

立法會
Legislative Council

LC Paper No. CB(1)223/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/08/2

Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2009

Second meeting on
Thursday, 8 October 2009, at 2:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon Starry LEE Wai-king
Hon CHAN Kin-por, JP
- Members absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon CHIM Pui-chung
- Public officers Attending** : Agenda item II

Ms Julia LEUNG
Under Secretary for
Financial Services and the Treasury

Mr Clement LEUNG
Deputy Secretary for
Financial Services and the Treasury (Treasury)

Ms Joan HUNG
Assistant Secretary for
Financial Services and the Treasury (Treasury)

Ms Katherine NG
Political Assistant to Secretary for Financial Services and
the Treasury

Mr CHU Yam-yuen
Deputy Commissioner of Inland Revenue

Miss Fatima NGAN
Senior Assessor
Inland Revenue Department

Ms Rayne CHAI
Senior Government Counsel
Department of Justice

**Attendance by
invitation**

: Agenda item II

The British Chamber of Commerce in Hong Kong

Ms Debbie ANNELLS
Chairman of Financial Services Focus Group Committee

The American Chamber of Commerce in Hong Kong

Mr Richard VUYLSTEKE
President

Mr Evan BLANCO
Taxation Committee Chairman

Hong Kong Small and Medium Enterprises Association

Mr SHEA Kai-chuen
Third Vice-Chairman

The Taxation Institute of Hong Kong

Mr Kenneth LEUNG Kai-cheong
Council Member

Deloitte Touche Tohmatsu

Mrs Yvonne LAW
National Chief Knowledge Officer and Tax Partner

Mr Davy YUN
Tax Director

Hong Kong Institute of Certified Public Accountants

Ms Elena CHAI
Assistant Director, Specialist Practices

Ms Florence CHAN
Deputy Chairman, Taxation Committee

Society of Trust and Estate Practitioners

Mr William AHERN
Chairman, Legislative Sub-Committee

Ms Samantha BRADLEY
Member, Legislative Sub-Committee

Ms Silvia ON
Member, Legislative Sub-Committee

The Lion Rock Institute

Mr Mike YING
Development Manager

Ms Nicole ALPERT
Research Associate

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

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Noel SUNG
Senior Council Secretary (1)4

Ms Haley CHEUNG
Legislative Assistant (1)8

Action

Late applications for membership

The Chairman invited members to consider the late applications for membership from Mr Alan LEONG and Mr CHAN kin-por. Members agreed that the applications should be accepted and noted that with the expansion of membership to eleven, the quorum for meetings of the Bills Committee would still be three members.

I Confirmation of minutes and matters arising

(LC Paper No. CB(1)2427/08-09 —Minutes of meeting on 17 July 2009)

2. The minutes of the meeting held on 17 July 2009 were confirmed.

II Meeting with deputations and the Administration

Briefing by the Administration on the Bill

(LC Paper No. CB(3)751/08-09 —The Bill

FIN CR 12/2041/46 —The Legislative Council Brief issued by the Financial Services and the Treasury Bureau)

Meeting with deputations

(LC Paper No. CB(1)2682/08-09(01) —Submission from the British Chamber of Commerce in Hong Kong

LC Paper No. CB(1)2622/08-09(01) —Submission from the American Chamber of Commerce in Hong Kong

LC Paper No. CB(1)2682/08-09(02) Submission from Hong Kong Trustee's Association Ltd.

LC Paper No. CB(1)2622/08-09(02) —Submission from the Taxation Institute of Hong Kong

LC Paper No. CB(1)2622/08-09(03) —Submission from Deloitte Touche Tohmatsu

- LC Paper No. CB(1)2622/08-09(04) —Submission from Hong Kong Institute of Certified Public Accountants
- LC Paper No. CB(1)2682/08-09(03) Submission from the Society of Chinese Accountants and Auditors
- LC Paper No. CB(1)2682/08-09(04) Submission from Society of Trust and Estate Practitioners, Hong Kong Limited)

Submissions from organizations not attending the meeting

- (LC Paper No. CB(1)2622/08-09(05) —Submission from the Chinese General Chamber of Commerce
- LC Paper No. CB(1)2622/08-09(06) —Submission from International Chamber of Commerce – Hong Kong, China
- LC Paper No. CB(1)2725 /08-09(01) Submission from Hong Kong General Chamber of Commerce
- LC Paper No. CB(1)2622/08-09(07) —Submission from the Chinese Manufacturers' Association of Hong Kong
- LC Paper No. CB(1)2622/08-09(08) —Submission from the Hong Kong Association of Banks
- LC Paper No. CB(1)2622/08-09(09) —Submission from the Real Estate Developers Association of Hong Kong
- LC Paper No. CB(1)2622/08-09(10) —Submission from the Law Society of Hong Kong
- LC Paper No. CB(1)2622/08-09(11) —Submission from Ernst & Young Tax Services Limited
- LC Paper No. CB(1)2622/08-09(12) —Submission from the Hong Kong Federation of Insurers
- LC Paper No. CB(1)2622/08-09(13) —Submission from PricewaterhouseCoopers Limited

