and the issuance of government securities; and
- develop strategies in partnership with the private sector to promote Singapore as an international financial centre.

The SGX is the Asia Pacific’s first demutualised and integrated securities and derivatives exchange. Its members include trading derivatives and trading securities organisations (“Members”). The SGX operates the securities and derivatives exchange and the respective clearing houses and securities depository. The SGX performs all steps in the value chain of businesses – order routing, trading, matching, clearing, settlement and depository functions.

The SGX is responsible for:

- regulating the stock market;
- approving applications for listing;
- provision and administration of business and listing rules;
- supervising admission of members and compliance by listed companies with the listing rules and corporate disclosure policies;
- market surveillance and risk management for clearing of securities and derivatives; and
- overseeing the capital requirements of brokers and investigating brokers as and when it deems necessary.

The SIC is an advisory body that assists the Minister of Finance on all matters relating to the securities industry. The SIC remains a non-statutory body consisting of representatives from the MAS, private and public sectors or such persons as the Minister may appoint.

The SIC's role is to:

- administer and enforce the Singapore Code on Takeovers and Mergers ("Takeover Code");
- supervise the application of the Takeover Code where a takeover or merger occurs;
- investigate any dealing in securities connected with a takeover or merger transaction;
- issue rulings on the interpretation of the Takeover Code and lay down the practice to be followed by the parties in a takeover or merger; and
- review the takeover rules and practices periodically and recommend changes.

3 What is the source of financial services regulation in Singapore?

In carrying out its functions as a regulator of the financial services industry, MAS is empowered to issue and administer various instruments. Such instruments include:

- the Banking Act which provides the regulatory framework for banks and merchant banks (including the licensing requirements) in the conduct of business;
- the Securities and Futures Act ("SFA") which is the main legislation governing the securities and futures industry;
- the Financial Advisers Act which regulates the activities of companies and individuals providing financial advisory services such as advice relating to corporate finance, investment products, the marketing of collective investment schemes and the arranging of any contract of insurance in respect of life policies, other than a contract of reinsurance;
- the Insurance Act which regulates the activities of insurers, including registration and licensing requirements; and
- the Trust Companies Act which regulates the establishment and licensing of trust companies.

MAS periodically issues various subsidiary legislation, codes (including the Takeover Code and the Code On Collective Investment Schemes), directions, practice notes and circulars regulating each category of activities set out above.

Companies listed on the SGX and members of SGX have continuous obligations to comply with the various rules promulgated by the SGX. There are seven rulebooks issued by the SGX governing the listing, clearing, trading and depository services that the industry needs to comply with. The rulebooks are constantly updated and revised to keep pace with market developments. In November 2007, the SGX announced the establishment of Catalist, a sponsor-supervised listing platform to replace the SGX-SESDAQ which is the SGX's current second board. The SESDAQ is the SGX's current second board, listing companies that do not meet the listing criteria of the mainboard but have good prospects of growth. Under the new Listing Rules, an applicant for listing on Catalist need not meet any operating track record, share capital or profit requirement but will be supervised by a panel of intermediaries ("Sponsors") who will determine the suitability of an applicant to list on Catalist. Existing SESDAQ companies will have two years from the announcement of the first batch of Sponsors to comply with the new Listing Rules. The new listing rules for Catalist took effect on 17 December 2007.

4 Do all the regulatory bodies described above have the same powers of enforcement?

The regulatory bodies governing the financial services industry do not have the same powers of enforcement.

The MAS supervises the activities of banks and merchant banks, insurance companies, finance companies, financial advisers and money brokers.

The SGX is tasked with interpreting, administering and enforcing its rules. The SGX can take actions against its members or a person registered with the SGX or a listed company who has failed to comply with its rules, by-laws or other requirements.

The SIC administers and enforces the Takeover Code and has power to conduct proceedings if any party has failed to adhere to the Takeover Code in a takeover or merger involving public companies. SIC proceedings are informal and no legal representation is permitted as of right.

5 What powers of investigation do these bodies have?

The scope of the MAS' investigative powers are set out in each of the statutes it administers.

For the purposes of overseeing and regulating the securities and futures industry, the MAS is empowered under the SFA to conduct any investigation it considers necessary or expedient for any of the following purposes:

- to exercise any of its powers or to perform any of its functions and duties under the SFA;
- to ensure compliance with the SFA or any written direction issued under the SFA; and
- to investigate an alleged or suspected contravention of any provision of the SFA or any written direction issued under the SFA.

The MAS' powers of investigation may be exercised notwithstanding any prescribed written law or requirement imposed or any rule of law.

For the purpose of an investigation, the MAS may require a person who is being investigated to give reasonable assistance in connection with the investigation and, if necessary, to appear before an officer of the MAS for examination under oath. The MAS officer may require the person being examined to answer any questions relevant to the investigation. A record may be made of the statements taken at the examination. A person who refuses or fails to comply with MAS' investigations, without reasonable justification or excuse, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$50,000 or to imprisonment for a term not exceeding two years or both.

During an investigation, the MAS is also empowered to require any person to provide information or produce books relating to any matter under investigation. A warrant enabling the MAS to enter and search premises and also to take possession of any books may be obtained from a Magistrate if the MAS has reasonable grounds to believe that a book has not been or will not be produced in compliance with a requirement imposed by the MAS.

The MAS has powers to inspect, under conditions of secrecy, the books of an exchange holding company; a securities exchange; a futures exchange; a recognised trading system provider; a person operating an exempt market; a clearing house; a person operating an exempt clearing facility; the holder of a capital markets services licence; an exempt person or a representative of these organisations. Any person who refuses or fails to provide MAS with books for inspection without reasonable excuse, shall be guilty of an offence and liable on conviction to a fine not exceeding S\$50,000 or to imprisonment for a term not exceeding two years or both.

The SGX may initiate investigations against its members, their directors, employees and trading representatives or a person registered with it for alleged misconduct upon the following:

- a referral from surveillance or other departments within the SGX;
- a complaint;
- a referral from external bodies; or
- on its own accord without any of the above.

The relevant division of the SGX will issue a written notice of charge giving particulars thereof to the member or registered person being charged and invite the member or registered person to make a written submission in answer to the charge. The member or registered person may request to appear before the SGX's Disciplinary Committee at a date fixed for the hearing of the charge.

When the SGX conducts an investigation it may require its member or any of the directors, trading representatives, officers, employees and agents of the securities trading member to render all assistance as SGX requires, at its premises or elsewhere and provide information, books and records which may be relevant to the investigations.

Where the SIC has reason to believe that any party connected with a takeover offer is in breach of the provisions of the Takeover Code or is believed to have committed acts of misconduct in relation to a takeover offer, the SIC may inquire into the suspected breach or misconduct. The SIC also has the power, in the exercise of its function to advise the Minister of Finance on all matters relating to the securities industry, to inquire into any matter or thing related to the securities industry. In both these respects, the SIC may summon any person to give evidence under oath or affirmation or produce any document or material necessary for the purpose of the inquiry.

6 Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

Although examinations are conducted in private, MAS is empowered to publish such information as it deems necessary in the interests of the public, which includes information relating to:

- any civil or criminal proceedings brought by the SFA against any person and the outcome of such proceedings, including any settlement, whether in or out of court; or
- any disciplinary proceedings brought against any person by the Authority or the SGX and the outcome of such proceedings.

The SGX is allowed to circulate to its members the decisions of its disciplinary committee and to notify the public of disciplinary actions taken against its members and registered persons. In addition, the SGX is entitled to publish information including the particulars of the charge, the underlying facts, the findings and decision of the disciplinary committee, and the basis of the findings.

The Takeover Code and the SFA are silent on whether the SIC should keep its investigations or information discovered confidential.

7 Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

A person responding to an MAS investigation is not excused from disclosing information on the ground that the statement might incriminate them. However, where a person claims before making the statement that the statement might incriminate them, limited protection is afforded by the SFA. The statement will not be admissible as evidence against them in a criminal proceeding (unless the statement made is, *inter alia*, false or misleading) but can be used as evidence for civil proceedings. During the investigation and examination, the MAS has the power to determine who may be present, which may or may not include legal advisers. Legal professional privilege may be claimed by the alleged offender's legal advisers who will not be obliged to disclose or produce any privileged communications or documents. However, the legal advisers are obliged to give the name and address of the person to whom the privileged communication was made.

A member, its directors, trading representative, officer, employee or agent must give the SGX access to all information, books and records requested by the SGX. The SGX Rules do not explicitly afford any protection to these people when responding to the SGX's investigation; the Rules are also silent on the right to legal representation at the inspection and investigation stage. However, at an SGX disciplinary hearing, the SGX and the alleged wrongdoer have a right to legal representation.

SIC hearings are usually informal. While the alleged offender has the right to call witnesses and consult legal advisers during the hearings, the legal advisers may not examine or cross-examine witnesses or answer any questions on behalf of their clients.

8 Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

The SFA does not explicitly allow the MAS to use the information it has obtained for any other purposes.

Where an investigation by the SGX reveals a possible violation of the law, the SGX will refer the matter to the relevant authority for further action. Presumably, all information obtained by the SGX can be provided to the relevant authority to aid in its investigations.

If the SIC finds evidence to suggest that a criminal offence has been committed under the Companies Act, SFA or criminal law, the matter will be referred to the relevant authority.

9 What disciplinary sanctions may these bodies impose?

The MAS has wide powers under the SFA to take the necessary action and impose sanctions where there has been a contravention of a provision of the SFA. For example, if any person has been involved in prohibited activities such as insider trading, false trading, market rigging transactions or securities market manipulation, the MAS has the power to bring an action in court with the consent of the Public Prosecutor and to seek an order for civil penalties against the person.

The MAS can apply to the court for action against any person who has committed an offence under the SFA or has contravened any condition or restriction of a licence, or the business and listing rules of the securities exchange.

The MAS can also apply to the court for an injunction if a person has engaged, is engaging, or is likely to engage in any conduct that constitutes or would constitute a contravention of the SFA.

The MAS has the power to reprimand a person found guilty of misconduct and if it is necessary to do so in the interest of the public or a section of the public or for the protection of investors.

