

立法會
Legislative Council

Ref : CB2/BC/10/04

LC Paper No. CB(2)2377/04-05
(These minutes have been seen by
the Administration)

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

**Minutes of the meeting
held on Monday, 20 June 2005 at 8:30 am
in the Chamber 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 Margaret NG
Hon CHAN Yuen-han, JP
Dr Hon Philip WONG Yu-hong, GBS
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

Members absent : Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBS, JP
Dr Hon LUI Ming-wah, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP
Hon TAM Heung-man

Public Officers : Miss Erica NG
attending Principal Assistant Secretary for Financial Services and the Treasury (Treasury)

Mr Ivanhoe CHANG
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

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

Staff in : Ms Bernice WONG
attendance 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 Chairman said that the House Committee decided at its meeting on 17 June 2005 not to support the resumption of the Second Reading debate on the Bill at the Council meeting on 6 July 2005. The Administration informed the Bills Committee that it intended to resume Second Reading debate on the Bill in the new legislative session, and as a result, the commencement date of the Bill would be changed.

3. With reference to the draft Committee Stage amendments (CSAs) provided by the Administration on 17 June 2005, the Bills Committee requested the Administration –

- (a) to consider whether the proposed new section 60H(2) of the Probate and Administration Ordinance (PAO) should be amended to include persons who subsequently took out the grant of representation because the executor appointed by the deceased refused to do so;
- (b) in relation to the proposed new section 60H of PAO regarding prohibition against intermeddling of estate, to advise on when an executor and an administrator derived title;
- (c) to improve the drafting of the proposed new clause 9A by making reference to sections 23 and 24 of the Estate Duty Ordinance and the proposed new section 60E(1A) by making reference to the new section 60C(3A)(b)(ii)(B) of PAO;
- (d) to explain the differences between the expressions “a schedule stating the assets and liabilities of the estate” and “part of the estate” used in the Bill and review the drafting of these expressions;
- (e) to consider amending the proposed new clause 20 so that the power to amend or repeal any provision would be exercised by the Secretary for Home Affairs (SHA) or the Secretary for Justice;
- (f) to improve the drafting of the proposed new section 60E(1A) of PAO to reflect the policy intent that the conditions to be issued by SHA were to safeguard the interest of any person in the estate of the deceased person;
- (g) to consider the appropriateness of the use of the word “conducive” in the proposed new section 60C(3A)(a) of PAO;

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- (h) to explain the procedure for clearance of the safe deposit box which was jointly rented by the deceased and another person who was not the executor;
- (i) to clarify whether the joint renter of the safe deposit box who was not the executor could take possession of the properties in the safe deposit box in accordance with the survivorships clause in the agreement with bank and whether this would constitute intermeddling of estate;
- (j) to explain the function of a schedule of property before and after the abolition of estate duty;
- (k) to provide samples of forms relating to the application of grant and the schedule of property to be specified by the Registrar of the High Court;
- (l) to consult the Law Society of Hong Kong on the proposed CSAs to be introduced by the Administration; and
- (m) to provide the revised CSAs.

(Post meeting note : The Administration's responses were issued vide LC Paper Nos. CB(2)2185/04-05(01), CB(2)2248/04-05(01) to (03) and CB(2)2267/04-05(01) on 5 and 13 July 2005 respectively.)

4. Assistant Legal Adviser 1 advised on the possible liability of the Secretary of Home Affairs under Part VA of PAO and agreed to provide a paper on the two cases claiming damages for negligence and misfeasance in public office regarding the discharge of statutory functions.

(Post meeting note : The paper prepared by the Legal Service Division was issued vide LC Paper No. LS 88/04-05 on 30 June 2005.)

II. Date of next meeting

5. The Bills Committee decided that the meeting originally scheduled for Wednesday, 22 June 2005 from 8:30 am to 10:30 am would be cancelled.

6. The Bills Committee agreed to schedule three meetings in July to scrutinise the CSAs to be proposed by the Administration. The meetings were as follows –

- (a) 6 July 2005 from 8:30 am to 10:30 am;
- (b) 14 July 2005 from 2:30 pm to 4:30 pm; and

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(c) 21 July 2005 from 10:45 am to 12:45 pm.

