



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2179 5848)

1 November 2017

Ms Pecvin YONG
Principal Assistant Secretary for Financial Services &
the Treasury (Treasury)(R1)
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Ms YONG,

Inland Revenue (Amendment) (No.5) Bill 2017

I am scrutinizing the subject Bill ("Bill") and would like to seek information or clarification on the following matters:

General

According to paragraph 3 of the Explanatory Memorandum to the Bill, clauses 5 to 11 of the Bill seek to align the relevant provisions in the Inland Revenue Ordinance (Cap. 112) with the international standard for the automatic exchange of financial account information in tax matters stipulated by the Organisation for Economic Co-operation Development ("OECD"). Please identify the alignments with reference to the international standard concerned, and highlight the differences between the international standard and the relevant provisions in Cap. 112.

Proposed amendment to the definition of "controlling person"

Clause 5(14) of the Bill seeks to amend the definition of "controlling person" in Cap. 112 by adding "or enforcer" to section 50A(6)(c)(iii)

of Cap. 112. According to paragraph 18(b) of the Legislative Council Brief, the Bill seeks to, among other things, align "the threshold of defining controlling person with the [Common Reporting Standard] requirements (i.e. consistent with the recommendations of Financial Action Task Force adopted in 2012)". However, the term "enforcer" is neither expressly referred to in the definition of (and the commentary on) "controlling persons" in the Standard¹ nor in the Recommendations, and is neither defined in the Bill nor in Cap. 112. In the light of the above, please explain the meaning of "enforcer" for the purpose of the new section 50A(6)(c)(iii) and how the Bill, by proposing to add "or enforcer" to the section, would align the definition of "controlling person" under Cap. 112 with the CRS requirements.

As the first meeting of the Bills Committee will be held on 14 November 2017, please let us have your reply in both Chinese and English as soon as practicable, preferably by **9 November 2017**.

Yours sincerely,



(Evelyn LEE)
Assistant Legal Adviser

c.c. Department of Justice
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¹ See paragraph 6 on page 57 and paragraphs 132 to 137 on pages 198 and 199 of OECD (2017) *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, Second Edition, OECD Publishing, Paris.