

立法會
Legislative Council

LC Paper No. CB(1)449/09-10
(These minutes have been seen by
the Administration)

Ref : CB1/BC/7/08/2

Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2009

Third meeting on
Tuesday, 27 October 2009, at 10:45 am
in Conference Room B of the Legislative Council Building

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Paul CHAN Mo-po, MH, JP
- Public officers** : Mr Kenneth CHENG
Attending Principal Assistant Secretary for
Financial Services and the Treasury (Treasury)
- Ms Shirley KWAN
Assistant Secretary for
Financial Services and the Treasury (Treasury)
- Mr CHIU Kwok-kit
Assistant Commissioner (2)
Inland Revenue Department
- Mr YIM Kwok-cheong
Senior Assessor (Support and Project)
Inland Revenue Department
- Ms Angie LI
Government Counsel
Department of Justice

Clerk in attendance : Ms Rosalind MA
Chief Council Secretary (1)5

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Miss Constance MAN
Senior Council Secretary (1)8

Ms Haley CHEUNG
Legislative Assistant (1)8

Action

I Meeting with the Administration

Follow-up to issues raised at the meeting on 6 October 2009

(LC Paper No. CB(1)72/09-10(01) —List of follow-up actions to issues raised at the meeting on 6 October 2009 prepared by the Legislative Council Secretariat

LC Paper No. CB(1)72/09-10(02) —Administration's supplementary information to issues raised at the meeting on 6 October 2009)

Relevant papers previously issued

(LC Paper No. CB(3)691/08-09 —The Bill

FIN CR 1/2306/09 —The Legislative Council Brief issued by the Financial Services and the Treasury Bureau

LC Paper No. CB(1)2302/08-09(01) —Marked-up copy of the Bill prepared by the Legal Service Division)

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

Follow-up actions to be taken by the Administration

Clause 9(3) (Part 3 of the Bill)

2. Mr James TO and Mr Albert HO expressed concern about the propriety and fairness of the Administration's proposal to empower a person who ceased to be a member of the Board of Review (the Board), such as a retired member, to handle a case that he had handled before in the three circumstances stated in paragraph 5 of the Legislative Council (LegCo) Brief (FIN CR 1/2306/09). In this connection, the Administration was requested to consider and provide its written response to Mr TO's following suggestions:

- (a) To allow a retired member to handle a case he had handled before only in the circumstances in paragraph 5(c) of the LegCo Brief, i.e. "when the appellant or the Inland Revenue Department (IRD), dissatisfied with the Board's decision, requests the Board to state a case on a question of law for the opinion of the Court of First Instance".
- (b) If the Administration proposed to empower a retired member of the Board to handle a case he had handled before in all of the three circumstances stated in paragraph 5 of the LegCo Brief, statutory requirements should be imposed for the Board to obtain the consent of both parties, i.e. the appellant and the Commissioner of Inland Revenue (the Commissioner), before allowing a retired member to handle such a case.

Clause 14(3) (Part 4 of the Bill)

3. In relation to the proposed extension of the prosecution period for breaches of secrecy provisions by IRD staff members from six months to six years, Mr James TO was concerned whether the proposed extension was commensurate with the severity of the offence in question, and the fairness of such a long prosecution period to the defendants concerned, in particular the difficulties in gathering evidence for defence if the defendants had left IRD when the prosecutions took place. The Administration was requested to take the following actions and provide a written response:

- (a) seek the comment of the Department of Justice (DoJ) on the proposal of extending the prosecution period to six years in terms of both legal and prosecution policies; and
- (b) consider extending the prosecution period to, say one or two years only, instead of simply seeking an alignment with similar provisions under the Business Registration Ordinance (Cap. 310) (BRO) and extending the period to six years.

(Post-meeting note: The Administration's supplementary information on requests in paragraphs 2 and 3 was issued to members vide LC Paper No. CB(1)326/09-10(02) on 12 November 2009.)

Way forward

4. Members agreed that the Bills Committee would decide the way forward, including the arrangement for another meeting to continue discussion on the Bill, upon receipt of the supplementary information provided by the Administration as requested in paragraphs 2 and 3 above.