- LC Paper No. CB(1)2622/08-09(14) —Submission from CPA Australia Ltd.
- LC Paper No. CB(1)2622/08-09(15) —Submission from Association of Chartered Certified Accountants Hong Kong
- LC Paper No. CB(1)2622/08-09(16) —Submission from KPMG Tax Limited
- LC Paper No. CB(1)2682/08-09(05) —Submission from Joint Liaison Committee on Taxation
- LC Paper No. CB(1)2682/08-09(06) —Submission from Hong Kong Bar Association
- LC Paper No. CB(1)2622/08-09(17) —Submission from Office of the Privacy Commissioner for Personal Data, Hong Kong
- LC Paper No. CB(1)2765/08-09(01) —Submission from Federation of Hong Kong Industries (tabled at the meeting and softcopy issued after the meeting)

Meeting with Administration

- (LC Paper No. CB(1)2682/08-09(07) —Administration's paper on a summary of views collected in the 2005 and 2008 consultation exercises
- LC Paper No. LS100/08-09 —The Legal Service Division Report on the Bill
- LC Paper No. CB(1)2621/08-09 —Background Brief on the Inland Revenue (Amendment) (No. 3) Bill 2009 prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)2622/08-09(18) —Marked-up copy of the Bill prepared by the Legal Service Division
- LC Paper No. CB(1)2622/08-09(19) —Letter from Assistant Legal Adviser to the Administration dated 14 August 2009
- LC Paper No. CB(1)2682/08-09(08) —Administration's response to the Assistant Legal Adviser's letter)

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

Follow-up actions to be taken by the Administration

4. To address the concerns expressed by members and deputations on the safeguards to protect an individual's right to privacy and confidentiality of the information exchanged in adopting the 2004 version of the Organization for Economic Cooperation and Development (OECD) Model Tax Convention Exchange of Information (EoI) article, the Administration was requested to provide the following information:

- (a) A paper setting out details of the restrictions or requirements imposed on the scope of exchange and usage of the information exchanged to be incorporated in provisions of comprehensive avoidance of double taxation agreements (CDTAs);
- (b) A paper containing the proposed rules to be made under section 49(6) of the Inland Revenue Ordinance (Cap. 112) (IRO) which would be put in place as domestic safeguards; and
- (c) The draft Departmental Interpretation and Practice Note (DIPN), setting out the procedural safeguards that the Inland Revenue Department (IRD) must adopt in processing EoI requests.

5. To facilitate the Bills Committee's consideration of the submissions made by various organizations, the Administration was requested to provide written responses to the views in the submissions, as listed in the summary prepared by the Secretariat.

(Post-meeting note: The information provided by the Administration as requested in paragraphs 4 and 5 was circulated to members vide LC Paper No. CB(1)106/09-10(02) on 21 October 2009.)

III Any other business

6. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 27 October 2009 at 4:30 pm.

7. There being no other business, the meeting ended at 4:22 pm.

**Proceedings of the
Bills Committee on Inland Revenue (Amendment) (No.3) Bill 2009
Second meeting on Thursday, 8 October 2009, at 2:30 pm
in the Chamber of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000416 – 000459	Chairman	(a) Late applications for membership (b) Confirmation of minutes of meeting on 17 July 2009 (LC Paper No. CB(1)2427/08-09)	
Meeting with deputations and the Administration			
000500 – 000915	Chairman	Introductory remarks	
000916 – 001713	Chairman Administration	Briefing by the Administration on the Bill	
Presentation of views by deputations and the Administration's preliminary response			
001714 – 002218	The British Chamber of Commerce in Hong Kong (BCC)	Presentation of views	
002219 – 002621	The American Chamber of Commerce in Hong Kong	Presentation of views	
002627 – 002939	Hong Kong Small and Medium Enterprises Association	Presentation of views	
002940 – 003319	The Taxation Institute of Hong Kong	Presentation of views	
003320 – 003643	Deloitte Touche Tohmatsu	Presentation of views	
003644 – 004129	Hong Kong Institute of Certified Public Accountants	Presentation of views	

