



SFC Senior Management Accountability and “Manager-In Charge” Regime – *What You Need to Know*

Introduction

The Securities and Futures Commission's (SFC) "Manager in Charge" (MIC) regime, which aims to heighten senior management accountability within licensed corporations (LCs), will come into effect in **less than three months**.

This briefing recaps on what LCs need to do and by when, in order to ensure compliance with the requirements. If you are an individual who has been, or will be appointed as an MIC under the regime, particularly if you are not already licensed by the SFC, this note will also address some common questions you might have about your new responsibilities.



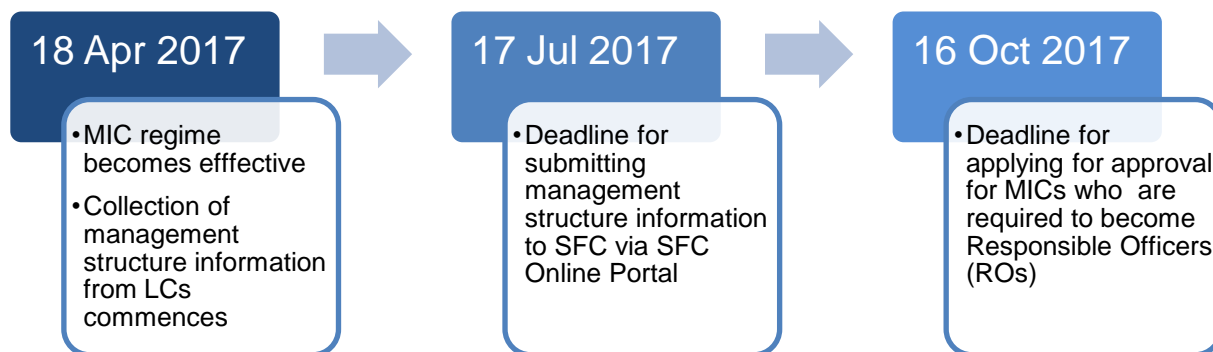
Regulatory expectations

The MIC measures, which spell out for the first time who the SFC regards as senior management, will apply to all LCs, including fund managers, broker-dealers and investment advisers.

The introduction of the MIC measures reflects the SFC's increased focus on senior management and individual responsibility for the conduct and activities of an LC. While the MIC regime effectively formalises existing regulatory expectations on senior management accountability and governance, it also creates a systematic method for the SFC to collect management structure information, particularly for certain core functions such as risk management and compliance that do not constitute regulated activities.

Notably, the MIC measures are also in line with the Hong Kong Monetary Authority's approach to improving the soundness of authorised institutions' risk management frameworks by enhancing corporate governance standards. Hong Kong's regulators have made their expectations of the role of the board of directors within licensed firms, and of senior management generally, very clear. We anticipate that the ongoing supervision, and enforcement, of senior managers' responsibilities is set to be high on the regulatory agenda.

The key dates



Who is a senior manager?

The SFC regards any individual who holds, or will hold, one or more of the following positions within an LC as a senior manager of that LC.

Director

- Executive directors
- Non-executive directors
- Includes shadow director

Responsible Officer

- Existing Responsible Officers
- Persons appointed as MICs of *overall management oversight* and MICs of *key business lines*

Manager-in-Charge

- Persons appointed by LC (either alone or with others) to have principal responsibility for a **Core Function**
- Can be an employee or non-employee/ based in HK or overseas

Specifically, Manager-in-Charge or MIC is the "new title" accorded to individuals who are appointed by an LC to be principally responsible, either alone or with others, for managing one of the following eight functions that the SFC has identified as being instrumental to an LC's operations (**Core Functions**):

- (a) Overall management oversight
- (b) Key business line
- (c) Operational control and review
- (d) Risk management
- (e) Finance and accounting
- (f) Information technology
- (g) Compliance
- (h) Anti-money laundering and counter-terrorist financing

Further details of the Core Functions and their key responsibilities are set out in the Annex.

What Do Licensed Corporations Need to Do?

