香港信託人公會
rustee Hong Kong Trustees' Association

KEY POINTS OF HONG KONG TRUSTEES' ASSOCIATION'S SUBMISSION TO THE FINANCIAL SECRETARY FOR THE 2019 BUDGET CONSULTATION
(written submission following business roundtable of 3 November 2018)

Suggestion 1. Develop Talents in the Trust Industry

To strengthen HK's position as a leading Asset Management / Wealth Management location, we consider it highly relevant to develop skills in the trust industry. Funds, private wealth structures, CIS and pensions are often structured as trusts, but there has been a lack of systematic training for trust professionals in Hong Kong.

In Aug 2018, the HKTA rolled out the Trust Training Certification Course in conjunction with the HKSI, the first of its kind in the Hong Kong trust industry which was well-received by industry practitioners. This is currently enjoying the benefits of the WAM Pilot program whereby some students can obtain reimbursements under the program.

The HKTA course will benefit if the WAM Pilot program becomes a permanent arrangement.

Further, we would also ask the FS to evaluate specific tax concessions / super-deductions or annual subsidy for Hong Kong businesses who pay for their employees to attend trust administration / compliance related training. This would be consistent with the Government's efforts to bolster Hong Kong as a knowledge-based economy. In particular, we would draw your attention to the salaries tax deduction provisions for self-education expenses in section 12 of the Inland Revenue Ordinance (the "Ordinance") and the general deductibility provisions for profits tax in section 16 of the Ordinance. As regards section 12, the scope of "prescribed course of education" and "education provider" could be expanded specifically to take into account specialist regulatory and legal training. Similarly, employer subsidies for employee self-education in fields relevant to their employment should be expressly allowed as deductions, perhaps in the form of a new paragraph of sub-section (1). Whereas we are aware that the Department and the Commissioner of Inland Revenue are in general skeptical about the application of super-deductions in Hong Kong, a move towards granting, say, a 1.5:1 deduction for knowledge-related expenditure would be consistent with the Government's stated economic development and diversification objectives and further contribute to maintaining Hong Kong's role as an international financial centre.

<u>Promotion of HK as a Trust Services Centre:</u> As an IFC where wealth management and asset management businesses are key components of the financial services industries, the fiduciary/trust services are very much an integral part of the value chain, providing crucial

support given the professionalism and expertise of the participants in the trust sector. Do not forget to also include the trust sector when the Government promotes HK as a financial services centre e.g. in roadshows.

Suggestion 2. Clarification of the taxation of profits of Family Offices

It would be beneficial to Hong Kong if tax measures were introduced that are welcoming to family offices.

HKTA would suggest the Inland Revenue Department to make clear, at least by way of a practice note but preferably by way of a legislative amendment, that where a family office is established in Hong Kong, the types of activities that it can or cannot perform in order not to attract profits tax in Hong Kong. The lack of certainty, and in turn, confidence, has deterred high net worth individuals from setting up family offices in Hong Kong or has triggered their moving from Hong Kong to elsewhere (e.g. Singapore). For example, the management of assets in Hong Kong for estate management / succession planning purposes should not in the ordinary course be regarded as a trading activity, since most such operations will be of an investment or capital nature and so expressly exempt under section 14(1) of the Ordinance. We refer, in particular, to the ratio of the Privy Council decision in ITC v Mehta [1938] LR 65, which distinguishes between the place where investment decisions are made – which is not necessarily the locality of any profits arising from the transactions implemented as a result of such decisions – and the place where the investments are actually effected. A clearer application of those longstanding principles to the context of family offices would therefore be welcomed by the industry.

It would be more beneficial to Hong Kong if it introduces tax measures that are friendly to family offices. To encourage family offices to establish operations in Hong Kong and to ensure that Hong Kong remains competitive as a private wealth management centre and in general, as an international financial centre, tax policies (either by way of a new exemption or expansion of the current (Offshore) Finds Exemptions) should be implemented to encourage the formation of family offices in Hong Kong without exposing offshore investments to Hong Kong tax. As the regional competitor of Hong Kong, Singapore is often seen as a more favourable jurisdiction for family offices due to its targeted exemptions and incentives for family offices. Hong Kong should at least match Singapore in this respect, if not to introduce a even more attractive regime in terms of exemptions and incentives so that the set up of family offices and the management of their assets could both be attracted to Hong Kong.

Suggestion 3. Proposal regarding amendments to the Profits Tax Exemption for Funds

In April 2018, the HKTA responded to the FSTB's public consultation regarding proposals to Remove Ring-Fencing Features from the Tax Regimes for Funds. In particular, we were very concerned that the proposals would inadvertently bring into the Hong Kong tax net income generated by family offices / family trusts and wealth structures that were hereto exempted/

not subject to Hong Kong profits tax. Our prior submission is attached.