The SGX may take disciplinary proceedings against its members, their directors, employees and trading representatives or a person registered with it.

At the meeting, the disciplinary committee hears the charge and decides whether the member or the registered person has violated any of the SGX's rules, by-laws and requirements; if so, it will decide on the appropriate penalty which may take the form of a reprimand, a fine not exceeding S\$250,000, or suspension and / or expulsion of the member or trading representative. Where the matter also involves a violation of the law, the matter would be referred to the relevant authorities for further action. The member or registered person may appeal to the SGX's appeals committee against the decision of the disciplinary committee. The decision of the appeals committee is final.

The SIC may have recourse to private reprimand or public censure. In the event that it determines there is a breach of the Takeover Code, it may deprive the offender temporarily or permanently of its ability to enjoy the facilities of the securities market. In the event that the SIC finds evidence suggesting a criminal offence has taken place under the Companies Act, the Securities Industry Act or the criminal law, it will recommend to the Attorney-General that the alleged offender be prosecuted. Every alleged offender will have the opportunity to answer allegations and to call witnesses. The Council may also summon witnesses. Proceedings are informal and no legal representation is permitted. The Council has powers under the law to investigate any dealing in securities that is connected with a takeover or merger transaction.

10 Is it possible to enter into a settlement to resolve any enforcement action taken by any of these bodies?

This is not provided for in the event of a suspected violation of the provisions of the SFA, Takeover Code or listing rules.

11 Are there provisions for persons to appeal against any enforcement action taken against them?

Appeals from decisions of the MAS may be made to the Minister of Finance who may confirm, vary or reverse the decision of the MAS, or give such directions in the matter as the Minister see fit. The decision of the Minister shall be final.

Appeals in relation to decisions of the SGX may be made to the Appeals Committee whose decision is final.

12 Is securities and futures market misconduct (eg, insider dealing, market manipulation etc) a criminal offence or a civil action?

Prohibited activities such as insider dealing, market manipulation, false trading and market rigging etc under the SFA can be either criminal or civil offences.

The MAS, with the consent of the Public Prosecutor, may bring an action in court against a person who is suspected of insider dealing, market manipulation or any other prohibited activity under the SFA, to seek an order for a civil penalty in respect of that contravention. The court can impose a civil penalty not exceeding three times the amount of the profit gained or loss avoided as a result of the contravention or S\$50,000 (in the case of an individual) or S\$100,000 (in the case of a corporation), whichever is greater.

Insider dealing, market manipulation or any other prohibited activity under the SFA can also be a criminal offence punishable on conviction to a fine not exceeding S\$250,000 or to imprisonment for a term not exceeding seven years, or both.

The MAS is also empowered to enter into an agreement with any person to pay to the MAS, with or without admission of liability, a civil penalty in respect of any prohibited activity in contravention of the SFA. The civil penalty which the MAS may agree to should not exceed the monetary limits of a civil penalty which a court is empowered to impose in the event of a finding of any prohibited activity in contravention of the SFA.

13 What civil remedies are there for investors?

Investors can bring civil proceedings against persons making offers of shares and debentures accompanied by prospectus or profile statement or against an issuer or underwriter named in the prospectus, if the investor suffers loss or damage as a result of false or misleading statements or omissions in the prospectus or profile statements. If offers are made by a corporation, each director of the corporation making the offer can be made liable.

14 Do the police assist these regulatory bodies in investigations?

An officer or public servant of the regulatory bodies has a right to certain documents for the purposes of conducting an investigation. Any person who, being legally bound to provide these documents, intentionally omits to produce or deliver the documents commits an offence which may be punishable with an imprisonment for a maximum period of one month or a fine, or both. Upon the issue of a warrant, an offender can be arrested or the relevant documents can be seized by the police.

15 How do these regulatory bodies interact with overseas regulators?

The SFA authorises the MAS to provide assistance to its foreign counterparts in their investigations and enforcement actions. In this regard, the MAS may assist in transmitting information in its possession and can require a person to furnish the requisite information to the MAS or directly to the foreign regulator for purposes of facilitating an investigation or enforcement action by the foreign regulator.

The MAS is empowered to enter into treaties, conventions, Memoranda of Understanding ("MOU") or exchanges of letters with foreign regulators relating to the securities and futures industry. The SFA authorises the MAS to make regulations to give effect to such treaties, conventions, MOUs or exchanges of letters with foreign regulators to which it or Singapore is a party. In 2002 the MAS signed an MOU with the Hong Kong Office of the Commissioner of Insurance and in May 2005 an MOU with the Chinese Insurance Regulatory Commission to facilitate co-operation in training and exchange programmes relating to the insurance industry. As part of the MAS's efforts to foster co-operation among regulators, which acts as a strong supervisory framework for Islamic finance, the MAS joined the Islamic Financial Services Board ("IFSB") in December 2003 as an observer member and became a full member of the IFSB in 2005.

The SGX interacts with foreign exchanges by way of MOUs regarding the sharing of information and co-operation between exchanges and by forging alliances with other exchanges. The SGX is currently a member of the Global Clearing, Netting and Central Counterparty Association which is the world's principal clearing organisation. The SGX has also collaborated with Tokyo Commodity Exchange to co-operate on the launch of the Middle Eastern Crude Oil futures on the SGX.

Singapore has entered into Free Trade Agreements with various countries including Japan, India and Korea, and, in May 2005, signed an agreement with China to discuss policies and issues related to the investment environment of both countries, thereby enhancing mutual understanding of the economic policies and facilitating two-way investment between the countries.

16 Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

The Prevention of Corruption Act is drafted very widely and prohibits various corrupt transactions including corruption in the financial services industry. The Corrupt Practices Investigation Bureau is empowered to conduct investigations into any such offences and the Public Prosecutor can authorise such investigations based on reasonable grounds for suspecting that an offence has been committed.

The MAS is responsible for regulating and combating money laundering and has issued various notices to each of the market sectors it regulates.

17 Are there any laws or regulations imposing obligations on persons to “whistle-blow” or disclose suspected financial services-related wrongdoing within an organisation?

Yes, obligations are imposed by various statutes and subsidiary legislation on persons to “whistle-blow” or disclose financial services related wrongdoing. Set out below are some of the statutes imposing such obligations:

- Pursuant to the Terrorism (Suppression of Financing) Act, every person in Singapore who has information they know or believe may be of assistance in preventing a terrorism financing offence being committed is required to furnish such information to the police. Failure to do so attracts a fine or an imprisonment or both; and
- The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act requires a person who has reasonable grounds for suspecting that any property is used for drug trafficking or criminal conduct, where the information became known to the person through their employment, to disclose the knowledge to an authorised officer. Contravention of this requirement attracts a fine.

18 How are hedge funds regulated?

The MAS regulates hedge funds. On 5 December 2002, the MAS announced the introduction of new rules for the setting up of hedge funds in Singapore. The new rules are set out in the Code on Collective Investment Schemes (“Singapore Code”). The Code sets out best practices on the management, operation and marketing of funds that managers and trustees are expected to observe. The Singapore Code divides hedge funds into three main categories: (1) single hedge funds, (2) hedge fund of funds and (3) capital guaranteed or capital protected hedge funds. Single hedge funds should be offered with a minimum subscription of S\$100,000 per investor. A hedge fund of funds is a portfolio where the professional fund manager will allocate capital across a range of hedge funds which may in turn invest in a wide range of investments. A hedge fund of funds should be offered with a minimum subscription of S\$20,000 per investor.

The Singapore Code has been amended from time to time to provide guidelines aimed at providing fund managers greater operational flexibility whilst at the same time protecting investors interests. In March 2005, new reporting guidelines were added to the Singapore Code requiring fund managers to prepare accounts and reports in the manner set out Annex 4a in the Singapore Code. The most recent amendment to the Singapore Code was implemented on 22 December 2006 where the key amendments were (1) to allow Singapore-constituted and managed funds to invest in financial derivatives instruments as an asset class, subject to safeguards and (2) to revise the method for calculating the exposure of an investment scheme to a single party.

19 Are there likely to be any significant procedural reforms in the near future?

The MAS issued a consultation paper on 21 February 2008 seeking views and comments on the proposed “Guidelines on Fair Dealing - Board and Senior Management responsibility for Delivering Fair Dealing Outcomes to Consumers”. The proposed guidelines seek to promote fair dealing by financial institutions when they conduct business with consumers, and to deliver fair dealing outcomes to consumers and to achieve better standards of fair dealing with consumers. The Guidelines set out five fair dealing outcomes and explain why each outcome is important to consumers. They also list key issues and set out some self-assessment questions for the Board and Senior Management to consider. The guidelines propose that Board and Senior Management should focus on making sure that, for their financial institutions, the following fair dealing outcomes are achieved:

- a) Consumers have confidence that financial institutions put consumers’ interests first in the conduct of their business.

- b) Financial institutions offer products and services that are suitable for the consumer segments they target.
- c) Financial institutions appoint competent representatives who provide consumers with advice that meets their financial objectives and suit their personal circumstances.
- d) Consumers receive clear, relevant and timely information to make informed financial decisions.
- e) Financial institutions handle consumer complaints promptly and in a consistent manner.

The date of implementation of these guidelines will possibly be announced after the MAS completes its consultation with interested parties.

Engelin Teh Practice LLC

Contact	Engelin Teh 20 Cecil Street #13-02 Equity Plaza Singapore 049705
Phone	+65 6224 9933
Fax	+65 6226 1234
Email	legal@etplaw.com
Website	www.etplaw.com

Founded in 1994 primarily as a firm focusing on dispute resolution and banking and corporate work, Engelin Teh Practice LLC is today a premier boutique law corporation. Over the years, we have grown with market demands and today offer a full range of legal services to our clients spanning dispute resolution, corporate and banking, insurance, real property and intellectual property.

Our success is built on an understanding of our clients' needs and a commitment to providing prompt, effective and workable solutions. Many of the relationships we have built with our clients are long standing and we pride ourselves on the fact that our senior lawyers are personally involved in the matters entrusted to us and are always accessible to consult with.

