

Augmenting the accountability of licensed corporations' senior management

January 2017



On 16 December 2016, the Securities and Futures Commission (SFC) released *Circular to Licensed Corporations Regarding Measures for Augmenting the Accountability of Senior Management*, accompanied by a set of FAQs. The circular introduces the new Managers-In-Charge (MIC) initiatives to heighten the accountability of senior management of all licensed corporations (LCs), and promote awareness of senior management obligations under the current regime.

The concept of holding senior management of an LC accountable for misconduct is nothing new, and the SFC's recent circular is built upon existing regulations. Through this new initiative, the SFC aims to heighten MICs' awareness of their obligations and liability under the law, regardless of whether they are licensed. The SFC has taken steps to foster a sense of genuine responsibility and clear accountability for LCs' activities and to drive proper conduct and behaviour. The SFC hopes to see front-line business managers take on responsibility for compliance, instead of solely relying on the compliance department, and set a tone from the top that consistently places client interests and the integrity of the market at the centre of business decisions.

Key timeline and actions

- The MIC regime will come into effect on **18 April 2017**.
- The LC will need to submit the following to the SFC no later than **17 July 2017**:
 - (i) MICs' information, i.e. full name, identification information, job title, place of residence, core function(s) which they are in charge of, and job title(s) of the person(s) to whom they report
 - (ii) Organisational chart depicting its management and governance structure, business and operational units, and key human resources and their respective reporting lines.
- The LC will need to submit to the SFC the application for MICs to become responsible officers before **16 October 2017**.

The MIC regime will require LCs to undertake a substantial amount of work in a short timeframe. LCs should therefore start making any necessary changes to comply with the new regime.

Who is included in the senior management of a licensed corporation?

The SFC regards the following as the senior management of an LC:

- Directors
- Responsible officers (ROs)
- Individuals who are MICs of a specific core function.

Individuals can simultaneously be a director, responsible officer and MIC.

Which functions require a manager in charge?

The SFC identifies eight core functions for which LCs must appoint at least one fit and proper person to be the MIC:

| | |
|--|---|
| 1. Overall management oversight | E.g. Chief executive officer; president |
| 2. Key business line | E.g. Chief investment officer; head of equity; head of corporate finance; chief ratings analyst; head of fund marketing |
| 3. Operational control and review | E.g. Chief operating officer; head of operations; head of internal audit |
| 4. Risk management | E.g. Chief risk officer; head of risk management |
| 5. Finance and accounting | E.g. Chief financial officer; financial controller; finance director |
| 6. Information technology | E.g. Chief information officer; head of IT |
| 7. Compliance | E.g. Chief compliance officer; head of legal and compliance |
| 8. AML/CTF | E.g. Head of financial crime prevention; head of compliance |

Note: The examples of job titles are outlined in Annex 1 of the SFC circular. The examples given are illustrative only, and are not exhaustive.

Key criteria for selecting a manager in charge

The LC's board is responsible for determining the proper delegation of authority and responsibilities among its senior management (including MICs). In determining whether an individual is an MIC of a particular core function, an LC should take into account:

- (i) The **apparent and actual authority** of that individual in relation to that core function. An individual may be an MIC if they have authority to:
 - Enable the individual to exert significant influence on the conduct of the core function
 - Make decisions for the core function
 - Allocate resources or incur expenditures relating to the core function; and/or
 - Represent the core function.
- (ii) An individual's **seniority**. The MIC should:
 - Report directly to the board of the LC or to the MIC who assumes the overall management oversight function of the LC
 - Be accountable for the performance or achievement of business objectives set by the MIC who assumes the overall management oversight.

