



羅兵咸永道

Hon CHAN Kam-lam,  
Chairman  
Committee on Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment)  
Bill 2012  
Legislative Council  
Hong Kong SAR Government

11 March 2013

Dear Hon KL Chan,

Submission on the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Bill 2012

We refer to your invitation for submission on the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Bill 2012 ("Bill"). We set out below our comments on the Bill for your consideration. We are delighted to see proposed legislation is finally tabled at the Legislative Council for its consideration after the Consultation conducted by the Financial Services and the Treasury Bureau ("FSTB") in March 2012.

As indicated in our submission during the FSTB consultation, having a legal framework that provides a level-playing field for Sukuk vis-à-vis conventional bonds can facilitate the development of a sukuk market in Hong Kong. Allowing alternative bond scheme as the Bill describes will strengthen the role of Hong Kong as an international financial centre market by widening the spectrum of financial products that can be offered in Hong Kong financial markets and attracting different market participants.

In principle, we support the various amendments to the Inland Revenue Ordinance ("IRO") and the Stamp Duty Ordinance ("SDO") as proposed by the Bill with a view of levelling the playing field for the four common types of sukuk described in the Legislative Council Brief to in the Bill (namely Ijarah, Musharakah, Mudarabah and Murabahah) vis-à-vis their conventional counterparts in terms of profits tax, property tax and stamp duty liabilities.

We also support the proposed prescriptive and religion-neutral approach adopted by the Bill. Deeming the arrangements in the tripartite structure (namely a structure comprising an originator, a bond-issuer and bond-holders) as prescribed as "alternative bond arrangement" ("ABS") in the Bill provides an efficient and effective legal framework in achieving the intended objective of the Bill.

During the FSTB consultation, we had indicated our views on specific issues in the proposed legislation. We are glad that some proposals in our submission are now reflected in the Bill. On the other hand we would like to reiterate the following matters that are not yet addressed in the Bill. Providing certainties or more flexibilities on these matters would certainly enhance the framework for the development of Islamic finance in Hong Kong.

- *Reasonable commercial return*

According to section 13 of the proposed Schedule 17A to the Inland Revenue Ordinance ("IRO"), one of the qualifying conditions for a bond arrangement in a specified ABS is the "reasonable commercial return" condition which requires both the maximum total amount of bond return (i.e. coupon payments and/or discount/premium) payable and the actual total amount paid to the bond-holders must not exceed an amount that would be a reasonable

commercial return on money borrowed of the amount of the bond proceeds. This condition represents an additional requirement as compared to conventional bonds. Moreover the Bill does not specify any objective means of testing whether this condition is met. Uncertainties will thus arise in its practical interpretation. We suggest removal of this condition or if such condition is kept, the practical uncertainty should be clarified in the interpretation and practice notes to be issued by the Inland Revenue Department.

- *Maximum term length*

The “maximum term length” condition is specified in section 16 of the proposed Schedule 17A to the IRO. Although the “maximum term length” has been relaxed from 10 years in the FSTB consultation paper to 15 years in the Bill, inclusion of such a condition imposes an additional requirement as compared to conventional bonds. We suggest removal of this condition.

- *Record keeping*

Section 24 of the proposed Schedule 17A to the IRO stipulates that the business records relevant to a specified ABS have to be kept until the expiry of seven years after the completion of the transactions, acts or operations concerned or the expiry of three years after the end of the ABS term, whichever is the later. Similarly proposed section 47J of the Stamp Duty Ordinance (“SDO”) requires the relevant documents have to be kept until the expiry of one year after the end of the ABS term. Although these periods have been shortened in response to our submission during the FSTB consultation, we maintain these record keeping requirements are more onerous than those for conventional bonds and should thus be dispensed of under the overall objective of providing a level playing field for Islamic finance.

- *Time limit for raising additional profits tax assessments / recovering stamp duty*

Section 26 of the proposed Schedule 17A to the IRO and the proposed section 47L of the SDO extends time limits for raising additional profits tax assessments / recovering stamp duty in cases of a disqualification beyond the normal statutory time limits. We consider that these conditions that do not provide a level playing field to sukuk and should be removed.

Should you have any questions, please do not hesitate to contact me on 2289 1833.

Yours sincerely  
For and on behalf of PricewaterhouseCoopers Ltd



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