Taiwan

Lee and Li

1 What are the main bodies responsible for regulating financial services in Taiwan?

These are the:

- Financial Supervisory Commission (“FSC”), under which, four bureaux have been established, namely the Banking Bureau (“BB”), the Securities and Futures Bureau (“SFB”), the Insurance Bureau (“IB”) and the Examination Bureau (“EB”) (collectively known as “the Bureaux”). Each bureau is separately responsible for regulating the banking, securities and insurance industries;
- Central Bank of the Republic of China (Taiwan) (“CBC”);
- Taiwan Stock Exchange Corporation (“TSEC”); and
- Taiwan Futures Exchange Corporation (“TFEC”).

2 What does each of these bodies regulate?

The FSC is an independent primary regulatory authority governing the financial services industry in Taiwan, which determines financial policy, drafts laws and rules with regard to the financial industry, conducts financial examinations and supervises financial institutions.

While the FSC issues regulations relating to financial services generally, the Bureaux are responsible for administering the regulations relating to separate financial services sectors. In this regard, the BB regulates banking and bill finance; the SFB, together with TSEC and TFEC, oversee all activities in the securities and futures market; the IB supervises the insurance business and the EB is responsible for conducting financial investigations with a view to maintaining market order and the protection of investors.

The FSC also oversees the Taiwan Depository and Clearing Corporation and the all activities in the Greta Securities Market, ie, the OTC market in Taiwan.

The CBC, the government bank performing the function as a central bank, regulates monetary and credit policy. It also manages official foreign exchange reserves, issues currency, adjusts reserve ratios and examines banks.

The TSEC regulates trading on the Taiwan Stock Exchange and companies listed on the Taiwan Stock Exchange while the TFEC regulates trading on the Taiwan Futures Exchanges.

3 What is the source of financial services regulations in Taiwan?

The Central Bank of China Act (“CBCA”) sets out general regulations as well as the powers and functions of the CBC. In accordance with the CBCA, the CBC also issues compliance rules to participants in the financial services market.

The Financial Supervisory Commission Organization Act (“FSCOA”) sets out the legal basis for the organisation of the Bureaux under the FSC.

The Banking Law (“BL”) provides guidelines for conducting banking business, including incorporation and dissolution of banks and the regulation of various banks.

The Insurance Law (“IL”) regulates the terms and conditions of insurance contracts and the administration of insurance companies.

The Securities and Exchange Act (“SEA”) regulates securities firms, the stock exchange and the offering, issuing, private placement and trading of securities. Similarly, the Futures Trading Law (“FL”) provides the guidelines for the futures exchange market and futures enterprises.

The Operation Rules of the Taiwan Stock Exchange Corporation and Operation Rules of the Taiwan Futures Exchange Corporation (“the Operation Rules”) provide the rules relating to operations of stock and futures exchange respectively.

The TSEC and TFEC also issue a variety of implementation regulations.

4 Do all the regulatory bodies described above have the same powers of enforcement?

No. The CBC has authority to examine financial institutions to ensure their compliance with regulations. The SFB takes action against illegal activities of stock market participants, the BB may exercise its enforcement power over misconduct by authorised banks and the IB is responsible for enforcement action against the wrongdoing of insurance companies. TSEC and TFEC enforce rules relating to securities firms, futures commission merchants or clearing members.

5 What powers of investigation do these bodies have?

The EB has extensive powers of investigation, including conducting regular or irregular examinations over financial activities. Generally, the Bureau, TSEC and TFEC conduct investigations in specific situations described under the BL, SEA, IL, FL and the Operation Rules. The following table sets out the powers of these regulatory bodies:

Powers	BB	SFB	IB	EB	TSEC and TSFC
Who conducts the investigation	BB, professionals (eg, attorneys or accountants), appointed by the BB, authorised organisations or officials of local competent authority which is directed by BB to investigate	SFB or professionals appointed by the SFB	IB or any staff appointed by the IB	EB	TSEC / TSFC
Require production of records and documents	Yes	Yes	Yes	Yes	Yes
Require a party to answer questions	Yes	Yes	Yes	Yes	Yes
Conduct interviews	No explicit authority to conduct interviews but the BB may request information from the responsible person or relevant staff of the corporation	No explicit authority to conduct interviews but the SFB may request information from the responsible person or relevant staff of the corporation	No explicit authority to conduct interviews but the IB may request information from the responsible person or relevant staff of the corporation	Yes	No
Conduct search at premises	Yes	Yes	Yes	Yes	Yes
Who are required to assist in investigations	The responsible person or staff of the bank, or any other associated persons	The issuer, underwriter or any other associated persons	The responsible person or relevant staff of the corporation	Any person	Any person

Powers	BB	SFB	IB	EB	TSEC and TSFC
Statutory power to compel production of evidence and / or attendances of witnesses	Yes	Yes	Yes	Yes	No
Consequences of non-compliance	Liable to an administrative fine	Liable to an administrative fine	Liable to an administrative fine	Liable to an administrative fine	Liable to an administrative fine

If the regulatory bodies discover any misconduct involving criminal liability during the investigation, they can report to the prosecutor who can conduct a search of the premises of the suspected person, bank or corporation after obtaining a warrant from the court.

6 Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

The FSC provides guidelines requiring investigators to keep confidential the information disclosed during the course of financial investigations.

7 Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

The laws and regulations do not provide for the right to legal representation at interviews. However, it is unlikely to be prohibited. The privilege against self-incrimination is available only in criminal proceedings and cannot be asserted when providing information during interviews with regulatory bodies. These are deemed as administrative rather than criminal proceedings. Communications with legal advisors and documents created upon the instructions of legal advisers are not subject to legal professional privilege during administrative investigations.

8 Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

Any information obtained by these regulatory bodies may be presented or used in court proceedings, depending upon the requirements of each procedure.

9 What actions may these bodies take in exercising their regulatory functions?

These regulatory bodies may take the following actions:

Bodies	Actions
BB	<ul style="list-style-type: none"> • Prescribe corrective measures or issue an improvement order • Partially suspend the corporation's operations, or dissolve the corporation • Order the dismissal of managerial officers or employees of the corporation • Order the removal of directors or supervisors of the corporation, or prohibit the corporation from carrying out its activities • Take any other necessary actions
SFB	<ul style="list-style-type: none"> • Wholly or partially dissolve a corporation or revoke the corporation's licence • Wholly or partially suspend or terminate the corporation's business • Order the removal of the corporation's directors, supervisors, or managers • Issue a reprimand

Bodies	Actions
IB	<ul style="list-style-type: none"> • Prescribe corrective measures or issue an improvement order • Partially suspend the corporation's operations, or dissolve the corporation • Order the dismissal of managerial officers or employees from the corporation • Order the removal of directors or supervisors of the corporation, or prohibit the corporation from carrying out its activities • Take any other necessary actions
TSEC / TSFC	<ul style="list-style-type: none"> • Issue a notification to the securities firm to take corrective measures or improvement • Wholly or partially suspend trading • Terminate the market usage contract

10 What disciplinary sanctions may these bodies impose?

If a regulatory body considers that conduct of any company or individual does not meet the standard provided in the relevant laws and regulations, the regulatory body can impose the following sanctions:

Bodies	Sanctions
BB	<ul style="list-style-type: none"> • Issue a warning and order the corporation to take rectification action • Suspend or revoke the corporation or individual's licence • Impose an administrative fine
SFB	<ul style="list-style-type: none"> • Issue a warning and order the corporation to take rectification action • Prohibit participation in the securities and futures market • Suspend or revoke the corporation or individual's licence • Impose an administrative fine
IB	<ul style="list-style-type: none"> • Issue a warning and order the corporation to take rectification action • Suspend or revoke the corporation or individual's licence • Impose an administrative fine
EB	<ul style="list-style-type: none"> • Impose an administrative fine
TSEC / TSFC	<ul style="list-style-type: none"> • Issue a warning and order the corporation to take rectification action • Impose a penalty

11 Is it possible to enter into a settlement to resolve any enforcement action taken by any of these bodies?

Securities firms, futures commission merchants, securities investment trust enterprises and securities investment consulting enterprises (the "Firms") may reach settlement with the FSC, provided that the FSC cannot conclude the fact or legal issues involving the acts of the Firms against which enforcement action is taken.

12 Are there provisions for persons to appeal against any enforcement action taken against them?

The decisions of the Bureaux can be reviewed by the Administrative Appeals Commission ("AAC") under the Executive Yuan. The AAC is constituted by five to 10 committee members, who are current officers, scholars or experts. More than half of the committee members have a legal background.

A party dissatisfied with a decision of the AAC may file an action against the decision in the High Administrative Court (“HAC”). If the HAC finds against a party, then the party can appeal to the Supreme Administrative Court for the highest court’s review.

13 Is securities and futures market misconduct (eg, insider dealing, market manipulation etc) a criminal offence or a civil action?

Securities and futures market misconduct, eg, insider trading or market manipulation, constitutes both a criminal offence and also gives rise to civil liability. The FSC may actively co-operate with the prosecutor to investigate the misconduct. Persons engaging in market misconduct may, on conviction, be sentenced to imprisonment for not less than three years and not more than 10 years and a fine of not less than NT\$10 million and not more than NT\$200 million. Where the amount gained by the misconduct is NT\$100 million or more, a sentence of imprisonment for not less than seven years shall be imposed, and in addition a fine of not less than NT\$25 million and not more than NT\$500 million may be imposed.

The Securities and Futures Investors Protection Centre can be authorised by more than 20 investors or traders to commence a civil action in its own name, on condition that the subject matter of the claim involves injury to a majority of securities investors or future traders.

