

立法會
Legislative Council

Ref : CB2/BC/10/04

LC Paper No. CB(2)2376/04-05
(These minutes have been seen by
the Administration)

**Bills Committee on
Revenue (Abolition of Estate Duty) Bill 2005**

**Minutes of the meeting
held on Thursday, 16 June 2005 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Margaret NG
Hon CHAN Yuen-han, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon LI Kwok-ying, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon TAM Heung-man

Members absent : Dr Hon David LI Kwok-po, GBS, JP
Dr Hon LUI Ming-wah, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Patrick LAU Sau-shing, SBS, JP

Public Officers : Mr Martin GLASS
attending Deputy Secretary for Financial Services and the Treasury
(Treasury)

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

Mrs Teresa CHU WONG Lai-fun
Assistant Commissioner of Inland Revenue

Mr Allen NG
Deputy Commissioner of Estate Duty of Inland Revenue

Mr Stephen FISHER
Deputy Secretary for Home Affairs

Mrs Nancy HUI
Principal Assistant Secretary for Home Affairs

Mr Gilbert MO
Deputy Law Draftsman
Department of Justice

Ms Vicki LEE
Senior Government Counsel
Department of Justice

Mrs Emme WALLER
Senior Assistant Law Officer (Civil Law)
Department of Justice

Mr M Y CHEUNG
Senior Government Counsel
Department of Justice

Mr Kim SALKELD
Land Registrar
Land Registry

Ms Teresa WONG
Deputy Principal Solicitor
Land Registry

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2)1

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mrs Eleanor CHOW
Senior Council Secretary (2)4

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration –

- (a) to consider specifying the ambit or nature of conditions attached to a certificate issued by the Secretary for Home Affairs (SHA) under the proposed section 60E of the Probate and Administration Ordinance (PAO);
- (b) to consider amending the proposed section 60E of PAO so as to reflect the proposed powers of SHA under the proposed section 60C set out in paragraph 10 of LC Paper No. CB(2)1989/04-05(01);
- (c) to consider amending the proposed section 60C(5) of PAO so as to allow taking copy of document in the safe deposit;
- (d) to consider deleting the proposed section 60G of PAO so that subsequent changes would be made to the new sections 60A to 60F of PAO by way of an amendment bill;
- (e) to review the drafting of clause 13, and to consider adding a new provision to set out the documents required to support an application for grant of representation when estate duty did not apply;
- (f) to provide a list of all the proposed Committee Stage amendments (CSAs); and
- (g) to provide samples of forms of –
 - (i) affidavit exhibiting a schedule of assets and liabilities of the estate; and

Action

(ii) probate to be specified by the Registrar of the High Court.

(Post-meeting note : The Administration's responses were issued to members vide LC Paper Nos. CB(2)2157/04-05(01) to (03) and CB(2)2185/04-05(01) on 4 and 5 July 2005 respectively.)

3. The Administration undertook –

- (a) to state in the speech to be delivered during the resumption of Second Reading debate on the Bill that SHA would follow the current practice of the Inland Revenue Department (IRD) regarding the inspection of safe deposit box, i.e. two officers will be sent to witness the inspection of the box prior to the preparation of the inventory of its contents; and
- (b) to explain during the resumption of Second Reading debate on the Bill the interim arrangement whereby the Commissioner of Inland Revenue would discharge the relevant powers in the new ordinance under delegation authority from SHA, and that in the longer term the Home Affairs Bureau would take over such responsibilities.

4. In relation to the proposed Part VA of PAO, members expressed concern about the possible liability of SHA if a certificate was mistakenly issued under the new section 60C of PAO. The Bills Committee requested the Legal Service Division to research into cases on claiming damages for negligence and misfeasance in public officers regarding the discharge of statutory functions.

(Post-meeting note : The paper prepared by Legal Service Division was issued vide LC Paper No. LS88/04-05 on 30 June 2005.)

5. The Chairman said that at the last meeting, members agreed that subject to the progress of this meeting, the Bills Committee would decide whether the date of resumption of the Second Reading debate on the Bill proposed by the Administration, i.e. 6 July 2005, should be supported. Some members said that given that the Administration had responded to the issues raised by the Bills Committee, the Bill should be passed at the earliest opportunity. They supported the resumption date proposed by the Administration.

6. Ms Margaret NG and Mr LEE Cheuk-yan disagreed that there was an urgent need to pass the Bill within this legislative session. Ms Margaret NG said that Mr TONG Ka-wah, Ms Audrey EU and herself were dissatisfied with the manner the Bill was scrutinised. They considered it important for the Bills Committee to adhere to the established procedure for scrutinising bills, and that members should be allowed sufficient time to study the Bill and its implications. Ms NG pointed out that at this point in time, despite the Administration would move a lot of amendments to the Bill, the draft CSAs were not yet available for members' scrutiny.

Action

7. The Chairman put the matter to vote. Seven members voted in support of the Administration's proposal to resume the Second Reading debate on the Bill on 6 July 2005. Two members voted against. The Chairman said that she would make a verbal report to the House Committee at its meeting on 17 June 2005.

II. Date of next meeting

8. The Bills Committee agreed to schedule two more meetings as follows –

(a) Monday, 20 June 2005 from 8:30 am to 10:30 am; and

(b) Wednesday, 22 June 2005 from 8:30 am to 10:30 am.

