強制性公積金計劃管理局
MANDATORY PROVIDENT FUND
SCHEMES AUTHORITY

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17 December 2013

Circular Letter: SU/COT/2013/001
To: All representative/relevant employers of ORSO schemes

Dear Sir/ Madam,

US Foreign Account Tax Compliance Act –
Implications for ORSO schemes

Further to the Authority's letter dated 21 February 2012 to corporate and individual trustees/ administrators of ORSO registered schemes and all representative/relevant employers of ORSO exempted schemes, I write to invite you to address any potential implications including, compliance associated with the US Foreign Account Tax Compliance Act ("FATCA") on your ORSO scheme.

What is FATCA?

FATCA is a piece of US legislation which was enacted in the US in March 2010 and which will become effective in mid-2014 according to the latest implementation timeline issued by the US Department of the Treasury. It targets tax non-compliance by US taxpayers holding foreign accounts. It requires reporting by US taxpayers about certain foreign financial accounts and offshore assets they hold and by foreign financial institutions ("FFIs") on financial accounts held by US taxpayers or foreign entities in which US taxpayers hold a substantial ownership interest. For further information on FATCA, please visit the US Internal Revenue Service ("IRS") website www.irs.gov.

How would FATCA affect an FFI?

An FFI includes a foreign entity that, as a substantial portion of its business, holds financial assets for the account of others. According to the IRS, FATCA will require FFIs to report to the IRS certain information about financial accounts held by US taxpayers, or by foreign entities in which US taxpayers hold a substantial ownership interest.

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To comply with these reporting requirements, FFIs will have to enter into an FFI Agreement with the IRS by the deadline specified by the IRS. Unless the FFI complies with specified due diligence, reporting and withholding requirements or qualifies for exemption under FATCA (please see Further Information in the last paragraph), there may be a range of implications including the imposition of a 30% withholding tax on certain payments made to an FFI .

What you need to do

ORSO scheme employers should work with their ORSO scheme administrators and put in place controls to ensure compliance with the legislation and take appropriate actions which may, among other things, include:

(a) seek professional advice from experts on US taxation legislation and relevant industry bodies on the implications for your ORSO scheme;

(b) consider the implications of the FFI Agreement to your ORSO scheme; and

(c) inform scheme members and obtain the specific consent of those who may be regarded as "specified US persons" under FATCA before reporting the information to the IRS to ensure compliance with relevant legislative provisions including those in the Personal Data (Privacy) Ordinance. For details, please visit the IRS website www.irs.gov.

Further Information

The Hong Kong Government has been in discussion with the US Department of the Treasury, with the objective of concluding an inter-governmental agreement ("IGA") designed to facilitate compliance with FATCA by FFIs in Hong Kong. Please note that the extent to which individual ORSO schemes might be affected and exempted will depend on the final scope of the IGA. As such, you are strongly encouraged to keep abreast of updates and announcement made by the Hong Kong and/ or US Government. As and when the Authority hears from the Hong Kong Government, we will write to you again with the information.

Yours sincerely,

(Henrietta Ma)
Manager
ORSO Schemes Department
Supervision Division

cc Administrators of ORSO registered schemes
The Hong Kong Trustees' Association Limited