EDUCATE

- Review SFC Circular and FAQs
- Attend SFC MIC Workshop
- Brief Board and relevant personnel

PREPARE

- Assess existing organisational structure
- Identify MICs
- Clarify MIC responsibilities and reporting lines
- Obtain MIC acknowledgement
- Prepare Organisational Chart
- Adopt formal governance document
- Obtain Board approval
- Implement MIC training programme
- Implement MIC ongoing compliance process
- Amend internal manuals/ policies

SUBMIT

- Submit information to SFC by 17 July 2017
- Apply for RO approval by 16 Oct 2017 (if required)
- Submit subsequent changes within 7 days

Review current governance structure

LCs should review their existing governance structure and organisational chart to assess the extent to which it is compatible with the MIC requirements.

The SFC expects LCs to adopt a formal document, which is approved by the Board, that sets out the LC's management structure, and the roles, responsibilities and reporting lines of its senior management personnel. The SFC also expects LCs to submit an organisational chart which should depict:

- the LC's corporate hierarchy (management and governance structure) and its business and operational units (including both regulated and non-regulated activities); and
- the positions of all MICs, the job titles of the persons to whom the MICs report and the job titles of the persons reporting directly to the MICs in relation to the operations of the LC. Where more than one individual is appointed to be an MIC of a particular Core Function, the chart should contain details of the specific responsibilities of each MIC concerned.

Although the SFC does not mandate any particular organisational structure, it expects the LC's Board to determine the proper delegation of authority and responsibilities among its senior management, including its MICs. To this end, LCs should conduct a thorough review of their existing organisational chart to ascertain if the current accountability and reporting lines of its senior managers are, in practice, clearly delineated or referable to each Core Function, and if not, whether any changes to the management structure need to be made to achieve this result.

The organisational structure will need to be approved by the LC's Board.

Identify MICs

When determining whether an individual should be appointed as an MIC of a particular Core Function, LCs should focus on that individual's seniority and their apparent or actual authority in relation to the Core Function. The SFC expects an MIC to:

- occupy a position with sufficient authority to make decisions and manage the Core Function on a day-to-day

basis, which may include assuming business risks within pre-set parameters, allocating resources and incurring expenses and being internally and externally representative of the Core Function; and

- have the seniority to report directly, and be accountable, to the LC's board of directors or its MIC of the overall management oversight Core Function.

We anticipate that the process of identifying suitable individuals to be appointed as MICs will be challenging, particularly for those firms whose Core Functions are led by persons who cover various different legal entities and geographies, who lead multiple Core Functions, or who may not be employed by the LC. The SFC has indicated that all these scenarios are acceptable so long as the MIC holds a sufficiently senior position of authority within the LC and is properly accountable to it. It is the LC's Board which is ultimately responsible for implementing effective systems and controls to supervise those who act under its delegated authority.

It will be critical for human resources teams within LCs to work with the business to define the job responsibilities for each MIC and align the terms of each MIC's employment with potential changes to management structures and reporting lines.

Assess MIC's fitness and properness

LCs must ensure that any MIC it appoints is fit and proper and qualified to act in the capacity appointed.

The SFC has not imposed a regulatory approval requirement to assess the fitness and properness of an unlicensed MIC, thus the various existing codes and guidelines which apply to licensed persons (such as the SFC's *Fit and Proper Guidelines*) will not be strictly applicable. However the SFC has highlighted that where a corporation's key personnel (such as its managers) and other controllers fail to meet the *Fit and Proper Guidelines* on criteria other than competence, it is unlikely the SFC will assess that corporation to be fit and proper to be licensed.

When making its own assessment of an MIC's fitness and properness, we recommend that LCs refer to the criteria in the *Fit and Proper Guidelines* and, as a minimum standard, be guided by the SFC's requirement that all persons involved in the management of LCs be "honest and fair".

As MICs who are not licensed with the SFC will not be subject to the regulatory vetting process, LCs should consider enhancing its internal fitness and properness vetting procedure for MIC candidates.

