Guidelines on Individual Accountability and Conduct

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INTRODUCTION

In April 2018, the MAS issued the consultation paper on proposed guidelines on individual accountability and conduct. And after extensive review and comments on the feedback from the financial industry and excited participants, the MAS published the Guidelines on Individual Accountability and Conduct (the "Guidelines") on 10 September 2020, to be effective on 10 September 2021.[1]

The MAS has been focusing on culture and conduct in FIs to achieve two key outcomes: (i) ethical business practices that safeguard customers' interests and ensure fair treatment; and (ii) prudent risk-taking behaviour and robust risk management that support FIs' safety and soundness.

The guidelines focus on the measures FIs should put in place to promote the individual accountability of senior managers, strengthen oversight over material risk personnel, and reinforce standards of proper conduct among all employees. Specifically, the Guidelines set out the five accountability and conduct outcomes (the "Outcomes") that FIs should achieve.

The objective of the Guidelines is to assist FIs by providing a framework and best practices for strengthening accountability and standards of conduct. FIs should carefully review the measures and identify those relevant to achieve the five Outcomes, with adaptations and enhancements to be made based on the nature, size and complexity of their businesses. FIs with smaller number of employees, such as those with fewer than 50 headcount, should still achieve the five Outcomes, but will not ordinarily be expected to adopt the specific guidance described in the Guidelines (hint: be prepared to explain why not).

Outcome 1.

Senior managers responsible for managing and conducting the FI's core functions are clearly identified.

Senior managers are to be held accountable for matters under their purview. This is fundamental to an effective governance framework, and facilitates greater transparency in the management and decision-making processes.

Senior managers should in general have direct reporting lines to the CEO, or equivalent and, where relevant to the Board or Head Office as appropriate.

FI should consider designating senior managers for CMFs which are relevant to their circumstances, but are presently not assigned to any individual. May deviate from the list of CMFs, if determined that any of the CMFs are not applicable to their circumstances.

Specific guidance (i.e. what needs to be done and documented):

1. clear identification of senior managers who have responsibility for functions that are core to the FI's management.
2. accurate identification of senior managers that reflects actual oversight responsibilities and decision-making authority.
3. appropriate management oversight over all material aspects of the FI's affairs (activities).

Outcome 2.

[1] The MAS also published an Information Paper on Culture and Conduct Practices of Financial Institutions (the "Information Paper") which sets forth nine culture and conduct outcomes that FIs should work towards in specific areas such as governance, hiring, communication channels, and performance management.

Senior managers are fit and proper for their roles, and held responsible for the actions of their employees and the conduct of the business under their purview.

Outcome 3.

The FI's governance framework supports senior managers' performance of their roles and responsibilities, with a clear and transparent management structure and reporting relationships.

FIs are responsible for conducting the necessary due diligence prior to appointing senior managers. And it should establish the appropriate governance policies and processes to promote proper accountability, and facilitate senior managers' performance of their roles and responsibilities.

FIs should clearly articulate the roles and responsibilities of its senior managers and their overall management structure. FIs are expected to maintain accurate and comprehensive records of these arrangements. The MAS may engage FIs on the rigour of their screening and hiring processes, and review the effectiveness of FIs' governance frameworks, including the relevant policies, systems, and documentation, as well as senior managers' understanding of their areas of responsibility.

The emphasis on individual accountability does not absolve the collective accountability of management committees and vice versa.

In setting up management committees, FIs should establish a formal mandate and articulate the terms of reference and reporting lines for each committee. Individual senior managers constituting the committee are expected to have a robust understanding of the matters under their purview, and how these interact with the FI's business and risks. It is the responsibility of each senior manager to determine the issues that ought to be raised at the relevant committee meeting and make constructive contributions to the discussion, so as to facilitate more informed decision-making by the committee collectively.

Specific guidance (i.e. what needs to be done and documented):

1. robust standards to assess of the fitness and propriety of each senior manager, prior to appointment and on an on-going basis.
2. clear specify each senior manager's areas of responsibility; their appointment and responsibilities in management committees.
3. appropriate delineation of the FI's overall management structure, reporting relationships among senior managers and management committees, between senior managers or management committees and the Board, and across entities within the group, as applicable.
4. acknowledgement by each senior manager of his or her specified roles, responsibilities and reporting lines.
5. approval by the Board or Head Office, as applicable, of each senior manager's specified roles and responsibilities and the FI's overall management structure.
6. documentation of each senior manager's specified roles and responsibilities and the FI's overall management structure, including timely updates where there are material changes.
7. appropriate incentive, escalation, and consequence management frameworks that hold senior managers accountable for the effective performance of their specified roles and responsibilities, including the actions of their employees and the conduct of the business under their purview.
8. a succession plan that is regularly reviewed and updated, including the identification of potential candidates in the pipeline and appropriate handover policies and procedures to facilitate smooth transition in the senior management team.

Outcome 4.

Material risk personnel are fit and proper for their roles, and subject to effective risk governance, and appropriate incentive structures and standards of conduct.

