



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

來函檔號 YOUR REF : B&M/2/1/29/4/1C(2018)
本函檔號 OUR REF : LS/B/2/18-19
電話 TELEPHONE : 3919 3510

傳真 FAX : 2877 5029
電郵 E-MAIL : lotchan@legco.gov.hk

By Fax (2856 0922)

22 November 2018

Ms Estrella CHEUNG
Prin AS for Financial Services & the Treasury
(Financial Services)3
Financial Services and the Treasury Bureau
Financial Services Branch
Financial Services Division
Division 3
24/F, Central Government Offices
2 Tim Mei Avenue, Tamar, Hong Kong

Dear Ms CHEUNG,

Inland Revenue (Amendment) (No. 6) Bill 2018

We are scrutinizing the legal and drafting aspects of the captioned Bill and shall be grateful if you would clarify the following matters.

Clause 3 – section 2 amended (interpretation)

Clause 3 seeks to add the definition of LAC banking entity, which means an HK affiliated operational entity or clean HK holding company, both as defined under the Financial Institutions (Resolution) (Loss-absorbing Capacity Requirements – Banking Sector) Rules to section 2 of Inland Revenue Ordinance (Cap. 112).

Please clarify whether the meaning of a "holding company" under section 13 of the Companies Ordinance (Cap. 622) also applies in construing "clean HK holding company" in Cap. 112 under the proposed amendment.

Clause 8 – section 17A amended (financial institution: interpretation)

It is proposed in the Bill that the reference to a person's asset and liability in the definitions of "fair value" and "fair value accounting" under

section 17A of Cap. 112 are to be repealed. Please explain the reason(s) for removing such reference in the proposed definitions for "fair value" and "fair value accounting".

Please explain why the proposed new definitions of "fair value" and "fair value accounting" will only apply to the regulatory capital security ("RCS") but not to other capital securities or instruments held by financial institutions.

Clause 9 – section 17D amended (financial institution: general provisions on regulatory capital security held by, or for benefit of, issuer's specified connected person)

Clause 9 of the Bill seeks to repeal section 17D(6)(a) with the intended effect that a connected person (of an issuer of RCS) who is chargeable to profits tax in respect of a sum payable in respect of the RCS, would be considered a "specified connected person" and thus chargeable to profits tax under section 17D.

Please clarify whether the removal of section 17D(6)(a) could result in double taxation on a specified connected person (of an issuer of RCS) who could be subject to profits tax in respect of the RCS under other provisions of Part 4 as well.

Clause 11 – section 17F amended (financial institution: issuer's deduction if RCS is issued to, held by, or issued to or held for benefit of specified connected person)

Under the proposed amendment to section 16, interest payable on money borrowed by a LAC banking entity by way of issuing RCS would be deductible for ascertaining chargeable profits (proposed section 16(2)(ab)). Section 17F(1) provides that no deduction is allowed to an issuer of a RCS for any sum payable in respect of the RCS if it is issued to, held by or issued or held for the benefit of a specified connected person of that issuer.

By virtue of the proposed new section 17F(9A)(a), a connected person who is chargeable to profits tax in respect of a sum payable in respect of the RCS would not be regarded as a specified connected person under section 17F so that interest payable on a RCS is deductible for ascertaining chargeable profits.

However, such a connected person would be regarded as a specified connected person under section 17D as amended by clause 9 of the

Bill. Please explain the inconsistency in treatment of such kind of connected person under the amended sections 17D and 17F respectively.

It is appreciated that your reply in both English and Chinese could reach us as soon as possible, preferably, before the first meeting of the Bills Committee on 27 November 2018.

Yours sincerely,



(Linda CHAN)
Assistant Legal Adviser

c.c. HKMA(Attn: Mr Robert PROBYN, Sr Mgr (Resolution Office) (Policy) 3
(By Fax: 2878 8197))
DoJ (Attn: Ms Mandy NG, Sr Govt Counsel (By Fax: 3918 4613))
Legal Adviser
Senior Assistant Legal Adviser 2
Clerk to the Bills Committee