

立法會
Legislative Council

LC Paper No. CB(1)602/05-06

(These minutes have been seen
by the Administration)

Ref : CB1/BC/14/04

**Bills Committee on
Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005**

**Minutes of the third meeting held on
Monday, 28 November 2005, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon James TIEN Pei-chun, GBS, JP (Chairman)

Dr Hon LUI Ming-wah, SBS, JP

Hon Bernard CHAN, JP

Hon CHAN Kam-lam, SBS, JP

Dr Hon Philip WONG Yu-hong, GBS

Hon Jeffrey LAM Kin-fung, SBS, JP

Hon WONG Ting-kwong, BBS

Hon CHIM Pui-chung

Hon TAM Heung-man

Members absent : Hon SIN Chung-kai, JP

Hon Ronny TONG Ka-wah, SC

**Public officers
attending** : Mr Martin GLASS, JP
Deputy Secretary for Financial Services and the Treasury
(Treasury)

Miss Erica NG
Principal Assistant Secretary for Financial Services and the
Treasury (Treasury)

Mrs Dorothy MA
Principal Assistant Secretary for Financial Services and the
Treasury (Financial Services)

Mrs LAU MAK Yee-ming, JP
Commissioner of Inland Revenue

Mr TAM Kuen-chong, JP
Deputy Commissioner of Inland Revenue

Mr CHU Yam-yuen, JP
Assistant Commissioner of Inland Revenue

Mr YIM Kwok-cheong
Senior Assessor
Inland Revenue Department

Ms Monica LAW
Senior Assistant Law Draftsman
Department of Justice

Clerk in attendance : Ms Connie SZETO
Senior Council Secretary (1)4

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Council Secretary (1)1

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)362/05-06) — Minutes of second meeting held on 25 October 2005)

The minutes of the meeting held on 25 October 2005 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(3)770/04-05) — The Bill

LC Paper No. CB(1)2043/04-05(01) — Marked-up copy of the Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005

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| LC Paper No. CB(1)363/05-06(01) | — Draft Committee Stage amendments proposed by the Administration (as at 24 November 2005) |
| LC Paper No. CB(1)363/05-06(02) | — Marked-up copy of the Bill showing the draft proposed Committee Stage amendments provided by the Administration (as at 24 November 2005) |
| LC Paper No. CB(1)385/05-06(01) | — Letter dated 25 November 2005 from the Assistant Legal Adviser to the Administration |
| LC Paper No. CB(1)385/05-06(02) | — Extracts of relevant statutory provisions |
| LC Paper No. CB(1)363/05-06(03) | — “List of follow-up actions to the second meeting on 25 October 2005” prepared by the Legislative Council Secretariat |
| LC Paper No. CB(1)117/05-06(02) | — Summary of submissions and Administration’s responses (Position as at 24 November 2005)) |

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

(*Post-meeting note:* The following documents were issued to members:

- (i) The Administration’s reply dated 28 November 2005 to Assistant Legal Adviser 3’s letter dated 25 November 2005 (LC Paper No CB(1)411/05-06(01)) on 29 November 2005;
- (ii) The Chinese version of the summary of submissions and Administration’s responses (Position as at 24 November 2005) (LC Paper No CB(1)117/05-06(02)) on 29 November 2005; and
- (iii) Updated version of the marked-up copy of the Bill showing the draft proposed CSAs by the Administration (LC Paper No. CB(1)426/05-06(01)) was issued to members and uploaded to the website of the Council on 30 November 2005).

Clause-by-clause examination of the Bill and consideration of the Administration's proposed Committee Stage amendments (CSAs)

3. The Bills Committee examined the Bill clause-by-clause and considered the CSAs proposed by the Administration. Members agreed with the proposed CSAs.

4. Members considered that the proposed CSAs had achieved the policy objective of providing profits tax exemption for offshore funds and should have addressed the concerns raised by deputations. They further noted the Administration's advice that it had taken into account the inputs from members of the fund industry in working out the proposed CSAs. To facilitate members' consideration of the resumption of the Second Reading debate on the Bill, it was decided that the Bills Committee would invite deputations, which/who had provided submissions to the Bills Committee, to provide their written views on the technical aspects of the CSAs proposed by the Administration by 31 December 2005.

(*Post-meeting note:* Letters to the deputations inviting written views on the Administration's proposed CSAs were issued on 6 December 2005.)

