

LEGAL UPDATE

Hong Kong Securities & Futures Market Regulator introduces Managers-in-Charge regime

Introducing the Managers-in-Charge requirements

The Hong Kong Securities and Futures Commission (SFC) has issued its “Circular to Licensed Corporations Regarding Measures for Augmenting the Accountability of Senior Management” which introduces additional specific requirements and expectations of the SFC regarding senior management personnel of licensed corporations (referred to below as “**the Managers-in-Charge Circular**”).

The Managers-in-Charge Circular was published on 16 December 2016 and shall be effective from 18 April 2017 (“**Commencement Date**”). It is intended to enhance accountability and transparency of senior management of licensed corporations in the conduct of business operations. Existing licensed corporations will need to submit to the SFC additional information on and particulars of their senior management personnel who are responsible over 8 core functions (the “**Managers-in-Charge**”) within 3 months of the Commencement Date, latest by 17 July 2017. With effect from the Commencement Date, applicants for license with the SFC to engage in regulated activities in securities and futures businesses will need to submit such additional information on their proposed Managers-in-Charge together with the intended human resources and organizational structure when applying to the SFC for license. Any change in the appointment or particulars of the Managers-in-Charge of a licensed entity should be notified to the SFC within 7 business days.

Core Functions

The new Managers-in-Charge framework would impact senior management persons over the following 8 categories of functions within a licensed corporation:

- i. **Overall Management Oversight** (eg. Chief Executive Officer, President);
- ii. **Key Business Line** (of the regulated activities – eg. Chief Investment Officer, Head of Equity, Head of Corporate Finance, Chief Rating Analyst, Head of Fund Marketing);
- iii. **Operational Control and Review** (eg. Chief Operating Officer, Head of Operations, Head of Internal Audit);
- iv. **Risk Management** (eg. Chief Risk Officer, Head of Risk Management);
- v. **Finance and Accounting** (eg. Chief Finance Officer, Financial Controller, Finance Director);
- vi. **Information Technology** (eg. Chief Information Officer, Head of Information Technology);
- vii. **Compliance** (eg. Chief Compliance Officer, Head of Legal and Compliance);
- viii. **Anti-Money Laundering and Counter-Terrorist Financing** (eg. Head of Financial Crime Prevention, Head of Compliance).

Information regarding the job position and reporting lines of the Managers-in-Charge will need to be submitted, together with details on the identity and residence of the Managers-in-Charge. The SFC accepts that the same individual may be Managers-in-Charge of more than one function, or that there may be more than one person responsible for a function. The Managers-in-Charge could also be based outside of Hong Kong. As the SFC often emphasizes, it does not prescribe a one-size-fit-all organizational structure,

but accepts that different entities may have different structure depending on its size, scale, business and operational needs. The Managers-in-Charge are such persons with sufficient seniority and authority within the entity with responsibility to make decisions and manage on day-to-day basis over the relevant function.

The Managers-in-Charge are not subject to specific qualification requirements or approval by the SFC, but the onus lies on licensed corporations to appoint fit and proper persons who are qualified to assume those responsibilities.

Responsible Officers for Overall Management Oversight and Key Business Lines

However, the SFC specifically clarifies in the Managers-in-Charge Circular that Managers-in-Charge of the Overall Management Oversight and any Key Business Line would need to be approved as Responsible Officers (ROs). Therefore, persons responsible for the overall management of the licensed corporation such as the Chief Executive Office or similar positions, as well as all business heads for conducting regulated activities will need to be ROs. In this regard, the SFC further clarifies that it may approve a proposed RO who does not have actual experience in the relevant regulated activity if the SFC considers that he/she has sufficient overall industry experience, as well as taking into account the overall system, expertise and resources available to the licensed corporation. Accordingly, a person with compliance, financial or operations experience, for example, may be approved as RO on this basis. The SFC may impose a condition that such RO work with a fully-qualified unconditional RO, until the RO subject to the condition has gained and accumulated sufficient relevant experience.

Managers-in-Charge of Overall Management Oversight and of any Key Business Line who are not already ROs are expected to apply and be approved as ROs on or before 16 October 2017 (within 6 months of the Commencement Date).

Responsibility of the Board of Directors

The functions of the ROs and Managers-in-Charge do not change the ultimate responsibility of the board of directors of licensed corporations. The SFC states in the Managers-in-Charge Circular that the board of a licensed corporation is ultimately responsible for the conduct of business and financial soundness of the corporation. In the SFC's view, senior management is accountable to the board, being authorized and delegated with power and authority of the board over the business and management of the licensed corporation. The SFC expects the board of directors of licensed corporation to formally approve the management and organizational structure of the corporation covering the roles, responsibilities, accountability and reporting lines of senior management personnel. Such document may be required to be submitted to the SFC for its review.

The SFC also makes reference to the responsibility of all directors of a licensed corporation, and that the term "director" is defined in the Securities and Futures Ordinance to include "a shadow director and any person occupying the position of director by whatever name called".

Implications

While the Managers-in-Charge regime would impose additional requirements with respect to reporting on senior management personnel of licensed corporations, the requirements are not intended to change the potential legal liability and regulatory obligations of senior management. According to General Principle 9 of the SFC Code of Conduct for Persons Licensed by or Registered with the SFC, the senior

management of a licensed corporation should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures, and in determining where responsibility lies and the degree of responsibility of any individual, regard shall be had to that individual's apparent or actual authority in relation of the business operations.

Under the Securities and Futures Ordinance (SFO), a person involved in the management of the business of a licensed entity is also a "regulated person", besides licensed persons and ROs of licensed corporations. Where a licensed corporation is guilty of misconduct or offence under the SFO, where such conduct is under the consent or connivance of, or attributable to neglect or recklessness on the part of a regulated person, the regulated person may also be guilty of a misconduct or an offence. The apparent or actual authority of a person, the supervisory duties performed and the levels of control or knowledge on any failure or misconduct would be taken into account in determining responsibility.

Under the Managers-in-Charge regime, it clarifies the SFC's attitude and views on senior management personnel of licensed corporations, and as licensed corporations would need to clearly stipulate and report to the SFC on the persons who are responsible for the respective core functions, it is aimed to provide greater transparency around the responsibility and accountability of senior management persons.

For further details on the SFC Managers-in-Charge regime, the Managers-in-Charge Circular is available on the SFC's website (in English and Chinese versions):

- [Circular to Licensed Corporations Regarding Measures for Augmenting the Accountability of Senior Management](#)
- [致持牌法团有关加强高级管理层问责性的措施的通函](#)

The SFC has also published on its website [Frequently Asked Questions \(FAQs\) on the topic](#).

Contact Details

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