

Hong Kong SFC Publishes Circular to Licensed Corporations on Handling of Client Complaints

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On 31 March 2022, the Hong Kong Securities and Futures Commission (“SFC”) released a new circular to licensed corporations (“LCs”) on the handling of client complaints.^[1] alongside an Appendix setting out the SFC’s expected regulatory standards and suggested techniques and procedures for handling client complaints (collectively, the “Circular”).^[2]

This client alert covers the key regulatory expectations imposed on LCs under the Circular and highlights suggested practices that LCs can adopt in order to meet these expectations. In particular, as discussed further below, the Circular continues the SFC’s increasing shift towards requiring LCs to allocate one or more of their Managers-in-Charge (“MIC”) with responsibility for a particular subject matter, by requiring the appointment of an MIC to oversee complaints handling. This follows the SFC’s October 2019 circular requiring LCs to appoint an MIC with specific responsibility for the use of external electronic data storage providers^[3] and the June 2021 circular requiring LCs to appoint an MIC or responsible officer (“RO”) with specific responsibility for the operation of the LC’s bank accounts.^[4] Further, by providing more granular and prescriptive guidance to LCs in relation to complaints handling, and in particular the expected timeframe for handling complaints, the Circular represents an important step towards alignment of regulatory standards in this area between LCs and authorized institutions which must comply with the HKMA’s Supervisory Policy Manual IC-4 (“SPM”).^[5]

I. The SFC’s existing requirements for complaint handling

Paragraph 12.3 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (the “Code”)^[6] sets out the standard of compliance expected of LCs with regards to complaint handling. In short, the Code requires LCs to handle complaints in a “timely and appropriate manner”, to properly review the subject matter of the complaint, and to respond “promptly” to the complaints.

Similarly, Part V(5) of the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission (the “Internal Control Guidelines”)^[7] requires the management of LCs to establish, maintain and enforce “policies and procedures to ensure the proper handling of complaints from clients and that appropriate remedial action is promptly taken.”

The SFC’s new Circular supplements both the Code and Internal Control Guidelines, and provides important guidance and detail as to the SFC’s expectations of how LCs should adhere to the requirements set out in the Code and Internal Control Guidelines. In other words, compliance with the Circular is now required in order to ensure compliance with the Code and Internal Control Guidelines. As such, we strongly encourage LCs to adopt the

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suggested techniques and procedures laid out under the Circular as soon as practicable.

The Circular covers six key areas in relation to handling client complaints: (i) management oversight and complaint handling policies and procedures; (ii) disclosure of complaint handling procedures; (iii) identification and escalation of complaints; (iv) investigating complaints; (v) communicating outcomes with clients; and (vi) record keeping.

II. Responsibilities of senior management

The Circular emphasizes that senior management of LCs bear “primary responsibility” for ensuring appropriate standards of conduct and adherence to proper policies and procedures. As such, the SFC has indicated that LCs should designate a MIC to oversee complaint handling, including the setup, implementation and monitoring of complaint handling policies and process. Further, the Circular encourages LCs to ensure that regular reports on the progress of complaints handling are made to senior management, with the SFC praising LCs which provided their senior management with reports on the types of complaints received, adherence to timelines, investigation results, remedial measures identified from investigations, and the implementation status thereof.

The SFC has also indicated that senior management should ensure that:

- LCs with large retail client bases dedicate sufficient resources to ensure proper governance over complaint handling, including through, for example, complaints committees staffed by MICs and ROs;
- at the conclusion of an investigation of a complaint, any remedial measures identified are promptly implemented so as to prevent the recurrence of similar issues; and
- regular training is provided to staff in relation to complaint handling techniques.

III. Complaint handling policies and procedures

The Internal Control Guidelines require LCs to set out their complaint handling policies and procedures in writing. The Circular supplements this by noting that LCs should ensure that their complaints handling policies set out:

- the expected timeframe for acknowledging the complaint upon receipt;
- responding to the complainant’s enquiries in relation to the complaint;
- providing a final response to the complaint.

Further, the Circular notes that while the timeframe required will vary depending on the nature of the complaint, as a rule of thumb, an acknowledgment of a complaint should be issued within seven days of receipt and a final response should be issued within two months. This is broadly consistent with the HKMA’s SPM which requires authorized institutions to provide an acknowledgment of receipt within seven days, and a final response within thirty days, or, if that is not possible, within a “reasonable period of time” (which the HKMA considers to be no longer than sixty days).

In order to preserve objectivity in investigations and to avoid potential conflict of interests, the SFC has also encouraged LCs to ensure that complaints are handled by compliance staff who are not directly involved in the subject matter of complaints.

