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## The SFC's new "Managers-in-Charge" Regime: it's getting tougher at the top

Regulators in key markets around the world have increasingly looked for more effective ways to hold senior managers of financial institutions accountable for wrongdoing within their institutions, driven by the belief that overall corporate behaviour can be improved through increased personal responsibility.

In Hong Kong, after concerted reminders from the Securities and Futures Commission (SFC) and other regulators that senior management of financial institutions must foster the "right corporate culture," and that individuals will be held accountable for misconduct, the SFC recently published the Circular "Regarding Measures for Augmenting the Accountability of Senior Management." That Circular and its accompanying FAQs aim to reinforce that message and give additional guidance.

The guidance builds on expectations of senior management in the SFC's Code of Conduct, and confirms that the SFC regards a Licensed Corporation's (LC) Board of Directors, its Responsible Officers (ROs) and individuals designated by that LC as "Managers-in-Charge" (MICs) as "senior management."

Who should be designated an MIC? LCs must appoint at least one MIC, each of whom should report directly to the Board or CEO, for each of the following eight "Core Functions": overall management oversight (those who direct/oversee operations daily, e.g., CEO), key business line (those who direct/oversee a regulated activity, e.g., head of that business line), operational control and review (e.g., COO), risk management, finance and accounting, information technology, compliance, and anti-money laundering. Existing LCs are expected to give the SFC between 18 April 2017 and 17 July 2017 MIC information and new organisational charts which show a clear management and governance structure and individual reporting lines.

What does all of this mean for an LC in practice? As a start, it will necessitate

a fresh look by its Board and senior management of its management, organisational, reporting and responsibility structures, to identify which individuals have responsibility for what areas, to whom they have responsibility and why, so that those structures are clear and can be documented, and at least one MIC for each Core Function can be identified. It will then require buy-in from those individuals before the SFC can be notified of their MIC designation ahead of the proposed 17 July 2017 deadline.

What challenges might arise along the way? Some individuals who should be designated MICs will be familiar with being regulated in Hong Kong (most key business line MICs will already be ROs because of their responsibilities). But some may not be so used to being under SFC scrutiny and, potentially,

exposure. For example, heads of risk management, finance and accounting, IT, and compliance, who do not typically hold SFC licences, may need particular help in understanding what being an MIC means for them. This also applies to any individuals located outside Hong Kong who have the SFC's expected attributes of an MIC (essentially, someone who has significant influence and decision-making power over a Core Function). Accordingly, it will be particularly important for those categories of MIC to be specifically educated about the MIC regime, their responsibilities within that regime and what it means for them to be identified as an MIC, so that their early buy-in can (hopefully) be obtained.

As for the standards of conduct expected of MICs, SFC expectations ought to be familiar territory for those who are already ROs, but may well not be for those who do not hold an SFC licence. In this regard, neither the Circular nor its accompanying FAQs appear to be particularly clear about the applicable benchmarks. Time, and the SFC's first disciplinary actions against unlicensed MICs, will tell how the SFC might look to enforce its MIC expectations in practice. But one thing is clear: it's getting increasingly tough at the top, and not just at the very top.