The way forward

5. Given that the Bills Committee had completed clause-by-clause examination on the Bill and considered the Administration's proposed CSAs, members agreed that:

- (a) the fourth meeting originally scheduled for 19 December 2005 would be cancelled; and
- (b) the need for the Bills Committee to convene a meeting to consider relevant issues in the deputations' submissions on the Administration's proposed CSAs would be reviewed in the light of the submissions received.

Clerk

(*Post-meeting note:* Members were informed of the arrangements in paragraphs 4 and 5 vide LC Paper No. CB(1)416/05-06 on 29 November 2005.)

III. Any other business

6. There being no other business, the meeting ended at 5:55 pm.

Council Business Division 1
Legislative Council Secretariat
22 December 2005

Appendix

**Proceedings of the third meeting of the
Bills Committee on Revenue (Profits Tax Exemption for Offshore Funds) Bill
2005
on Monday, 28 November 2005, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000607	Chairman	Confirmation of minutes of the second meeting held on 25 October 2005	
000608-001058	Chairman Administration Clerk	<p><u>Clause-by-clause examination of the Bill and consideration of the Administration's proposed Committee Stage amendments (CSAs)</u></p> <p>(LC Paper Nos. CB(1)363/05-06(01) and (02), CB(1)385/05-06(01) and CB(1)426/05-06(01))</p> <p>(a) The Administration's further CSAs tabled at the meeting</p> <p>(b) Members' agreement to examine the Chinese text of the Bill and the Administration's proposed CSAs first</p> <p><u>Long title and clause 1 (short title)</u></p> <p>Members did not raise any query</p>	
001059-001445	Administration Chairman	<p><u>Clause 2 – Proposed section 20AB</u></p> <p>(a) Briefing by the Administration</p> <p>(b) The Administration's re-iteration on the following points:</p> <p>(i) The proposed tests in the Bill, namely, a number of</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>“specified days” for individuals and the “central management and control” criterion for corporations and other non-individual entities at entity level were generally supported by the fund industry for determining the granting of exemption</p> <p>(ii) Members had expressed support for the Inland Revenue Department (IRD) to issue a Departmental Interpretation and Practice Note (DIPN) with examples to explain how the “central management and control” test would be applied</p> <p>(c) Members’ agreement to the proposed CSAs to add new subsection (9) to the proposed section 20AB to carve out “non-profit participating shares” from the application of the Deeming Provisions</p>	
001446-002823	Administration Chairman Assistant Legal Adviser (ALA) 3	<u>Clause 2 – Proposed section 20AC</u> <u>(Exemption Provisions)</u> <p>(a) Briefing by the Administration</p> <p>(b) The Administration’s confirmation that the transactions specified in the proposed Schedule 16 (the new subsection (2) of the proposed section 20AC) would cover the typical transactions carried out by offshore funds</p> <p>(c) Members’ agreement, as follows:</p>	

Time marker	Speaker	Subject(s)	Action Required
		<ul style="list-style-type: none"> (i) To delete the proposed subsections (1) to (4) of the proposed section 20AC and substitute with new subsections (1) and (2); and (ii) To add new subsections (7) and (8) to the proposed section 20AC (d) ALA3's advice that amendments to the proposed Schedule 16 would be subsidiary legislation subject to negative vetting by the Legislative Council (the new subsection (7) of the proposed section 20AC)) 	
002824-003010	Chairman Administration	<u>Clause 2 – Proposed section 20AD</u> <ul style="list-style-type: none"> (a) Briefing by the Administration (b) Members' agreement to the proposed CSA which was a technical amendment 	
003011-004305	Chairman Administration	<u>Clause 2 – Proposed section 20AE (Deeming Provisions)</u> <ul style="list-style-type: none"> (a) Briefing by the Administration (b) Members' agreement to the proposed CSAs with the following aims: <ul style="list-style-type: none"> (i) To apply the Deeming Provisions with effect from the year of assessment immediately following the year of assessment in which the Bill was enacted; and (ii) To put beyond doubt the Administration's policy 	

Time marker	Speaker	Subject(s)	Action Required
		<p>intent of aggregating a resident person's direct and indirect beneficial interests in an offshore fund in applying the Deeming Provisions</p> <p>(c) The Administration's clarification that the proposed section 20AE(5) was an anti-avoidance provision under which a resident person (could be a group of residents) who had a direct or indirect beneficial interest in a trustee of a trust estate by reason of the fact that he was able or might reasonably be expected to be able to control the activities of the trust estate or the application of its corpus or income would be regarded as being interested in 100% in value of the trust estate</p> <p>(d) Members noted that the definitions of the terms provided in the proposed section 20AE(10) were modeled on the definitions of similar terms used in the principal Ordinance.</p> <p>(e) Members' agreement to the proposed CSA to delete the proposed subsection(11) which was no longer necessary as a result of the proposed CSA in b(i) above.</p>	
004306-004437	Administration Chairman	<p><u>Clause 3 – Proposed section 70AB</u></p> <p>Briefing by the Administration</p>	

