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A REGIME FOR FOSTERING ACCOUNTABILITY OF SENIOR MANAGEMENT

MIC (Manager-in-Charge) regime, which is an initiative to heighten the accountability of senior management of licensed corporations, will arrive at its first milestone date: 18th April, 2017. It is a date to commence the information collection initiative and the SFC intends to start collecting from licensed corporations and corporate licence applicants up-to-date management structure information.

The primary intention of the MIC regime is to promote awareness of the regulatory obligations and potential liabilities of senior management. In its circular dated 16th December 2016, the SFC articulated that the senior management includes, amongst others, directors, responsible officers, and MICs of 8 core functions which are listed out as follows:-

- (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; and
- (h) Anti-Money Laundering and Counter-Terrorist Financing.

The concept of senior management's accountability is nothing new to the regulatory regime for licensed corporation. For example, General Principle 9 of the Code of Conduct provides, inter alia, that the senior management should be primarily responsible for ensuring maintenance of appropriate standards of conduct and adherence to proper procedures adopted by licensed corporation. It is however observed that the Code of Conduct does not spell out who is regarded as senior management at all. The SFC's view is that the MIC regime is intended to fill in the regulatory gaps when it comes to identifying who has real responsibility and remedy the deficiency of the RO regime. Whilst the outsourcing of certain core functions (e.g. compliance and

finance and accounting) is permitted, the MIC will be ultimately accountable to the licensed corporation's activities in respect of which the MIC oversees. The whole purpose of the MIC regime is to foster and establish a sense of genuine responsibility and clear accountability at the core of a licensed corporation's activities.

MIC will not necessarily be employees of the licensed corporation and may reside in Hong Kong or overseas. Save for the two core functions (see below), MIC may be licensed or unlicensed under the SFO and the SFC does not seek to apply regulatory approval to the MIC who is neither a licensed person nor a licence applicant. In addition, it is expected that each MIC reports directly either to the board of directors or to the MIC with Overall Management Oversight which is a function responsible for directing and overseeing the effective management of the overall operation of a licensed corporation on a day-to-day basis.

A licensed corporation may appoint one individual to act as the MIC for several core functions, taking into account its scale operation and control measures. Also, a licensed corporation may appoint two or more individual as MICs to jointly manage a particular core function.

It is also expected that MICs of the Overall Management Oversight and the Key Business Line function should be ROs in respect of the regulated activities they oversee, but it is not necessary that the MICs of core functions other than the above two are ROs. Further, it is not required that every RO to be the MIC.

The other two milestone dates fall on 17th July 2017 and 16th October 2017 respectively. The SFC's expectation is that MIC information and organization chart shall be submitted to the SFC on or before 17th July 2017 and the MICs of the Overall Management Oversight function and the Key Business Line function, who are not already ROs, will have applied for approval to become ROs on or before 16th October 2017.

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