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SUGGESTED SOLUTIONS

PART A

Question 1

Part 1

In respect of the sales to mainland customers, the profits so derived would not be taxable as they were derived outside Hong Kong.

The IRD expresses its view on determining the locality of profits in its Departmental Interpretation and Practice Notes (DIPN) No. 21. The general principle is the "operation test" (F.L. Smidth& Co. v Greenwood) which asks the question "where did the operation take place from which profits in substance arise?" According to the Hang Seng Bank case, the broad guiding principle is that one looks to see what the taxpayer has done to earn the profit in question and where he has done it.

As RL is engaged in a trading business, the IRD would generally regard the determining factor as where the contracts for purchase and sale are effected. Moreover, the IRD expresses in DIPN 21 that "(in Magna case) Litton VP recognized that in case of a trading profit the purchase and the sale were the important factors. He further included in his deliberation all of the relevant operations and not just the purchase and sale of the products".

It is the IRD's practice that if either the purchase contract or sale contract is effected in Hong Kong, the initial presumption will be that the profits are fully taxable. Where the commodities are purchased from a Hong Kong supplier or manufacturer, the purchase contract will usually be taken as having been effected in Hong Kong.

The IRD takes the view that there is no apportionment of trading profit, which is either wholly taxable or wholly non-taxable.

DIPN 21 states that in identifying an agent's acts with those of its principal, whilst imposing some unity on the law applicable to situations where one party represents or acts for another, should not be taken to an inappropriate degree or taken too literally since this is not conducive to arriving at the accurate legal analysis. In brokerage business, it is not necessary that the transaction which produced the profit was carried out by the taxpayer or his agent in the full legal sense (i.e. one who enters into a contract on his principal's behalf creating a contractual relationship between his principal and a third party). It is sufficient that the transaction was carried out on the taxpayer's behalf and for his account by a person acting on his instructions. It seems that in general IRD would regard the act of a fully accredited agent as the act of its principal. In the case, the mainland subsidiaries and RL did not sign any agency agreements. However, as the subsidiaries acted for and on behalf of RL, the subsidiaries could be regarded as agents for RL for taxation purposes.

As regard to the case, as RL purchased goods from a Hong Kong supplier, the IRD will take the initial presumption that the purchase contracts were effected in Hong Kong and the trading profit derived from the sales made by the agents in the Mainland is sourced from Hong Kong. The fact that ultimate suppliers were located outside Hong Kong is not relevant to determine the source of profits of RL.

The fact pattern of RL's case is similar to Magna case, which involved sale of low value electronic products by fully accredited agents in overseas and purchased products from a sole supplier in Hong Kong, which is a related company to the taxpayer. It was held that Magna's operation in effecting the sale contracts were more immediately responsible for generation of profits. Thus, Magna's trading profits were derived outside Hong Kong.
According to Manga case, one should look at the operation more immediately responsible for the generation of the profits. The ING Baring case also mentioned one should consider the most critical step for generation of profits to determine the source.
RL may rely on the Magna case to argue that the sales activities done by the agents in the Mainland are more important in generating the trading profit and based on the ING Baring case that the activities done by the agents are more critical in generating the trading profit. However,

it may be hard to convince the IRD to accept this argument because the IRD mentions in its website – FAQ: The ING Baring case that it will continue to apply "the totality of facts" approach. The IRD explains that the term "totality of facts" should mean no more than having regard to all the relevant factual "operations" of a transaction to decide the locality of the source of profits. Also, in DIPN No 21, the IRD reiterates its focus on "all of the relevant operations and not just the purchase and sale of the products". Also, RL was NOT trading low-value electronic products, like Magna case. RL has appointed just five agents whereas Magna has appointed 100 agents. The importance of sales efforts and contracts in contributing the trading profits in Manga might not be the same as that in RL's case.

Part 2

The Hong Kong profits tax position of RL in respect of the pricing adjustment to be made by the Chinese tax authority is as follows:

- A juridical double taxation would be resulted. Juridical double taxation means an enterprise is charged to tax on the same profit or income in two different states. In this case, RL would be subject to income tax as a result of the transfer pricing adjustment.

- In the Double Taxation Arrangement (DTA) between the Mainland China and the Hong Kong SAR, the Associated Enterprise Article provides for primary transfer pricing adjustments by either side. The Associated Enterprises Article also provides a mechanism for relief from the resultant economic double taxation to be given by the other side.

