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Client Alert

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Monetary Authority of Singapore follows suit in the global regulatory trend to strengthen individual accountability of directors and senior managers

On 29 April 2018, the Monetary Authority of Singapore ("**MAS**") issued a consultation paper, proposing to introduce a new set of Guidelines on Individual Accountability and Conduct ("**Guidelines**").

MAS adopts a three pronged approach in regulating and supervising financial institutions

With growing incidents of misconduct and egregious risk-taking in the financial industry both globally and in Singapore, MAS has been intensifying its regulatory and supervisory emphasis on financial institutions ("**FIs**")'s culture and conduct. MAS reiterates that in doing so, it adopts a three pronged approach:

1. Promote and cultivate

- Promote a culture of trust and ethics through regular engagement, active collaboration and promulgation of good practices.
- Shift the industry away from mechanistic compliance with rules and box ticking mentality and elevating the industry from "what is legal?" to "what is right and ethical?"

2. Monitor and Assess

- Monitor and assess culture and conduct, focusing on both "hardware" (frameworks, policies and procedures) and "software" (tone-at-the-top, leadership, attitudes, behaviours and group dynamics).
- Adopt a preemptive and anticipatory supervision to control and mitigate incidents of breaches and misconducts.

3. Enforce and Deter

- Take supervisory and enforcement actions against lapses in risk management, misconduct, regulatory breaches or offences.
- Apply suitable supervisory and enforcement actions commensurate to the severity and nature of lapses and to achieve effective deterrance.

In connection with the first prong of promoting and cultivating the right culture and conduct, MAS is proposing to issue a new set of Guidelines to strengthen individual accountability of directors and senior managers.

What are the key highlights of the proposed Guidelines?

The proposed Guidelines seek to promote individual accountability of senior managers, strengthen oversight of employees with material risk functions, and reinforce standards of proper conduct among all employees. FIs are expected to work towards five accountability and conduct outcomes as follows:

Outcome 1: FIs must clearly identify who the "senior managers" are

- **Who are senior managers**? Senior managers are those have responsibility for functions that are core to the management of the FI's affairs, including but not limited to the Core Management Functions.
- **Core Management Functions** include, depending on the type of licence the FI holds, the following : (a) chief executive officer; (b) chief financial officer / head of finance; (c) chief risk officer / head of risk; (d) chief operation officer / head of operations; (e) chief information officer / chief technology officer / head of information technology; (f) chief information security officer / head of information security; (g) chief data officer; (h) head of business functions; (i) head of actuarial / appointed actuary / certifying actuary; (j) head of human resources; (k) head of compliance; (l) head of financial crime prevention; (m) head of internal audit; and (n) chief regulatory officer.
- Apart from the CEO who is directly accountable to the Board of Head Office, senior managers should in general have a direct reporting line to the CEO, and where relevant to the performance of that function, to the Board or Head Office as appropriate.

Outcome 2: Senior managers must be fit and proper for their roles, and held responsible for the actions of their staff and conduct of business under their purview

Outcome 3: FIs must adopt governance framework that is supportive of and conducive to senior manager's performance of their roles and responsibilities. Management structure and reporting relationships must be clear and transparent

- Regardless of whether senior management appointments are subject to regulatory approvals, FIs are expected to ensure their fitness and propriety.
- FIs should establish appropriate governance policies and processes to promote proper accountability and facilitate senior manager's performance of their roles and responsibilities in an effective manner.
- Practices include requiring the Board or Head Office to implement: (a) robust standards and processes to assess fitness and propriety for senior managers; (b) clear specification of each senior manager's roles and responsibilities in management committees; (c) appropriate delineation of the FI's overall management structure; (d) appropriate incentive, escalation and consequence management frameworks to hold senior managers accountable for their roles; and (e) regularly reviewed and updated succession plan.

Outcome 4: Board and senior managers must identify employees in material risk functions. Such employees must be fit and proper for their roles, and subject to effective risk governance and appropriate standards of conduct and incentive structure.

- **Who are considered employees in material risk functions?** These are employees whose decisions or activities could materially impact the FI's risk profile. For example, 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 FIs' customers or other stakeholders
- Board and senior management are required to implement appropriate standards and processes to: (a) identify employees in material risk functions; (b) assess their fitness and propriety; (c) facilitate effective risk governance (e.g. imposing appropriate mandates, decision making authority, risk limits and supervisory oversight); and (d) subject such employees to standards of proper conduct, training and appropriate incentive structures.

Outcome 5: FIs must adopt framework that promotes and sustains the desired conduct among all employees

- Board and senior management should ensure that a framework is in place to address : (a) standard of conducts of all employees; (b) consistent and effective communication of the expected standards of conduct; (c) appropriate policies, systems and processes to enforce the expected standards of conduct (including regular monitoring, reporting and escalation to the Board and senior management, appropriate incentive structure, consequence management system and formalised whistleblowing channel); and (d) engagement strategies with key stakeholders (including depositors, policyholders, investors, corporate and institutional clients and counterparties, shareholders and regulators).
- Board and senior management should notify MAS as soon as it comes aware of any material adverse development. These include 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's operations or business, and/or significantly impact the FI's customers, safety and soundness.

Who will the Guidelines apply to?

The proposed Guidelines will apply to all licensed banks, merchant banks, finance companies, insurers, foreign insurers operating in Singapore under a foreign insurer scheme, approved exchange, approved clearing house, approved holding company, capital markets services licence holders, licensed financial adviser and licensed trust company.

When will the Guideline be implemented?

MAS targets to issue the final Guidelines by Q4 2018. MAS is currently seeking public feedback on the proposed Guidelines, and the public consultation will close on 25 May 2018.

Key Takeaway

The latest proposal demonstrates MAS' continued focus in upholding a high standard of integrity, ethics and conduct in the financial industry, and ensuring strong corporate governance and personal accountability.

The proposed Guidelines echoes, to an extent, the regimes seen in other major financial centres such as the UK's Senior Managers and Certification Regime and Conduct Rules, Hong Kong Securities and Futures Commission's Managers-in-Charge Regime and Australia's Banking Executive Accountability Regime. In this regard, MAS does appear to be taking a softer approach as compared to the regimes in UK and Hong Kong, by proposing for the requirements to be encapsulated in the form of Guidelines.

Nevertheless, in this new era, it is expected that FIs in Singapore will be challenged to clearly identify and demarcate the roles and responsibilities of senior managers and employees in material risks functions, including middle and back office functions (which are traditionally not subject to direct accountability with MAS), and implement appropriate reporting, management oversight, remuneration and incentive structures to comply with the Guidelines.

As alluded to in the Consultation Paper, consistent with the second prong approach, MAS will be reviewing the robustness of FI's governance arrangements and measures to achieve the objectives and spirit of the Guidelines through their ongoing supervisory process, including supervisory visits, meetings with Board, senior management and other employees. Consistent with the third prong approach, MAS will take appropriate supervisory actions where FIs and their Board and senior management do not meet the expectations under the Guidelines and/or demonstrate an unwillingness or inability to take remedial actions.

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