14 What civil remedies are there for investors?

The SEA provides that *bona fide* buyers or sellers are entitled to seek compensation from market manipulators in the following situations:

- The offering of a quote on a centralised securities exchange market and failure to deliver or settle the transaction after acceptance of such quotation, where such omission affects market order;
- Conspiracy with other parties in a scheme where one party buys or sells designated securities at an agreed price and the other party sells or buys from the first party in the same transaction, with intent to inflate or deflate the price of the securities on the centralised securities exchange market;
- Continuously buying at high prices or selling at low prices designated securities for his or her own account or under the names of other parties with intent to inflate or deflate the trading prices on said securities traded on the centralised securities exchange market;
- Continuously ordering or reporting a series of trades under his or her own account or under the names of other parties, and to complete the corresponding transactions with the intent of creating an impression on the centralised securities exchange market of brisk trading in a particular security;
- Spreading rumors or false information with intent to influence prices of designated securities traded on the centralised securities exchange market; and
- Performing directly or indirectly any other manipulative acts to influence prices or designated securities traded on the centralised securities exchange market.

15 Do the police assist these regulatory bodies in investigations?

The police department of the local government, such as the Taipei City Police Department, the military police and any other persons authorised by law or regulations may assist in investigations relating to the financial services industry. The police may pursue joint investigations with regulatory bodies to obtain information regarding misconduct by a financial institution. The police may also be instructed by the prosecutor to conduct a search if the court issues a warrant.

16 How do these regulatory bodies interact with overseas regulators?

The FSC co-operates with overseas regulators through various memoranda of understanding. For example, the FSC has entered into a memorandum of understanding with El Salvador providing for mutual co-operation in supervising the financial services markets in each country and facilitating sharing of information regarding investigation.

17 Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

The EB has extensive powers to investigate over financial activities, while the Bureau, TSEC and TFEC are also empowered to conduct investigations over the financial institutions under certain circumstances. They have responsibility to report to the court or the Prosecutors with regard to any facts of corruption, money laundering and terrorist financing within the financial services industry, as they engage in the investigations and find any illegal operations hereto.

18 Are there any laws or regulations imposing obligations on persons to “whistle-blow” or disclose suspected financial services-related wrongdoing within an organisation?

The ROC Money Laundering Control Act requests that the staffs or managers in charge of the financial institutions, including banks, credit card companies, insurance companies, securities brokers and futures brokers etc, have to report to the authority or to the Ministry of Justice on a condition that there is a suspicious situation of money laundering of persons or legal entities.

19 How are hedge funds regulated?

On 2 August, 2005, the FSC promulgated the Regulations Governing Offshore Funds (“Offshore Funds Regulations”) pursuant to the Securities Investment Trust and Consulting Act, which allows the offer, distribution and sale of offshore funds in Taiwan through public offering or private placement under certain conditions. The Offshore Funds Regulations provide detailed implementation rules regarding the offer, distribution and sale of offshore funds in Taiwan. Although there is no definition given for hedge funds to date, foreign hedge funds are subject to the Offshore Funds Regulations.

For an offshore hedge fund to be offered in Taiwan through public offering, it must be approved or effectively registered with the FSC, and a qualified master agent and distributors must be appointed. The fund should also meet certain conditions, including that its derivative transactions and investments in PRC-related securities shall not exceed the limitations prescribed by the FSC.

For an offshore hedge fund to be offered by private placement, it must be a securities investment trust fund, and the qualifications and numbers of the offerees should meet the criteria prescribed by the FSC. Furthermore, under the Offshore Funds Regulations, a report regarding the basic information of the fund by private placement should be filed to the Securities and Investment Trust and Consulting Association of the R.O.C. with a copy to the CBC after all payments of the subscription price have been made.

20 Are there likely to be any significant procedural reforms in the near future?

The government has submitted the proposal of the Finance Company Act to the Legislative Yuan of the ROC – the congress in Taiwan – for review. The Finance Company Act will regulate the establishment and operation of finance companies in Taiwan.

It has been proposed that the regulations governing the elements of insider trading under the SEA will be amended. The key amendments include:

- (1) the cooling-off period for material information will be extended from 12 hours to 18 hours;
- (2) persons trading in another’s name will also be subject to the insider trading restrictions; and
- (3) non-equity corporate bonds will also be covered.

It has been proposed that the BL will be amended. The key amendments include:

- (1) The same person, or same concerned party, who holds more than 5% of a bank’s issued shares with voting rights shall report such fact to the BB. If such person or party would like to hold more than 10%, 25%, or 50%, respectively, of a bank’s issued shares with voting rights, he shall report such fact to the BB in advance for approval.

- (2) If a bank's BIS ratio is lower than 2%, and such bank fails to take rectifying actions within the period designated by the BB, its operation shall be ceased.

The above-mentioned proposals have been submitted to the Legislative Yuan of the ROC, but the final version of the amendments is subject to the Legislative Yuan's opinion and approval.

Lee and Li

Contact [Chi-chang Yu \(Partner\)](#)
[7th Floor, 201 Tun Hua North Road, Taipei 10508 Taiwan R.O.C.](#)
Phone [+886 2715 3300](#)
Fax [+886 2713 3966](#)
Email chichangyu@leeandli.com
Website www.leeandli.com

The largest full service law firm in Taiwan, the Republic of China (ROC), Lee and Li traces its roots to the days of Shanghai, China in the mid-1940s. In addition to the main office in Taipei, the firm also has four branch offices in Hsinchu, Taichung, Tainan and Kaohsiung. Today, Lee and Li offers premium legal services to over 30,000 clients worldwide.

Lee and Li has more than 500 staff with lawyers and legal professional staff. The firm leads the legal services market in Taiwan by offering a full range of civil and commercial legal services. It focuses on various core practice areas to meet the needs of clients, which include corporate and investment, banking and capital markets, patent and technology, trademark and copyright, IPR management and enforcement, government contracts and infrastructure and litigation and alternative dispute resolution.

Thailand

Herbert Smith (Thailand) Limited

1 What are the main bodies responsible for regulating financial services in Thailand?

- The Ministry of Finance (“MOF”);
- The Bank of Thailand (“BOT”);
- The Securities and Exchange Commission of Thailand (“SEC”); and
- The Office of Insurance Commission (“OIC”).

2 What does each of these bodies regulate?

The MOF is responsible for overseeing various matters concerning public finance, taxation, treasury, government property, operations of government monopolies and revenue-generating enterprises which can be legally operated only by the government. It is also authorized to provide loan guarantees for government agencies, financial institutions, and state enterprises (other than insurance companies’ licenses which shall be granted by the Ministry of Commerce).

The BOT generally acts as the central bank of Thailand. It regulates and supervises financial institutions and has the power to investigate the operations of financial institutions. It formulates monetary policy in order to maintain monetary stability, manages international reserves and prints bank notes.

The SEC regulates the Stock Exchange of Thailand (“SET”) and is responsible for the supervision and development of primary and secondary markets of Thailand’s capital markets or securities related participants and institutions. Its prime roles are to formulate policies, rules and regulations regarding securities trading and the development of securities businesses and relevant activities, and to prevent unfair securities trading practices. The SEC also oversees the trading of futures and options under the operation of Thailand Futures Exchange PCL, as a subsidiary of the SET.

The OIC regulates the insurance industry including both Thai and foreign insurance companies operating in Thailand. The OIC has the power to issue licences for insurance companies, agents and brokers and to take disciplinary action against them. The OIC is also responsible for ensuring that all insurance companies meet with legal and financial requirements.

3 What is the source of financial services regulations in Thailand?

As a civil law jurisdiction, Thailand has a number of statutes which regulate a specific industry or business. The laws regulating the financial services sector are derived mainly from the following Acts:

- Commercial Banking Act 1962;
- Currency Act 1958;
- The Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business 1979;
- Exchange Control Act 1942;
- Securities and Exchange Act 1992;
- Derivatives Act 2003;
- Life Insurance Act 1992;
- Non-Life Insurance Act 1992;

- The Trust for Transactions in Capital Market Act 2007;
- Provident Fund Act 1987; and
- Royal Enactment on Special Purpose Juristic Persons for Securitization 1997.

The relevant government agencies are empowered under the acts to issue subordinate legislation (in the form of Royal Decrees, Ministerial Regulations, Ministry Notifications, Notifications and Circulars of the BOT and Notices of Competent Officers). The detailed requirements of the law and the procedures to be followed are contained in the subordinate legislation and as such, they form an important part of the law. The Commercial Banking Act and the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business will be consolidated to become the Financial Institutions Businesses Act which is due to become effective in August 2008.

4 Do all the regulatory bodies described above have the same powers of enforcement?

No. Each regulatory body is empowered to take action against relevant institutions or persons pursuant to the terms and ambit of the specific authority entrusted to it by relevant legislation. In certain cases, a regulatory body might be required to use its enforcement powers together with another regulatory body, or the power to take a specific action will be conditional upon obtaining the approval of another regulatory body (eg, an order to suspend the operation of a commercial bank is made by the Minister of Finance following the recommendation of the BOT or the BOT could immediately suspend on its own initiative).

5 What powers of investigation do these bodies have?

Each regulatory body has the statutory power to monitor and investigate unusual transactions or acts of the persons or entities under their supervision as detailed below.

Powers	MOF and BOT	SEC	OIC
Who conducts the investigation	Officer / inspectors appointed by the MOF and BOT, the Supervision Group, Financial Institution Policy Group or Legal and Litigation Group	Enforcement Department	The Insurance Commissioner ("IC") or any other OIC authorized officer
Require production of records and documents	Yes	Yes	Yes
Require a party to answer questions	Yes	Yes	Yes
Conduct interviews	Yes	Yes	Yes
Conduct search at premises	Yes	Yes	Yes
Who are required to assist in investigations	Any person	Any person	Any person
Statutory power to compel production of evidence and / or attendances of witnesses	Yes	Yes	Yes
Consequences of non-compliance	Criminal offence punishable with a fine or imprisonment, or both	Criminal offence punishable with a fine or imprisonment, or both	Criminal offence punishable with a fine or imprisonment, or both

6 Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

Under the Commercial Banking Act, it is the responsibility of any individual who has obtained sensitive and confidential information during the course of performing their duties to refrain from disclosing such information to any person unless the disclosure is (i) within the scope of their duties; (ii) made for the benefit of an investigation; or (iii) made during the course of a trial.

