

立法會
Legislative Council

LC Paper No. CB(1)647/09-10

(These minutes have been seen by
the Administration)

Ref : CB1/BC/7/08/2

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

**Fourth meeting on
Monday, 16 November 2009, at 2:30 pm
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 Ronny TONG Ka-wah, SC

Members Absent : Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Paul CHAN Mo-po, MH, JP

**Public officers
Attending** : Mr Kenneth CHENG
Principal Assistant Secretary for
Financial Services and the Treasury (Treasury)

Ms Shirley KWAN
Assistant Secretary for
Financial Services and the Treasury (Treasury)

Mr Simon YIP
Clerk to Board of Review
(Inland Revenue Ordinance)

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

I Confirmation of minutes and matters arising

(LC Paper No. CB(1)325/09-10 — Minutes of meeting on 6 October 2009)

The minutes of the meeting held on 6 October 2009 were confirmed.

II Meeting with the Administration

Follow-up to issues raised at previous meetings

(LC Paper No. CB(1)326/09-10(01) — List of follow-up to issues raised at the meeting on 27 October 2009 prepared by the Legislative Council Secretariat

LC Paper No. CB(1)326/09-10(02) — Administration's response to issues raised at the meeting on 27 October 2009

LC Paper No. CB(1)72/09-10(01)	—List of follow-up 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 response 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)

2. 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)

3. Mr James TO 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 consult the Board again and provide a written response to Mr TO's following suggestions:

- (a) to impose a statutory requirement for the Board to obtain the prior consent of both parties, i.e. the appellant and the Commissioner of Inland Revenue (the Commissioner), before allowing a retired member to handle a case he had handled before in the three circumstances stated in paragraph 5 of the LegCo Brief; or
- (b) at least impose the statutory requirement in (a) above on the Board when the court remitted a case to the Board for rehearing.

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

4. The Bills Committee supported the Administration's proposal that clause 14(3) be amended so that the prosecution period for breaches of secrecy provisions by staff

members of the Inland Revenue Department (IRD) would only be extended to two years, instead of six years as originally proposed. The Administration would provide the draft Committee Stage amendment to the clause for members' information.

Way forward

5. Members agreed that, having regard to the supplementary information provided by the Administration as requested in paragraphs 3 and 4 above, the Bills Committee would consider the need to arrange another meeting and decide the way forward.

III Any other business

6. There being no other business, the meeting ended at 3:10 pm.

Council Business Division 1
Legislative Council Secretariat
10 December 2009

**Proceedings of the
Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2009
Fourth meeting on Monday, 16 November 2009, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000250 – 000338	Chairman	Introductory remarks	
Follow-up to issues raised at previous meetings			
000339 – 001135	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)326/09-10(02)).	
001136 – 003249	Chairman Mr James TO ALA1 Administration Department of Justice (DoJ)	<p>(a) Mr James TO's concern whether the proposed arrangement to allow a retired member to handle a case he had handled before would be subject to any time limit. His question on the propriety of allowing a retired member who had retired for a long time, say 10 years, to be a member of a hearing panel, in particular for cases remitted by the court to the Board for rehearing.</p> <p>(b) ALA1's reference to section 65 of the Inland Revenue Ordinance (Cap. 112) (IRO) on the constitution of the Board. As set out in section 65(1), all members of the Board should be appointed by the Chief Executive from time to time, and the members should hold office for a term of three years, but should be eligible for reappointment. There was no explicit provision in IRO or the Bill which would set a time limit for a retired member of the Board to handle cases he had handled before.</p> <p>(c) The Administration's advice that the timeframe for a person to appeal to the Board, i.e. one month after provision of IRD's written decision, would in practice set a time limit on the hearing of an appeal case to a certain extent. Moreover, the Chairman of the Board, being an independent and fair-minded person who possessed knowledge of the Board members, would consider in full the suitability of a former member (such as whether he was fit and proper), before redeploying him to serve on the hearing panel.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(d) Mr TO's concern about the Board Chairman's knowledge of a person who had ceased to be a Board member for a long time. His enquiry whether a retired member would include a member who was dismissed and one who had resigned.</p> <p>(e) The Administration's advice that in deciding whether members of the original hearing panel should be redeployed for rehearing of a case, the Chairman of the Board would consider the suitability of the members, regardless of whether they were still serving or had retired. Moreover, under the existing practice, both parties to an appeal could raise their concerns on the composition of the hearing panel. In the past, it was not uncommon for the Chairman of the Board to change the composition of the panel after taking into account the views of either party.</p> <p>(f) DoJ's advice that the provisions on power to appoint under section 42 of the Interpretation and General Clauses Ordinance (Cap. 1) would apply to the appointment of the Board, i.e. the person having the power to make appointment of members to any board or committees should also have the power to remove, suspend, dismiss or revoke the appointment of such members.</p> <p>(g) Mr TO's view that to ensure fairness of the mechanism for appointment of members of the hearing panel, it would not be appropriate to leave too much flexibility to the Chairman of the Board. His request that a statutory requirement be imposed on the Board to obtain the prior consent of both parties, i.e. the appellant and the Commissioner, before allowing a retired member to handle a case he had handled before.</p> <p>(h) The Administration's response that at present, both parties to an appeal might raise their concerns on the composition of the hearing panel. While it was the ultimate authority of the Chairman of the Board to decide on the composition of the panel, the Chairman would make the decision having regard to the views of the parties concerned, if any. As a matter of</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>principle, the Administration considered that parties to an appeal should not be given a statutory right to veto the Chairman's decision on the composition of the hearing panel.</p> <p>(i) Responding to Mr TO's suggestion of appointing a retired member on a case-specific basis, the Administration's advice that this would not be practicable under the current provision of IRO which stipulated appointment of Board members for a three-year term.</p> <p>(j) The Administration's further advice that the proposal of allowing a retired member to handle a case he had previously handled was made by the Board in the light of its operational experience. The Administration had consulted the Board on Mr TO's proposal of imposing a statutory requirement to obtain prior consent of both parties to an appeal but the Board was of the view that this might not be conducive to the operation of the Board.</p>	
003250 – 003544	Chairman Administration Mr James TO	<p>(a) Briefing by the Administration on the supplementary information related to the proposed extension of the prosecution period for breaches of secrecy provisions by staff members of IRD (LC Paper No. CB(1)326/09-10(02)).</p> <p>(b) Members' support of amending clause 14(3) so that the prosecution period for breaches of secrecy provisions by staff members of IRD would only be extended to two years, instead of six years as originally proposed.</p>	The Administration to take follow-up action as required in paragraph 4 of the minutes.
003545 – 004117	Chairman Administration Mr James TO	Mr James TO's request that the view of the Board be sought again on his proposal of imposing a statutory requirement on the Board to obtain prior consent of both parties to an appeal before empowering a retired member to handle a case he had previously handled. His suggestion that the Bills Committee might consider inviting the Chairman or Deputy Chairmen of the Board to a meeting or an informal discussion outside the meeting to exchange views on the proposal.	The Administration to take follow-up action as required in paragraph 3 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
004118 –	Chairman	Way forward	
004141			

Council Business Division 1
Legislative Council Secretariat
10 December 2009