

Update on Manager-in-Charge Regime

October 25, 2019

The Manager-in-Charge (“MIC”) regime was fully implemented by the Securities and Futures Commission (“SFC”) on 17 October 2017 to promote proper conduct and increase awareness of individual responsibility and accountability. While the MIC regime was not intended by the SFC to be an enforcement tool, the SFC’s Enforcement Division has investigated whether certain MICs have appropriately fulfilled their obligations in supervising regulated activities within their corporations. It is therefore important for corporations to fully understand the regime. With this goal in mind, we have prepared the following overview and the SFC’s latest update on the MIC regime.

Overview of the MIC Regime

The MIC regime is only applicable to corporations licensed under section 116(1) of the Securities and Futures Ordinance (Cap. 571) and corporations applying for a licence under that provision.

Under the MIC regime:

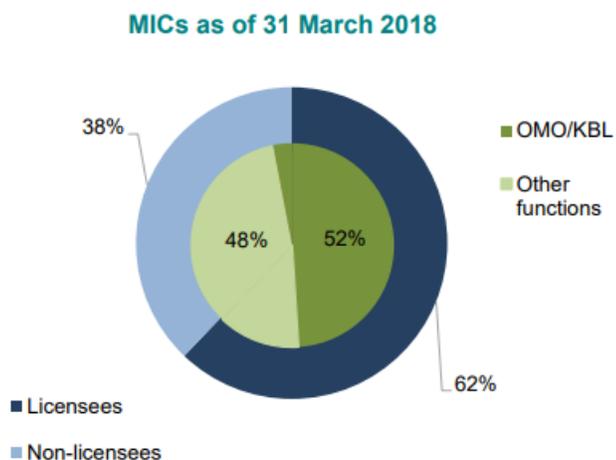
- An MIC is responsible for managing Core Functions¹ of a licensed corporation.
- An MIC, like a director and a responsible officer (“RO”), is a member of the senior management of a licensed corporation. An MIC will therefore need to comply with various SFC codes² and guidelines on its responsibilities as a member of senior management.
- An MIC can be a director and/or an RO of the same licensed corporation at the same time. In fact, MICs of the Overall Management Oversight (“OMO”) function or Key Business Line (“KBL”) function should be ROs in respect of the regulated activities they oversee.
- There should generally be at least one MIC responsible for managing each Core Function of a licensed corporation. However, depending on the scale of operations and control measures, one individual can act as the MIC for several Core Functions and more than one MIC can head one Core Function where appropriate.
- It is the responsibility of a licensed corporation’s board to determine the proper delegation of authority and responsibilities among its —senior management (including the MICs). Licensed corporations should adopt a formal document, approved by its board, clearly setting out the management structure of the corporation, including the roles, responsibilities, accountability and reporting lines of its senior management personnel.
- An MIC should have certain level of seniority and authority (apparent or actual) in relation to a Core Function and the licensed corporation should be satisfied that the individuals are “fit and proper” to act as MICs for the relevant Core Functions.
- MICs will not necessarily be employees of the licensed corporation and may be located in Hong Kong or overseas.

However, as they hold positions of authority within the licensed corporation, they will not be external parties merely providing outsourced services.

- For an MIC who is not a licensed person or a licence applicant, no regulatory approval is required.
- Licensed corporations should report information about their MICs, and any change in this information, to the SFC, including their full name, identification information, job title, place of residence, Core Function(s) which he or she is responsible for, and the job title(s) of the person(s) to whom he or she reports within the corporation and, if applicable, within its corporate group.
- An individual may be designated as an MIC by multiple licensed corporations, provided there are no conflict of interest concerns. An MIC can also serve multiple licensed corporations that are within the same corporate group or owned by the same controlling shareholders.

Latest SFC's Update on the MIC Regime

The SFC provided an update on the implementation of the MIC regime in May 2018 in its SFC Compliance Bulletin. According to the report, about 10,600 individuals were appointed as MICs as of 31 March 2018. Among these individuals, around 90% of the MICs responsible for the OMO or KBL functions were approved as ROs of their respective principals. By May 2018, the SFC has handled about 2,000 RO applications from MICs of OMO or KBL functions. About 40% of all MICs are not licensed persons as they are mainly involved in compliance, control and operational functions. Below is a chart illustrating the percentage of different MICs as of 31 March 2018.



This year at the SFC Compliance Forum, Ms Julia Leung, Deputy Chief Executive Officer and Executive Director, Intermediaries of the SFC, reiterated that the MIC regime emphasises the importance of senior management bearing primary responsibility for ensuring appropriate standards of conduct and compliance. She stressed that if the firm's business strategy and the risks it is exposed to are too complex for senior management to understand, then it calls into question the competence of the senior management and the suitability of the business activities and risks for the firm.

Reflecting on the MIC regime, the SFC noted that its Licensing Division now receives much more detailed information on the senior management in place throughout various levels within a licensed corporation and its internal governance structures. With such information, the SFC can better determine whether senior management understand the firm's business strategy and the risks it is exposed to.

1. Core functions (“**Core Functions**”) of a licensed corporation comprise: (i) Overall Management Oversight, (ii) Key

- Business Line, (iii) Operational Control and Review, (iv) Risk Management, (v) Finance and Accounting, (vi) Information Technology, (vii) Compliance and (viii) Anti-Money Laundering and Counter-Terrorist Financing.]↔
2. See for example General Principle 9 and paragraph 14.1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, Internal Control Guidelines and The Guideline on Anti-Money Laundering and Counter-Terrorist Financing.↔

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