1. Subject:

Whether

- a. the consent solicitation exercise ("CSE") Amendments (as elaborated below) and Voting Rights Amendment (as elaborated below) result in an arrangement that is materially different from the arrangement identified in each of the Series B Securities Ruling and the Series C Securities Ruling, such that each of the Series B Securities Ruling and the Series C Securities Ruling will cease to apply after the CSE Amendments and Voting Rights Amendment; and
- b. the Voting Rights Amendment result in an arrangement that is materially different from the arrangement identified in the Series A Securities Ruling, such that the Series A Securities Ruling will cease to apply after the Voting Rights Amendment.

2. Relevant background and facts:

- a. Company A is incorporated outside Singapore.
- b. It had issued three tranches of subordinated perpetual securities, Series A Securities, Series B Securities and Series C Securities (collectively, the "Securities") in year X, Y and Z respectively, under its multicurrency debt issuance programme (the "Programme"). The Securities are listed on the Bonds Market of the Singapore Exchange Securities Trading Limited.
- c. The Securities are constituted by a trust deed between Company A and a trustee (the "**Trust Deed**"), which sets out the terms and conditions of the Securities (the "**Conditions**").
- d. Advance rulings were sought and obtained from the Comptroller of Income Tax that the Securities would be regarded as "debt securities" for the purpose of Section 43H(4) of the Income Tax Act 1947 (2020 Revised Edition) ("ITA") and Regulation 2 of the Income Tax (Qualifying Debt Securities) Regulations (the "QDS Regulations"). Accordingly, the distributions (including Arrears of Distribution and any Additional Distribution Amounts (as elaborated below)) payable on the Securities will be regarded as interest payable on indebtedness under the ITA. The Comptroller also ruled that the holders of the Securities will enjoy the tax exemptions and concessions available for qualifying debt securities ("QDS"), subject to the satisfaction of the governing conditions under the QDS Regulations.

e. Advance ruling letters had been issued to Company A in respect of the Series A Securities ("Series A Securities Ruling"), the Series B Securities ("Series B Securities Ruling") and the Series C Securities ("Series C Securities Ruling") in year X, Y and Z respectively. The Series A Securities Ruling, the Series B Securities Ruling and the Series C Securities Ruling are collectively referred to as the "IRAS Rulings".

The CSE Amendments

- f. Due to a proposed business acquisition, a Change of Control Event¹ as defined in the Conditions of the Trust Deed will occur. This will trigger the redemption provision under the Conditions, and a step-up in the distribution rate (the "Step-up") of the Series B Securities and the Series C Securities (collectively, the "CSE Securities") immediately following the date of occurrence of the Change of Control Event so long as Company A has not already redeemed the CSE Securities in accordance with the Conditions.
- g. Company A sought the approval of the holders of each of the Series B Securities and the Series C Securities (the "CSE Securityholders") to amend the definition of "Change of Control Event" in the Conditions, such that the completion of the proposed business acquisition will not trigger the Step-up and redemption provision, through a consent solicitation exercise ("CSE").
- h. Company A also sought the approval of the CSE Securityholders to make other amendments to the Conditions of the CSE Securities, the notable one being the insertion of provisions to include fallback arrangements relating to the possible cessation of the London Interbank Offered Rate benchmark ("LIBOR") as a regulated benchmark under the United Kingdom Benchmark Regulation².

The amendments are collectively referred to as the "CSE Amendments".

The Voting Rights Amendment

- i. Following the proposed business acquisition, each of the holders of the Series A Securities, the Series B Securities and the Series C Securities (the "Securityholders") would be given indirect and limited voting rights on the appointment, election, re-election or removal of directors to and/or from the board of directors of Company A (the "Voting Rights Amendment").
- j. Apart from the CSE Amendments and the Voting Rights Amendment, the following key features of the Securities remain unchanged:

¹ It is provided in the Conditions that the Securities may be redeemed at the option of Company A following the occurrence of a Change of Control Event, by complying with certain notice requirements.

² The reset of the distribution rate for the CSE Securities will be affected by the benchmark reforms.

- i. The Securities confer a right to the Securityholders to receive fixed rate distributions, payable semi-annually in arrears (each a "Distribution Payment Date"). The distribution rate does not depend on the profit performance of Company A. There is a step-up feature.
- ii. Company A may in its sole discretion elect to defer the payment of distribution scheduled to be paid on a Distribution Payment Date. Any distributions that are deferred ("Arrears of Distribution") will bear interest at the prevailing distribution rate ("Additional Distribution Amount").
- iii. Company A is not allowed to pay dividends, distributions or make any other payment on any of Company A's junior obligations (which includes the ordinary shares of Company A) or to redeem, reduce, cancel, buy-back or acquire any of Company A's junior obligations unless and until Company A (i) has satisfied in full all outstanding Arrears of Distribution; or (ii) is permitted to do so by an extraordinary resolution of the Securityholders.
- iv. Company A is required to satisfy all outstanding Arrears of Distribution on the earliest of the date of redemption of the Securities, the occurrence of certain events or on the winding up of Company A.
- v. The Securityholders are not reflected in Company A's register of members. They are not entitled to the rights enjoyed by shareholders, and do not have the right to attend and vote at general meetings of Company A (except for the indirect and limited voting rights granted following the Voting Rights Amendment as explained above).
- vi. The Securities do not have a fixed redemption date. However, Company A has the option to redeem the Securities in certain instances.