- The DTA also contains a Mutual Agreement Procedure Article that provides for the resolution of cases where a taxpayer is faced with double taxation.

- For the claim to revise the non-taxable offshore profits attributable to the overseas PE of a Hong Kong resident (i.e. to increase the offshore profit), the relevant adjustment is made under the "Business Profits Article" and section 79 of the IRO. The time limit for invocation of section 79 is six years after the end of the relevant year of assessment.

- A retrospective price adjustment would not represent outgoings or expenses incurred in the production of chargeable profits and hence deductible under section 16.

- The assessment, for those years where transfer pricing adjustments have been made, cannot be re-opened under section 70A as the retrospective price adjustment constitutes neither an error nor omission made in the taxpayer's return or statement filed with the IRD for the year concerned.

- The CIR would only be obligated to make corresponding adjustments up to the extent to which the CIR agrees that the tax adjustments made by the other side (the Mainland) represent the arm's length principle.

- If the Commissioner does not fully agree with the adjustments of the other side, it is expected that the two authorities would communicate with each other so as to resolve the issue.

- RL can formally invoke the "Mutual Agreement Procedure Article" of the DTA. RL has to initiate the procedure with the IRD within three years from the time of the first notification to them of the actions giving rise to taxation not in accordance with the DTA (as a result of transfer pricing adjustments or profit re-allocation adjustments). The IRD will then consider and resolve the case on its own if possible or where necessary, endeavour to resolve the issue with the competent authority of the Mainland (however without the obligation of necessarily reaching agreement with the competent authority of the Mainland).

Question 2

Part 1

According to the DTA, the profits of a Hong Kong enterprise shall be taxable only in Hong Kong unless the enterprise carries on business on the mainland through a permanent establishment (PE).

If the Hong Kong enterprise carries on business through a PE on the mainland, the profits of the enterprise may be taxed on the mainland but only to the extent of those attributable to that PE

The term PE means a fixed place of business which is defined to include:

- a place of management
- a branch
- an office
- a factory
- a workshop
- a mine, an oil or gas well, a quarry or any other place of extraction of natural resources
- an agency with general authority to conclude contract

For consultancy services, if the services have been furnished in one side for the same project or a connected project for a period or periods exceeding in the aggregate 183 days in any 12-month period, the provision of services will be treated as a PE in that side.

PE does not cover facilities or a fixed place of business for:

- storage, display or delivery of goods
- purchasing goods
- advertising, collecting information or other preparatory or ancillary activities belonging to the enterprises

Part 2

Chinese EIT impact (assuming no PE in mainland China)

If BHK does not maintain a PE in mainland China, it will only be subject to EIT on a withholding basis in respect of the royalty received from GAC for granting GAC the right to use the software in mainland.

The withholding rate is 7% on the gross royalty, without any deduction according to the DTA between Hong Kong and mainland China, if BHK is the beneficial owner of the royalty.

BHK should be regarded as the beneficial owner because it developed BDEES and owns the proprietary interest in the programme. Also, it will perform substantial operation for the purpose to earn the royalty income as it will send staff to GAC's office to set-up the interface system and technical support on using BDESS.

If PE exists in mainland China

As BHK will send staff to set-up the interface system and technical support to GAC, BHK may be regarded as maintaining a PE in mainland if:

- The number of days BHK's staff working in mainland is more than 183 days within any 12-month period commencing or ending in a taxable year; or

- There is a fixed place in mainland China at the disposal of BHK when it renders the services in mainland (for instance at GAC's office).

If BHK is regarded as maintaining a PE in mainland, its net profits attributable to the PE will be taxable. If this is the case, the gross royalty fee less the relevant expenses will be subject to EIT at a rate of 25%.

Whether it is more beneficial of being taxed at withholding basis at 7% or being taxed at 25% on net profit (with tax adjustment) depends on level of operating expenses of BHK in this regard.

Part 3

Hong Kong profits tax impact

Applying the operation test, the IRD will regard the royalty fee from GAC as derived from Hong Kong. It is because BHK has developed BDEES in Hong Kong. The place of usage is not relevant (DIPN 49).

