

MAS ISSUES PROPOSAL TO HEIGHTEN SENIOR MANAGEMENT ACCOUNTABILITY

Regulators around the world have been looking to the board and senior management of financial institutions (FIs) to ensure a strong culture of responsibility and ethical conduct within their organisations. Singapore is no exception. With the proposed introduction of the Guidelines on Individual Accountability and Conduct (Guidelines), the Monetary Authority of Singapore (MAS) aims to strengthen the individual accountability of senior managers in FIs.

INTRODUCTION

On 26 April 2018, MAS published its consultation paper on the proposed Guidelines to raise standards of conduct in FIs.

Consistent with the wider trend among global regulators, MAS has been intensifying its regulatory and supervisory emphasis on FIs' culture and conduct. Specifically, MAS has adopted a three-pronged approach via:

- (i) promoting and cultivating trust and ethical behaviour in the financial sector;
- (ii) monitoring and assessing FI's culture and conduct through "hardware" (frameworks, policies and procedures) and "software" (tone-at-the-top, leadership, attitudes, behaviour and group dynamics); and
- (iii) enforcing and deterring lapses in risk management, misconduct, regulatory breaches or offences.

Based on this three-pronged approach, the proposed Guidelines set out MAS' supervisory expectations of boards and senior management with respect to individual conduct and behaviours.

WHAT ARE THE KEY PURPOSES OF THE GUIDELINES AND HOW ARE THESE TO BE ACHIEVED?

The key purposes of the Guidelines are to reinforce FIs' responsibilities in three areas:

- (i) promoting individual accountability of senior managers;
- (ii) strengthening the oversight of employees in material risk functions (MRFs); and
- (iii) embedding standards of proper conduct among all employees.

To achieve these objectives, MAS proposes to adopt an outcomes-based approach. The Guidelines set out five outcomes that FIs are expected to work towards:

Key issues

- MAS intends to issue Guidelines on Individual Accountability and Conduct in the fourth quarter of 2018.
- The proposed Guidelines do not supersede existing laws and regulations.
- An outcomes-based approach will be adopted. FIs have the flexibility to explore different means of achieving the intended outcomes.
- FIs should be prepared to undertake the necessary work to ensure compliance with the proposed Guidelines.

- (i) **Outcome 1:** Senior managers who have responsibility for the management and conduct of functions that are core to the FI's operations are clearly identified.
- (ii) **Outcome 2:** Senior managers are fit and proper for their roles, and held responsible for the actions of their staff and the conduct of the business under their purview.
- (iii) **Outcome 3:** The FI's governance framework is supportive of and conducive to senior managers' performance of their roles and responsibilities. The FI's overall management structure and reporting relationships are clear and transparent.
- (iv) **Outcome 4:** Employees in MRFs are fit and proper for their roles, and subject to effective risk governance as well as the appropriate standards of conduct and incentive structure.
- (v) **Outcome 5:** The FI has a framework that promotes and sustains the desired conduct among all employees.

MAS has made clear that the Guidelines are not designed to be prescriptive. The outcomes set out above are intended to facilitate FIs' implementation of the Guidelines in a manner proportionate to the nature, size and complexity of their operations. The FIs have the flexibility to explore different means of achieving these outcomes, taking into account their specific organisational structure, business model and context.

The role of MAS will be to review the robustness of FIs' governance arrangements and measures to achieve the objectives and spirit of the Guidelines through its ongoing supervisory process.

TO WHOM DO THE GUIDELINES APPLY?

The Guidelines are intended to apply to banks, merchant banks, finance companies, insurers, capital markets services licensees, financial advisers, trust companies and systemically-important infrastructures (approved exchanges and clearing houses). For locally-incorporated banks and insurers, MAS proposes to apply the Guidelines on a group basis¹.

Individuals falling within the definition of "senior managers" are those who are employed in an executive capacity by and are principally responsible for the day-to-day management of the FI. These include, but are not limited to, the senior managers performing "core management functions", such as the following persons:

- chief executive officer
- chief financial officer
- chief risk officer
- chief operating officer
- chief information officer
- chief information security officer
- chief data officer
- head of business function
- head of actuarial
- head of human resources
- head of compliance
- head of financial crime prevention
- head of internal audit
- chief regulatory officer

¹ For locally-incorporated banks and insurers that are headquartered in Singapore, this refers to the group including the holding company in Singapore, as well as local and overseas subsidiaries and branches, where applicable. For locally-incorporated subsidiaries of foreign banks and insurers, this refers to the local operations in Singapore and downstream subsidiaries and branches in Singapore and overseas, where applicable.

REQUIREMENTS UNDER THE PROPOSED GUIDELINES

The proposed Guidelines provide guidance on actions which should be taken by the FIs to achieve the intended Outcomes.

In relation to Outcome 1, FIs should identify senior managers who are responsible for core management functions and have actual decision-making authority and oversight of each such function, and clearly specify their individual accountabilities. Such senior managers may be based in or outside Singapore.

As for Outcomes 2 and 3, FIs are required to conduct due diligence on senior managers prior to their appointment, and to establish governance policies and processes to promote proper accountability, and facilitate senior managers' performance of their roles and responsibilities in an effective manner.

