1. Subject:

Whether:

- a. the subordinated perpetual securities ("Securities") would be regarded as "debt securities" for the purpose of Section 43N(4) of the Income Tax Act ("ITA")¹ and Regulation 2 of the Income Tax (Qualifying Debt Securities) Regulations ("QDS Regulations");
- b. the distributions ("**Distributions**") (including Arrears of Distribution and any Additional Distribution Amount, as defined below) payable on the Securities would be regarded as interest payable on indebtedness and eligible for the tax concessions and exemptions available for qualifying debt securities ("**QDS**"), assuming the other requisite conditions for the Securities to be QDS are satisfied; and
- c. the issuer would be entitled to tax deductions on the Distributions (including Arrears of Distribution and any Additional Distribution Amount) as interest, subject to the provisions of Section 14(1)(a) of the ITA.

2. Relevant background and facts:

- a. The issuer is a Singapore-based issuer. It issued a tranche of Securities above its aggregate nominal amount. The guarantor of the Securities ("Guarantor") is listed on the Singapore Exchange Securities Trading Limited.
- b. The net proceeds from the issue of the Securities will be used for general corporate purposes and refinancing existing borrowings.
- c. The key features of the Securities include the following:
 - i. The Securities confer the right 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 the issuer and bears a step-up feature.
 - ii. The issuer may in its sole discretion elect to defer the payment of Distribution scheduled to be paid on a Distribution Payment Date. Distributions that are deferred ("Arrears of Distribution") are cumulative. Arrears of Distribution will bear interest at the prevailing

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

Distribution Rate (the "Additional Distribution Amount"). The issuer may further elect to defer any Arrears of Distribution.

- iii. Save in connection with any employee benefit plan or similar arrangements and as a result of the exchange or conversion of parity obligations for junior obligations of the issuer or the Guarantor, the issuer and the Guarantor are not allowed to pay dividends, distributions or make any other payment to any of the issuer or the Guarantor's junior obligations or to redeem, reduce, cancel, buy back or acquire any of the issuer or the Guarantor's junior obligations unless and until the issuer has satisfied in full all outstanding Arrears of Distribution; or permitted to do so by an extraordinary resolution of the holders of the Securities ("Securityholders").
- iv. The Securities do not have a fixed redemption date but the issuer has the option to redeem the Securities in certain instances.
- v. The issuer is required to satisfy all outstanding Arrears of Distribution and any Additional Distribution Amounts on the earliest of the date of redemption of the Securities, the occurrence of certain events or on the winding up of the issuer or the Guarantor.
- vi. The Securities are direct, unconditional, subordinated and unsecured obligations of the issuer. The rights of the Securityholders rank junior to the senior creditors of the issuer but *pari passu* with all other subordinated obligations of the issuer (that are not expressed by their terms to rank junior to the Securities) and in priority to the holders of the ordinary shares of the issuer.
- vii. The Securityholders will not be reflected in the issuer's Register of Members and are not entitled to the rights conferred upon shareholders by the Companies Act (Cap. 50) ("**CA**"). The Securities are not subject to the capital maintenance rules under the CA and the requirement that Distributions must be paid out of distributable profits.

3. Relevant legislative provisions:

- a. Income Tax Act, Chapter 134 (Revised Edition 2014) Sections 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 accruing from the issue date of the Securities (including Arrears of Distribution and any Additional Distribution Amounts) and 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 accruing from the issue date of the Securities (including Arrears of Distribution and any Additional Distribution Amounts) 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 accruing from the issue date of the Securities (including Arrears of Distribution and any Additional Distribution Amounts) if such Distributions (including Arrears of Distribution and any Additional Distribution and any Additional Distribution Amounts) are incurred on capital (raised through 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 accruing from the issue date of the Securities (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. 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 accruing from the issue date of the Securities (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 accruing from the issue date of the Securities (including Arrears of Distribution Amounts) will be regarded as QDS under the ITA and the Distributions accruing from the issue date of the Securities (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 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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