BHK may counter argue that the place of usage is more critical for generation of profit. BHK has to set-up the interface system at GAC's Guangzhou office. BHK also will provide on-site technical support to GAC for earning the royalty fee. Hence, BHK's royalty fee should be distinguished from simply licensing out a self-developed intellectual property as illustrated in DIPN 49. Alternatively, BHK may argue, as least part of the fee should be attributable to the set-up and technical support services to be rendered in mainland China. To strengthen this argument, BHK may need to have a professional valuation to justify a reasonable split of the fee into royalty fee and service fee. The royalty is purely received for the right to use BDEES, whereas the service fee is received just for the set-up and technical support services done in mainland China.

BHK's payment of content fee to overseas companies would be deductible if it is incurred in the production of assessable profits (section 16(1)). If BHK's royalty from GAC is offshore nature and non-taxable, the corresponding portion of the content usage fee should be non-deductible. Except for this portion, the remaining balance of the content fee should be deductible if other profits of BHK is subject to profits tax.

BHK's payment of content fee to overseas companies for the right to assess and extract data from the overseas companies' data bases might be deemed as taxable either under section 15(1)(b) or section 15(1)(ba). Section 15(1)(b) applies for the cases where BHK uses the right in Hong Kong. Section 15(1)(ba) applies where BHK use the right outside Hong Kong and it can claim deduction on the content fee. Section 15(1)(ba) will be applied to the portion of the royalty BHK pays for granting GAC the right to use BDEES to extract data if BHK will be subject to tax on the royalty received from GAC and hence it can claim deduction on the content fee paid to overseas companies. However, if BHK's royalty fee received from GAC is offshore in nature and non-taxable, the content fee it pays will not be deductible and hence section 15(1)(ba) will not be applicable.

Part 4

Chinese EIT re Dividend from GAC to BHK

For dividend paid to a Hong Kong resident beneficial owner, which does not maintain any permanent establishment in mainland China and has been holding 25% or more shareholding of a Chinese company for a period of not less than 12 months, the withholding EIT rate is 5%. Hence, the EIT liability for the case is RMB 50,000, (i.e. RMB 1,000,000 x 5%).

However, as BHK will distribute 100% of the dividend to BAL, there might be a risk BHK is not regarded as a beneficial owner and cannot enjoy the reduced withholding rate.

Hong Kong profits tax impact

Dividend received from GAC is offshore in nature and non-taxable to BHK.

Dividend distributed by BHK to BAL is not subject to withholding profits tax in Hong Kong.

Part 5

Chinese EIT

Gain derived from the alienation of shares of a Mainland company by a Hong Kong representing 25% or more of the entire shareholding of the Chinese company may be subject to EIT in mainland.

As BHK will hold 50% shareholding in GAC, its disposal of 5%-10% shareholding in GAC would be subject to income tax in mainland China at 10%.

Hong Kong profits tax

Gain on disposal of shares in GAC is capital in nature and not taxable in Hong Kong.

PART B

Question 3

Part 1

The IRD's practice on transfer pricing of related party transaction is set-out in DIPN 45.

Related party transactions should follow the arm's length principle. The arm's length principle uses the transactions of independent enterprises as a benchmark to determine how profits and expenses should be allocated for the transactions between associated enterprises. It compares what an enterprise has transacted with its associated enterprise with what a truly independent enterprise would have done in the same or similar circumstances.

Generally, the IRD would seek to apply the principles in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (the OECD Transfer Pricing Guidelines), except where they are incompatible with the express provisions of the IRO. Transactions actually undertaken by the associated enterprises would be considered, except where the economic substance differs from its form or the structure is not one that commercially rational independent enterprises would arrange. The use of ranges, such as an inter-quartile range, would be accepted in the determination.

Acceptable transfer pricing method under the OECD guideline, which is also acceptable to the IRD include: the comparable uncontrolled price method, the resale price method, the cost plus method, the transactional net margin method, the profit split method, and other approaches that are in compliance with the arm's length principle.

Under the comparable uncontrolled price (CUP) method, the price of property or services transferred in transactions between associated enterprises is compared to the price of property or services transferred in transactions between independent enterprises under comparable conditions. Discrepancies between these two sets of prices indicate that the transaction does not conform to the arm's length principle. Therefore the prices used by the associated enterprises should be replaced by the prices used by the independent enterprises. The comparable uncontrolled price method may apply to all types of related-party transactions.
The resale price method (RPM) is based on the price that associated enterprises use when reselling products to independent enterprises.