The Bills Committee noted that the next meeting would be held on 20 June 2005 at 8:30 am.

9. The meeting ended at 6:47 pm.

Council Business Division 2
Legislative Council Secretariat
25 July 2005

**Proceedings of the meeting of the
Bills Committee on
Revenue (Abolition of Estate Duty) Bill 2005
on Thursday, 16 June 2005 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000103 - 000318	Chairman	Clause-by-clause examination of the Bill	
000319 - 001806	Admin Hon Audrey EU Hon CHAN Yuen-han Chairman Hon Margaret NG	Purpose of the proposed section 60E Procedure for inspection of safe deposit box before and after abolition of estate duty Proposal to specify the ambit or nature of the conditions attached to the certificate issued by the Secretary for Home Affairs (SHA) in the proposed section 60E of the Probate and Administration Ordinance (PAO)	Admin to address the new procedure for inspection of safe deposit box during resumption of Second Reading debate on the Bill Admin to consider the proposal
001807 - 001941	Hon Albert HO Chairman Admin	Appeal mechanism against the decision of SHA under the proposed sections 60B to 60E of PAO	
001942 - 002450	Hon Margaret NG Chairman Admin Hon Audrey EU	Government officers to be present during inspection of safe deposit box after abolition of estate duty Interim arrangement whereby Commissioner of Inland Revenue would discharge the relevant powers in the new ordinance under delegated authority from SHA	Admin to provide the requested information (paragraph 3(a) and (b) of the minutes refers)

002451 - 002940	Hon Margaret NG Chairman Admin	Feasibility of implementing the proposed powers of SHA under the proposed section 60C of PAO as set out in paragraph 10 of LC Paper No. CB(2) 1989/04-05(01)	
002941 - 003611	Hon Albert HO Admin Chairman Hon Margaret NG ALA1	Liability of the bank and the Administration if there was a mistake or omission on the part of the bank or SHA in respect of release of money or removal of documents from safe deposit box Cases instituting against the Government for not exercising due care in discharging statutory functions	ALA1 to research into these cases, if any
003612 - 003753	Hon Margaret NG Admin Chairman	Proposal to refine the drafting of the proposed section 60E of PAO so as to reflect the proposed powers of SHA under the proposed section 60C set out in paragraph 10 of LC Paper No. CB(2) 1989/04-05(01)	Admin to consider the proposal
003754 - 004100	Hon Ronny TONG	Proposal to allow taking copy of document during inspection of the safe deposit box in the proposed section 60C(5)	Admin to consider the proposal
004101 - 004735	Hon Albert HO Admin Chairman Hon Audrey EU	Intermeddling of property in safe deposit box by joint renter who was not the executor	
004736 - 005055	Hon Audrey EU Hon Margaret NG Admin Chairman	Ambit of the conditions attached to the certificate issued by SHA in the proposed section 60E of PAO	

005056 – 005723	Hon Ronny TONG Hon Margaret NG Admin Chairman Hon Albert HO	Policy intention of the proposed section 60G of PAO Appropriateness for the bank to take over the services provided by the Government in the proposed sections 60A to 60F of PAO Proposal to delete the proposed section 60G of PAO so that subsequent changes would be made to the new sections 60A to 60F of PAO by way of an amendment bill	Admin to consider the proposal
005724 - 005833	Chairman Admin	Clause 10	
005834 – 010410	Admin Hon Albert HO Chairman Hon Margaret NG	Clause 11 Whether small estate would have to shoulder more court fees after abolition of estate duty Whether charges for grant of representation would be added to the Second Schedule in future	
010411 - 010453	Chairman Admin	Clause 12	
010454 - 011431	Chairman Admin Hon Margaret NG ALA1 Hon Albert HO	Drafting of Clause 13 Inclusion of a provision to set out the documents required to support an application for grant of representation when estate duty did not apply	Admin to consider the drafting of the Clause
011432 - 012017	Admin Chairman Hon Margaret NG	Clause 14 – Clause 19	

012018 - 012609	Chairman Admin Hon Margaret NG	Liability and protection to the indemnity scheme of the Land Registry after abolition of estate duty	
012610 - 012911	Chairman Admin	In relation to proposed sections 24A and 49AA of PAO, the existing information-seeking power of the Inland Revenue Department provided under the Inland Revenue Ordinance	
012912 - 014542	Admin Chairman Hon Margaret NG Hon LEE Cheuk-yan Hon Andrew LEUNG	Proposed commencement dates for the Bill	
014543 – 020116	Hon Margaret NG Admin Chairman Hon SIN Chung-kai Hon CHAN Kam-lam	Urgency of the Bill Availability of Committee Stage amendments (CSAs) to the Bill and other ordinances	Admin to provide the requested information
020117 - 020643	ALA1 Admin Chairman Hon Margaret NG	Forms to be specified by the Registrar of the High Court by general notice published in the Gazette and not in the form of subsidiary legislation Provision of samples of forms of – (i) affidavit exhibiting a schedule of assets and liabilities of the estate; and (ii) probate to be specified by the Registrar of the High Court	Admin to provide the requested information

020644 - 021321	Chairman Admin Hon Margaret NG Hon LEE Cheuk-yan Hon Jeffrey LAM Hon CHAN Kam-lam	Date of resumption of Second Reading debate on the Bill Date of next meeting	
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Council Business Division 2
Legislative Council Secretariat
25 July 2005