3. Relevant legislative provisions:

a. Income Tax Act 1947 (2020 Revised Edition) - Sections 13(16), 14(1)(a), 43H and paragraph 7(a) of Part I of the Seventh Schedule

4. The rulings:

a. The CSE Amendments do not result in an arrangement that is materially different from the arrangement identified in each of the Series B Securities Ruling and Series C Securities Ruling.

- b. The Voting Rights Amendment constitutes a material change to the arrangement identified in the IRAS Rulings. In this regard, the IRAS Rulings would no longer be applicable following the Voting Rights Amendment pursuant to paragraph 7(a) of Part I of the Seventh Schedule of the ITA.
- c. Nevertheless, the Securities will be regarded as "debt securities" for the purpose of section 43H(4) of the ITA and Regulation 2 of the QDS Regulations. This ruling will apply from the date on which the change of the Voting Right Amendment is effective.
- d. The distributions due and payable on the Securities (including Arrears of Distribution and any Additional Distribution Amounts) will be regarded as interest payable on indebtedness.
- e. Subject to satisfying the governing conditions under the QDS Regulations, and sections 43H, 13(2) and 13(16) of the ITA for QDS, the Securities will be regarded as QDS and the Securityholders will be entitled to the tax concessions and exemptions under section 43H and section 13(1)(a) of the ITA respectively.
- f. The deductibility of the distributions (including Arrears of Distribution and any Additional Distribution Amounts) is subject to a detailed examination of the purpose of the Securities and the use of the proceeds. Company A will be allowed a tax deduction under section 14(1)(a) of the ITA on the distributions (including Arrears of Distribution and any Additional Distribution Amounts) if:
 - i. such distributions (including Arrears of Distribution and any Additional Distribution Amounts) are incurred on the capital (raised through the issuance of the Securities) employed in acquiring the income of Company A that is chargeable to tax; and
 - ii. the conditions governing deductibility of expenses under section 14 of the ITA are met and the deduction is not prohibited under any other provisions of the ITA.
- g. The distributions (including Arrears of Distribution and any Additional Distribution Amounts) will be deductible only when they are legally due and payable and not based on their scheduled distribution payment dates.

5. Reasons for the decision:

a. The CSE Amendments only involve amending the definition of "Change of Control Event" in the Conditions of the CSE Securities and inserting provisions relating to benchmark discontinuation and replacement. Such amendments do not result in an arrangement that is materially different

from the arrangement identified in each of the Series B Securities Ruling and Series C Securities Ruling.

- b. However, the Voting Rights Amendment constitute a material change to the arrangement identified in the IRAS Rulings, as the Securityholders are now granted certain voting rights (however indirect or limited the voting rights are).
- c. Nevertheless, on balance of the features of the Securities following the CSE Amendments (applicable to the CSE Securities) and the Voting Rights Amendment, the key features of the Securities described in paragraph 2j above generally support the character of the Securities as "debt securities" for the purpose of section 43H(4) of the ITA and Regulation 2 of the QDS Regulations.
- d. Following the characterisation of the Securities as a debt instrument for tax purposes, the distributions (including Arrears of Distribution and any Additional Distribution Amounts) are regarded as interest payable on indebtedness. The Securities will be regarded as QDS under the ITA and the distributions (including Arrears of Distribution and any Additional Distribution Amounts) will enjoy the tax concessions and exemptions available for QDS provided that the other requisite conditions for the Securities to be QDS are satisfied.

6. General References:

a. Taxpayers may refer to the IRAS e-Tax Guide "Income Tax Treatment of Hybrid Instruments" ("e-Tax Guide") for further guidance. In particular, paragraph 5 of the e-Tax Guide states the approach and factors that the Comptroller of Income Tax considers when determining the characterisation of a hybrid instrument. Paragraphs 7 and 9 of the e-Tax Guide further explains the deductibility of distributions from the Issuer to the investor and the timing of deductions by the Issuer.

Disclaimer

The published summary of the advance ruling is for general reference only. It is binding only in respect of the applicant of the advance ruling and the specified transaction under consideration of the advance ruling. All taxpayers should exercise caution in relying upon the published summary of the advance ruling, as the Comptroller is not bound to apply the same tax treatment to a transaction that is similar to the specified transaction.

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