- Arm's length purchase price = Resale price to independent enterprises × (1 − Gross margin of comparable unrelated party transaction)
- Gross margin of comparable unrelated party transaction = Gross profit of comparable unrelated party transaction / Net sales of comparable unrelated party transaction x 100%

The resale price method generally applies to simple processing business in which a reseller does not carry out any substantial value-added processing activities such as modifying the shape, function, structure of the goods involved or changing the trademark of the goods or to pure purchase and sale business.

Under the cost plus method (CPM), the arm's length price shall be reasonable cost incurred for a related-party transaction plus the gross profit of a comparable non-related-party transaction. The cost plus method generally applies to related-party transactions involving the purchase and sale, transfer and employment of tangible assets, the provision of labour services, or financing.

Under the transactional net margin method (TNMM), the net profits of a related-party transaction shall be determined on the basis of the profit margin indicators of a comparable non-related-party transaction. The cost plus method generally applies to related-party transactions involving the purchase and sale, transfer and employment of tangible assets, the transfer and employment of intangible assets and the provision of labour services.

Under the profit split method (PSM), the amount of profits that shall be distributed respectively to an enterprise and its associated party shall be calculated on the basis of contribution to the consolidated profits of the associate transaction involved made respectively by them. The profit split method consists of the general profit split method and the surplus profit split method. The profit split method generally applies to situations in which related-party transactions are so closely integrated that it is difficult to make separate evaluations on the results of transactions for all parties thereto.

<u>Part 2</u>

BC and CCL is highly integrative. There should be no comparable uncontrolled price due to their uniqueness in production and marketing strategy. That is both companies have added special value to the goods produced and sold. Also, there is no comparable mark-up to either BC or CCL. Hence RPM and CPM are not applicable. There is no comparable profit margin and TNNM may not be applicable. Due to their integrative strategy, PSM may be applicable to them.

PART C

Question 4

Part 1

Exemption from Stamp Duty is available for intra-group transfers of shares or immovable property from one associated body corporate to another under s.45 of the Stamp Duty Ordinance (SDO)

The property acquired from its 80% subsidiary should not be entitled to s. 45 relief. Two corporations are "associated" when one is the beneficial owner of at least 90% of the issued share capital of the other, or when a third company is the beneficial owner of at least 90% of the issued capital of each. PL and AL are not "associated corporations". The 20% shares held by Mr Huang and Mr Chen should not be taken into account because they are not "corporations".

Part 2

Property 1 and Property 3 were transferred below market value. Both transactions would be regarded as voluntary disposition and hence market value would be applied to replace the transfer value (s.27) in computing the Stamp Duty payable. The chargeable instruments are the agreement for sale (Head 1(1A)). This is so even though the transfers were in good faith and for valuable consideration (*Lap Shun Textiles Industrial Co Ltd case*).

In addition to normal Stamp Duty, Special Stamp Duty (SSD) would also be chargeable on the Agreements for Sale for Property 3 and 4 (if they are residential properties) because both of them were acquired on or after 27 October 2012 and were sold within 36 months (Head 1 (1B)). Buyer's Stamp Duty would also be chargeable if the properties are residential properties.

The stamp duty payable is computed as follows:

Property	Acquisition time	Market value (HK$)*	Transfer value (HK$)	Stamp Duty payable (HK$)	SSD (HK$)	BSD(HK$)
1	1 April 2013	8 million	7 million	$1.2M (15% x 8M)	Nil, holding period from 1 April 2103 to 1 Dec 2016 (more than 36 months	$1.2M ($8M x 15%)
2	1 March 2013	10 million	11 million	$825,000 (7.5% x 11M)	Shop, not applicable	Shop, Not applicable
3	1 May 2015	22 million	20 million	$3.3M (15% x 22 million)	2,200,0000 (10% x 22 million); holding period: 19 months + 1 day more than 12 months but less than 36 months	$3.3M ($22M x15%)
4	1 November 2015	9 million	11 million	$1.65M (15% x 11 million)	1,100,000 (10% x 11 million); holding	$1.65M ($11M x15%)

		period: 13 months + 1 day, more than 12 months but less than 36 months

Question 5

Part 1

Fixed term bank deposit interest is exempt from payment of profits tax under the Interest Exemption Order in general. However, there will be no exemption if the deposit has been used to secure for borrowing and interest expenses on such borrowing is deductible by virtue of section 16(1)(a) and section 16(2). The deposit in the case has been used to secure for a bank loan borrowed by DBS's overseas subsidiary. The interest expense of the bank loan would not be deductible. Hence, the deposit interest would still be exempt.

