Advance Ruling Summary No. 5/2021 Published on 3 May 2021

1. Subject:

Whether:

- the guaranteed senior perpetual capital securities ("Securities") is an issue of debt for the purposes of Section 43N(4) of the Income Tax Act ("ITA")¹ and Regulation 2 of the Income Tax (Qualifying Debt Securities ("QDS")) Regulations ("QDS Regulations");
- b. the distributions ("Distributions") (including Arrears of Distribution, as defined below) payable on the Securities should consequently be regarded as interest payable on indebtedness for the purposes of Sections 14 and 14(1)(a) of the ITA; and
- c. the holders of the Securities ("Securityholders") should be entitled to the tax concessions and exemptions available for QDS, subject to satisfying the governing conditions for the Securities to be QDS.

2. Relevant background and facts:

- a. The issuer is a Singapore-based issuer. It has issued a tranche of Securities. The guarantor of the Securities ("Guarantor") is a company incorporated in and registered with the securities exchange in Country A.
- b. The proceeds from the issue of the Securities are intended for refinancing of existing borrowings and general corporate purposes.
- c. The key features of the Securities include the following:
 - 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 bears a stepup feature.
 - ii. The Securityholders are not conferred any shareholding and residual interest in the issuer and the payment of Distributions is not dependent on the issuer or the Guarantor's profit performance.
 - iii. The issuer or the Guarantor may, in its sole and absolute discretion, defer the payment of any or all the Distributions unless a compulsory distribution payment event has occurred. Any deferred Distribution will constitute Arrears of Distribution.

¹ Income Tax Act, Chapter 134 (Revised Edition 2014)

- iv. Distributions will accrue on each Arrears of Distributions for so long as such Arrears of Distribution remains outstanding at the prescribed rate of distribution and will be added to such Arrears of Distributions (and thereafter bear Distributions accordingly) on each Distribution Payment Date.
- v. There is no limit as to the number of times the Distributions and Arrears of Distributions may be deferred.
- vi. The issuer and the Guarantor are not allowed to declare or pay any discretionary dividends, distributions or make any other payments on, any of the issuer or the Guarantor's junior obligations, other than a dividend, distribution or other payment in respect of an employee benefit plan or similar arrangement or to redeem, reduce, cancel, buy back or acquire any of the issuer or the Guarantor's junior obligations, unless and until the issuer or the Guarantor has satisfied in full all outstanding Arrears of Distribution; or is permitted to do so with the consent of the Securityholders.
- vii. The Securities have no fixed redemption date, but the issuer has the option to redeem the Securities in certain instances.
- viii. The issuer is obliged to satisfy all Arrears of Distribution on the earliest of the date of redemption of the Securities or the occurrence of certain events including on the winding up of the Guarantor.
- ix. The Securities constitute direct, unconditional, unsecured and unsubordinated obligations of the issuer. They rank *pari passu* with all other outstanding unsecured and unsubordinated obligations of the issuer, but, in the event of insolvency, only to the extent permitted by applicable laws relating to creditors' rights.
- x. The Guarantor unconditionally and irrevocably guarantee on an unsubordinated basis the due payment of the principal of and Distributions on the Securities and all other money payable by the issuer under the trust deed constituting the issuance of the Securities.

3. Relevant legislative provisions:

- a. Income Tax Act, Chapter 134 (Revised Edition 2014) Sections 14(1), 14(1)(a) and 43N
- b. Income Tax (Qualifying Debt Securities) Regulations

4. The rulings:

- a. The Securities are regarded as "debt securities" for the purposes of Section 43N(4) of the ITA and Regulation 2 of the QDS Regulations.
- b. The Distributions (including Arrears of Distribution) payable on the Securities will be regarded as interest payable on indebtedness and will enjoy the tax concessions and exemptions available for QDS provided that the other requisite conditions for the Securities to be regarded as QDS are satisfied.
- c. The deductibility of the Distributions (including Arrears of Distribution) is subject to a detailed examination of the use of the proceeds from the issuance of the Securities. The issuer will be allowed a tax deduction under Section 14(1)(a) of the ITA on the Distributions (including Arrears of Distribution) if such Distributions (including Arrears of Distribution) are incurred on capital (raised through the issuance of the Securities) employed in acquiring the income of the issuer that is chargeable to tax. This is on the condition that all requirements under Section 14 of the ITA are met and the deduction is not prohibited under any other provisions of the ITA.
- d. The Distributions (including Arrears of Distribution) 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. Based on the facts and representations provided, the key features of the Securities described in paragraph 2c above generally support the character of the Securities as "debt securities" for the purpose of Section 43N(4) of the ITA and Regulation 2 of the QDS Regulations.
- b. Following the characterisation of the Securities as a debt instrument for tax purposes, the Distributions (including Arrears of Distribution) are regarded as interest payable on indebtedness. The Securities will be regarded as QDS under the ITA and the Distributions (including Arrears of Distribution) 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 Reference:

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.

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