IV. Disclosure of complaint handling procedures to clients in a clear, understandable manner

The Circular states that at a minimum, LCs should disclose key information about the different methods of lodging a complaint to the LC (for example, by email, telephone, letter, etc.); and the expected timeframe for processing the complaint under normal

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circumstances. However, the SFC has stopped short of mandating the manner in which this information must be conveyed, with the Circular noting that this standard of disclosure will be met as long as the required information is effectively conveyed to complainants. This may include, for example, posting the information in a prominent place on LC's website, or to providing a leaflet with the necessary information to the client during account opening or upon receipt of their complaint.

V. Identification and escalation of complaints

The Code requires LCs to differentiate general enquiries from complaints for the purpose of ensuring compliance with the self-reporting requirements set out in para 12.5(a) of the Code. The Circular builds on this by:

- requiring the escalation of any serious or high-impact cases to senior management for prompt handling, including self-reporting to the SFC under para 12.5(a) where appropriate. The Circular suggests that this category of serious or high impact cases includes those involving fraud, staff misconduct, mass complaints involving multiple clients complaining about the same or similar issues, as well as those involving significant financial losses to clients or which may cause significant financial, operational and reputational risks for the LC; and
- recommending the provision of guidelines for staff to distinguish between the different nature and seriousness of complaints.

Further, the Circular also encourages LCs to regularly monitor feedback channels to ensure that all complaints are detected; for instance, by sample-checking tape recordings of telephone conversations between clients and customer service staff.

VI. Investigating complaints

The Circular notes that LCs should:

- properly review the subject matter of each complaint;
- maintain guidelines on when and how a complaint can be closed, including circumstances under which a complaint can be closed, and the approval procedures for different types of resolutions; and
- offer appropriate, consistent and fair resolutions to complainants; for example, where issues complained thereof are recurring or systematic, LCs should dig into the root causes of the problem rather than investigating at surface-level.

VII. Communicating outcomes to clients

LCs are expected to communicate their investigation results to complainants promptly and in doing so provide a clear description of the outcome of the investigation (i.e. whether the complaint is accepted or rejected, and any redress offered), alongside with an explanation of the outcome. The Circular further requires LCs to advise clients of any further steps which may be available to them where a complaint is not remedied promptly, including the right to refer a dispute to the Financial Dispute Resolution Centre.

VIII. Record keeping

The Internal Control Guidelines require LCs to keep proper records of all complainants and their complaints. The Circular extends this requirement by demanding LCs to review such records on a regular basis and to make them available to the SFC upon request during its ad hoc and routine reviews. While the Circular does provide LCs with some degree of flexibility by noting that LCs may adopt a pragmatic approach in deciding the level of detail to be retained in record-keeping, the Circular does also note that:

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- complaint records will generally not be complete without details of the substance of the complaint and how it was resolved;
- details of follow up actions should be kept for any complaints relating to client assets; and
- a register of complaints should be made available to the SFC upon request.

IX. Conclusion

The Circular should be viewed as consistent with the SFC's continued prioritization of senior management accountability as well as investor protection. As such LCs are encouraged to pay close attention to the SFC's views and expectations as set out in the Circular and adopt appropriate implementation measures as soon as practicable.

[1] *Circular to Licensed Corporations Handling of Client Complaints* (31 March 2022), published by the Securities and Futures Commission, available at <https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=22EC30>.

[2] *Expected Regulatory Standards and Suggested Techniques and Procedures for Handling Client Complaints* (31 March 2022), published by the Securities and Futures Commission, available at <https://apps.sfc.hk/edistributionWeb/api/circular/openAppendix?lang=EN&refNo=22EC30&appendix=0>.

[3] *Circular to Licensed Corporations – Use of external electronic data storage* (31 Oct 2019), published by the Securities and Futures Commission, available at <https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/doc?refNo=19EC59>.

[4] *Circular to licensed corporations Operation of bank accounts* (28 June 2021), published by the Securities and Futures Commission, available at <https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=21EC25>.

[5] *Supervisory Policy Manual IC-4 Complaints Handling Procedures* (22 February 2002), published by the Hong Kong Monetary Authority, available at <https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2002/IC-4.pdf>.

[6] *Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission*, 27th edition (December 2020), published by the Securities and Futures Commission, available at https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/codes/code-of-conduct-for-persons-licensed-by-or-registered-with-the-securities-and-futures-commission/Code_of_conduct-Dec-2020_Eng.pdf.

[7] *Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission* (April 2003), published by the Securities and Futures Commission, available at <https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/guidelines/management-supervision-and-internal-control-gu/management-supervision-and-internal-control-guidelines-for-persons-licensed.pdf>.

The following Gibson Dunn lawyers prepared this client alert: William Hallatt, Emily Rumble, and Jane Lu.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. If you wish to discuss any of the matters set out above,

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