INLAND REVENUE DEPARTMENT
STAMP OFFICE

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STAMPING PROCEDURES AND EXPLANATORY NOTES

Inland Revenue (Amendment) (No. 2) Ordinance 2016
Stamp Duty Relief for the Transactions and Transfers of Regulatory Capital Securities

Introduction

The Inland Revenue (Amendment) (No. 2) Ordinance 2016 ("the Amendment Ordinance") was published in the Gazette on 3 June 2016. Among others, the Amendment Ordinance clarifies stamp duty treatments in respect of regulatory capital securities ("RCSs") issued by financial institutions in compliance with the Basel III capital adequacy requirements.

Regulatory Capital Securities

2. The Basel III capital adequacy requirements are minimum standards promulgated by the Basel Committee on Banking Supervision, under which financial institutions must hold certain amount of regulatory capital expressed as a percentage of their total risk-weighted assets. The Basel III requirements[1] have been gradually implemented in Hong Kong and other member jurisdictions since 2013.

3. Financial institutions may seek to comply with the Basel III requirements by strengthening their capital base through, among other means, issuing specified securities, including Additional Tier 1 or Tier 2 instruments ("AT1/T2 instruments"), to raise funds. These AT1/T2 instruments possess hybrid features of debt and equity because their terms and conditions provide for their write-down, or conversion into ordinary shares, to absorb losses either in going concern (for AT1 instruments) or at the point of non-viability of the issuer (for both AT1 and T2 instruments).

[1] The legal framework for the implementation of Basel III standards in Hong Kong is provided by the Banking (Amendment) Ordinance 2012 enacted in February 2012. The capital adequacy requirements are set out in Banking (Capital) Rules (Cap. 155, sub. leg. L).

4. Before the enactment of the Amendment Ordinance, these AT1/T2 instruments were not regarded as debt instruments under the provisions of the Inland Revenue Ordinance (Cap. 112) (“IRO”). Under the Amendment Ordinance, new provisions have been added to the IRO to treat a RCS as a debt security for the purposes of profits tax.

5. Correspondingly, the Stamp Duty Ordinance (Cap. 117) (“SDO”) has been amended so that the transfer of RCSs is, as other transfer transactions relating to debts, given stamp duty relief.

Stamp Duty Treatments

6. Upon the enactment of the Amendment Ordinance, sections 19 and 63 of, and the First Schedule to, the SDO have been amended and a new Schedule 9 has been added thereto. With these amendments, a contract note is not required to be executed or stamped for the sale or purchase of a RCS. Further, any other transfer of RCS is exempt from stamp duty under heads 2(3) and 2(4) of the First Schedule to the SDO.

Enquiries

7. For enquiries, please contact the Stamp Office by telephone or in writing as follows:

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