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LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2294 0460)

13 July 2017

Miss CHANG Kar Wai, Carrie
Prin AS for Financial Services & the Treasury
(Financial Services)1
Financial Services Branch
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Miss CHANG,

Inland Revenue (Amendment) (No. 4) Bill 2017

I am scrutinizing the legal and drafting aspects of the Bill and would like to seek clarification on the following points -

Part I - Legal issues

Clause 1(3) - Commencement

Item 8 of the new Schedule 16A in relation to OTC derivative products as defined in Part 1 of Schedule 1 to Cap. 571 will come into operation on the day to be appointed for the commencement of section 53(8) of the Securities and Futures (Amendment) Ordinance 2014 (Ord. No. 6 of 2014). Please let us know the estimated commencement date of section 53(8) of Ord. No. 6 of 2014 and what are the factors affecting the commencement date, if any.

Clause 4 – new section 20AH(2)(c)(ii)

Under the proposed new section 20AH(2)(c)(ii), a maximum of 10% of the value of all the open-ended fund company ("OFC")'s asset is allowed to be invested in assets of a class that is not specified in the new Schedule 16A. According to paragraph 9 of the LegCo Brief, such 10% is to provide a "degree of flexibility". Please clarify the basis for setting such degree of flexibility at 10%.

Clause 4 – new sections 20AH(5) to (7)

The proposed new section 20AH(5) to (7) provide for certain circumstances under which the profits tax exemption of an OFC would be regarded as never having been granted. In cases where cessation of a trade, profession or business in Hong Kong of an OFC is involved, please clarify how the disapplication of profits tax exemption can be implemented.

Clause 4 – new sections 20AH(8) and 20AI(5)

Under the proposed new sections 20AH(8) and 20AI(5), Schedule 16A and Schedule 16B may be amended by the Commissioner of Inland Revenue by notice published in the Gazette respectively. Please clarify whether the notices made under the two sections are subsidiary legislation.

Clause 4 – new section 20AI(2)

The proposed new section 20AI(2) specify the conditions which are required to be met in good faith for an open-ended fund company to be non-closely held. Please clarify the meaning of "good faith" in this section. What are the contemplated circumstances under which the conditions are not met "in good faith"?

Clause 4 – new section 20AI(4)

The proposed new section 20AI(4) provides for the power of the Commissioner of Inland Revenue not to regard an OFC as non-closely held under certain circumstances. Please clarify all the factors which the Commissioner must take into account in exercising such power. Further, please clarify whether any person aggrieved by the Commissioner's decision under the proposed new section 20AI(4) may appeal to the Board of Review referred to in section 65 of the Inland Revenue Ordinance (Cap. 112).

Part II - Drafting issues

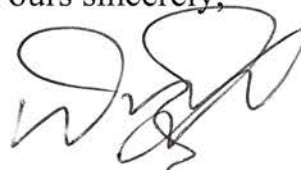
Clause 4 – new section 20AH(2)(c)(i)

The proposed new section 20AH(2)(c)(i) provides that "...the trade, profession or business carried on by the company in Hong Kong does not involve transactions in assets of a non-Schedule 16A class". Under section 20AH(9), "non-Schedule 16A class" means a class that is not specified in Schedule 16A. Please consider amending the drafting of section 20AH(2)(c)(i) to avoid using double negatives, which is a recommended guideline for writing legislative text stated in paragraph 9.1.3 of *Drafting Legislation in Hong Kong — A Guide to Styles and Practices*.

As scrutiny of the Bill is continuing, further letter may be issued to seek clarification on further points, if necessary.

I would appreciate if you could let me have the said information (in both Chinese and English with soft copy to Miss Kathy NG at pcng@legco.gov.hk) at your earliest convenience.

Yours sincerely,



(Winnie LO)
Assistant Legal Adviser

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