Time marker	Speaker	Subject(s)	Action Required
004438-004759	Administration Chairman	<p><u>Clause 4 – Proposed Schedule 15</u></p> <p>(a) Briefing by the Administration</p> <p>(b) The Administration’s advice, as follows:</p> <ul style="list-style-type: none"> (i) Part 1 of Schedule 15 provided a formula for ascertaining the amount to be regarded as assessable profits of a resident person under the proposed section 20AE; (ii) Part 2 of Schedule 15 set out the different scenarios for calculating direct or indirect beneficial interest of a resident person in a non-resident person; and (iii) The proposed Schedule 15 was supported by the fund industry 	
004800-005843	Administration Chairman	<p><u>New Clause 5 – To add new Schedule 16</u></p> <p>(a) Briefing by the Administration, as follows:</p> <ul style="list-style-type: none"> (i) “Specified transactions” eligible for profits tax exemption were by reference to the nature of a financial product rather than their product names; and (ii) The Administration’s policy remained that no exemption would be provided to shares or debentures of a private company as this would unintentionally widen the 	

Time marker	Speaker	Subject(s)	Action Required
		<p>scope of exemption</p> <p>(b) Members' agreement to the proposed CSA to include transactions in exchange-traded commodities within the scope of "specified transactions" and to add the definition on the term in Schedule 16</p> <p>(c) ALA3's observation that the definitions of the terms "collective investment scheme", "deposit" and "securities" as proposed in Schedule 16 were wider in scope than those in the Securities and Futures Ordinance (SFO) and the Banking Ordinance (BO)</p> <p>(d) The Administration's explanation, as follows:</p> <ul style="list-style-type: none"> (i) Although reference had been made to the SFO and the BO in drafting the proposed definitions of the relevant terms, the proposed definitions in Schedule 16 were meant to be separate and independent from those in the SFO and the BO; and (ii) The definitions of the terms in the SFO and the BO had their own regulatory functions to play, which were considered not necessarily appropriate for administering the offshore funds exemption under the Inland Revenue Ordinance. The definitions were hence modified so that they suited the legislative intent of 	

Time marker	Speaker	Subject(s)	Action Required
		providing tax exemption to offshore funds dealing in those instruments.	
005844-010009	Administration Chairman	<u>Clause 2 – Proposed section 20AB</u> Members' agreement with the proposed CSAs to delete "(中間人)" in the proposed section 20AB(4)(c)	
010010-010433	Administration Chairman	(a) Members' agreement that deputations who/which had provided submissions to the Bills Committee be invited to give written views on the technical aspects of the Administration's proposed CSAs by 31 December 2005 (b) Members' note of the Administration's target to resume the Second Reading debate on the Bill and enact the Amendment Ordinance before 31 March 2006	The Clerk to take action as per paragraph 4 of the minutes
010444-011029	Chairman Administration Mr CHAN Kam-lam Mr WONG Ting-kwong ALA3	<u>English text of the Bill and the Administration's proposed CSAs</u> (a) Administration's advice, as follows: (i) There was a technical amendment to delete subparagraph (ii) of the proposed section 20AB(4)(c) and substitute a new proposed section in the English text; and (ii) Other proposed CSAs in the English text corresponded with those in the Chinese text	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) ALA3's advice that the English text of the Bill and the Administration's proposed CSAs were in order</p> <p>(c) Members' agreement to the English text of the Bill and the proposed CSAs</p>	
011030-011820	Chairman Clerk Administration Mr CHAN Kam-lam	<p>(a) Members' decisions, as follows:</p> <p>(i) Deputations who/which had provided submissions to the Bills Committee would be invited to give written views on the technical aspects of the Administration's proposed CSAs by 31 December 2005</p> <p>(ii) To cancel the fourth meeting originally scheduled for 19 December 2005; and</p> <p>(iii) The need for the Bills Committee to convene a meeting to consider relevant issues in the deputations' submissions would be reviewed in the light of submissions received</p>	The Clerk to take action as per paragraphs 4 and 5 of the minutes