Note:

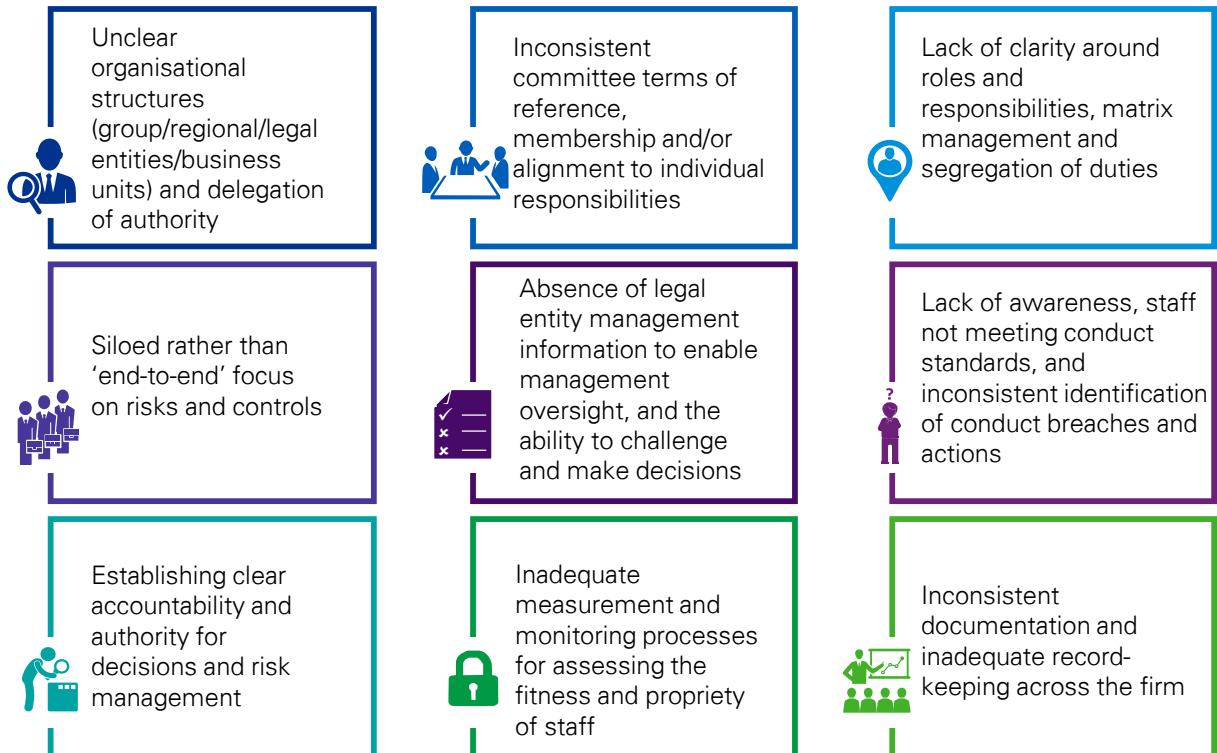
- MICs do not necessarily need to be LC employees, however, they hold positions of authority within the LC.
- MICs may be located in Hong Kong or overseas.
- Depending on the functions they perform in relation to the business of the LC, they may or may not be licensed under the Securities & Futures Ordinance.

SFC's key expectations of senior management (including MICs)

- Bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the LC
- Properly manage the risks associated with the business of the LC, including performing periodic evaluation of its risk management processes
- Understand the nature of the LC's business, internal control procedures and policies on the assumption of risk
- Understand the extent of their own authority and responsibilities
- Be responsible for the adequacy and effectiveness of the LC's internal control systems
- If applicable, make any necessary amendments to the group's policies, practices and actions so that they are appropriate for the operations of the LC's regulated business activities in Hong Kong

