

Search Warrant under Section 191 of
Securities and Futures Ordinance

Yu, Chan & Yeung Solicitors

January 2026

Search Warrants

Pursuant to section 191(1) of the Securities and Future Ordinance (Cap. 571 of the Laws of Hong Kong) (“SFO”), a magistrate may issue a search warrant (“SW”) delegating powers to the investigation team of the Securities and Futures Commission (“SFC”) to, amongst the others, enter into the premises, if necessary by force and do the followings within the validity period of SW:-

- (i) search for, seize and remove any relevant record or document;
- (ii) require any person specified in the SW to produce for examination record or document; and
- (iii) prohibit any person specified in the SW from removing, erasing, adding, altering or interfering with any record or document required to be produced by the SFC investigation.

Record and document are separately and widely defined in section 1 of Part 1 of Schedule 1 to the SFO and always used together, which include the documents or data created, transmitted, kept and stored by digital devices.

A person commits an offence and is liable if he fails to comply with the stipulated requirements or prohibitions or otherwise obstructs the SFC’s investigation team in the exercise of its authorized powers under the SW.

Form of SW

Under section 191 of the SFO, it does not specify any particulars form for the SW but the following matters should be specified in the SW:-

- (i) the authority which issues the SW (e.g. magistrate);
- (ii) preconditions to issue the SW are satisfied;
- (iii) the place to be searched is clearly identified;
- (iv) people to whom the SW is directed;
- (v) documents and records which are the subjects of search and seizure;
- (vi) relevant offences which may have committed; and
- (vii) other ancillary matters.

Approach to Handle SW

When the SFC investigation team executes the SW at premises specified in the SW, the following actions may be taken:-

- (i) engage a legal adviser to provide legal advice and instruct legal adviser to arrive at premises specified in the SW to accompany the person to assist or under the SFC's investigation to deal with SW;
- (ii) take copy of search warrant and ensure that it remains valid and in full force and effect;
- (iii) refrain from obstructing the investigation team of the SFC;
- (iv) verify whether the investigation team of the SFC is executing the SW within the scope of power granted under the SW;
- (v) ensure that the investigation team of the SFC is executing the SW at the premises specified in the SW; and
- (vi) ensure that the records and documents, which are searched and seized by the SFC, are within the scope of the records and documents specified under the SW.

Upon conclusion of the execution of the SW, the SFC's inventory list of the records and documents should be reviewed and copied. The inventory list should be acknowledged only if it is accurate and complete in all respects.

Legal Professional Privilege Protection

Records or documents protected by legal professional privilege (i.e. legal advice and litigation documents) may not be subject to production and seizure, which should be sealed pending a court direction hearing as to the disposition if the investigation team of the SFC insists on production and seizure.

Retention of Records and Documents Seized

Under section 191(3) of the SFO, any records or documents seized under section 191 of the SFO may be retained for any period not exceeding 6 months beginning on the date of its seizure or, where the record or document is or may be required for criminal proceedings or for any proceedings under the SFO, for such longer period as may be necessary for the purpose of those proceedings.

Whether Answer to On-the-Spot Questions Obligated

Pursuant to section 191 of the SFO, answers to the on-the-spot or spontaneous substantive questions relevant to the SFC's investigation may not be required provided that the refusal to answer will not constitute an obstruction of execution of the SW.

Albeit it is not obliged to answer substantive questions with respect to the SFC's investigation specified in the SW, it is necessary to:

- (i) not provide information which is false or misleading in a material particular as required under section 384 of the SFO;
- (ii) provide access to the premises specified under the SW;
- (iii) assist in locating records, documents or devices listed out in the SW; and
- (iv) answer logistical or factual questions necessary for executing the SW (e.g. "Where is the server room?" or "What is the password for this encrypted computer?").

While volunteering potentially exculpatory information to the SFC may be advisable, it is prudent to exercise with caution. In cases of uncertainty, it is recommended to limit disclosure to what is strictly required by law.

The SFC's Other Investigation Powers

The SFC has a separate and powerful investigative tool under section of 183(1) of the SFO which empowers the SFC to compel a person to attend an interview, produce documents and records and answer questions by issuing notice thereunder ("Section 183 Notice") and refusal to comply with the Section 183 Notice is a criminal offence.