The Securities and Exchange Act provides that any confidential information acquired by an officer of the SEC during the course of performing their duties under the Act (and which under normal circumstances should not be disclosed) should be kept confidential. As a matter of practice, the officers of the SEC are diligent in ensuring that information obtained is kept confidential in order to avoid any adverse effect on the stock market or the reputation of the persons investigated.

There are no specific provisions that require the OIC or its officers to keep confidential any information obtained during the course of an investigation or the fact that an investigation was carried out. In practice, however, the officers conducting the investigation are likely to keep confidential all information received during the process.

In general any person who discloses information obtained during an investigation might be liable for civil action under the laws relating to wrongful acts (similar to tortious liability under common law).

7 Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

The laws regulating financial services do not specifically provide any protective measures to persons being investigated by the regulatory bodies. In general, however, the person / entity being investigated by these regulatory bodies does not have a right to legal representation until official criminal charges are made against them.

With regard to privilege against self-incrimination, the Thai Constitution provided that a person has the right to refuse to make any statement which might subsequently result in charges being made against them for a criminal offence.

In general, a person being investigated has the right to refuse disclosure of all documents created during the process of providing and obtaining legal advice.

8 Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

Yes, the regulatory bodies are entitled to use all of the information received in subsequent disciplinary, criminal or civil actions against the person / entity investigated or any other person incriminated.

9 What actions may these bodies take in exercising their regulatory functions?

The table below sets out the actions that the MOF, BOT, SEC and the OIC are entitled to take in exercising their regulatory functions:

Bodies	Actions
MOF	<ul style="list-style-type: none"> • Order the BOT to prepare and submit reports concerning the business operation of all or any particular finance companies • Appoint inspectors of commercial banks for the purposes of examining and reporting on the affairs and assets of commercial banks
BOT	<ul style="list-style-type: none"> • Order any financial institution to submit reports concerning its business operation in relation to all or any particular finance companies. The term "financial institution" is intended to cover any company licensed to carry out banking business, finance business and credit foncier business under relevant legislation (including commercial banks, Thai branches of foreign banks, finance companies and credit foncier companies) • Order any financial institution to rectify its condition and operations (eg, to maintain its cash reserve at the prescribed ratio, to make provision for doubtful assets; to record its deposits and borrowings in its accounts in a proper manner) • Order any financial institution to increase or decrease its capital (which if not subsequently complied with, will be deemed to be a resolution of the shareholders meeting of that institution) • Seize or attach property of any person or financial institution which commits certain criminal offences or any person who employs or supports another in committing certain criminal offences • Request the Criminal Court or the Police to issue an order to restrain a person who has committed a certain offence from leaving the Kingdom
MOF and BOT	<ul style="list-style-type: none"> • Order any director, officer, employee, auditor, any other representative of a financial institution or a financial institution's debtor to testify or to deliver copies of or produce the actual books of accounts, documents or other evidence concerning the affairs, assets and liabilities of the financial institution in question • Enter into any business premises of a financial institution, its debtors or any other person to examine the affairs, assets and liabilities of such person, including documents, evidence or information relating to the transactions involving the financial institution in question • Enter any premises where an offence is reasonably suspected to have been committed and seize or attach documents or things connected with the commission of such offence for inspection or prosecution purposes
SEC	<ul style="list-style-type: none"> • Enter into the premises of a securities company or securities institution, a company which issues or sells securities or a financial institution in order to examine and inspect the operations, accounts, assets and liabilities and any other documents of such business • Seize or attach documents or evidence for the purposes of inspection or taking legal action • Order a director, other authorised officer or representative, any person who purchases or sells securities or any other person to testify or deliver copies of all documents and evidence in relation to the business in question • Enter into any place of business of any debtor of any securities company to inspect the condition or operations of the business • Where a criminal offence is deemed to have been committed, file a criminal complaint with the Police or the Economic Crime Investigation Department to conduct further investigations and commence criminal proceedings
OIC	<ul style="list-style-type: none"> • Order an insurance company to submit any documents or information as required by the Insurance Commissioner and to provide explanation or clarification as requested • Enter into any premises of an insurance company to obtain information, to question directors, employees and representatives of such company and order that statements be given, to inspect the property of the company and to order the delivery of documents and evidence • Order any insurance company to improve its condition and operations and rectify any non-compliance with insurance laws • Order any insurance company to increase or reduce its registered capital (which if not subsequently complied with, will be deemed to be a resolution of the shareholders' meeting of that company)

10 What disciplinary sanctions may these bodies impose?

The regulatory bodies have the right to impose the following sanctions:

Bodies	Sanctions
MOF and BOT	<ul style="list-style-type: none"> • Issue an order to withdraw the licence or to close the financial institution, or to take control of the financial institution • Issue an order to dissolve the financial institution • Issue an order to take control of the operations of the financial institution • Issue an order to suspend the operations of the financial institution entirely or partially for a temporary period • Remove directors of a financial institution and appoint replacement directors
SEC	<ul style="list-style-type: none"> • Revoke the licence of the securities' company or dissolve the securities company • Remove and replace the directors of the securities' company • In respect of certain offences, the Settlement Committee is entitled to impose a fine and settle the matter on behalf of the SEC
OIC	<ul style="list-style-type: none"> • Remove the directors, managers or persons in charge of operations of the company and appoint replacements • Issue an order to suspend the licence of the insurance company • Appoint a Control Committee to manage the affairs of and represent the insurance company • Issue an order to revoke the licence of the insurance company and the appointment of a liquidator to liquidate the company

11 Is it possible to enter into a settlement to resolve any enforcement action taken by any of these bodies?

It is not possible to negotiate with a regulatory body to reach a settlement for a reduction in a fine or term of imprisonment. There is no specific provision relating to settlement with the BOT or MOF. There is, however, a Settlement Committee appointed by the MOF under the Commercial Banking Act and the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business which has the power to reach a settlement for certain offences under the said Acts.

There is no specific provision in relation to settlement with the SEC. However, the provisions of the Securities and Exchange Act provide that a Settlement Committee of the SEC has the power to determine and impose a fine for certain offences. In practice, the Committee will request and consider information provided by the wrongdoer, consider the severity of the offence committed and impose a fine as it deems appropriate.

12 Are there provisions for persons to appeal against any enforcement action taken against them?

A finance company is entitled to appeal against certain orders of the BOT (eg, an order of the BOT not approving the project for the rectification of the condition of the finance company). The appeal is made to the MOF.

SEC decisions or orders are deemed to be administrative orders (as defined in the Administrative Procedure Act 1996 and the Act on the Establishment of the Administrative Court and Administrative Procedure 1999) and can be revoked by the Administrative Court on the ground of *ultra vires*, illegality or procedural unfairness.

13 Is securities and futures market misconduct (eg, insider dealing, market manipulation etc) a criminal offence or a civil action?

The Securities and Exchange Act provides that securities market misconduct amounts to a serious criminal offence. The SEC is entitled to institute criminal proceedings against parties engaging in market misconduct which, on conviction, may result in imprisonment of up to two years and / or a fine not exceeding twice the amount of the benefit received (or to have been received) but in any case not less than Baht 500,000.

The Derivatives Act provides that misconduct involving the futures market amounts to a serious criminal offence which carries a term of imprisonment of up to five years and / or a fine of the greater of Baht 1 million or twice the benefit received (or to have been received).

14 What civil remedies are there for investors?

There are no provisions in the specific Acts mentioned above granting civil remedies for investors. The general rule is that an investor seeking to claim against the SEC will need to exercise their right under the general law (pursuant to the Thai Civil and Commercial Code) and, in most cases, any claim would be for compensation arising from a wrongful act.

In respect of the insurance industry, the policyholders may take civil action or commence arbitration proceedings against an insurance company. The OIC has established a set of arbitration rules and procedures to govern disputes between insurance companies and policyholders.

15 Do the police assist these regulatory bodies in investigations?

The police are not usually involved in the investigation process as each body has the authority to conduct its own investigations. If the conclusion is reached that a criminal offence is likely to have been committed, the regulatory body will file a complaint with the police who will then proceed to investigate the matter further.

The Economic and Technology Crime Suppression Division, Royal Thai Police (“ETCS”) has the power to oversee and investigate economic crimes (fraudulent transactions in relation to trading and share market manipulation), particularly where the allegations are complex and involve large sums of money. The authority of the ETCS is similar to that of the ordinary police save that the ETCS has expertise in economic crimes and matters.

The Department of Special Investigation (DSI) (under the jurisdiction of the Ministry of Justice) is a unique special investigative agency set up for the surveillance, deterrence and prevention of organised criminal activities. Amongst other things, the DSI has the specific power to investigate financial and banking fraud (for example, under the Commercial Banking Act, Act on Undertaking of Finance Business, Securities Business and Credit Foncier Business, the Foreign Exchange Control Act and the Bank of Thailand Act).

16 How do these regulatory bodies interact with overseas regulators?

The SEC has entered into bilateral co-operative agreements with regulatory bodies in Argentina, Australia, Brazil, Chile, China, Hong Kong, India, Israel, Malaysia, South Africa, Sri Lanka, Taiwan, the United Arab Emirates and Vietnam. Thailand is also a member of the International Organisation of Securities Commissions (IOSCO) but has not yet signed any multilateral Memoranda of Understanding.

17 Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

The Office of the National Counter Corruption Commission (“NCCC”) has the right to inspect and seize assets of politicians or government officers. The NCCC also has the right to petition for the removal of officers and / or request the Public Prosecutor to file charges against corrupt officers. The Anti-Money Laundering Office (“AMLO”) is in charge of money laundering offences, which include embezzlement / cheating and fraud involving assets or acts of dishonesty or deception, as described in the law governing commercial banks or Acts on Undertaking of Financial Business and Credit Foncier Business, or the Acts governing securities and the Stock Exchange and any agreements relating to terrorist financing.

18 Are there any laws or regulations imposing obligations on persons to “whistle-blow” or disclose suspected financial services-related wrongdoing within an organisation?

Under the amendments to the Securities and Exchange Act (which came into force this year), there is a provision requiring auditors who discover any suspicious circumstance during the course of auditing a securities company or a public limited company (as defined in the statute), to disclose such circumstance to the audit committee of the company for further investigation.

