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My new job title – Manager-in-charge

A discussion on the “Circular to Licensed Corporations Regarding Measures for Augmenting the Accountability of Senior Management” dated 16 December 2016 issued by the Securities and Futures Commission of Hong Kong (“SFC”)

On 16 December 2016, the Securities and Futures Commission (“SFC”) published the Circular to Licensed Corporations Regarding Measures for Augmenting the Accountability of Senior Management (“Circular”) that introduced the proper implementation of the General Principle 9 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“Code of Conduct”). This circular applies to **ALL** SFC licensed corporations (“LC”s).

Under the Securities and Futures Ordinance (“SFO”), a regulated person not only included (i) a licensed person; (ii) a Responsible Officer (“RO”), but also (iii) a person involved in the business management of a LC (regardless of whether he or she is licensed). In respect to the third categories, the SFC further define senior management as (i) Directors, including both Executive Directors and Non-Executive Directors; (ii) ROs; and (iii) Managers-In-Charge (“MIC”s) of Core Functions. Effectively, all members of the senior management of a LC (even if they are not licensed) are regulated persons because of their involvement in the management of the LC’s business.

8 Core Functions

- (i) Overall Management Oversight
responsible for directing and overseeing the management of the overall operations of the corporation on a day-to-day basis

- (ii) Key Business Line
responsible for directing and overseeing a line of business which comprises one or more types of regulated activities, e.g. Type 9 asset management business should be in a different line of business from the Type 4 advisory business

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- (iii) Operational Control and Review
responsible for establishing and maintaining adequate and effective systems of controls over the corporation's operations; and reviewing the adherence to, and the adequacy and effectiveness of, the corporation's internal control systems
- (iv) Risk Management
responsible for the identification, assessment, monitoring and reporting of risks arising from the corporation's operations
- (v) Finance and Accounting
responsible for ensuring the timely and accurate financial reporting and analyses of the operational results and financial positions of the corporation
- (vi) Information Technology
responsible for the design, development, operation and maintenance of the computer systems of the corporation
- (vii) Compliance
responsible for setting the policies and procedures for adherence to legal and regulatory requirements in the jurisdiction(s) where the corporation operates; monitoring the corporation's compliance with the established policies and procedures; and reporting on compliance matters to the Board and senior management
- (viii) Anti-Money Laundering and Counter-Terrorist Financing
responsible for establishing and maintaining internal control procedures to safeguard the corporation against involvement in money laundering activities or terrorist financing

Who are MICs?

Subject to the scale of operations and control measures of the licensed corporation, a person can serve more than one core function. When determining who is the MIC of Core Function(s), the LC should consider whether:

- (i) the person is principally responsible, either alone or with others, for managing any of the Core Functions;
- (ii) the person has the apparent or actual authority in relation to that Core Function; and
- (iii) the person has sufficient seniority.

Further, although an MIC may not necessarily be the employee of a licensed corporation, he/she cannot be an external party providing outsourced services. For instance, the accounting officer of the parent company can be an MIC, but the external lawyer cannot be an MIC. Despite the SFC does not seek to apply regulatory approval to an MIC who is not a licensed person or a licensed applicant, LC should ensure the person appointed is fit and proper and qualified to act in his/her capacity.

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MICs of the Overall Management Oversight function and the Key Business Line function should be ROs of the LC

The SFC is of the view that MICs of the Overall Management Oversight function and the Key Business Line function are usually actively participating in or are responsible for directly supervising the business of the regulated activities. However, these individuals may not be the ROs of the licensed corporation. As a result, they will be required to become an RO. For RO applicant, who is or will be an MIC of the Overall Management Oversight function, the SFC will consider the applicant's overall career history within the industry, as well as his / her proposed activities and the resources (including system and expertise) available to the licensed corporation in totality.

An applicant who has held a senior position to manage a control or operational function (e.g. risk management, compliance, financial or operational control) for a long time may be approved as RO subject to appropriate licensing conditions, even if he/she has not had any experience in conducting or directly supervising regulated activity. SFC may consider imposing a "non-sole" condition on the RO applicant. The RO applicant will be required to pass the relevant regulatory framework papers.

The SFC does not expect MICs of Core Functions other than MICs of the Overall Management Oversight function and the Key Business Line function to be ROs. The SFC also does not require every RO to be an MIC.

Rationale of the MICs regime

Learned from the speech made by Ms. Julia Leung, executive director of SFC Intermediaries Department, on 19 January 2017 at AIMA APAC Annual Forum 2017, the SFC would like to heighten the awareness of the senior management of the LCs regarding their regulatory responsibilities and promote the culture of corporate governance in the LC through this regime.

Despite the regulatory responsibilities of the senior management is embedded in the SFO since its promulgation, the SFC found some unlicensed senior manager, particularly on IT and risk management, are not aware of it during its soft consultation exercise. Hence, under the MIC regime, these responsibilities are spelt out.

In determining where responsibility lies, and the degree of responsibility which a particular member of senior management has, the SFC takes into account of various factors including the individual's apparent or actual authority over the business and its operations.

The SFC is cognisant of the fact that many licensed firms in Hong Kong are subsidiaries of global financial institutions with a matrix reporting that management decision may be made by a global management committee. In this case, this may be hard to trace the person who should be accountable to the management decision of the LC. In this case, the SFC suggests LCs that are part of an international financial group should review the composition of the management team and the responsibilities allocation among senior management.

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Key dates

February to March 2017	Workshops to be organized by the SFC
From 18 April 2017 onwards	Submission of management structure information to the SFC, including the organizational chart and a Supplement 8A for information of the MIC, for new license application
On or before 17 July 2017	Submission of management structure information for all licensed corporations
On or before 16 October 2017	MICs of the Overall Management Oversight function and the Key Business Line function, who are not already ROs, to apply for approval to become RO

Conclusion

Hence, you should now start to:

- review the existing organizational chart;
- discuss with relevant employees about the MIC roles and liabilities;
- prepare management structure information ready for submission; and
- prepare necessary RO application for relevant MICs.

If you have any further questions regarding this issue of CP insights or have any topic you would like us to cover, please submit your response here <https://goo.gl/forms/gDLVThTmxGvMI4r12>.

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