II Any other business

5. There being no other business, the meeting ended at 11:50 am.

Council Business Division 1
Legislative Council Secretariat
23 November 2009

**Proceedings of the
Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2009
Third meeting on Tuesday, 27 October 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000622	Chairman Administration	Briefing by the Administration on the supplementary information related to allowing a retired member to handle a case that he had handled before (LC Paper No. CB(1)72/09-10(02)).	
000623 – 004309	Chairman Mr James TO Mr Albert HO Administration Mr Paul CHAN ALA1	<p>(a) Mr James TO's concern whether judicial justice could be upheld if a retired member of the Board would be empowered to handle a case he had handled previously when the court remitted a case to the Board for rehearing. View shared by Mr TO and Mr Albert HO that rehearing handled by new members would be a fairer arrangement, as members who had handled the case previously would have already formed their views on the case. Mr Paul CHAN's enquiry on the Board's existing practice in handling cases remitted by the court for rehearing.</p> <p>(b) The Administration's advice that under the existing practice, arrangement would normally be made for current members of the Board who had served in the hearing panel for the case previously to handle the case if it was remitted to the Board. The proposed amendment under clause 9(3) of the Bill sought to apply the existing arrangement to a retired member, instead of proposing a change in policy.</p> <p>(c) Mr Paul CHAN's view that the Administration should examine whether the existing practice of arranging current members of the Board who had served in the original hearing panel to handle a remitted case should be improved. Mr CHAN's enquiry on the nature of past remitted cases.</p> <p>(d) The Administration's advice that cases remitted by the court might involve certain facts needed to be further clarified by the Board. The Administration's view that while the propriety of the existing arrangement of allowing the same members of the Board to handle a case</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>remitted by the court could be further discussed at a separate forum, the arrangement had its merits, as the Board was the final arbitrator of the facts of an appeal case.</p> <p>(e) Responding to the Chairman's enquiry, the Administration's advice that the number of cases remitted to the Board for handling was small. Currently, the Board was handling a complicated case remitted by the Court of Final Appeal, and had obtained the consent of both the appellant and the Commissioner for arranging the members of the original hearing panel to handle the case. Such arrangement was conducive to the efficiency of the Board and in general supported by the parties concerned, in particular for complicated cases, as the parties concerned would not have to present again all the facts of the case to new panel members.</p> <p>(f) ALA1's reference to sections 69(1) and 69(5) of the Inland Revenue Ordinance (Cap. 112) (IRO) which stipulated the case stated procedures for an appellant or the Commissioner to seek the opinion of the Court of First Instance on a question of law arising from the decision of the Board. Even if the court remitted the case to the Board under section 69(5) of IRO, revision in tax assessment to be made by the Board would only be based on the opinion of the court on the question of law, rather than the facts of the case. In other words, the court would not make a decision on the facts of the case and the decision of the Board in this regard should be final.</p> <p>(g) Mr James TO's view that a retired member should only be empowered to handle cases that he had handled before in the circumstances stated in paragraph 5(c) of the LegCo Brief. If the Administration also proposed to make such arrangement when the court had remitted a case to the Board for rehearing or when the Board had accepted an appellant's application for rehearing of a dismissed case, statutory requirements should be imposed for the Board to obtain the consent of both the appellant and the Commissioner.</p>	<p>The Administration to take follow-up action as required in paragraph 2 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>(h) The Administration's explanation that the proposed amendment in the Bill only sought to empower a retired member to handle cases he had handled previously under the three limited circumstances stipulated in sections 68(2C), 69(1) and 69(5) of IRO. Section 68(2C) related to hearing of a case dismissed due to an appellant's failure to attend a hearing arranged to him before. In this circumstance, the Board had not heard or examined the facts previously. Sections 69(1) and 69(5) related to case stated procedures, which would not give rise to a fresh hearing of the case concerned.</p> <p>(i) Concern shared by Mr Albert HO and Mr James TO that the revision in assessment made by the Board on a case remitted by the court under section 69(5) might involve examination of new evidence or facts. Their view that empowering retired members to handle such cases might not be fair.</p> <p>(j) The Administration's explanation that under the case stated procedures stipulated in section 69(5), the court might decide upon a question of law to confirm, reduce, increase or annul the assessment determined by the Board, or might remit the case to the Board with the opinion of the court thereon. While the decision of the court on a question of law might require the Board to revise the assessment, the court would only give opinion on the nature of income taxable, instead of the details of the assessment to be made by the Board. The Administration's further advice that the case stated procedures were currently under review.</p> <p>(k) Mr Albert HO's view that consideration might be given to empowering the court to hear and determine an appeal case on the question of fact as well. Mr James TO nevertheless expressed reservation on Mr HO's idea.</p>	
004310 – 004525	Chairman Administration	Briefing by the Administration on the supplementary information related to the proposed extension of the prosecution period for breaches of secrecy provisions (LC Paper No. CB(1)72/09-10(02)).	

Time Marker	Speaker	Subject(s)	Action Required
004526 – 010159	Chairman Administration Mr James TO	<p>(a) Mr James TO's view that instead of seeking to align prosecution period for breaches of secrecy provisions of IRO with similar provisions under BRO, the Administration should determine the period on the basis of litigation fairness. His concern whether the proposed six-year prosecution period was commensurate with the severity of the offence in question, and the fairness of such a long prosecution period to the defendants concerned. His suggestion that the prosecution period be extended to, say one or two years.</p> <p>(b) The Administration's response that there was no time limit for prosecution of breaches of secrecy provisions in a number of ordinances. The proposed extension had been put forward taking into consideration the sensitivity and confidentiality of revenue information. As information maintained by IRD under BRO had been subject to secrecy provisions and the prosecution period was six years, the Administration considered it appropriate to provide the same level of safeguards to information of taxpayers under IRO. Moreover, IRD staff had not raised concern about the six-year prosecution period stipulated in BRO.</p> <p>(c) Noting the Administration's advice that comment of DoJ had been sought on the proposals under the Bill, Mr James TO's request that the Administration highlighted the proposed extension of prosecution period to six years for DoJ's further comments.</p>	The Administration to take follow-up action as required in paragraph 3 of the minutes.
010200 – 010538	Chairman Mr James TO Administration	Way forward	