There is an AMLO regulation under which the government may give a reward to a person who provides information leading to the arrest and conviction of an offender. The reward is usually a portion of the assets seized by the government and is given following the final judgment of the court.

19 How are hedge funds regulated?

There are no specific laws regulating hedge funds in Thailand and therefore strictly speaking, hedge funds are prohibited from operating as such. The conduct of asset management operations is a restricted business under Thai law and can only be carried out upon obtaining a licence from the relevant authority (mainly the MOF, acting upon the recommendation from the SEC). At present, it is only possible to apply for and obtain one of five types of licences for asset management operations in Thailand, namely, mutual funds, private funds, provident funds, venture capital funds and derivatives fund management.

However, an offshore hedge fund is entitled to invest in Thailand and in doing so, its investment activities in Thailand must comply with the laws and regulations that apply to all foreign investors in general, such as exchange control regulations and other monetary policies in force at the relevant time.

20 Are there likely to be any significant procedural reforms in the near future?

No.

Herbert Smith (Thailand) Limited

Contact	Alastair Henderson 1403 Abdulrahim Place, 990 Rama IV Road, Bangkok 10500, Thailand
Phone	+66 2 657 3888
Fax	+66 2 636 0657
Email	alastair.henderson@herbertsmith.com
Website	www.herbertsmith.com

Herbert Smith Thailand opened in 1998. We act for international agencies, multinational corporations and leading local businesses. We provide expert, practical legal advice based on long-standing experience of Thai and international law and commercial practice, to help our clients deal quickly and effectively with business matters. We advise in Thai and English and in clear, straightforward terms, anticipating clients' concerns and taking account of their commercial goals.

We advise on a wide range of issues arising in daily business. We help clients to understand and comply with Thai laws and regulations, draft and interpret contracts, and help clients to avoid or resolve commercial disputes. We offer specialist skills in the areas of international trade and commerce and in the energy and construction sectors. Herbert Smith Thailand has particular expertise in dispute resolution, where we act for local and international clients in regulatory disputes and in complex cases in the Thai courts and in Thai and international arbitration.

Vietnam

LWA Vietnam

1 What are the main bodies responsible for regulating financial services in Vietnam?

The main bodies responsible for regulating financial services in Vietnam are:

- The Ministry of Finance (“MOF”);
- The State Securities Commission (“SSC”); and
- The State Bank of Vietnam (“SBV”).

2 What does each of these bodies regulate?

MOF

Generally, the MOF is responsible for state finances, the state budget, taxation, charges, fees and other state budget revenues, the national reserve, state financial funds, financial investments, enterprise finance and financial service activities, customs, accountancy, independent audits and pricing nationwide; and state management over public services in the finance sector. The MOF has the following responsibilities in relation to the financial management of banks, non-bank financial institutions and other financial services:

- submit to the Government and / or to the Prime Minister draft legal instruments in the financial services sector and strategies of development planning on matters under its authority;
- promulgate legal instruments under its authority and to direct, guide, inspect and take responsibility for implementation of legal documents, strategies and plans after they are approved on matters under its authority;
- manage, inspect and supervise the implementation of the state’s regulations on insurance and to issue and withdraw operation licences of enterprises engaged in insurance;
- perform the state financial management over the operations of the State Bank, commercial banks, policy banks and state-run credit institutions and financial organizations; and
- negotiate and sign international finance agreements under the authorization of the State President or the Prime Minister.

SSC

The SSC is a body under the authority of the MOF. It is generally responsible for assisting the Minister of Finance in undertaking the function of state administration of securities and the securities market, to directly manage and supervise securities and securities market activities and manage service activities in the securities and securities market sector. The SSC performs the duties and has the powers stipulated in the Law on Securities including:

- submit to the Minister of Finance for promulgation within its own authority or for promulgation by the competent authority legal instruments on securities and the securities market and strategies, plans and policies on securities and the securities market;
- organise the implementation of the strategies, plans and policies for development of the securities market;
- issue, extend and withdraw licenses and certificates relating to securities activities and the securities market and to approve changes relating to securities activities and the securities market;

- administer and supervise the operation of the Stock Exchange, Securities Trading Centres, Securities Depository Centres and subsidiary institutions and to temporarily suspend trading and depository operations of the Stock Exchange, Securities Trading Centres and Securities Depository Centres when there are indications of an adverse impact on the lawful rights and interests of investors; and
- conduct inspections and supervision to deal with administrative breaches and to resolve complaints and denunciations during securities activities and securities market activities.

SBV

The SBV is a ministerial-level government agency which oversees monetary and banking activities and public services. The SBV also acts as the representative of the owner of state capital portions in state owned enterprises operating in the banking field and is the central bank of the Socialist Republic of Vietnam. The SBV's specific powers and duties include:

- submit to the Government and / or the Prime Minister draft legal instruments on monetary and banking activities and the development strategies and plans on monetary and banking activities;
- guide, inspect and take responsibility for the implementation of legal instruments, strategies and plans within the scope of its authority;
- formulate the national monetary policies for the Government to consider and submit to the National Assembly and the schemes on the development of the system of banks and credit institutions;
- grant and withdraw permits for the establishment and operation of credit institutions, to grant and withdraw permits for banking activities of other organizations and to decide on the dissolution and approve the splitting, separation, consolidation or merger of credit institutions;
- examine and inspect banking activities, to control credit; to inspect, supervise and handle complaints and denunciations, to combat corruption and handle law violations in the field of monetary and banking activities according to its authority;
- manage the borrowing and repayment of foreign debts by enterprises; and
- manage foreign exchange, foreign exchange related activities as well as gold import and export.

3 What is the source of financial services regulation in Vietnam?

The principle law regulating the securities industry in Vietnam is the Law on Securities together with its implementing legislation. Supplemental regulations are also issued by the Government, the Prime Minister, the MOF and the SSC.

The banking activities of banks and credit institutions in Vietnam are primarily governed by the Law on Credit Institutions and the Law on State Bank of Vietnam together with its implementing legislation. Supplemental regulations are also issued by the Government, the Prime Minister and the SBV.

The principle law governing the insurance industry in Vietnam is the Law on Insurance Business together with its implementing legislation. Supplemental regulations are also issued by the Government and the MOF.

4 Do all the regulatory bodies described above have the same powers of enforcement?

No.

5 What powers of investigation do these bodies have?

MOF

The MOF may guide, inspect and supervise organizations providing financial, accounting, auditing or tax consultancy services, non-bank financial organizations and organisations engaged in securities business and trading.

The MOF may also conduct inspections and checks of insurance business activities. A financial inspection of an institution can only be conducted once per year. An extraordinary inspection may only be conducted when there is an indication of a breach of the law.

SSC

The Inspectorate of the SSC may, amongst other things:

- Request the entity being inspected to supply information, data, electronic data, written reports and explanations on issues relating to the contents of the inspection and request any organization or individual with information or data relating to the contents of the inspection to supply such information and data;
- Request an authorized person to seal and temporarily detain data, source documents, securities and electronic data relating to any breach of the law on securities and the securities market when it is considered necessary to immediately stop a breach or to verify circumstances providing evidence for the conclusion of the inspection;
- Request an authorized person to freeze cash accounts, securities accounts, mortgaged assets or pledged assets relating to conduct in breach of the law on securities and the securities market when it is deemed necessary to verify circumstances which will provide a basis for a decision on dealing with a breach, or if such freezing would immediately prevent an act of dispersing money, securities, mortgaged or pledged assets relating to conduct in breach of the law on securities and the securities market;
- Issue a decision dealing with a breach, or recommend that an authorized person issue such decision; inspect the implementation of such decisions;
- Transfer the file on a breach to the investigative body within five days from the date of discovery of a possible criminal offence.

SBV

The banking inspection body of the SBV may:

- Inspect the observance of the laws on monetary and banking operations and the implementation of provisions provided for in the licenses for conducting banking transactions;
- Identify, prevent, and deal with, or make proposals for, relevant bodies to deal with breaches of the laws on monetary and banking operations;
- Request concerned parties to provide any documents and evidence or to answer questions in relation to the contents of inspection;
- Maintain records of inspection and make recommendations on solutions to deal with offences; and
- Apply measures to prevent or deal with offences in accordance with provisions of the law.

6 Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

Under Vietnamese law, employees of regulatory bodies are required to keep secret information and documents relating to ongoing inspections when no official conclusion has been made. If employees of regulatory bodies disclose such information, they will be disciplined or examined for civil or criminal liability.

7 Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

Individuals and entities must co-operate with any investigation carried out by regulatory bodies. They are required to supply information or documents requested in a prompt, full and accurate manner, and are responsible for the accuracy and truthfulness of such information and documents. There are no exemptions from the duty to co-operate and provide information on the ground of potential self-incrimination or legal professional privilege.

The right to legal representation at interviews is not available in investigations being conducted by such regulatory bodies.

8 Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

Yes. The information obtained by these regulatory bodies in the course of their investigations can be used in criminal proceedings. If criminal activity is suspected the regulatory bodies must transfer related documents to investigating bodies or a public prosecution office to consider whether to institute criminal proceedings.

9 What actions may these bodies take in exercising their regulatory functions?

Please refer to Points 2 and 5 above.

10 What disciplinary sanctions may these regulatory bodies impose?

Generally speaking these bodies may issue either a warning or fine for an administrative offence. Additional penalties may also be imposed.

Securities

Depending on the nature and gravity of the breach, the SSC may issue one or more of the following additional penalties:

- Confiscation of the proceeds earned from the breach and the securities used to commit the breach;
- Suspension for a fixed period or rescission of the public securities issue tranche, if after forty days from the date of the breach, the breach is not remedied;
- Revocation for a limited or unlimited period of the certificate for the public issue of securities, or of the license for establishment and operation of the securities company, securities investment fund management company, or securities investment company; of the license for registration of securities depository activities, or of the securities business practising certificate.

The SSC may also require one or more of the following measures to remedy the consequences of the breach:

- Compulsory compliance with law;
- Compulsory rescission or correction of incorrect or false information;
- Compulsory recovery by the issuing organization of the securities which were offered for sale, and refund of deposits or money paid for the securities by investors within a period of thirty days as from the date of revocation of the right to use the certificate registering the public issue of securities.

