

Regulatory Expectation for Bank Accounts Operation

In the midst of supervision on the licensed corporations (“**LCs**”), the Securities and Futures Commission (“**SFC**”) has noticed unsatisfactory practices with respect to the operation of their bank accounts, including the LC’s house bank accounts¹ and client bank accounts². The SFC therefore issued a circular to the LCs on 28 June 2021 (the “**Circular**”) to address the regulatory concerns and list out the expected standards. This explanatory note provides a summary of the regulatory concerns and expected standards set out in the Circular.

Unsatisfactory Practices

While the responsible officers (“**ROs**”) and Managers-in-Charge of Core Functions (“**MICs**”) of LCs are involved in the day-to-day management of the regulated activities (“**RAs**”), the SFC noted that some LCs failed to implement effective controls concerning their bank account operations and authorised bank account signatory arrangements to ensure the ROs and MICs have sufficient ability to direct and oversee the deployment of the LC’s financial resources. Striking examples are that ROs and MICs do not have access to information about the activities of the bank accounts and measures are not put in place to monitor activities in those accounts.

Inadequate or Inappropriate Controls

It is inappropriate where LCs’ house or client bank accounts are operated solely by a shareholder, director or their nominee who are not ROs, MICs or their delegates, or the authorised signers are not accountable to any ROs or MICs.

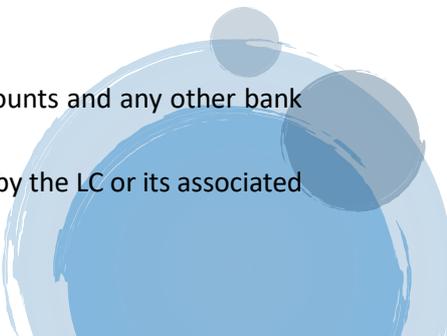
Where the ROs and MICs have no control over bank accounts, the withdrawals from the house bank account by shareholders could be in breach of the financial resources requirements under the Securities and Futures (Financial Resources) Rules (“**FRR**”). In the circumstances, the ability of the LC to maintain sufficient financial resources and liquidity to continue RAs without disruption is called into question.

Authorised signers who are not ROs or MICs may not participate in the day-to-day management of the LC’s operations. Where the authorised signers are not accountable to any ROs or MICs, the withdrawals of the house and client bank accounts can be effected without the approval or knowledge of any ROs, MICs or their delegates.

Absence of Timely and Effective Access to Account Information

¹ An LC’s house bank accounts include its payroll accounts, operating expenses accounts and any other bank accounts opened in the LC’s name for holding money which it beneficially owns.

² Client bank accounts include the client bank accounts established and maintained by the LC or its associated entities.





In the event that the LC's ROs, MICs or staff are not the authorised signer for the LC's bank accounts and have no direct access to information about the operation and activities of the bank accounts except for the month-end bank statements, they have no other options but to rely on the LC's authorised persons (e.g. director or shareholder) to access the bank accounts for intra-month updates on transactions.

They can only identify and verify on a monthly basis and are not able to monitor the LC's liquid capital position or detect any suspicious account activity or improprieties promptly. They may not be aware of any breach of the financial resources requirements under the FRR in case the shareholder withdraws funds from the LC's bank accounts.

Expected Standards

Senior Management Responsibilities

The ROs and MICs perform core functions in the LC's compliance with regulatory obligations to: -

- (a) safeguard client assets³;
- (b) promptly discharge settlement or margin obligations to clearing houses and trading counterparties;
- (c) ensure the availability of the financial resources required for LC's business activities⁴; and
- (d) comply with the financial resources requirements under the FRR at all times.

LC's senior management should designate at least one RO or MIC to be responsible for each area in paragraphs (a) to (d) above (the "**designated ROs or MICs**"). The responsibility for each area in paragraphs (a) to (d) can be allocated to different ROs or MICs. LCs are recommended to review Annex 1 of the Circular to Licensed Corporations Regarding Measures for Augmenting the Accountability of Senior Management issued on 16 December 2016 ("**MIC Circular**") to determine the most appropriate persons to hold the position of the ROs and MICs.

The LC's board of directors should delegate sufficient authority to the designated ROs or MICs to implement and operationalise necessary policies, procedures and internal controls.

The designated ROs or MICs should also have the authority to hold each authorised signer to account for any operation of the LC's bank accounts that is not consistent with these policies, procedures and internal controls.

Authorised Signer Arrangements

³ Paragraph 11.1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission ("**Code of Conduct**").

⁴ General principle 3 of the Code of Conduct.





For the purpose of the Circular, authorised signers include wet ink signers and any person who can instruct or authorise the bank to make any payment from an LC's bank account via any means, including but not limited to online banking, any form of electronic payment, standing instruction or the set-up of direct debit arrangement.

Since an LC's shareholders do not ordinarily conduct day-to-day operations related to RAs, the SFC expects that the authorised signers for effecting any form of payments out of an LC's house bank accounts should be: -

- (i) RO(s), MIC(s) or their delegate(s); or
- (ii) Any other person(s), provided that such person(s) can only effect payment jointly with RO(s), MIC(s) or their delegate(s).

The SFC also does not find it necessary for persons not involved in the day-to-day management to operate the LC's client bank accounts. Hence, the SFC expects that the authorised signers for effecting any form of payments out of an LC's client bank accounts should only be RO(s), MIC(s) or their delegate(s).

Delegate

The meaning of "delegate" refers to a person who reports or is accountable to the RO or MIC. In addition, the RO or MIC should have the actual authority to direct and oversee the delegate's actions.

Where delegates are authorised to operate an LC's bank accounts, the designated ROs or MICs should ensure that appropriate policies, procedures and internal controls are in place to effectively discharge their supervisory and regulatory responsibilities.

Joint Signature(s) Suggested

In addition to the requirements in the Circular, under paragraph 19 of the Suggested Control Techniques and Procedures of the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission ("**Internal Control Guidelines**"), it is suggested that LCs should consider the need to require two or more authorised signatures for house bank accounts and client bank accounts.

Timely and Effective Access to Account Information

The designated ROs or MICs should also have timely and effective access to all information about the operation and activities of the LC's house and client bank accounts to manage the risks associated with: -

- (i) safeguarding client assets;
- 

- (ii) ensuring the adequacy of financial resources⁵; or
- (iii) fully complying with the financial resources requirements under the FRR at all times.

Online Banking Accounts

Where an LC has online banking accounts, in order to identify transactions effected and detect unauthorised transactions, each user's access credentials should not be disclosed to another person.

Management and Organisational Structure

As the Internal Control Guidelines state that an LC should establish, document and maintain effective management and organisational structure⁶, the SFC expects that an LC should adopt a formal document setting out the firm's management structure, including senior management personnel's: -

- (i) roles;
- (ii) responsibilities;
- (iii) accountability;
- (iv) reporting lines⁷,

and allocation of responsibilities concerning paragraphs (a) to (d) under sub-section headed "Senior Management Responsibilities" above.

Timeline to Comply

The SFC expects the LCs to review their existing policies, procedures and internal controls and to implement and comply with the Circular by 3 January 2022.

Should you have any questions, please contact our Mr Lawrence Yeung on (852) 2854 3070 or by email at lawrence.yeung@ycylawyers.com.hk.

This explanatory note is not, and should not be regarded as, legal advice. Should you have any enquiries, please seek specific advice from legal advisers.

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⁵ Paragraph 14.1 of the Code of Conduct.

⁶ Section I of the Internal Control Guidelines.

⁷ Paragraph 28 of the MIC Circular.