Time Marker	Speaker	Subject(s)	Action Required
004130 – 004547	Society of Trust and Estate Practitioners (STEP)	Presentation of views	
004548 – 004957	The Lion Rock Institute	Presentation of views	
004958 – 010007	Chairman Administration	<p>The Administration's advice that it would provide a written response to the deputations' views after the meeting. On concerns about safeguards to protect right to privacy and confidentiality of the information exchanged, the Administration's preliminary advice that-</p> <ul style="list-style-type: none"> (a) Safeguards would be incorporated in individual CDTAs to impose restrictions on the scope of exchange and the usage of information obtained. For example, only information that was "necessary" or "foreseeably relevant" for the carrying out of the CDTA or the administration or enforcement of the requesting party's local tax laws would be provided and the requesting party must not share the information provided with a third party. (b) Incorporating the safeguard provisions in the primary legislation was considered inappropriate, as this would reduce the flexibility in CDTA negotiations, say when there were merely textual changes to the OECD Model Tax Convention. Individual CDTAs would be implemented as subsidiary legislation subject to the Legislative Council (LegCo)'s scrutiny. (c) Domestic safeguards would also be put in place through subsidiary legislation, including the authority for approving EoI requests, prior notifications to the person concerned of the information exchange and the review mechanism for persons aggrieved by the decision of IRD on proposed correction to information. Given the small number of EoI requests, the suggestion of setting up an independent board for the review was considered not preferable. Persons disagreed with the IRD's decision might seek the direction from Financial Secretary. The Administration would act lawfully in carrying 	

Time Marker	Speaker	Subject(s)	Action Required
		<p>out its duties but persons aggrieved by the Administration's decisions might also have other channels for redress, e.g. applying for a judicial review. Moreover, the "exceptional circumstances" under which prior notification of the information exchange would not be given to the person concerned would be set out clearly in the subsidiary legislation.</p>	
Discussion			
010008 – 010707	Chairman Mr Jeffrey LAM Administration	<p>(a) Mr Jeffrey LAM's enquiry whether IRD would be allowed to use the information collected at the request of a CDTA contracting party for investigation of local taxation cases and the channel for an aggrieved person to appeal against the provision of his tax information to a requesting party.</p> <p>(b) The Administration's advice that under the existing legislation, IRD was empowered to gather information for the purpose of the IRO. It might use the tax information collected for domestic tax purposes or for transmission to an overseas tax jurisdiction in relation to an EoI request pursuant to a CDTA. As to the mechanism for review, the Administration's advice that an aggrieved person might seek a review by the Financial Secretary on IRD's decision relating to correction of the information provided. The Administration tried to balance the need to fulfill the international obligations in responding to EoI requests within the standard time and the legal protection of the privacy rights of the person concerned.</p> <p>(c) In response to Mr LAM's further enquiry on sharing of information exchanged among European Union members, the Administration's advice that as part of the safeguards in CDTAs, the requesting party should be restricted from sharing the information provided with any third party (including a third jurisdiction or another government department of its own jurisdiction).</p>	
010708 – 013241	Chairman Mr Alan LEONG Administration BCC	<p>(a) Mr Alan LEONG's concern about domestic safeguards to be put in place through subsidiary legislation, in particular the prior notification to the person concerned on the information exchange.</p>	

