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LC Paper No. CB(1)454/18-19(02)

**FINANCIAL SERVICES AND THE
TREASURY BUREAU**

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By email (dwylo@legco.gov.hk)

14 January 2019

Ms Doris LO
Clerk to Bills Committee
Legislative Council Secretariat
1 Legislative Council Road
Central, Hong Kong

Dear Ms Lo,

**Bills Committee on
Inland Revenue (Amendment) (No. 7) Bill 2018 (“Bill”)**

Thank you for your email dated 9 January 2019 enclosing the list of follow-up actions arising from the 3rd Bills Committee meeting on 8 January 2019. Please find the Government’s response at **Annex A**.

Separately, in our earlier paper proposing Committee Stage Amendments (“CSAs”) to the Bill (LC Paper No. CB(1)410/18-19(01)), we proposed that clause 3 of the Bill to be amended so that the definition of specified financial reporting standard in the proposed section 18G(1) would include a financial reporting standard that is adopted by a relevant authority in a jurisdiction other than Hong Kong, as in force from time to time, and is in the opinion of the Commissioner of Inland Revenue equivalent to International Financial Reporting Standard 9.

We have examined the Bill further and considered that the proposed section 18L(6), which relates to the recognition of accounting standard, should also be amended to reflect the proposed acceptance of standard equivalent to International Accounting Standard 32. We have therefore prepared the revised draft CSAs¹ at **Annex B**, with changes to the proposed section 18L(6) included as the third item.

Yours sincerely,



(Ms Pecvin Yong)

for Secretary for Financial Services and the Treasury

c.c.

Commission of Inland Revenue (Attn: Mr KK CHIU)

Department of Justice (Attn: Miss Betty CHEUNG
Ms Carmen CHAN)

¹ The proposed CSAs are subject to any subsequent necessary refinements.

Inland Revenue (Amendment) (No. 7) Bill 2018 (“Bill”)

**Government’s Response to the Follow-up raised at
3rd Bills Committee Meeting on 8 January 2019**

At the meeting of the Bills Committee on 8 January 2019, the Administration was requested to provide supplementary information in relation to the proposed new section 50L of the Inland Revenue Ordinance (Cap. 112) (“IRO”). This note sets out the Government’s response.

2. The IRO provides the legal framework for implementing the Common Reporting Standard (“CRS”) promulgated by the Organisation for Economic Co-operation and Development (“OECD”) in Hong Kong. To facilitate financial institutions understand their obligations under the IRO for fulfilling the due diligence and reporting requirements under the CRS, the Inland Revenue Department has published the Guidance for Financial Institutions (“Guidance”)¹ which provides further elaboration on and interpretation of the relevant provisions of the IRO (namely Part 8A and Schedules 17C, 17D and 17E which are collectively referred to as “Part 8A-related provisions”). The Guidance summarises the relevant provisions in the CRS and is based on the Commentaries on the CRS and the CRS Implementation Handbook published by the OECD (collectively “CRS publications”) as long as they are applicable to Hong Kong.

3. In reviewing and assessing the implementation of the CRS in Hong Kong, the OECD has examined the IRO and the Guidance. The OECD recommended that, amongst others, the publishing of the Guidance should be backed up by legal provision so as to ensure that the CRS is effectively complied with in practice. The proposed section 50L is therefore necessary to meet the OECD’s recommendation. It also clearly sets out that the guidelines issued by the Inland Revenue Department on the interpretation of the Part 8A-related provisions should secure consistency between the effect of the Part 8A-related provisions and the effect of the CRS as interpreted by the CRS publications.

¹ The Guidance for Financial Institutions is available at <https://www.ird.gov.hk/eng/pdf/2016/guidance.pdf>.

4. While any guideline to be published under the proposed section 50L is admissible in evidence in proceedings before a court and must be taken into account by the court when interpreting the provisions of the IRO if relevant, it does not bind the court. The court will construe the Part 8A-related provisions in accordance with the usual rules of statutory interpretation and, in construing the relevant provisions, take into account the guideline and the principle that the effect of the Part 8A-related provisions is to be consistent with the effect of the CRS as construed in accordance with the CRS publications. Similar arrangements have been provided for in, among others, the Securities and Futures Ordinance (Cap. 571)² as well as the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615)³.

5. Sections 80B and 80D of the IRO stipulate that failure to comply with the CRS-related provisions in the IRO constitutes an offence. On the other hand, the proposed section 50L(2) clearly stipulates that a failure on the part of a person to comply with the provisions of any guideline published under the proposed section 50L does not by itself render the person liable to any proceedings, whether before a court or otherwise.

Financial Services and the Treasury Bureau
January 2019

² See section 203C(6) of the Securities and Futures Ordinance.

³ See section 7(4) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance.

Inland Revenue (Amendment) (No. 7) Bill 2018

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

| <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 3 | <p>In the proposed section 18G(1), in the definition of <i>specified financial reporting standard</i>—</p> <p>(a) in paragraph (a)(i), by deleting “or”;</p> <p>(b) in paragraph (a), by adding—</p> <p> “(iii) a financial reporting standard adopted by a relevant authority of a jurisdiction other than Hong Kong, as in force from time to time, which is, in the Commissioner’s opinion, equivalent to the standard referred to in subparagraph (ii); or”;</p> <p>(c) in paragraph (b), by deleting “(a)(i) or (ii)” and substituting “(a)(i), (ii) or (iii)”.</p> |
| 3 | <p>In the proposed section 18G(2)(b), in the Chinese text—</p> <p>(a) by deleting “(有關條文)”;</p> <p>(b) by deleting “有關條文” and substituting “本條或第 18H、18I、18J、18K 或 18L 條”.</p> |
| 3 | <p>In the proposed section 18L(6)(c)—</p> <p>(a) in subparagraph (i), by deleting “or”;</p> <p>(b) in subparagraph (ii), by deleting “time,” and substituting “time; or”;</p> <p>(c) by adding—</p> <p> “(iii) an accounting standard adopted by a relevant authority of a jurisdiction other than Hong Kong, as in force from time to time, which is, in the Commissioner’s opinion, equivalent to the standard referred to in subparagraph (ii),”.</p> |

4(2) In the proposed definition of *governmental entity*, in paragraph (d), by deleting “, controlled entity or political subdivision” and substituting “or controlled entity”.

5 By adding—

“(2A) Section 50A(1), definition of *governmental entity*, paragraph (d)—

Repeal

“, controlled entity or political subdivision”

Substitute

“or controlled entity”.”.