

MAS ISSUES GUIDELINES TO STRENGTHEN CULTURE OF RESPONSIBILITY AND ETHICAL BEHAVIOUR IN THE FINANCIAL INDUSTRY

Regulators around the world have been looking to the board and senior management of financial institutions (FIs) to ensure a strong culture of responsibility and ethical conduct within their organisations. Singapore is no exception. With the recent issuance of the Guidelines on Individual Accountability and Conduct (Guidelines), the Monetary Authority of Singapore (MAS) aims to strengthen the individual accountability of senior managers in FIs.

INTRODUCTION

Consistent with the wider trend amongst global regulators, the MAS has been intensifying its regulatory and supervisory emphasis on FIs' culture and conduct. Specifically, the MAS has adopted a three-pronged approach:

- promoting and cultivating trust and ethical behaviour in the financial sector;
- monitoring and assessing FIs' culture and conduct through "hardware" (frameworks, policies and procedures) and "software" (tone-at-the-top, leadership, attitudes, behaviour and group dynamics); and
- enforcing and deterring lapses in risk management, misconduct, regulatory breaches or offences.

On 10 September 2020, the MAS published the Guidelines, which set out the MAS's supervisory expectations of boards and senior management with respect to individual conduct and behaviour.

The Guidelines were published following two public consultation exercises, in April 2018 and June 2019, and will be effective from 10 September 2021. The published Guidelines are generally in line with the MAS's proposed guidelines which were put forward during the public consultations.

The MAS has also published a set of FAQs on the Guidelines; this is available on the MAS's website.

Key issues

- On 10 September 2020, MAS published its Guidelines on Individual Accountability and Conduct. The Guidelines will take effect from 10 September 2021.
- The Guidelines do not supersede existing laws and regulations.
- The Guidelines are neither exhaustive nor prescriptive, and an outcomes-based approach will be adopted.
- FIs will have the flexibility to explore different means of achieving the intended outcomes.
- FIs should take all necessary steps to ensure compliance with the Guidelines.

WHAT ARE THE KEY PURPOSES OF THE GUIDELINES AND HOW ARE THESE TO BE ACHIEVED?

The key purposes of the Guidelines are to reinforce FIs' responsibilities in three areas:

- (i) promoting individual accountability of senior managers;
- (ii) strengthening the oversight of employees in material risk functions (MRFs); and
- (iii) embedding standards of proper conduct amongst all employees.

To achieve these objectives, the MAS has adopted an outcomes-based approach. The Guidelines set out five outcomes (Outcomes) that FIs are expected to work towards:

- (i) **Outcome 1:** Senior managers who have responsibility for the management and conduct of functions that are core to the FI's operations are clearly identified.
- (ii) **Outcome 2:** Senior managers are fit and proper for their roles and held responsible for the actions of their staff and the conduct of the business under their purview.
- (iii) **Outcome 3:** The FI's governance framework is supportive of and conducive to senior managers' performance of their roles and responsibilities. The FI's overall management structure and reporting relationships are clear and transparent.
- (iv) **Outcome 4:** Employees in MRFs are fit and proper for their roles, and subject to effective risk governance as well as the appropriate standards of conduct and incentive structure.
- (v) **Outcome 5:** The FI has a framework that promotes and sustains the desired conduct amongst all employees.

The MAS has made clear that the Guidelines are not designed to be exhaustive or prescriptive. The outcomes set out above are intended to facilitate FIs' implementation of the Guidelines in a manner proportionate to the nature, size and complexity of their operations. FIs have the flexibility to explore different means of achieving these outcomes, taking into account their specific organisational structure, business model and context.

The role of MAS will be to review the robustness of FIs' governance arrangements and measures to achieve the objectives and spirit of the Guidelines through its ongoing supervisory process.

TO WHOM DO THE GUIDELINES APPLY?

The Guidelines apply to banks, merchant banks, finance companies, insurers, capital markets services licensees, financial advisers, trust companies, registered fund management companies, payment services providers and systemically important infrastructures (approved exchanges and clearing houses). For locally incorporated banks and insurers, as well as approved exchanges and approved clearing houses that operate as a single group, the Guidelines apply on a group basis.¹

¹ The Guidelines do not apply to the following entities: an exempt financial adviser, an exempt corporate finance adviser, an exempt trust business, an exempt over-the-counter derivatives broker, an exempt futures broker, an exempt payment services provider, a Recognised Market Operator incorporated outside Singapore, a Recognised Clearing House incorporated outside Singapore, a Licensed Foreign Trade Repository and the Continuous Linked Settlement Bank.

In line with the MAS's objective for the Guidelines to be applied flexibly:

- The MAS has clarified that smaller FIs (such as those with fewer than 50 employees), will not ordinarily be expected to adopt the specific guidance described in the Guidelines, although they will still be expected to achieve the five broad Outcomes.
- FIs with larger numbers of employees also have the flexibility not to adopt specific guidance they have assessed to be irrelevant to their businesses, although they will be expected to justify their decision and demonstrate how the Outcomes are achieved through other means.

