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財經事務及庫務局
財經事務科
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FINANCIAL SERVICES AND
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來函檔號 YOUR REF.:

25 November 2009

Mr Desmond Ng
Chairman
Hong Kong Investment Funds Association
1505 Tak Shing House
20 Des Voeux Road Central
Hong Kong

Dear *Desmond*,

**Islamic Finance
- Relevant Information for Preparing Applications for
Exemption of Profits/Property Tax and
Remission/Refund of Stamp Duty for Islamic Bonds (“Sukuk”)**

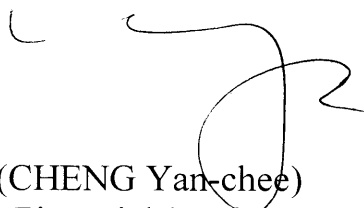
As you may be aware, the Government is currently pressing ahead with the legislative exercise for amending and clarifying the Inland Revenue Ordinance (Cap.112) (“IRO”) and Stamp Duty Ordinance (Cap.117) (“SDO”), with a view to levelling the playing field for common types of Sukuk vis-à-vis their conventional counterparts. Pending introduction and implementation of the legislative amendments, mechanisms are available under section 87 of the IRO and section 52 of the SDO respectively for granting exemption of profits/property tax and remission/refund of stamp duty in relation to Sukuk.

On the basis of the market views gauged, we consider it beneficial to provide a summary of relevant information which might facilitate market players in preparing their applications for the aforesaid exemption/remission/refund. Such information is set out at **Annex** to this letter.

We hope the information would be of reference value to members of the Hong Kong Investment Funds Association. Please feel free to disseminate the information to them, but kindly note that it is intended for general reference only and is not exhaustive. Also, it is not intended to be legal advice and does not affect any persons' legal position, rights or liabilities.

If there are any questions or comments on the information, please contact Miss Natalie LI, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2529 0121 or Miss Clara CHAN, Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2527 3974.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'CHENG Yan-chee', written in a cursive style.

(CHENG Yan-chee)
for Secretary for Financial Services and the Treasury

c.c. Mrs Sally Wong
Chief Executive Officer
Hong Kong Investment Funds Association

Islamic Finance
- Relevant Information for Preparation of Applications for
Exemption of Profits/Property Tax and
Remission/Refund of Stamp Duty for Islamic Bonds (“Sukuk”)

Preamble

The HKSAR Government is pressing ahead with developing Islamic finance in Hong Kong. Our policy objective is to provide a level playing field for Islamic financial products vis-à-vis their conventional counterparts. Having regard to the peculiarities of Hong Kong and market views, our starting point is to facilitate the launch and transactions of Sukuk in Hong Kong.

In view of the fact that transactions involving Sukuk would entail additional tax liabilities under the existing tax regime, and having taken into account views from the industry, the Financial Services and the Treasury Bureau has prepared a summary of relevant information with a view to facilitating applications for exemption of profits/property tax under section 87 of the Inland Revenue Ordinance (Cap. 112) and remission/refund of stamp duty under section 52 of the Stamp Duty Ordinance (Cap. 117) in relation to Sukuk.

We hope that such information could serve as a useful reference for the industry, pending the relevant amendments to the Inland Revenue Ordinance and the Stamp Duty Ordinance in due course. Please however note that the information below is intended for general reference only and is not exhaustive. Also, the information is not intended to be legal advice and does not affect your legal position or your rights or liabilities.

Part I below contains a flowchart for easy reference. Part II sets out some issues/questions which may be useful in considering applications.

Part I – Flowchart

Application submitted to the Financial Services and the Treasury Bureau

Note: The application should be made by fax or by post, addressing to Division 5 of Financial Services Branch/Financial Services and the Treasury Bureau (Address: 18/F, Tower 1, Admiralty Centre, 18 Harcourt Road, Hong Kong; Fax: 2527 0790). Please refer to Part II below for a list of useful issues/questions relating to the preparation of the application.

Vetting of application by relevant authorities, including the Financial Services and the Treasury Bureau, Inland Revenue Department and Hong Kong Monetary Authority

Note: The applicant will receive by fax or by post an acknowledgement of receipt of the application issued by the Financial Services and the Treasury Bureau within 7 days upon receipt of the application concerned. Vetting time of each case would depend on the complexity of the application and adequacy of the supporting information provided by the applicant. If necessary, the applicant would be required to provide supplementary information and/or give undertakings.

Notification of application result

Note: Notification of application result will be sent by fax or by post to the applicant. Each application would be considered on the basis of the supporting information provided and undertakings given by the applicant. In case the applicant provides misleading, erroneous or incomplete information, or fails to produce any required documentation or fulfil any required obligations, the approval granted is subject to change or withdrawal, in whole or in part.

Part II – Issues/Questions (Not Exhaustive, For General Reference Only)

- Details of the applicant and its relationship with the Obligor.
- Details of the Sukuk issue (e.g. type of Sukuk, issue size, denomination, date of issue/arrangement/listing in Hong Kong and tenor, etc.).
- Details of the underlying asset(s) involved.
- Have the Sukuk arrangements/structure been endorsed by a Shariah council or body, or by a committee formed for the purpose of providing guidance on compliance with Shariah law? If so, details to be provided.
- Have the arrangements specified a period at the end of which the Sukuk ceases to have effect?
- Are the Sukuk certificates transferable?
- Are there any commitments, undertakings or arrangements, conditional or unconditional, qualified or unqualified for the Obligor under the arrangements to purchase during or at the end of the Sukuk term the Sukuk assets at a pre-determined price?
- Will the total amount of payments (other than redemption payment) receivable by the Sukuk holders over the life of the Sukuk (if any) exceed an amount which would be a reasonable commercial return on a loan of an amount equal to the principal of the Sukuk?

If special purpose vehicle(s) (“SPV(s)”) are involved –

- Are there any arrangements providing for the Sukuk holders to pay a sum of money to the SPV upon the Sukuk issuance?
- Are there any arrangements to identify assets, or a class of assets, movable or immovable, which the SPV will acquire for the purpose of generating income or gains directly or indirectly?
- Has the SPV or the Obligor under the arrangements undertaken to arrange for the management of the Sukuk assets?

For application for remission/refund of stamp duty only –

- Are the instruments concerned executed for the sole purpose of carrying out the issuance of Sukuk, and that such instruments are over and above those required to be executed for equivalent conventional bonds issuance?
- Does the ownership of the Sukuk assets, including the legal title and beneficial interest, rest with the Obligor (or its nominee) immediately before the Sukuk issuance and at the end of the term of the Sukuk? (For Sukuk with embedded option (for example, convertible or exchangeable Sukuk), this condition may not apply).
- For Ijara Sukuk, is there a lease the terms of which enable the Obligor to use the Sukuk assets during the term of the Sukuk?
- Will 50% or more of the Sukuk be beneficially held or funded, directly or indirectly, by the Obligor or by its related parties (e.g. wholly-owned subsidiaries) throughout the life of the Sukuk?
- Will the arrangements be treated in accordance with international accounting standards or Hong Kong Financial Reporting Standards as a financial liability of the SPV or the Obligor (as the case may be)?

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