The revaluation gain on change of intention on holding the apartments should be taxable re *Sharkey and Wernher* case.

Unrealized revaluation gain on trading securities is not taxable. Anticipated profits should not be assessable under section 14 (*Nice Cheer* case).

A product design acquisition cost is NOT deductible under section 16E before 2011/12. The sale proceed of the product design was hence not taxable. Profits on disposal is capital in nature and hence not taxable.

Registered trademark acquisition cost is deductible under 16EA over 5 succeeding years on a straight-line basis (section 16EA(3)) or the protection period (section 16EA (4)), whichever is shorter. Hence the deductible amount for the year is $2,000,000 ÷ 5 = $400,000.

Product research expense is generally deductible under Section 16B, includes equipment cost, but excludes land and building cost. However, the decoration cost of research centre should be eligible for industrial building allowances, initial allowance at 20% (for the year of acquisition) and annual allowance at 4% (for the year where the property is "in use" at the end of the year) on the qualifying expenditure.

Bank charges on trading transactions are deductible under section 16(1).

Interest on bank loan for purchase of trading stock is deductible under section 16(1)(a), 16(2)(d) and (2)(e). Restriction under section 16(2A) is applicable as the loan is secured by a deposit generated non-taxable interest. The interest income derived from the secured deposit would not be taxable as Mr Wong did not carry on business in Hong Kong. Section 16(2B) does not apply because there is no flow-back of non-taxable interest income. Therefore, the non-deductible interest expense should be $50,000.

For the repair expenses, the replacement cost of cooking utensils should be deductible under section 16(1)(f).

Write off of a loan to a Hong Kong customer (principal portion) is not deductible under section 16(1)(d) as it was neither a trade debt previously taxed nor money lent in a money lending business carried on in Hong Kong. The interest should have been included as taxable receipt previously and hence written off of the interest should be deductible.

Bad debt recovered is taxable in the year of recovery under section 16(1)(d).

General provision for bad debts is not deductible under section 16(1)(d) because it cannot be proved to have become bad.

Specific provision for bad debts is made based on specific evidence which can prove the debts to have become bad and hence deductible under section 16(1)(d).

Question 6

Part 1

Mr Park's case

According the *Goepfert* case, Mr Park's new employment with SSC should be regarded as a non-Hong Kong employment because:

- the employment contract should have been negotiated, concluded and enforceable outside Hong Kong as Mr Park is a Korean resident and SSC is a Korean corporation;
- his employer is SSC, which is a company based in Korea, not a Hong Kong resident company;
- except for the portion shared by GSC, Mr Park's remuneration is paid to him outside Hong Kong;

Moreover, though he performed some of his work in Hong Kong, his location here is a matter of convenience and his work is for the benefit of various affiliated companies outside Hong Kong. Arguably, his stay in Hong Kong should constitute "visit" for the purposes of salaries tax. However, the IRD may view that his work base was in Hong Kong and hence he was not visiting Hong Kong.

On the basis that the employment is non-Hong Kong sourced, income will only be taxable if it is attributable to services performed in Hong Kong and the number of days Mr Park visiting Hong Kong exceeds 60 days in a year of assessment (before the Tax Treaty between Hong Kong and Korea is effective from 2017/18 onwards). With regard to the nature of services done by Mr Park in Hong Kong and the foreign bases of his work and family, the stay of Mr Park in Hong Kong should be regarded as 'visit'. If the total number of days he stayed in Hong Kong for the assessment year 2016/17 does not exceed 60 days (with both entry and exit days counted as in Hong Kong), the full amount of income from the employment will be exempt. If the total number of days he stayed in Hong Kong exceeds 60 days, salaries tax will be calculated based on the days he spent in Hong Kong (each entry and exit day is counted as half-day) and the total number of days in the year. Paid leave days attributable to the services done in Hong Kong should also be taxable.

Based on the travel schedule, the position of Mr Park is:

The year of assessment in which the employment commenced is 2016/17.

Total no. of days in the year:	321	[365 – 30(April) – 14(May)]
No. of days in Taiwan:	21	(both entry & exit days being counted in HK)
No. of days in Singapore:	28	
No. of days in Vietnam:	16	
No. of days in Thailand:	23	(including 10 paid leave days)
Total no. of days outside HK	88	
Total no. of days in HK	233*	
Total no. of days working in HK	229	(233-4**)
Total no. of working days for the year	311	(321-10)
Leave days attributed to HK services	7	(10 x 229/311)

Total HK servicing days, including attributable leave days: 229+7=236 days

*Since the total number of days in HK exceeds 60, Mr Park is subject to HK salaries tax based on time apportionment. Leave pay attributable to his services in Hong Kong is also taxable.