Specifically, the board or head office of the FIs should ensure that the FIs:

- have robust standards and processes to assess the fitness and propriety of senior managers;
- clearly specify each senior manager's area of responsibility (including in management committees);
- appropriately delineate the FI's overall management structure;
- have each senior manager acknowledging his specified roles, responsibilities and reporting lines;
- have board or head office's approval of and document each senior manager's roles and responsibilities and the FI's overall management structure;
- put in place appropriate incentive, escalation and consequence management frameworks; and
- put in place a succession plan that is regularly reviewed and updated.

Outcome 4 requires FIs to identify employees in MRFs² and subject them to necessary oversight. The board and senior management should ensure that appropriate standards and processes are in place to:

- identify such employees;
- assess the fitness and propriety of such employees;
- facilitate effective risk governance; and
- subject such employees to standards of proper conduct, continuing training and an appropriate incentive structure.

Lastly, Outcome 5 envisages that FIs should have in place a framework that promotes and sustains desired conduct among employees. The board and senior management should ensure that such framework addresses:

- the standards of conduct expected of all employees;
- consistent and effective communication of the expected standards;
- the policies, systems and processes to enforce the expected standards, including a monitoring, reporting and escalation framework, an incentive

² MAS proposes to define employees in MRFs as employees whose decisions or activities could materially impact an FI's risk profile, including but not limited to employees in executive, business, risk management, control, or support functions who, while not senior managers, are vested with material decision-making authority or mandates which may lead to significant impact on the FI's safety and soundness, or cause harm to a significant segment of the FI's customers or other stakeholders.

structure, a consequence management system and a formalised whistle-blowing channel; and

- engagement strategies with key stakeholders.

The board and senior management are expected to notify MAS of material adverse developments such as misconduct, lapses in risk management and controls, or breaches in legal or regulatory requirements that have the potential to cause widespread disruption to the FI and/or significantly impact the FI's customers or safety and soundness. MAS should also be notified in a timely manner of any information that may have material negative impact on the fitness and propriety of senior managers or employees in MRFs.

WHAT HAPPENS NEXT?

The Guidelines are targeted to be issued in the fourth quarter of 2018. MAS is currently seeking comments on the proposed scope of application of the Guidelines, the proposed Outcomes 1 to 5 and the proposed guidance for achieving such outcomes. Comments on the consultation are due by 25 May 2018. MAS's consultation paper is accessible [online](#).

IMPLICATIONS

The introduction of the Guidelines underscores that culture and conduct is the collective responsibility of not only the FIs and MAS, but also individuals such as board members, senior management and employees.

Similar regulatory regimes aimed at strengthening the individual accountability of directors and senior managers have been introduced in many other major jurisdictions, such as the United Kingdom, Hong Kong and Australia. The experiences in other jurisdictions demonstrate that these mechanisms will allow the regulator to more effectively identify the individuals who are responsible for the area or functions at fault in any instance of regulatory breach or failure of the FI.

Where the FI and its board and senior management do not meet the expectations under the Guidelines, and/or demonstrate an unwillingness or inability to take remedial actions, MAS will exercise a wide range of supervisory or enforcement actions, such as issuing warning or reprimand letters, or imposing conditions on the FI's activities. MAS's enforcement actions are intended to be commensurate with the severity and nature of the misconduct or breach, and yet be adequate to achieve effective deterrence.

Given the prospect of imminent implementation of these Guidelines, FIs should be prepared to undertake the necessary work to ensure compliance, having regard to the requirements under the existing legislation and outcomes-based approach proposed by MAS.

CONTACTS

Nish Shetty
Partner
Clifford Chance Pte Ltd

T + 65 6410 2285
M + 65 8128 7412
E nish.shetty
@cliffordchance.com

Lena Ng
Partner
Clifford Chance Pte Ltd

T + 65 6410 2215
M + 65 8126 0729
E lena.ng
@cliffordchance.com

Kabir Singh
Partner
Clifford Chance Pte Ltd

T + 65 6410 2273
M + 65 8218 2303
E kabir.singh
@cliffordchance.com

Janice Goh
Counsel
Cavenagh Law LLP

T + 65 6661 2021
M + 65 9113 2896
E janice.goh
@cliffordchance.com

Lijun Chui
Senior Associate
Clifford Chance Pte Ltd

T + 65 6506 2752
M + 65 9128 4122
E lijun.chui
@cliffordchance.com

Helen Wang
Senior Associate
Clifford Chance Pte Ltd

T + 65 6506 1973
M + 65 9661 0154
E helen.wang
@cliffordchance.com

Zhern Leing Thai
Associate
Clifford Chance Pte Ltd

T + 65 6410 2223
M + 65 9138 2342
E zhernleing.thai
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com
www.cavenaghlaw.com.sg

Clifford Chance Asia

12 Marina Boulevard, 25th Floor Tower 3,
Marina Bay Financial Centre, Singapore
018982

Clifford Chance Asia is a Formal Law Alliance
between Clifford Chance Pte Ltd and
Cavenagh Law LLP.

© Clifford Chance Pte Ltd and
Cavenagh Law LLP 2018

Abu Dhabi • Amsterdam • Bangkok •
Barcelona • Beijing • Brussels • Bucharest •
Casablanca • Dubai • Düsseldorf • Frankfurt •
Hong Kong • Istanbul • London • Luxembourg
• Madrid • Milan • Moscow • Munich • New
York • Paris • Perth • Prague • Rome • São
Paulo • Seoul • Shanghai • Singapore •
Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement
with Abuhimed Alsheikh Alhagbani Law Firm
in Riyadh.

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.