Bills Committee on Inland Revenue (Amendment) (No. 4) Bill 2017
HKIFA members' views/comments

Members generally support and welcome the Bill, but there are certain areas regarding the Bill that need clarification:

1. The minimum investment requirement for a "normal" investor of HK$20 million (US$2.58 million) is significantly higher than the normal minimum investment requirement for typical Cayman Islands funds - US$100,000. Members suggest that this minimum investment requirement be revisited so as to align with market practices.

2. The Bill is silent on the stamp duty implications to onshore privately-offered open-ended fund companies as the Bill is not amending the Stamp Duty Ordinance. This seems to imply that the existing rules would apply such that the transfer of shares in open-ended fund companies would be subject to stamp duty.

   We would suggest the Bills Committee to consider amending the Stamp Duty Ordinance so to make it explicit that the transfer of shares in open-ended fund companies would not be subject to stamp duty.

3. As it is common market practice for distributors of funds to pool their client subscription money and invest into funds via a nominee account, we would suggest the Bills Committee to work with the IRD to make it explicit in the DIPN that it would not see through the nominee holding to count the number of underlying investors for the purpose of Clause 4 Section 20AI (2) (a) & (b). Because it would virtually be impossible to implement if see-through were to be implemented.

4. The taxation of performance fees derived by investment managers and carried interest (especially for private funds) remains a complex and contentious industry issue and is highly fact dependent. The Bill [Clause 4 Section 20AJ (3)] introduces a provision to tax the consideration or remuneration in the form of a dividend for the provision of services in Hong Kong directly or indirectly, which will have flow-on effects and broader implications to the Hong Kong asset management industry. This poses an undesirable effect and makes the regime less attractive and competitive.

   Relating to this issue, we would exhort the Committee to work with the IRD to clarify in the DIPN that dividends or distributions derived from genuine seed capital investments made by investment managers to support the fund at the start-up phase (which is a common practice in the industry) be tax exempted pursuant to the existing tax provisions.

(End)

Hong Kong Investment Funds Association

Appendix 1

Hong Kong Investment Funds Association - Introduction

The Hong Kong Investment Funds Association ("HKIFA") is an industry body that represents the fund management industry in Hong Kong. It was incorporated in 1986 as a company limited by guarantee.

The HKIFA has two major roles, namely consultation and education. On consultation, it acts as the representative and consulting body for its members and the fund management industry generally in all dealings concerning the regulation of unit trusts, mutual funds, retirement funds and other funds of a similar nature. Towards this end, it reviews, promotes, supports or opposes legislative and other measures affecting the fund management industry in Hong Kong. Another very important task is to educate the public about the role of investment funds in retirement planning and other aspects of personal financial planning.

The HKIFA has four categories of members, namely full member, overseas member, affiliate member and associate member. A fund company can qualify as a full member or an overseas member if it is either the manager or the investment adviser of at least one Investment Fund.

An "Investment Fund" means

- an authorized unit trust/mutual fund; or
- a pooled retirement fund authorized under the Code on Investment-Linked Assurance Schemes or the Code on Pooled Retirement Funds; or
- a retirement scheme registered under the Occupational Retirement Schemes Ordinance; or
- a provident fund scheme registered under the Mandatory Provident Fund Schemes Ordinance; or
- a closed-end investment company listed on a recognized exchange.

A full member must be a company incorporated in Hong Kong or if it is incorporated outside Hong Kong, has established a place of business in Hong Kong whereas an overseas member must be a company incorporated outside Hong Kong.

An affiliate member is a company that has obtained a licence from the Hong Kong Securities and Futures Commission for type 9 regulated activities or it is a fund company incorporated in the People's Republic of China; and its primary business is fund management including the management of discretionary accounts, segregated portfolios or providing investment management services for non-collective investment schemes or the manager or investment adviser of any fund investment company or arrangement not included as an Investment Fund.

An associate member is a company conducting or providing any service of accounting, legal, trustee, custodian, administration, banking, distribution, and technological support to the fund management industry or any related professional services.

At present, HKIFA has 67 fund management companies as full/overseas members, managing about 1,350 SFC-authorized funds. Assets under management were about US$1,120 billion as at the end of June 2017. In addition, we have 58 affiliate and associate members.

http://www.hkifa.org.hk

(Updated: August 2017)