

Inland Revenue (Amendment) Bill 2015

The Administration's Responses to Questions Raised by the Legal Adviser of the Legislative Council in the letter of 4 May 2015

This paper sets out the Administration's responses to the questions raised by the Legal Adviser of the Legislative Council in the letter of 4 May 2015.

Clause 5

We consider it appropriate to adopt “買賣” as the Chinese rendition of “trade” in paragraph (d) of the definition to reflect our policy intention that the special purpose vehicle should not engage in an active occupation **with buying and selling transactions** (i.e. trading transactions), rather than “行業、生意” which gives the sense of a field of business activity.

Clause 8

The term “bona fide widely held” has been adopted in sections 20AE(8) and 26A(1A) of the Inland Revenue Ordinance without a statutory definition. In the Departmental Interpretation and Practice Notes (“DIPN”) No. 20 and 43, the Inland Revenue Department (“IRD”) has consistently interpreted the term “bona fide widely held” as follows -

- (a) during the year of assessment in question, at no time did fewer than 50 persons hold (or have the right to become the holders of) all of the units or shares in the non-resident fund; and
- (b) at no time during the year did fewer than 21 persons hold (or have the right to become the holders of) units or shares that entitled the holders, directly or indirectly, to 75%, or more, of the income or property of the non-resident fund.

Where the above benchmark figures are not met, the IRD will still accept in practice that the “bona fide widely held” requirement has been satisfied if it is clear from the constitutive documents of the non-resident fund and other relevant material that it was established with a view to wide public participation and that genuine efforts are being taken with the aim of achieving that objective i.e. there is nothing to suggest that the non-resident fund is intended to be a closely held investment vehicle.

Given that the term “bona fide widely held” has been clearly explained in the DIPNs and that it has been adopted for long, we consider it not necessary to define the term in the Inland Revenue (Amendment) Bill 2015.

**Financial Services and the Treasury Bureau
May 2015**