



LAW SOCIETY'S RESPONSE TO SFC'S CONSULTATION ON THE EVIDENTIAL REQUIREMENTS UNDER THE SECURITIES AND FUTURES (PROFESSIONAL INVESTOR) RULES

Question 1

Do you agree that the proposed approach is the best way to serve the purpose of providing flexibility? Please explain your view.

Law Society's response:

Except for individuals and partnerships, we do not think it is necessary to provide such flexibility to trust companies or corporations where they are required by law to prepare audited financial statements and where the custodian statements are readily available. We agree to provide flexibility to individuals or partnerships because they are not required by law to prepare audited financial statements and the custodian statements are not readily available to them.

Some members take the view that such flexibility should be extended to all investors and that it is the responsibility of those relying on the professional investor status to satisfy themselves as to the evidential requirements as at the relevant date

Question 2

Do you agree that the existing methods set out in sections 3(a) to 3(c) of the Professional Investor Rules (as outlined in paragraph 7 above) should be preserved?

Law Society's response:

Please see our response to Question 1.

Question 3

Do you agree that the "relevant date" should be used as the time reference for ascertaining whether a high net worth professional investor meets the relevant assets or portfolio threshold? Please explain your view.

Law Society's response:

There are mixed views on the appropriate "relevant date" on meeting the threshold with some expressing agreement with the definition of "relevant date" as currently provided in Appendix A.

However, an alternative view has been expressed that the relevant date should be the date of the investment - otherwise, it is not permissible to provide a copy of an offering document for an investment to a prospective investor without first determining if the

prospect is a professional investor. There can not be any problem as long as nobody can invest *unless* they are a professional investor.

Question 4

Do you agree that section 3(d) of the existing Professional Investor Rules should be extended so that any corporation which is wholly owned by one or more individuals or corporations/partnerships where each of those individuals or corporations/partnerships would qualify as a professional investor under section 3(b) or section 3(c) (as the case may be) of the Professional Investor Rules, will qualify as a professional investor?

Please explain your view.

Law Society's response:

We agree to extend the definition of "Professional Investor" to include a corporation which is wholly-owned by individuals, partnerships and corporations if they and each of them are qualified as a professional investor.

Question 5

Do you have any comments on the indicative draft of the proposed amendments to the Professional Investor Rules in Appendix A? Please explain your view.

Law Society's response:

As a result of the mixed views to questions 1 and 3 above, we have no comments on the proposed draft amendments in Appendix A.

**The Law Society of Hong Kong
Securities Law Committee
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