Time Marker	Speaker	Subject(s)	Action Required
	<p>STEP Ms Miriam LAU</p>	<p>(b) The Administration's advice that details of the proposed domestic safeguards would be provided to the Bills Committee in writing before the next meeting.</p> <p>(c) Mr LEONG's reference to the presentation of STEP on the proposal in the Singapore Bill for the taxation authority to apply for a court order to obtain certain information before acceding to EoI requests. His question on why the Administration did not propose the same safeguard in the Bill.</p> <p>(d) The Administration's advice that given the restriction of its domestic bank secrecy law, the Singapore authority had to seek a court order to obtain the restricted information from banks in order to accede to EoI requests. This was not the case for Hong Kong as there was no bank secrecy law in Hong Kong and there would not be problem in observing the 2004 OECD provision in this regard.</p> <p>(e) Responding to Mr LEONG's further enquiry, the Administration's advice that the proposal to adopt the 2004 OECD version of EoI article was welcomed by many jurisdictions. A number of them had expressed interests in negotiating CDTAs with Hong Kong. The Administration's further explanation that additional hurdles and prolonged procedures would undermine the effectiveness of exchange of information, one of the compliant standards required by OECD. Without being able to achieve this standard, the attractiveness of Hong Kong as a CDTA partner might be reduced and could cause problems during the subsequent "peer review" process. Appropriate checks and balances would be put in place as safeguard provisions would be incorporated in individual CDTAs which were subsidiary legislation subject to scrutiny by LegCo.</p> <p>(f) Mr LEONG's question on whether the vetting of individual CDTAs by LegCo could allay the concerns of deputations about prudent safeguards on privacy and confidentiality of information.</p>	<p>The Administration to take action as required in paragraph 4(b) of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>(g) BCC's view that the incorporation of the safeguards in the primary legislation would put Hong Kong in a stronger position in negotiating terms of individual CDTAs. Whilst CDTAs would be subject to LegCo's vetting, Members could hardly amend the provisions but only give endorsement at that stage when agreements had been reached with the treaty partners. STEP's similar view that the safeguards should be incorporated in the primary legislation.</p> <p>(h) Ms Miriam LAU's similar concern that the safeguards on the scope of exchange and usage of information exchanged should be provided in the primary legislation. Her disappointment with the current legislative proposal as the Administration had attempted to over-simplify the framework for liberalization of EoI by keeping all flexibility to itself in the CDTA negotiations. Her view that the negative vetting procedures for individual CDTAs could not provide adequate checks and balances to the Administration's power in deciding safeguard provisions in CDTAs, as in practice, Members could only choose to repeal the subsidiary legislation or accept the provisions therein intact.</p> <p>(i) The Administration's explanation that in negotiating terms of CDTAs, Hong Kong would adopt the safeguards accepted by the international community through the 2004 OECD version of EoI article, as provided in Annex C to the LegCo Brief for the Bill. A large number of CDTAs had been signed between various jurisdictions in accordance with the standard terms and provisions in the EoI article.</p>	
013242 – 013448	Chairman Mr CHAN Kin-por Administration	<p>(a) Mr CHAN Kin-por's enquiry as to whether the Bill would have retrospective effect. Mr CHAN's view that the Bill should be enacted as soon as possible as Hong Kong had already lagged behind in concluding CDTAs with its trading partners.</p> <p>(b) The Administration's advice that the Bill would only apply to exchange of information after its</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>enactment. Any information exchanged would only cover cases or periods after the commencement of the respective CDTAs. With Members' support, the Administration aimed to enact the Bill by the end of 2009.</p>	
013449 – 013632	Chairman Administration	<p>Responding to the Chairman's concern about the progress in CDTA negotiations, the Administration's advice that the proposed liberalization had received favourable responses in the international community. Discussions with three economies on CDTAs were arranged in 2009 after the Bill was introduced into LegCo. For another eight economies which had indicated interests in CDTAs negotiations with Hong Kong, discussions would be arranged in 2010.</p>	
013633 – 013926	Chairman ALA4 Administration STEP	<p>(a) ALA4's enquiry and the Administration's confirmation that the Bill would not apply retrospectively to information in existence before its enactment.</p> <p>(b) Responding to ALA4's further enquiry, the Administration's advice that the effective date would be stipulated in the respective CDTA. As to the concern of STEP on provision of tax information under CDTAs, the Administration's advice that exchange of information under CDTAs would only take place after the effective date of the relevant provisions and the contracting party could not request for tax information covering periods preceding that date.</p>	
013927 – 014143	Chairman Ms Miriam LAU Administration	<p>Ms Miriam LAU's request for written information on the safeguards in CDTAs, domestic safeguards and procedural safeguards, as well as the Administration's written response to views of deputations</p>	<p>The Administration to take action as required in paragraphs 4 and 5 of the minutes.</p>
014144 – 015126	Chairman Mr Alan LEONG Administration	<p>(a) Mr Alan LEONG's concern about Hong Kong's flexible regime for safeguards to protect privacy and confidentiality of information exchanged, as compared with the stringent control measures in the Singaporean regime.</p> <p>(b) The Administration's response that as Hong Kong had no bank secrecy law like that in Singapore, the relevant authority would not have to obtain a court order to get information from</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>banks. It would be a step backward for Hong Kong to impose more stringent control to access to information in CDTAs than those stipulated in local laws. In fact, the absence of bank secrecy law was one of the reasons for the international community's acceptance that Hong Kong was not a tax haven. To enhance the protection of data privacy, the Administration had proposed additional domestic safeguards on legal protection of the data subject, for example, prior notification to data subject, amendment and review mechanism.</p> <p>(c) In response to Mr LEONG's question on the acceptance of international community to the proposed arrangement of Singapore, the Administration's advice that it was not in a position to give comment in this regard. The arrangement of Singapore would be subject to the findings of the "peer review" on compliance with OECD standard to be conducted by an international body, the Global Forum on Tax Transparency and Effective Exchange of Information.</p>	
015127 – 015239	Chairman	<p>(a) The Chairman's view that the draft subsidiary legislation to provide for domestic safeguards and DIPN provided by the Administration should be made available to the deputations for comments.</p> <p>(b) Date of next meeting</p>	