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Mr. Hugo Chiu
Clerk to Bills Committee
Legislative Council
1 Legislative Council Road
Central
Hong Kong

Dear Mr. Chiu

Bills Committee on Inland Revenue and Stamp Duty Legislation
(Alternative Bond Schemes) (Amendment) Bill 2012
Meeting to be held on Monday, 18 March 2013

I refer to captioned Bill.

1. I am pleased to note that the Alternative Bond Scheme is not limited to listed Sukuk and that there are appropriate safeguards to prevent abuse of the specified alternative bond schemes.
2. The definitions of the specified investment arrangements, identified in Division 2, are limited to merely the basic structure of the various Islamic contracts without regard to the complexity of the elements affecting each of those contracts. Whilst I appreciate the policies upon which the Bill has been drafted, any DIPNs and SOIPNs should provide that any of the elements that are necessary for the creation of each of these specified investment arrangements may be followed provided that they do not fall foul of any of the provisions in Division 3. It occurs to me that the manner in which the Bill has been drafted allows for greater flexibility

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and leaves it to those creating the schemes to ensure compliance with which ever school (fiqh) they wish to adopt provided they comply with the basis structure, in that sense the Bill is to be commended for its simplicity and flexibility.

3. Whilst I appreciate that the Legislation is neutral as to religion, the specified alternative bond scheme are actually based on elements of Ijarah, Musharakah, Mudarabah, Murabaha and Wakalah contracts (various specific contracts based on Shariah-Islamic law). It is possible that the originator may communicate with the Commissioner/Collector on the background of the specified alternative bonds by making reference, for example, to the Accounting standards or Shariah standards, and for that purpose, it would be useful if any DIPNs and SOIPNs make reference to the possibility of originator making reference to these background materials provided there is compliance with the Ordinance. This is a process issue indirectly related to the operation of the Bill.

Inland Revenue Ordinance **Schedule 17A – Part 2**

4. Under section 2(3)(f): provision could be added to allow the bond-issuer to hold a reserve to deal with contingencies or indemnity contracts (Takaful/insurance) to regulate investment return, provided that it is not inconsistent with section 13.
5. Under section 3(2): the management provision could be expanded to include keeping reserves or obtaining Takaful.
6. Under section 3(3)(b): consideration could be given to adding “exchanged or replaced”.
7. Under section 3(4): If the above suggestions are accepted then consequential amendments to this subsection as to

“exchange or replacement” could be considered. I note that such provision is provided under section 9.

8. Under section 4: the term “material time” could be better drafted as it is rather difficult to read.
9. Under section 6(2)(a)(B): the use of the term **“insurance”** would be legally incorrect, as insurance as defined under Hong Kong law, would not be available to specified investment arrangements. Consideration could be given to another term such as “contract of indemnity” or some such term. Alternatively clarification be provided in any DIPNs.
10. Section 10(3)“C”: Consideration could be given to include **“exchange or replacement”**.
11. Section 10(3)“E”: Consideration could be given to Takaful or similar term for **insurance**.
12. Section 10(9)(b)(i): includes the term **“insurance”** and I repeat my comments for s.6(2)(a)(B).
13. Section 12(1)(a): consideration could be given, in due course, to allowing greater flexibility to the condition **“reasonable commercial return”** to allow bond-holders to benefit from better returns if possible without detracting from s.13. This may be considered initially for the listed sukuk given the concerns expressed under section 13.
14. Section 15(c): consideration could be given, in due course, to adding “wholly or partly” before “are marketed in Hong Kong.”

15. Section 20(2)(b): I am concerned with the use of the term “interest” in this section although I do understand that it is necessary for the purpose of the ordinance and the relief given on the basis that it is a debt instrument. However, debt instruments create a greater risk and for the purpose of good practice and appreciation of this factor both locally and internationally it would be useful to provide clarification of this in any DIPNs and SOIPNs. It would avoid those in other jurisdictions concluding that we in Hong Kong do not understand the importance of avoiding “interest” in the alternative bond market.

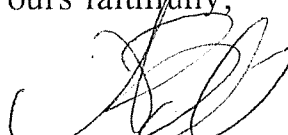
Stamp Duty Ordinance Parts VA and VB and Schedule 6

16. Under section 47D(1)(a): my comments on reasonable commercial return is repeated.
17. It would be useful to receive confirmation that records can be kept in electronic form and that the same would be acceptable in evidence.
18. Consideration could also be given to the obtaining of tax certificates but without the “**interest**” provisions.

I have reflected my views herein from mixed Islamic and legal perspective.

If you have any enquires from an Islamic perspective, please do not hesitate to contact me at 2877 5299 and I shall be happy to assist.

Yours faithfully,


A.B. Nasir
Nasirs