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Clerk to the Bills Committee
Legislative Council
Central
Hong Kong

Attention: Ms. Debbie Yau

Re: The Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005 (“the Bill”)

Dear Ms., dear Sirs,

We thank you for inviting us to the Bills Committee meeting on October 25, 2005 to discuss the above referenced bill. We appreciate the Administration's willingness to seek and consider practitioners' comments.

As a Hong-Kong incorporated and SFC-licensed asset management company, subsidiary of a French-based company, itself belonging to a large, multinational financial group with very deep roots in Hong Kong, we welcome the intent of this Bill.

In our view it may help to strengthen Hong Kong's position as a pre-eminent financial centre, particularly in the on-going competition for the management of global investors' assets. Regionally, the progressive opening of markets for our industry in the neighbouring countries make this bill all the more necessary, as it seeks to provide legal clarity and certainty where it was so far perceived to be lacking.

However, we do have a limited number of comments concerning this Bill:

- The definition of “non-resident persons” should not be too narrowly defined, and, as far as possible simple to apply, so as to avoid renewed uncertainty. While a high-level definition of “management and control” appears to provide such comfort, we would suggest avoiding to enshrine it into the Bill, so as to leave room and time to the IRD to account for specific issues and practice. A statement from the IRD based on experience with past as well as new practice under the Bill could suffice and possibly provide more flexibility.
- The scope of exemption appears to be too narrow, as OTC derivatives, commodities, private equity and various sorts of commonly used fixed income or quasi fixed-income investments (e.g. cash deposits, debentures) seem to be excluded from the Scope of exemption. Such “2-tiered” approach to the definition of eligible investments may hamper the development of new generation investment products, typically “Alternative investments” and “Total returns funds”, which make extensive usage of such investments tools. As the growth of the asset management industry relies

increasingly on the development of such investment funds, failure to address this point risks nullifying the expected impact of the bill, and therefore the Bill not fulfilling its intent.

- We note that voices have been raised against the retroactive application of this Bill. We see it as a welcome suggestion from an industry standpoint, and a logical and fitting conclusion to a period during which we are told the IRD has in practice not taxed foreign funds using HK investment managers.
- We also note that demands have been made to quantify the economic benefits of the Bill. We would like to suggest that leaving the above mentioned uncertainty as to the tax treatment would continue to carry significant costs for Hong Kong, as the lost business to the local asset management industry results in less employment being created and less taxes being paid in the Territory. Such costs are on going.

Finally, we would like to remind the Committee of the strong reputation that Hong Kong enjoys as a place where tax law is clear and simple: we hope this Bill will not be an exception to this feature of the Hong Kong business landscape, and will not increase the burden of compliance on firms, especially if we have in mind the many investment boutiques which are such a dynamic feature of our Asset Management industry.

Yours faithfully,

Patrice Conxicoeur
Chief Executive