Obtain MIC acknowledgement and appoint MIC

LCs are required to obtain an acknowledgment from each MIC that he or she accepts and understands the appointment as MIC for the relevant Core Function. The Board should ensure that this acknowledgment is obtained and approve the appointment of each MIC.

Consider if MIC is required to be a responsible officer

The SFC has made it clear that only individuals appointed as MICs of *overall management oversight* and of *key business lines* must be ROs in respect of the regulated activities they oversee. If they are not already approved as an RO, LCs should ensure that an application for RO approval is made to the SFC on or before 16 October 2017..

If a proposed MIC of overall management oversight has no direct experience conducting regulated activities, the SFC has set out some criteria in its FAQs that it will consider as part of the RO application, including the individual's career history, proposed activities and previous experience in managing a control or operational function (such as a mid/back office role).

Finalise management structure information

All LCs (whether licensed or license applicants) will need to submit information relating to their MICs as well as an enhanced organisational chart to the SFC.

To facilitate the submission of the MIC information, the SFC has provided a template form, "Supplement 8A - Manager-In-Charge of Core Function(s)" that sets out the required particulars for each MIC appointed. These include the individual's name, identification details, place of residence, job title, relevant Core Function and reporting lines.

Implement training and ongoing compliance processes

Training

LCs are expected to provide appropriate initial and ongoing training to MICs to enable them to carry out their responsibilities effectively.

Unlicensed MICs will not be subject to the training requirements in the *Guidelines on Continuous Professional Training*, however LCs should implement a suitable training programme, particularly for those MICs whose experience falls outside the LC's regulated activities, such as IT and Finance and Accounting.

LCs should consider updating internal training requirements, including providing more targeted practical experience or structured courses so that MICs can properly apply their responsibilities in the performance of their day to day duties, and fully understand the consequences of non-compliance.

Amend internal compliance policies

LCs will need to review and update their internal compliance policies and systems to reflect the changes brought about by the MIC regime, and ensure that appropriate reporting infrastructure is in place to monitor and notify changes to the SFC.

MIC Changes

LCs must notify the SFC of any changes to the MICs, including new appointments, cessations of appointment, changes to the persons to whom the MIC reports or any changes in an MIC's particulars, within seven (7) business days of the changes. This should be accompanied by an updated organisational chart.

LCs should also put in place similar procedures for future changes to MICs, including identification of the appropriate MIC candidates, assessing fitness and propriety, obtaining acknowledgement and obtaining Board approval.

Any ongoing changes to the MIC information and organisational chart will need to be submitted via the SFC's enhanced online portal. The SFC will be holding workshops during February and March 2017 to introduce the new features of the online portal and explain the process of submitting information. It should be noted that none of the information provided will be displayed in the Public Register maintained by the SFC.



Key Things A Senior Manager Should Know

What standard of conduct is expected of an MIC / senior manager?

Senior managers are already subject to various existing standards of conduct, regardless of whether they are licensed or unlicensed.

These include bearing primary responsibility for ensuring that appropriate standards of conduct and procedures are maintained by the LC¹, managing risks and risk management processes, and understanding the LC's business, its internal controls and risk assumption policies, as well as one's own authority and responsibilities²

While the LC's Board is ultimately responsible for the conduct, operations and financial soundness of the LC, and for supervising those who act under its delegated authority, senior managers (including directors, CEO, managing directors, other senior managers) assume full responsibility for the development, implementation and on-going effectiveness of the LC's internal controls. Specific guidelines are also in place for core areas such as compliance, information management, audit, operational and risk management.³

¹ General Principle 9 of the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct)

² Paragraph 14.1 of the Code of Conduct

³ The Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC

For MICs responsible for AML/CTF, the regulatory expectations regarding their compliance and control functions are set out in detail in the *Guideline on Anti-Money Laundering and Counter-Terrorist Financing*.

What are the liabilities of MICs?

The MIC regime does not introduce new sanctions or sources of liability for senior managers or MICs. Rather, the SFC intends to rely on its existing powers under Part IX of the *Securities and Futures Ordinance (SFO)* to discipline a "regulated person" if they are guilty of misconduct or considered not fit and proper to remain a regulated person.