Individuals falling within the definition of "senior managers" are those who are employed in an executive capacity by and are principally responsible for the day-to-day management of the FI. These include, but are not limited to, the senior managers performing "core management functions", such as the following persons²:

Chief Executive Officer	Head of Business Function
Chief Financial Officer	Head of Actuarial
Chief Risk Officer	Head of Human Resources
Chief Operating Officer	Head of Compliance
Chief Information Officer	Head of Financial Crime Prevention
Chief Information Security Officer	Head of Internal Audit
Chief Data Officer	Chief Regulatory Officer

REQUIREMENTS UNDER THE GUIDELINES

The Guidelines provide guidance on actions which should be taken by the FIs to achieve the intended Outcomes.

In relation to Outcome 1, FIs should identify senior managers who are responsible for core management functions and have actual decision-making authority and oversight of each such function, and clearly specify their individual accountabilities. Apart from the Chief Executive Officer (CEO) who is directly accountable to the Board or Head Office, senior managers should in general have direct reporting lines to the CEO or equivalent and, where relevant to the performance of that function, to the Board or Head Office as appropriate. Such senior managers may be based in or outside Singapore.

As for Outcomes 2 and 3, FIs are required to conduct due diligence on senior managers prior to their appointment, and to establish governance policies and processes to promote proper accountability and facilitate senior managers' performance of their roles and responsibilities in an effective manner.

Specifically, the board or head office of the FIs should ensure that the FIs:

- have robust standards and processes to assess the fitness and propriety of senior managers;

² For locally incorporated banks and insurers that are headquartered in Singapore, this refers to the group including the holding company in Singapore, as well as local and overseas subsidiaries and branches, where applicable. For locally incorporated subsidiaries of foreign banks and insurers, this refers to the local operations in Singapore and downstream subsidiaries and branches in Singapore and overseas, where applicable.

- clearly specify each senior manager's area of responsibility (including in management committees);
- appropriately delineate the FI's overall management structure;
- have each senior manager acknowledge his or her specified roles, responsibilities and reporting lines;
- have board or head office approval of and document each senior manager's roles and responsibilities and the FI's overall management structure;
- put in place appropriate incentive, escalation and consequence management frameworks; and
- put in place a succession plan that is regularly reviewed and updated.

Outcome 4 requires FIs to identify material risk personnel (MRP) and subject them to necessary oversight. The board and senior management should ensure that appropriate standards and processes are in place to³:

- identify MRPs;
- assess the fitness and propriety of MRPs;
- facilitate effective risk governance; and
- subject MRPs to standards of proper conduct, continuing training and an appropriate incentive structure.

Lastly, Outcome 5 envisages that FIs should have in place a framework that promotes and sustains desired conduct amongst employees. The board and senior management should ensure that such framework addresses:

- the standards of conduct expected of all employees;
- consistent and effective communication of the expected standards;
- the policies, systems and processes to enforce the expected standards, including a monitoring, reporting and escalation framework, an incentive structure, a consequence management system and a formalised whistle-blowing channel; and
- engagement strategies with key stakeholders.

The board and senior management are expected to notify the MAS of material adverse developments such as 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 and/or significantly impact the FI's customers or safety and soundness. The MAS should also be notified in a timely manner of any information that may have material negative impact on the fitness and propriety of senior managers or employees in MRFs.

IMPLICATIONS

The introduction of the Guidelines underscores that culture and conduct are the collective responsibilities of not only the FIs and the MAS, but also of individuals such as board members, senior management and employees.

³ MRPs are individuals who 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. MRPs can include employees in front, middle, and back office functions, as applicable to the FI, as well as any other employee with supervisory capacity over such functions who are not senior managers. In identifying MRPs, the Board and senior management of FIs should establish criteria that consider: (i) the financial and non-financial risks which the FI is or may be exposed to; and (ii) 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.

Similar regulatory regimes aimed at strengthening the individual accountability of directors and senior managers have been introduced in many other major jurisdictions, including the United Kingdom, Hong Kong and Australia. The experiences in other jurisdictions demonstrate that these mechanisms will allow the regulator to more effectively identify the individuals who are responsible for the area or functions at fault in any instance of regulatory breach or failure of the FI.

The Guidelines apply alongside existing legislation and related directions and notices. The MAS has made clear that where misconduct, regulatory breaches or offences have occurred, MAS will take the necessary enforcement action against the FI and/or relevant directors, senior managers or employees. These include a range of supervisory or enforcement actions such as warning or reprimand letters to the FI or the imposition of conditions on the FI's activities. The MAS may also take enforcement action against the relevant director, senior manager or employee, where necessary and/or appropriate.

Given that Guidelines have now been published, FIs should take all necessary steps to ensure compliance, having regard to the requirements under the existing legislation and outcomes-based approach implemented by the MAS.

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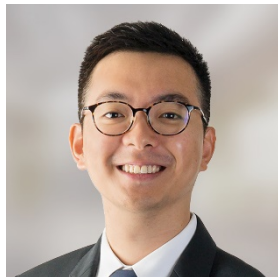
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