

Standard Setting Department  
Hong Kong Institute of Certified Public Accountants  
37/F., Wu Chung House  
213 Queen's Road East  
Hong Kong

12 August 2022

**Exposure Draft, Circular on Reporting for Certification of Funds under Schedule 16D to the Inland Revenue Ordinance (“Circular”)**

Dear Sir or Madam,

Thank you for seeking our views on the Circular. We set out our key comments below for your kind consideration.

Appendix 1, Procedure 14 of the Circular, and Annex 3 of HKMA Guidelines

I. Suggested changes to the wording

It is stated in Procedure 14 that for entities not incorporated in Hong Kong as stated in Annex 1, the auditors should obtain a written representation from the [Investment Manager] stating that [it is] [they are] not allowed to issue an invitation to the public to subscribe any of its shares or debentures at any one point in time during the Holding Period.

This same wording is repeated in Annex 3, Written Representation, of the Guideline on Auditor's Report for Application for Certification of Funds Issued by the Monetary Authority for Funds and their Investment Managers ([https://www.hkicpa.org.hk/-/media/HKICPA-Website/New-HKICPA-Standards-and-regulation/SSD/o2\\_Open-for-comment/auditing/cf16d/g\\_im.pdf](https://www.hkicpa.org.hk/-/media/HKICPA-Website/New-HKICPA-Standards-and-regulation/SSD/o2_Open-for-comment/auditing/cf16d/g_im.pdf)) (“HKMA Guidelines”).

At the same time, footnote 4 of the HKMA Guidelines (“Footnote 4”) clarifies that it is sufficient for a fund to demonstrate that it has invested in a company that satisfied the definition of a Private Company or an Investee Private Company for a certain period of time (i.e., not the entire period) during the Holding Period.

We consider the current wording of Procedure 14 of the Circular and also Annex 3 of the HKMA Guideline can be made more concise to reflect the intention of Footnote 4. The suggested changes highlighted in underline as follows:

**Procedure 14 of Appendix 1 of the Circular**

\*[For [name(s) of the entity]<sup>11</sup> that [was][were] not incorporated in Hong Kong as stated in [Annex 1], we obtained a written representation<sup>13</sup> from the [Investment Manager] stating that [it is][they are] not allowed to issue any invitation to the public to subscribe any of its shares or debentures at any least one point in time during the Holding Period.]

**Annex 3 of the HKMA Guidelines**

1. Private company

[*Actual name of the entity*], denoted as “SPE” in the Ownership Structures Diagrams,<sup>7</sup> is not allowed to issue any invitation to the public to subscribe any of its shares or debentures at any least one point in time during the Holding Period.



Appendix 1, Procedure 14 of the Circular, and Annex 3 of HKMA Guidelines (Cont'd)

II. Practical difficulty of proving the entities are not allowed to issue invitation to public

We would like to highlight that in constitutive documents of entities not incorporated in Hong Kong, it is common that there are no explicit provisions that prohibit the companies to issue invitation to the public to subscribe any of its shares and debentures. In practice, the Investment Manager may have to rely on representation from management of the Investee Company that the Investee Company is not allowed to issue invitation to public. While the current suggested wording in the representation as highlighted in (I) above provide some flexibility, we would suggest that the definition of Private Company to be made more flexible, for example, instead of “not allowed to issue”, to change to “do not issue” any invitation to public.

We thank you again for the opportunity to provide our comments on the draft Circular and HKMA Guidelines and would be pleased to explain our submission further. Please do not hesitate to contact Josephine Kwan (Asset & Wealth Management Partner) on 2289 1203, Helen Li (Asset & Wealth Management Partner) on 2289 2741, or Rex Ho (Asia Pacific Asset & Wealth Management Tax Leader) on 2289 3026.

Yours sincerely

A handwritten signature in black ink, appearing to read "Josephine Kwan", written in a cursive style.

Josephine Kwan  
Asset & Wealth Management Partner