Banking

Depending on the nature and seriousness of the breach, the SBV may:

- Seize the evidence and the means used for the administrative violation;
- Recommend that the competent authorities suspend one or more operations relating to an administrative violation in the field of money and banking, with or without a time limit.

The SBV may also enforce compliance with the law and require the breaching party to repair the breach.

Insurance

In addition to the right to impose warnings and fines, and depending on the nature and seriousness of the breach, the MOF may withdraw or suspend operation licenses for enterprises engaged in insurance. The MOF may also order the

violator to publish corrections of incorrect announcements, restore to the original state that which was altered by the administrative violation and suspend operations for a definite term or narrow the operation contents or scope and geographic areas.

The MOF can enforce compliance with the law and require the breaching party to repair the breach.

11 Is it possible to enter into a settlement to resolve any enforcement action taken by any of these bodies?

Whilst not specified in law, it is generally possible to work with and negotiate settlements with the regulatory bodies. It is highly unusual for such a body to suspend or revoke an operating license where the breaching entity works with the authority in good faith to resolve the breach.

12 Are there provisions for persons to appeal against any enforcement action taken against them?

Yes. If individuals and entities are dissatisfied with the decision of a regulatory authority they have the right to make a complaint to the relevant regulatory body for an administrative review. If a complaint is not settled within the specified time limits or the complainant disagrees with the initial decision they may lodge a further complaint to a higher body or initiate an administrative lawsuit at a court as prescribed by law.

13 Is securities and futures market misconduct (eg, insider dealing, market manipulation etc) a criminal offence or a civil action?

Securities and futures market misconduct (eg, insider dealing, market manipulation etc) is currently an administrative offence and may also be subject to criminal proceedings in Vietnam.

Acting fraudulently during securities trading (ie, including the making of false statements), insider dealing and market manipulation are administrative offences subject to a civil action and a fine from thirty million to fifty million VND for an individual and from fifty million to seventy million VND for an organization. Further, the entire income unlawfully derived from the breach can be confiscated. Serious offences may also be subject to criminal liability.

14 What civil remedies are there for investors?

Under the Law on Securities, any organization or individual who suffers loss or damage as a result of conduct in breach of the law, including an investor, has the right, either individually or jointly with other organizations and persons who suffered loss and damage, to institute proceedings to claim compensation for the loss and damage.

Any dispute during a securities operation or securities market activities in Vietnam may be referred to an arbitrator or a court.

15 Do the police assist these regulatory bodies in investigations?

No. However, the police will be involved in the investigation of cases of criminal behaviour. The case can also be transferred by the regulatory body to the relevant police investigation bodies.

16 How do these regulatory bodies interact with overseas regulators?

Vietnam is a member of a number of international and regional organizations including the International Monetary Fund, World Bank, and the Asian Development Bank. In addition, Vietnam also cooperates with nations or regions in relation to banking operations.

17 Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

The Central Steering Committee for Corruption Prevention and Combat is headed by the Prime Minister. The Committee has national responsibility for preventing corruption. Provincial / municipal Steering Committees for Corruption Prevention and Combat have also been established.

The Anti-Money Laundering Information Centre is a subsidiary unit of the SBV, with responsibility for collecting information in relation to money laundering. The Anti-Money Laundering Information Centre assists the SBV Governor and has the right to require any body, organization or individual to provide data, files or information on transactions over certain values specified in the law and, in particular, in relation to suspicious transactions.

The SBV has the primary responsibility for the prevention of money laundering. It coordinates with the Public Security Ministry / police and other bodies to formulate and implement strategies, guidelines and policies to prevent and combat money laundering.

The Ministry of Police is responsible for organizing teams to investigate money laundering-related crime, guiding other agencies in conducting preliminary investigations of money laundering-related crime and advising the SBV on investigations of money laundering-related cases.

18 Are there any laws or regulations imposing obligations on persons to “whistle-blow” or disclose suspected financial services-related wrongdoing within an organisation?

Yes. There are various laws and regulations imposing obligations on person to “whistle-blow” or disclose suspected financial services-related wrongdoing. Any person who has a responsibility to disclose and does not disclose suspected financial services-related wrongdoing within an organisation will be subject to administrative or criminal liability.

Any person who knows a crime is being planned or carried out but fails to make this information known to the authorities is liable under the Penal Code.

Any person who conceals an offence relating to the breach of regulations on loan provisions in the operations of credit institutions or counterfeiting of banknotes, cheques, bonds and other valuable papers may be sentenced to non-custodial reform for up to three years or between six months and five years imprisonment. Any person who has knowledge of such an offence but fails to disclose this information may be subject to a warning, a non-custodial reform for up to three years or a prison term of between three months and three years.

19 How are hedge funds regulated?

Hedge funds are currently not governed by Vietnamese law and therefore cannot be established in Vietnam.

20 Are there likely to be any significant procedural reforms in the near future?

Rapid reform will continue over the next few years. This reflects Vietnam’s status as a developing market, the recent introduction of a securities market and the gradual integration of the economy into the global market. By way of example, on 2 August 2007 the Prime Minister of Vietnam approved a project to further develop Vietnam’s capital market up to 2010 and the outlook to 2020 with numerous long-term and short-term objectives to liberalise and diversify the Vietnamese market.

LWA Vietnam, Ho Chi Minh City Branch

Contact [Konrad Hull, Nguyen Thi Xuan Trinh](#)
 [Eighth Floor, Central Plaza Office Building,](#)
 [17 Le Duan Boulevard, District 1, Ho Chi Minh City, Vietnam](#)

Phone [+84 8 824 4395](#)
Fax [+84 8 824 4396 / 822 8588](#)
Email: info@lwavietnam.com
Website: www.lwavietnam.com

LWA Vietnam specialises in the Indochina region. The firm is one of the oldest-established and largest foreign law firms in Vietnam and, in 1996, was in the first group of law firms to be licensed by the Vietnamese Ministry of Justice.

The firm provides advice in all areas of industry and commerce to multi-national and Vietnamese corporate, financial and industrial clients and specialises in foreign direct investment into Vietnam. Our extensive experience in Vietnam has been gained from our lawyers' work on over 750 major projects in Vietnam to date, involving investment of around US\$9.5 billion in aggregate, in most fields of practice. We also have extensive regional experience, co-operating with other law firms where required.

We are a full service firm and are particularly well-known for our work in the inward investment, corporate and commercial, project finance, infrastructure, petroleum and energy, taxation and tax structuring, employment, real and intellectual property and dispute resolution fields.

To compliment our status as one of Vietnam's leading international law firms LWA Vietnam has established a number of informal strategic alliances with leading Vietnamese law firms and through its extensive experience has developed close working relationships with Vietnamese authorities.

Profiles



Ashley Alder

Head of Asia, Hong Kong

Tel: +852 2101 4001

Fax: +852 2845 9099

Email: ashley.alder@herbertsmith.com

Ashley is based in Hong Kong with a practice focused on M&A and ECM transactions involving listed companies. He also specialises in private equity, financial services, venture capital and direct investments, as well as regulatory and compliance work.

Ashley returned to the firm in October 2004 after completing a three-year appointment as a Board member and Executive Director, Corporate Finance at the Securities and Futures Commission.

Whilst at the Commission, Ashley was responsible for key aspects of listed company regulation, including the Takeovers Code, company prospectuses and the regulation of various aspects of corporate conduct. He was also closely involved in important policy initiatives. Since returning to the firm he has handled a broad range of financial services regulatory work for clients ranging from large China based companies to global investment banks.



Maurice Burke

Partner, Singapore

Tel: +65 6868 8009

Fax: +65 6868 8001

Email: maurice.burke@herbertsmith.com

Based in Singapore, Maurice is joint-head of Herbert Smith's dispute resolution practice in Southeast Asia and responsible for covering the Singapore, Malaysian and Indonesian markets. Originally qualified in Australia, Maurice qualified in Hong Kong in 1996, where he worked as a litigator for two years before joining Herbert Smith's Hong Kong litigation division in 1997. Since joining Herbert Smith, Maurice has conducted a broad range of commercial litigation and dispute resolution matters.

Maurice has been actively involved in disputes throughout Asia, including advising major corporate entities from Singapore, Thailand, Hong Kong, Japan, Malaysia, the Philippines and Indonesia. He has practised broadly in the area of investment disputes, oil and gas, and telecommunications. His clients include Nokia, Mitsubishi, Morgan Stanley, BP, Halliburton, Standard Chartered, UTIO and Pratt & Whitney, CSFB, Newmont Mining, Goldman Sachs, PCCW and Shimizu.



David Dawborn

Partner, Jakarta

Tel: +62 21 574 4010

Fax: +62 21 574 4670

Email: david.dawborn@hbtlaw.com

David is a Herbert Smith partner seconded full-time to Herbert Smith's associated Indonesian law firm, Hiswara Bunjamin & Tandjung. He is fluent in Bahasa Indonesia, both spoken and written and has practised in Jakarta since the early 1990s, advising and supporting major multi-national corporations and financial institutions on a broad range of cross-border commercial, corporate and financial transactions.

David's areas of practice are financing and mergers and acquisitions in Indonesia, with a speciality in the area of Indonesian securities and energy and natural resource projects.

He also regularly supports the firm's specialist Indonesian Disputes Resolution Practice in Indonesian strategic and commercial aspects of regulatory investigations and dispute proceedings based on his long involvement and experience with Indonesian matters.



David Gilmore

Partner, Tokyo

Tel: +81 3 5412 5412

Fax: +81 3 5412 5113

Email: david.gilmore@herbertsmith.com

David has experience in a wide variety of substantial commercial disputes including international arbitration in the UK and Asia and litigation in the English and US Courts. Principal industry areas include insurance and reinsurance, energy and construction/heavy industries. David relocated to Herbert Smith's Tokyo office from London in 2004 and is licensed to advise on English law in Japan as a Gaikokuho Jimu Bengoshi.