MRPs are individuals who are not senior managers, but have the authority to make decisions or conduct activities that can significantly impact the FI's safety and soundness, or cause harm to a significant segment of the FI's customers or other stakeholders. Thus, it is appropriate for FIs to subject such employees to more stringent oversight and higher conduct standards than non-MRPs.

FIs are responsible for critically assessing and identifying MRPs, and subjecting them to the necessary oversight.

In identifying MRPs, FI should establish criteria that consider:

1. the financial and non-financial risks which the FI may be exposed to including, but not limited to, credit, market, liquidity, operational, technology, conduct, money laundering and terrorist financing (ML/TF), legal, regulatory, reputational, and strategic risks.
2. the materiality of the impact that an individual's decisions or activities could have on this risk profile, based on the appropriate quantitative and qualitative indicators.

Quantitative indicators may include the authority or mandate to structure, deal in, or approve transactions or trades that give rise to credit, market, or liquidity risk exposures beyond a certain risk limit; responsibility for the investment management of, or advising on, assets beyond a certain size. The onus is on the FI's Board and senior management to determine the appropriate materiality thresholds for the quantitative indicators used, based on the nature, scale, and complexity of the FI's activities.

Qualitative indicators may include the authority to make decisions on or approve the development, structuring, or distribution of products and services, development or deployment of new technologies in internal processes or products and services offered to customers, or on-boarding or retention of customers that present higher risks

Specific guidance (i.e. what needs to be done and documented):

1. identify MRPs, including establishing the relevant criteria for identifying such employees.
2. assess the fitness and propriety of MRPs, prior to their appointment and on an on-going basis, taking into account the specific nature and risk implications of their roles.
3. subjecting MRPs to the appropriate mandates, decision-making authority, risk limits, and supervisory oversight as relevant to the type(s) of activities which they undertake.
4. according the necessary stature and authority to MRPs where such employees perform risk management or control functions.
5. subject MRPs to standards of proper conduct in relation to the type(s) of activities they undertake.
6. provide regular training on the competencies required for their roles, risk implications of their activities, and standards of proper conduct.
7. incorporate an appropriate incentive structure, including on performance evaluation, compensation, and promotion, that is aligned with the nature and time horizon of risks, and effective in encouraging behaviour that is consistent with the desired conduct outcomes.

Outcome 5.

The FI has a framework that promotes and sustains among all employees the desired conduct.

The Board and senior management have a critical role in defining, and taking steps to actively and consistently embed, the conduct standards that they would expect of all employees (the values, attitude, and behaviour). The tone-from-the-top, reinforced by the policies, systems, and processes of the FI, have a significant impact on the effectiveness with which the desired conduct standards are cascaded down.

The FI should notify MAS as soon as it becomes aware of any material adverse developments (including but not limited to misconduct, lapses in risk management and controls, or breaches in legal or regulatory requirements). MAS should also be notified in a timely manner of any information that may have a material negative impact on the fitness and propriety of senior managers or MRPs.

The Board and senior management should regularly review the adequacy and effectiveness of the FI's conduct framework, taking into account any gaps between observed behaviours and the desired standards of conduct.

Specific guidance (i.e. what needs to be done and documented):

1. standards of conduct expected of all employees, including but not limited to standards on honesty and integrity, due care and diligence, fair dealing (treating customers fairly), management of conflicts of interest, competence and continuous development, adequate risk management, and compliance with the applicable laws and regulations.
2. consistent and effective communication of the expected standards of conduct, such as through a code of conduct, on-boarding and regular training programmes, and sharing of lessons learnt where misconduct has occurred.
3. appropriate policies, systems, and processes to enforce the expected standards of conduct:
    - to regular monitoring, reporting, and escalate on matters relating to the FI's and employees' conduct;
    - an incentive structure which considers risk and control objectives, as well as feedback from human resources, compliance, risk management, internal audit, and other control or support functions as applicable to the FI, in performance evaluation, compensation, and promotion decisions; a consequence management system, including transparent investigation and disciplinary procedures;
    - a formalised whistleblowing programme and procedures to ensure anonymity and adequate protection of employees who raise concerns over the FI's policies, practices, and activities via this channel; and
    - procedures for handling whistleblower complaints.

4. engagement strategies with key stakeholders, including depositors, policyholders, investors, corporate and institutional clients and counterparties, shareholders, and regulators, to ensure transparent and timely communication of relevant material information.

CONCLUSION

Over the coming years, we expect audits and regulatory inspections will include a review of FIs' efforts to achieve the Outcomes set out in the Guidelines, as well as the outcomes listed in the Information Paper. To assist FIs prepare for such reviews, Holland & Marie has developed a methodology to help FI's validate that they have achieved the Outcomes. We believe there is value in having an independent party provide this assessment because of the sensitivities that may exist in having internal staff judge the governance and behaviours of senior management. To find out more about these services, click here.

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Holland & Marie is a compliance, risk, C-Suite and legal solutions firm based in Singapore. We have extensive experience resolving typical compliance issues including regulatory inspections, satisfying regulatory requirements and maintaining best practices in corporate governance to navigate the rapidly changing regulatory landscape.

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