HKTA comments on FSTB's Proposals to R

We welcomed the proposal to remove the ring fencing, but we have also highlighted the need to ensure that the trusts, family offices and companies currently qualifying under the existing definition of offshore funds do not inadvertently become excluded from the exemption. We note the briefing paper for the Legislative Council Panel on Financial Affairs on 5 November 2018 proposes to introduce a new and hopefully broader definition of "funds". We would again ask for the new definition to ensure that private trusts and family offices are included.

Whilst we welcome the fact that the tax exemption will extend to 'onshore' funds / collective investment schemes, we must not lose sight of the developments in our neighboring jurisdictions.

In particular,, in Singapore, its Ministry of Finance has announced lately that a tax framework for Variable Capital Companies (or "VCCs", the equivalent of Open-ended Fund Companies "OFCs" in Hong Kong) will be introduced to complement the VCC regulatory framework. Under the framework, tax incentives will be provided to VCC funds and also Singapore-based fund managers operating them. Hong Kong, to remain competitive, will have to clarify its tax regime on OFCs as soon as possible to enable their takeoff.

Suggestion 4. Pension/Funds related

1. Support / Create a favourable policy environment (e.g. tax, measures to facilitate the development of the capital market, etc.) for the markets to develop financial products of diverse nature for the accumulation of retirement savings and for providing income protection at the decumulation phase (e.g. issuance of i-bonds or other bonds of longer duration; this may offer support to asset management companies and insurance companies in providing annuities so they can effectively hedge their liabilities with long dated bonds issued by the Government).

   Please raise the tax deductible voluntary contributions limit ($36,000 is too low to be attractive or effective in changing employee behaviour) in order to increase the likelihood of pension contributions in due course giving rise to *sustainable* pensions and annuities. The ageing demographic of Hong Kong requires urgent action to ensure that the Government is not left with a socio-economic time-bomb of elderly, childless individuals with no independent means to sustain themselves.

2. Strengthen publicity and promotion efforts to enhance the public's understanding of different kinds of investment and retirement products that will help them plan for their retirement or manage their wealth.

3. Consider to include non-working population (parents, spouses, etc.) for making retirement savings through the MPF system in an efficient way.

4. Financial education – increase funding for IEC (Investment Education Centre); put into school curriculum courses on financial planning and investment basics.

5. Allow section 12 and section 16 deductions for hiring full-time or part-time nurses, caretakers, helpers etc. to care for dependent parents / grandparents and children. This is a natural corollary of the generous deductions available for taxpayers who care for children, parents, and / or grandparents. Allowing deductions for employing helpers / caretakers would go some way to relieving the economic burden of starting and maintaining a family in Hong Kong and, in turn, militate against currently unfavourable demographic trends, such as the sub-replacement local birth rate.

Suggestion 5. Elderly employment

To support active ageing and enhance labour participation, the Government should consider providing additional tax deductions (again, perhaps super-deductions) or other financial incentives to employers who hire workers at age 60 or above who wish to enter the workforce or continue working; especially in view of the fact that more and more experienced workers in various fields (including the trust sector) will be retiring, generally at age 60, in the coming years.

<u>Other Suggestions in relation to The Chief Executive's 2018 Policy Address</u>

(A) Government Green Bond Programme

We agree with the government initiative to promote the development of green finance in Hong Kong. Indeed, more and more investment **funds** in Hong Kong (including MPF) **have**, to different extent, s**tarted** incorporating **ESG** (environmental, social and governance) **indicators in their investment** process for purposes of a better potential and sustainable long-term return. Also, the International Organisation of Pension Supervisors (IOPS) is developing draft guidelines on the application of ESG factors in the supervision of pension fund investment.

In this regard, we look forward to seeing a systematic issuance of the green bonds and related regulatory policies (for example, as regards MPF legislation) to facilitate the investment by MPF funds and the development of more ESG/retirement-related investment products.

(B) Employees' Benefits and Support

For the improvement of labour welfare, we would suggest that **the Government** could **consider** making regular special MPF contributions to low-income employees to enhance their retirement protection. The fact that, for those of low income, it is rather difficult for them to squeeze retirement savings from their daily life. They cannot benefit from the proposed tax deductible MPF voluntary contributions. To lessen the financial burden of MPF on low-income earners, employees whose relevant income is less than the minimum level of relevant income are not required to contribute to MPF. Under such circumstance, the benefits of MPF for those of low-income are either limited even in the longer term or offset by the employers (due to the job nature).

The above suggestion can optimize the use of public resource by addressing the inadequacy of retirement savings of low-income earners. It might also help unleashing the potential of the local labour force (namely, grassroots employees) and alleviating the immediate demand for social security.

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