Peter Godwin

Partner, Tokyo

Tel: +81 3 5412 5412

Fax: +81 3 5412 5413

Email: peter.godwin@herbertsmith.com

Peter has broad experience of international dispute resolution (including litigation, arbitration, mediation and other forms of dispute resolution), financial services regulation and crisis management. His experience spans the globe covering Europe, Asia and the Middle East.

Peter's major corporate clients include Japanese multi-nationals with problems overseas as well as multi-national companies and global financial services institutions with problems in Japan. Peter has assisted numerous global financial services institutions in navigating their way through the global regulatory maze.

Peter is qualified as a solicitor in England and Wales as well as Hong Kong and is licensed to advise in Japan as a Gaikokuho Jimu Bengoshi.



Alastair Henderson

Managing partner, Bangkok

Tel: +66 2 657 3829

Fax: +66 2 636 0657

Email: alastair.henderson@herbertsmith.com

Alastair is the joint head of Herbert Smith's dispute resolution practice in Southeast Asia. He qualified as a lawyer in 1990 and moved to Asia in 1993. Before joining the Bangkok office he worked in London, Hong Kong and Singapore.

Alastair's practice covers a wide range of local and international disputes, including construction and infrastructure-related claims, energy disputes, commercial contract disputes and general trade-related cases.

He has extensive experience of successfully representing governments, multinationals and private companies in a wide variety of complex commercial disputes around the world, involving domestic and international arbitrations and local and multi-national litigation.



Mark Johnson

Partner, Hong Kong

Tel: +852 2101 4003

Fax: +852 2845 9099

Email: mark.johnson@herbertsmith.com

Mark heads Herbert Smith's Asian dispute resolution practice. Based in Asia since 1987, he has conducted a wide range of civil, regulatory matters and white-collar crime matters. He is particularly experienced in respect of contentious issues involving publicly listed companies and securities.

On the civil side, Mark regularly represents clients in relation to directors' disputes and in respect of cases where the client has been the target of fraudulent activity by employees or others. These cases often have a multi-jurisdictional element to them.

On the regulatory side, Mark advises clients in the securities market whom are involved in investigations, particularly in the areas of insider trading and market manipulation.



Graeme Johnston

Managing partner, Shanghai

Tel: +86 21 2322 2109

Fax: +86 21 2322 2322

Email: graeme.johnston@herbertsmith.com

Graeme leads the mainland China-based dispute resolution practice. His practice has always focused on dispute resolution and of most of his cases have a cross-border dimension. He has wide experience advising on contentious matters, including litigation, arbitration and regulatory investigations.

Graeme joined Herbert Smith in 1995 in London and worked there for five years before moving to Herbert Smith Hong Kong in 2001. Since early 2006 he has been based in Shanghai.

Graeme is the author of the leading textbook on Hong Kong private international law – The Conflict of Laws in Hong Kong (Sweet & Maxwell, 2005) and will also be the editor of Competition Law in China and Hong Kong (to be published by Sweet & Maxwell in late 2008).



Angelyn Lim

Senior consultant, Hong Kong

Tel: +852 2101 4182

Fax: +852 2845 9099

Email: angelyn.lim@herbertsmith.com

Angelyn is a senior consultant in the corporate department of the Hong Kong office, and heads the department's Investment Funds Group. She specialises in fund formation work in various jurisdictions, and in Hong Kong securities regulatory advice.

She has extensive experience in advising on all aspects of investment business and acts for a number of major fund houses. She also advises numerous industry participants, both locally and in the region, on Hong Kong securities regulatory and compliance issues, including the marketing of investment products in Hong Kong, intermediary licensing requirements, the securities disclosure of interest regime and compliance with the relevant securities legislation in Hong Kong.

Angelyn is qualified to practise in Singapore, Hong Kong and England and Wales. She is on the Executive Committee of the Hong Kong Trustees' Association Limited, and is a member in the Law Society of Hong Kong, The Law Society, the Law Society of Singapore and Singapore Law Academy.

Angelyn speaks English and Mandarin (written and spoken).



Gary Lock

Managing partner, Beijing

Tel: +86 10 6535 5088

Fax: +86 10 6505 6516

Email: gary.lock@herbertsmith.com

Gary is the managing partner of the Beijing office and focuses on foreign direct investment, corporate finance and takeovers and acquisitions.

Gary has extensive experience in advising on Hong Kong and PRC securities regulations, mergers and acquisitions, corporate reorganisations, privatisations and joint ventures.

Gary has advised on a number of major transactions in mainland China and Hong Kong for leading corporates and banks, both foreign and Chinese.

Before moving to Beijing, Gary has lived in Shanghai for more than 10 years and prior to that, has worked in London and Hong Kong. He speaks fluent Cantonese, Putonghua and English.



Tim Mak

Partner, Hong Kong

Tel: +852 2101 4141

Fax: +852 2845 9099

Email: tim.mak@herbertsmith.com

Tim focuses on contentious and non-contentious regulatory matters in the financial services industry, with an emphasis on regulatory investigations and proceedings. He also advises on related civil and criminal disputes, and where regulatory issues arise in corporate transactions. Tim has appeared as advocate before the civil and criminal courts in Hong Kong, as well as in specialist tribunals like the Insider Dealing Tribunal and the Administrative Appeals Board. After training and qualifying with Herbert Smith, he spent two years as an in-house lawyer with the Hong Kong Securities and Futures Commission, before returning to Herbert Smith in 2002. His clients include investment banks, commercial banks, private banks, fund managers, listed companies and their directors, financial services regulators and other market participants.



Simon Meng

Partner, Shanghai

Tel: +86 21 2322 2118

Fax: +86 21 2322 2322

Email: simon.meng@herbertsmith.com

Simon is a highly regarded China specialist. He has significant experience in project finance and project development in China, in particular BOT and PPP structures in the energy, water and transportation sectors. He also specialises in cross-border M&A, direct investments and joint ventures in China. Simon has advised numerous multi-national corporations including financial institutions, automobile components, aerospace, news print and real estate development companies, in relation to mergers and acquisitions transactions.

Simon practised in Paris and New York for four years as an international transaction lawyer. Since 1994 he has been working in China and Hong Kong dealing mainly with China projects and inward investment.

Simon is fluent in Putonghua, English and French.



John Moore

Partner, Hong Kong

Tel: +852 2101 4106

Fax: +852 2845 9099

Email: john.moore@herbertsmith.com

John Moore is a US- and Hong Kong-qualified partner with considerable experience advising both investment banks and corporations on capital markets, M&A and private equity transactions in the United States and Asia.

Prior to joining Herbert Smith, John was an executive director and senior counsel at Goldman Sachs, with primary legal coverage responsibility for its investment banking division in Asia ex-Japan. At Goldman Sachs he was responsible for covering the investment banking division's full range of products, notably capital markets transactions including SEC-registered, Rule 144A/Regulation S and Rule 144 offerings, as well as M&A transactions. John also practised in New York and Hong Kong with the Wall Street law firm Sullivan & Cromwell.

John is a member of the Listing Committees of the Main Board and the Growth Enterprise Market (GEM) of the Hong Kong Stock Exchange.



Dominic Roughton

Partner, Tokyo

Tel: +81 3 5412 5412

Fax: +81 3 5412 5413

Email: dominic.roughton@herbertsmith.com

Dominic Roughton is a partner in our Tokyo office with extensive experience in international litigation, including international arbitration, and contentious regulatory matters. He is licensed to advise upon English law in Japan as a Gaikokuho Jimu Bengoshi and has been the Official Representative of the LCIA in Japan since 2003.

He has acted and advised upon matters arising from all major industry sectors but has particular industry experience of working with major financial services clients. He has advised and represented leading US and European institutions across a broad range of matters within Japan and the Asia-Pacific region.

Amongst his recent matters, Dominic is defending one client in a US\$450 million class action with up to 19,000 plaintiffs and recently conducted an internal investigation for another across three Asian jurisdictions; the matter is currently before the Korean courts and is expected to lead to an ICC arbitration. Other credentials include litigation of distressed debt, enforcement of security, regulatory appeals and employment claims.

Dominic is fluent in English, French and German.



Surapol Srangsomwong

Partner, Bangkok

Tel: +66 2 657 3888

Fax: +66 2 636 0657

Email: surapol.srangsomwong@herbertsmith.com

Surapol is a litigation and arbitration specialist with almost 30 years' experience in Thai dispute resolution. He is locally and internationally respected as one of the country's leading lawyers in this field.

Surapol worked with Baker & McKenzie in Bangkok before leaving to establish Siam Premier International Law Office, where he served as managing partner and head of litigation. As the partner in Herbert Smith's Bangkok office, Surapol handles commercial disputes in the Thai Courts and in Thai arbitration, on behalf of well-known Thai and international clients.



Gareth Thomas

Partner, Hong Kong

Tel: +852 2101 4025

Fax: +852 2845 9099

Email: gareth.thomas@herbertsmith.com

Gareth leads the Hong Kong commercial litigation team, as well as being responsible for the Asian insurance practice. He has had wide experience in disputes work, including cases concerning commercial contracts, shareholders' disputes, negligence actions, insolvency, fraud, banking cases, defamation proceedings, product liability, employment and restraint of trade.

Gareth's experience also covers arbitration and mediation work. He has also handled regulatory and criminal investigations and coroner's inquests. Gareth has advised clients on all aspects of international insurance and reinsurance law and practice, both contentious and non-contentious.



Tommy Tong

Partner, Hong Kong

Tel: +852 2101 4151

Fax: +852 2845 9099

Email: tommy.tong@herbertsmith.com

Tommy advises on a broad range of corporate and commercial matters, specialising in equity capital markets transactions, corporate restructurings and public and private takeovers and acquisitions.

He has substantial experience in advising issuers, as well as sponsors and underwriters, in relation to international offerings of securities and their listing on the Hong Kong Stock Exchange.

Tommy has also advised numerous international and domestic corporates, including banks, insurance and reinsurance companies, in relation to mergers and acquisitions and corporate restructuring transactions.

Tommy is fluent in English, Cantonese and Putonghua.