A "regulated person" includes a licensed person, an RO, or a person involved in the management of an LC, regardless of whether they were licensed at the relevant time (and will therefore include an unlicensed MIC). This is consistent with the expectation that MICs should be individuals who hold senior positions with sufficient authority to make decisions, exert significant influence over, and manage their core functions on a day-to-day basis.

When determining whether to take disciplinary action and the level of sanctions, the SFC has indicated it will refer to its Disciplinary Fining Guidelines.

While the sanctions that can be imposed under Part IX are civil in nature, if an LC has been found guilty of an offence under the SFO, the SFO extends criminal liability to any of the LC's officers where the offence was proved to have been committed with their consent, connivance or otherwise attributable to their recklessness.⁴ An officer includes a director, manager, secretary or any other person involved in the management of the corporation.

Conclusion

The MIC regime is a key part of the SFC's overall strategy to delineate senior managers within an LC and to foster a sense of clear responsibility and accountability. The measures aim to change behaviours at an individual level in order to support changes in the overall firm culture, so that better ex-ante decisions are made by LCs resulting in less ex-post enforcement by the regulators. LCs and their senior managers are expected to drive this cultural change and instil the principle of acting honestly, fairly and in the interests of their clients and the integrity of the market. There is no longer any question that senior managers and boards of directors of regulated entities will be held fully accountable for defined business activities and material risks.



⁴ Section 390 Securities and Futures Ordinance

Annex

Core Function		Description
1	Overall management oversight	<p>A function responsible for directing and overseeing the effective management of the overall operations of the corporation on a day-to-day basis</p> <p>Key responsibilities may include:</p> <ul style="list-style-type: none"> • Developing the corporation's business model and associated objectives, strategies, organisational structure, controls and policies; • Developing and promoting sound corporate governance practices, culture and ethics; • Executing and monitoring the implementation of Board-approved business objectives, strategies and plans, and the effectiveness of the organisational structure and controls. <p>Example: Chief Executive Officer, President</p>
2	Key Business Line	<p>A function responsible for directing and overseeing a line of business which comprises one or more types of regulated activities</p> <p>Example: Chief Investment Officer, Head of Equity, Head of Corporate Finance, Chief Rating Analyst, Head of Fund Marketing</p>
3	Operational Review and Control	<p>A function responsible for:</p> <ul style="list-style-type: none"> • Establishing and maintaining adequate and effective systems of controls over the corporation's operations; • Reviewing the adherence to, and the adequacy and effectiveness of, the corporation's internal control systems <p>Example: Chief Operating Officer, Head of Operations, Head of Internal Audit</p>
4	Risk Management	<p>A function responsible for the identification, assessment, monitoring and reporting of risks arising from the corporation's operations</p> <p>Example: Chief Risk Officer, Head of Risk Management</p>
5	Finance and Accounting	<p>A function responsible for ensuring the timely and accurate financial reporting and analyses of the operational results and financial positions of the corporation</p> <p>Example: Chief Finance Officer, Financial Controller, Finance Director</p>
6	Information Technology	<p>A function responsible for the design, development, operation and maintenance of the computer systems of the corporation</p> <p>Example: Chief Information Officer, Head of Information Technology</p>

7	Compliance	<p>A function responsible for:</p> <ul style="list-style-type: none"> • Setting the policies and procedures for adherence to legal and regulatory requirements in the jurisdiction(s) where the corporation operates; • Monitoring the corporation’s compliance with the established policies and procedures; • Reporting on compliance matters to the Board and senior management <p>Example: Chief Compliance Officer, Head of Legal and Compliance</p>
8	Anti-Money Laundering and Counter-Terrorist Financing	<p>A function responsible for establishing and maintaining internal control procedures to safeguard the corporation against involvement in money laundering activities or terrorist financing</p> <p>Example: Head of Financial Crime Prevention, Head of Compliance</p>

Source: *Annex 1 of SFC Circular to Licensed Corporations Regarding Measures for Augmenting the Accountability of Senior Management*

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