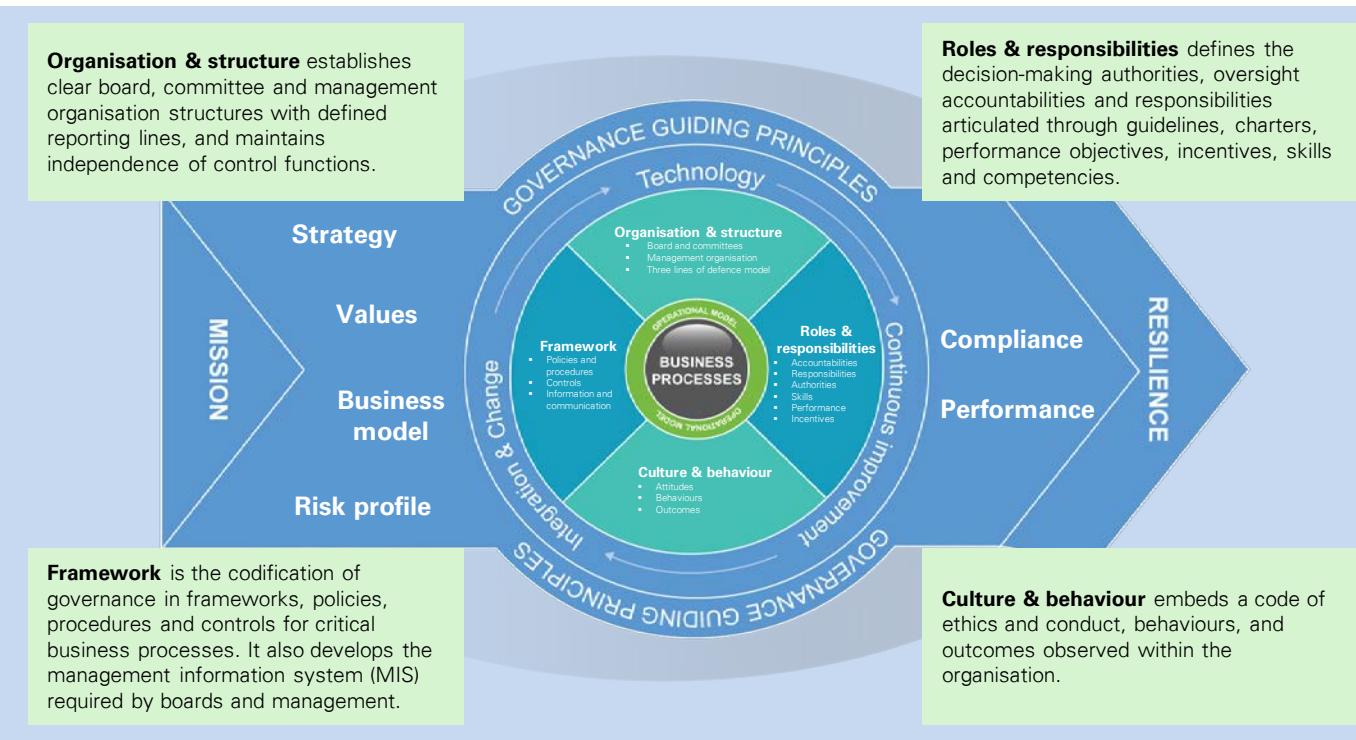
The MICs of the overall management oversight function and the key business line function should be ROs in respect of the regulated activities they oversee.

Common challenges that senior management must address as part of their obligations



KPMG's governance model

KPMG's governance model can be leveraged in the new MIC regime and the common challenges highlighted above. The model represents KPMG's view on how governance, risk and compliance can be seen within the organisation, and the key elements that hold the governance model together.





How KPMG can help

KPMG can provide you with advisory assistance in relation to the implementation of the new MIC regime. KPMG will also work closely with various key stakeholders within your firm to assess, design and implement the MIC regime. Key activities for such advisory assistance include (but are not limited to):

Senior management responsibilities

- Identify senior management responsibilities
- Define, assign and document functional responsibilities



Governance framework assessment

- Review and assess committee structure, terms of reference, membership and reporting
- Review and recommend updates to key policies and procedures for SFC prescribed functions
- Update existing governance framework



Role profile mapping

- Map the roles and responsibilities of individual MICs
- Identify delegations, interdependencies and multiple senior manager roles
- Update organisational charts, accountabilities and delegated authorities relating to senior managers
- Conduct awareness session with senior management



Road map

- Map roll-out plan to timelines
- Define appropriate work stream and structure for implementing any changes
- Agree on road map to meet key initiatives



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