**For time apportionment, each entry/exit day is counted as a half-day. Since there are 4 trips during the year, 4 days will be deducted for assessment purposes.

Assessable income for the year

$$\text{Total income for the year} \times \frac{\text{236 serving days in HK (including leave days)}}{\text{321 days for the year}}$$

Question 7

Part 1

The new legislation offers a concessionary profits tax rate of 50% reduction on existing rate (i.e. to 8.25%) for qualifying profits derived from specified treasury activities of qualifying Corporate Treasury Centres (CTCs).

Under the new section 14D(2) of Inland Revenue Ordinance ("IRO"), a qualifying CTC is a corporation that can fulfil any of the following criteria:

- Carried out during the year of assessment, in Hong Kong, ONLY Corporate Treasury Activities (section 14D(3) of the IRO);
- Satisfied the specified safe harbour rules (section 14E of the IRO); or
- Has obtained the Commissioner of Inland Revenue's ("CIR's") determination that it is a Qualifying CTC (section 14F(1) of the IRO).

In addition to fulfilling any of the above criteria, the corporation must, in the relevant year of assessment, be centrally managed and controlled in Hong Kong and the activities generating the profits must be carried out or arranged by the corporation in Hong Kong.

The three types of specified corporate treasury activities are (i) intra-group financing business, i.e. borrowing money from and lending money to its associated corporations; (ii) corporate treasury service; and (iii) corporate treasury transaction.

Even if a corporation cannot satisfy the requirements of "carrying out ONLY corporate treasury activities", it will still be considered as a Qualifying CTC if it satisfies the profits test and the assets test for either one year ("One-year Safe Harbour Rule") or that for multiple years ("Multiple-year Safe Harbour Rule"). Details of which are as follows:

	One-year Safe Harbour Rule	Multiple-year Safe Harbor Rule
Profits test	Corporate Treasury Profits ("CTP") percentage is not lower than 75% for a one-year period. CTP percentage is calculated as below: The total CTP of the CTC for the year of assessment concerned The total profits accruing to the CTC for the year of assessment concerned	Average CTP percentage is not lower than 75% over a two-year period or three-year period* Average CTP percentage is calculated as below: Sum of CTP percentage for two years or three years* Two or three years*
Assets test	Corporate Treasury Assets ("CTA") percentage is not lower than 75% for a one-year period. CTA percentage is calculated as below: The total CTA of the CTC for the year of assessment concerned The total assets of the CTC for the year of assessment concerned	Average CTA percentage is not lower than 75% over a two-year period or three-year period* Average CTA percentage is calculated as below: Sum of CTA percentage for two years or three years* Two or three years*

* depending on the duration of which the corporation has carried on a trade or business in Hong Kong

If a corporation cannot satisfy the requirement of "carrying out ONLY Corporate Treasury Activities" or the abovementioned safe harbour rules, it can apply to the CIR for his discretion to deem the corporation to be a Qualifying CTC if he is satisfied that the corporation would have been qualified as CTC in the ordinary course of its business, but for some extreme or unforeseen circumstances it cannot be qualified in the meantime.

Only Qualifying Profits may be subject to the concessionary tax rate. Qualifying Profits are assessable profits of a Qualifying CTC derived from the following transactions (Section 14D(1) of the IRO):

- Money lent in the ordinary course of the Qualifying CTC's intra-group financing business to a non-Hong Kong associated corporation (i.e. a qualifying lending transaction);
- A Corporate Treasury Service to a non-Hong Kong associated corporation (i.e. a qualifying corporate treasury service); or
- A Corporate Treasury Transaction related to the business of a non-Hong Kong associated corporation (i.e. a qualifying corporate treasury transaction).

Setting-up a branch in Hong Kong to carry out the group's treasury function will not fulfil the requirement, among other things, that it must be a corporation in Hong Kong.

Using the existing Hong Kong subsidiary company to perform the group's treasury function may need to be aware of the requirement of safe-harbour rules. Given that the subsidiary company has derived profits from other businesses in Hong Kong, it may not be able to satisfy the safe-harbour rules.

It seems the most effective way is to set-up a new subsidiary company in Hong Kong to perform the group's treasury function.