

BDO NEWS

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COMPLIANCE WITH THE SFC MANAGER-IN-CHARGE REGIME



CONTENTS

- ▶ Compliance with the SFC Manager-In-Charge regime
- ▶ Key dates
- ▶ MIC requirements
- ▶ Next steps
- ▶ Personal liabilities of MICs
- ▶ What BDO can offer

On 16 December 2016, the Securities and Futures Commission (SFC) issued a Circular, two Annexes and a Frequently Asked Questions (FAQs) (the "Circular") aimed at augmenting the accountability of senior management of licensed corporations and introducing a new 'Manager-in-Charge' of Core Functions (MIC) regime. This circular is particularly important to an individual who has been, or will be appointed by the Licensed Corporations (LCs) as the MIC and he/she is not the Responsible Officers (ROs) of the LCs.

The Circular applies to all Licensed Corporations (LCs), including fund managers, broker-dealers and investment advisers.

Another regulatory regime that has published similar measure is the United Kingdom, Senior Managers and Certification Regime requires the identification and notification of the regulators of the most senior managers within banks. The SFC is the first Asian regulator to adopt a regime which heightens the scrutiny of senior management and accountability.

Key dates:

- 18 Apr 2017: MIC regime comes into effect. The SFC accepts Manager-In-charge (MIC) Information and management organisation charts from all licensed corporations and new corporate license applicants.
- 17 Jul 2017: Deadline for licensed corporations to submit MIC information and management organisation charts via the SFC's Online Portal.
- 16 Oct 2017: Deadline to submit applications to the SFC for MICs who need to be approved as ROs.

MIC requirements

Licensed corporations will need to designate an individual as the MIC (either alone or with others) for each Core Function and will need to report about its MICs, and any changes in this information, to the SFC. A MIC may be located in or outside Hong Kong.

“Core Functions”, in relation to a licensed corporation, comprise of the following eight functions:

- (1) Overall management oversight
- (2) Key business lines
- (3) Operational control and review
- (4) Risk management
- (5) Finance and accounting
- (6) Information technology
- (7) Compliance
- (8) Anti-money laundering and counter-terrorist financing

Next steps (the following shows examples of actions that can be done)

- (1) Review corporate governance structure and management structure; roles; responsibilities and delegation of authority and responsibility of the Senior Management.
- (2) Agree with the individuals who are to be appointed as the MICs. Identify suitable personnel for the position with fit and proper test.
- (3) Revisit employment contracts of MICs and their job descriptions as well as existing policies and procedures in relation to disciplinary procedures and performance management.
- (4) The Board should ensure that the appointments of the MICs are acknowledged and approvals are sought.

- (5) Completion of the “Supplement 8A – Manager-In-Charge of Core Function(s)” that sets out the required particulars for each MIC appointed.
- (6) The need to update their internal compliance policies and procedures to make sure that the MIC Regime is reflected.

Personal liabilities of MICs

The existing Part IX of the Securities and Futures Ordinance (SFO) allows it to sanction a “regulated person”. Section 194(7)(c) SFO includes regulated person as a licensed person, an RO or a person involved in the management of an LC. For the person related to the management of the LC, it doesn't matter whether he/she is licensed.

Although the sanctions to be imposed are civil in nature, if LC has been found guilty of an offence under the SFO, this may be extended to criminal liability.

What BDO can offer

BDO Risk Advisory Services team has seasoned and qualified professionals to provide assistance in compliance with the MIC regime regarding the following Core Functions:

- (1) Risk management
- (2) Information technology
- (3) Compliance
- (4) Anti-money laundering and counter-terrorist financing

We shall also assist in reviewing and advising on corporate governance structure, delegation of authority, compliance with internal policies to reflect the changes brought about by the MIC regime and provide independent assessment review.

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