7. The meeting ended at 10:00 am.

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 Monday, 20 June 2005 at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000908	Chairman Hon Margaret NG Admin Hon TONG Ka-wah	Way forward Committee Stage amendments (CSAs) to be revised Schedule for future meetings	Admin to provide the requested information
000909 - 001153	Chairman ALA1	Cases claiming damages for negligence and misfeasance in public office regarding the discharge of statutory functions	Cases to be circulated to members
001154 - 001542	Chairman Hon TONG Ka-wah Admin	Proposed CSAs in proposed new clause 9A Whether the proposed new section 60H(2) of the Probate and Administration Ordinance (PAO) should be amended to include persons who subsequently took out the grant of representation because the executor appointed by the deceased refused to do so Clarification on when an executor and an administrator derived title	Admin to provide the requested information Admin to provide the requested information

Time marker	Speaker	Subject(s)	Action Required
001543 - 002031	Hon Margaret NG Admin Chairman	<p>Drafting of the proposed new clause 9A to be more precise e.g. intermeddling with estate not covered by the schedule of property by an executor should be an offence</p> <p>Differences in the expressions “a schedule stating the assets and liabilities of the estate” and “part of the estate” used in the Bill and the need to review drafting of these expressions</p>	<p>Admin to follow up</p> <p>Admin to provide the requested information</p>
002032 - 003338	Hon Margaret NG Admin Chairman	<p>In relation to the proposed new clause 20, the power to amend or repeal any provision should not given to the Law Draftsman but to the Secretary for Home Affairs (SHA) or the Secretary for Justice</p> <p>Purpose of the CSA to the proposed section 60E of PAO</p> <p>Drafting of the proposed new section 60E(1A) of PAO to be improved so that the conditions to be issued by SHA would safeguard the interest of beneficiaries or any person in the estate of the deceased person</p>	<p>Admin to consider the proposal</p> <p>Admin to refine the drafting</p>
003339 - 003925	Chairman Hon CHAN Yuen-han Admin	<p>Commencement date for the Bill</p> <p>Preparatory work to implement abolition of estate duty once the Bill was passed</p>	
003926 - 004200	Hon TONG Ka-wah Chairman	Drafting of the proposed new section 60E(1A) of PAO to make reference to the drafting of the proposed new section 60C(3A)(b)(ii)(B) of PAO	

Time marker	Speaker	Subject(s)	Action Required
004201 - 004712	Hon Margaret NG Admin Chairman	Drafting of the proposed new section 60E(1A) of PAO to be improved so that the conditions to be issued by SHA would safeguard the interest of beneficiaries or any person in the estate of the deceased person Appropriateness of the use of the word “conducive” in the proposed new section 60C(3A)(a) of PAO	Admin to consider the wording
004713 - 005347	Chairman Admin Hon Margaret NG	Practical difficulties for SHA to know who would be the beneficiaries and what the safe deposit box contained at the time of attaching conditions to the certificate and the need for the drafting of the proposed new section 60E(1A) of PAO to take into account these difficulties Issuance of certificate by SHA more than once Liability of SHA under the proposed section 60E of PAO	
005348 - 010102	Hon James TIEN Admin	Reasons for the Administration to continue to provide services set out in the proposed sections 60B to 60E of PAO after abolition of estate duty Involvement of the Administration in the distribution of valuables of the deceased to beneficiaries	

Time marker	Speaker	Subject(s)	Action Required
010103 - 010405	Hon TONG Ka-wah Chairman	The importance of the role played by the Administration to protect the interest of beneficiaries and any third party over the property of the deceased from being intermeddled	
010406 - 011824	Hon Albert HO Admin Chairman	The procedure to clear the safe deposit box which was jointly rented by the deceased and another person who was not the executor Whether the joint renter of the safe deposit box who was not the executor could take possession of the properties in the safe deposit box in accordance with the survivorship clause in the agreement with the bank and whether this would constitute intermeddling of estate	Admin to provide the requested information Admin to provide the requested information
011825 - 012334	Hon Margaret NG Chairman Admin	The function of a schedule of property before and after abolition of estate duty Provision of samples of forms relating to the application of grant and the schedule of property to be specified by the Registrar of the High Court The need to consult the Law Society of Hong Kong on the CSAs	Admin to provide the requested information Admin to provide the requested information Admin to follow up
012335 - 012520	Chairman	Provision of revised CSAs before the next meeting	