

Goldman Sachs – Archie Parnell

**Bills Committee Meeting
25 October 2005**

Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005

Honorable Chairman and Members

I am Archie Parnell, a managing director of Goldman Sachs (Asia) L.L.C. where I head the Tax Department in Asia. Goldman Sachs is a leading global investment banking, securities and investment management firm. I am pleased to be here to represent Goldman Sachs in presenting our views on the Bill.

We have reviewed the Bill and the *Supplementary Notes and Responses to Industry's Concerns* issued by the Financial Services and Treasury Bureau in October 2005.

We welcome the Bill and appreciate the efforts of the Government and LegCo to widely consult the industry and the public, and to address the concerns of the industry by refining the Bill to its current form.

The Bill, if enacted, would exempt offshore (or non-resident) funds from profits tax on profits from qualified transactions carried out through specified persons. The Bill also contains anti-abuse measures to combat unintended use of this exemption.

We believe that the proposed exemption is a positive step to reinforce Hong Kong's position as an international financial centre and a regional hub for fund management.

We also feel that the Bill strikes a fair balance between offering exemption to the intended population and guarding against abuse to protect government revenue.

Thus, we support the enactment of the Bill.

I would like to add a few words on certain important aspects of the Bill.

- Central to the exemption is the determination of whether a fund is an offshore fund. In other words, where is it resident? As currently drafted, residency will be determined with reference to the place of central management and control. The term "central management and control" is neither defined in the Bill, nor in the existing Inland Revenue Ordinance. There is, however, a body of court-decided common law on point. It is often a question of fact and could be open to interpretation and application. In this regard, the Administration has indicated that an interpretation and practice

note will be issued to provide more guidance to taxpayers. We welcome this step.

- Transactions proposed for exemption are limited to (i) dealings in securities, (ii) dealings in futures contracts, (iii) leveraged foreign exchange transactions, as well as (iv) incidental transactions (within 5% of the above). Many offshore funds engage in many other types of transactions. The Administration plans to review the scope of exemption and has stated that, where necessary, it will expand the definition of qualifying transactions. We urge that flexibility be built into the definition to cope with market developments without the need for any legislative amendments (e.g., “any other transactions that the Commissioner of Inland Revenue may in writing allow”).
- We understand that the Administration plans to move a Committee Stage Amendment to clarify that “specified persons” includes any entity licensed or registered under the Securities and Futures Ordinance. We welcome this clarification.

In closing, we support the Bill and welcome the additional steps announced by the Administration.

Thank you and I would be pleased to answer questions.