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HONG KONG'S SFC GIVES FIRST MAJOR UPDATE ON PROGRESS OF MANAGER-IN-CHARGE REGIME

Hong Kong's Securities and Futures Commission (SFC) has published its first substantive review of progress in the Manager-in-Charge regime since it was fully implemented in October 2017. The SFC also says it will conduct a thematic review of Licensed Corporations' (LCs) management structure and effectiveness. The update comes shortly after Singapore announced plans to introduce a similar regime, with a consultation underway and guidelines expected to be issued later this year.

BACKGROUND

In its *SFC Compliance Bulletin: Intermediaries* published in May 2018, the SFC discussed developments in the Manager-in-Charge (MIC) regime that was fully implemented in October 2017. The SFC said the regime *"adds clarity as to which individuals are senior management, heightens awareness of senior management's accountability, regulatory obligations and potential liabilities, better aligns senior management with the existing responsible officer (RO) regime and standardises the format for submitting management structure information to the SFC".*

The bulletin reported that many firms prepared for the introduction of the MIC regime by discussing their specific management structures with the SFC as well as taking specific actions to strengthen accountability and governance. By way of example, the bulletin identified specific improvements by global financial groups including:

- the appointment of senior executives at group level to become MICs, ROs and board members of LCs who were previously licensed representatives only or were not even licensed;
- the establishment of new management and operating committees reporting to the LCs' board; and
- additional training of MICs on their obligations.

For a reminder of the requirements of the MIC regime, see the Clifford Chance client briefing *"SFC introduces Manager-in-Charge Regime to Heighten Senior Management Accountability".*

Key issues

- The SFC has published its first major review of progress in the Manager-in-Charge regime since it was fully implemented in October 2017.
- As of 31 March 2018, about 10,600 individuals had been appointed as MICs.
- The SFC will conduct a thematic review of LCs' management structure and effectiveness, including board governance as well as the responsibilities of MICs (based within or outside Hong Kong) and how they discharge these responsibilities.

FACTS AND FIGURES

The bulletin noted that as of 31 March 2018, about 10,600 individuals were appointed as MICs. Around 90% of the MICs responsible for the OMO or Key Business Line (KBL) function were approved as ROs (the SFC had handled about 2,000 such RO applications). All active LCs had made initial MIC submissions to the SFC and are now required to notify the SFC of any changes to their MIC appointments or organisational charts (within seven business days). 38% of all MICs are not licensed persons as they are mainly involved in compliance, control and operational functions.

The MIC regime has, according to the bulletin, made it easier for the SFC to keep track of information about a firm's senior management who are required to comply with conduct requirements under SFC codes and guidelines, regardless of whether or not they are licensed persons.

HKMA REGIME

On 16 October 2017, the Hong Kong Monetary Authority (HKMA) published its own guidance on management accountability at registered institutions (see the Clifford Chance client briefing *"HKMA implements measures to refine management accountability".* According to the guidance, registered institutions (i.e. authorised institutions which conduct regulated activities) should have, by 16 April 2018, identified at least one individual as principally responsible for (i) the overall management of the whole business of the registered institution; and (ii) managing each of the businesses or functions listed in paragraphs 2 to 8 of the Fourteenth Schedule to the Banking Ordinance, to the extent that these individuals are involved in the management of the business constituting any regulated activities. The HKMA also took the opportunity to issue a reminder that under Part IX of the Securities and Futures Ordinance (SFO), a person involved in the management of the business constituting any regulated activities in registered institutions is a "regulated person" and is subject to the disciplinary powers under the SFO.

The HKMA has not thus far made any public announcement about the implementation of the guidance.

SIMILAR DEVELOPMENT IN SINGAPORE

The Singapore regulator is planning to introduce a similar accountability regime. On 26 April 2018, the Monetary Authority of Singapore (MAS) published its consultation paper on the proposed introduction of Guidelines on Individual Accountability and Conduct (Guidelines) to raise standards of conduct in FIs.

The MAS proposed five "Outcomes" which closely mirror the requirements of the Hong Kong MIC regime, particularly in areas such as the importance of clearly identifying roles and responsibilities, having in place a clear and transparent organisational structure and framework, the need for additional training and undertaking a regular assessment that those managers in key functions are fit and proper for their roles. The Guidelines are intended to be issued in the fourth quarter of 2018. Further information about the Guidelines can be found in the Clifford Chance client briefing *"MAS issues proposal to heighten senior management accountability".*

WHAT'S NEXT FOR HONG KONG - THEMATIC REVIEW

The SFC bulletin noted that the SFC will conduct a thematic review of LCs' management structure and effectiveness, including board governance as well as the responsibilities of MICs (based within or outside Hong Kong) and how they discharge these responsibilities. Whilst there are currently no details as to when the review will take place or complete, licensed corporations are encouraged to revisit the information they have submitted to the SFC to ensure that it is consistent with, and can be demonstrated in, their actual practice. Similar reviews by the HKMA in the future can also be expected.

IMPLICATIONS

It appears that the strict compliance with the MIC requirements (appointing individuals as MICs and submitting an updated organisation chart) has not proved too difficult for LCs. LCs however need to ensure that the MICs are "fit and proper" (even if they are not licensed). We expect the SFC to hold LCs (and their board) accountable if it is identified, in the upcoming thematic inspection, that an MIC has raised fitness and properness concerns.

A major challenge in the implementation of the MIC requirements has centred around the identification of relevant individuals, defining their areas of accountability and ensuring they occupy appropriate positions within the management hierarchy. Some LCs with complex organisational arrangements found mapping of MICs to the relevant functions challenging. To the extent that LCs did not go through the mapping process with all the internal stakeholders and obtain the MICs' buy-in in at the time of submitting the MIC information, the SFC may identify issues in the LCs' governance structure in the upcoming thematic inspection. LCs are recommended to take remedial action immediately.

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