

立法會
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seen by the Administration)

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Establishment Subcommittee of the Finance Committee

Minutes of the 4th meeting
held in Conference Room A of Legislative Council Building
on Wednesday, 12 January 2011, at 8:30 am

Members present:

Dr Hon Margaret NG (Chairman)
Dr Hon PAN Pey-chyou (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon CHEUNG Man-kwong
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon LI Fung-ying, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Hon Mrs Regina IP LAU Suk-yee, GBS, JP

Member attending:

Hon James TO Kun-sun

Member absent:

Hon WONG Yuk-man

Public Officers attending:

Mrs Ingrid YEUNG, JP	Deputy Secretary for the Civil Service (1)
Ms Alice LAU, JP	Deputy Secretary for Financial Services and the Treasury (Treasury)1
Miss Cathy CHU, JP	Deputy Secretary for Financial Services and the Treasury (Treasury)2
Ms Shirley KWAN	Principal Assistant Secretary for Financial Services and the Treasury (Treasury) (Revenue)
Mr WONG Kuen-fai, JP	Deputy Commissioner of Inland Revenue (Technical)
Mr Patrick HO Chung-kei, JP	Deputy Secretary for Financial Services and the Treasury (Financial Services)2

Clerk in attendance:

Mr Stephen LAM	Chief Council Secretary (1)4
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Staff in attendance:

Mrs Constance LI	Assistant Secretary General 1
Mr Simon CHEUNG	Senior Council Secretary (1)1
Ms Alice CHEUNG	Senior Legislative Assistant (1)1
Ms Clara LO	Legislative Assistant (1)3

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The Chairman drew members' attention to the information paper provided by the Administration, i.e. ECI(2010-11)10, which set out the latest changes in respect of the Administration's directorate establishment approved since 2002.

EC(2010-11)15 **Proposed creation of one supernumerary post of Chief Assessor (D1) in the Tax Treaty Section of Inland Revenue Department for a period of three years with effect from 1 April 2011 to provide dedicated directorate support to undertake the implementation of a number of initiatives in relation to the expansion of the Comprehensive Avoidance of Double Taxation Agreement network of Hong Kong**

2. The Chairman advised that the Administration was proposing to create one supernumerary post of Chief Assessor (CA) (D1) for a three-year period from 1 April 2011 to provide directorate support for the implementation of initiatives arising from the expansion of the Comprehensive Avoidance of Double Taxation Agreement (CDTA) network of Hong Kong. She said that the Administration's proposal had been discussed by the Panel on Financial Affairs (FA Panel) at its meeting on 1 November 2010. Panel members queried that the workload caused by negotiations for CDTAs and related work might not reach a point warranting the creation of an additional CA post. In this regard, the Administration was requested to provide quantitative information, augmented by analysis, about the current workload and anticipated workload. The Administration was also requested to explain why it had failed to sign CDTAs with some major trading partners, and whether the proposed CA post would speed up the work. Panel members also requested the Administration to provide information on the benefits, in quantifiable terms, to be brought by CDTAs to taxpayers and the overall economy of Hong Kong. The Administration had provided the information on 31 December 2010.

Justifications for the post

3. Mr WONG Ting-kwong said that Members belonging to the Alliance for the Betterment and Progress of Hong Kong supported the Administration's proposal, as the expansion of the CDTA network was in line with global trends and there was a genuine need for the proposed CA to cope with the additional workload arising from the signing of CDTAs with other countries.

4. Mr CHEUNG Man-kwong expressed disappointment that despite requests of Ms Emily LAU and Mr James TO made at the FA Panel meeting on 1 November 2010, the Administration had not provided all required information in the paper to the Establishment Subcommittee (ESC).

5. Deputy Secretary for Financial Services and the Treasury (Treasury)2 (DS(Tsy)2) advised that paragraph 17 of the paper had provided detailed description of the increased workload and the length of time required for preparing each round of CDTA negotiations. As for the benefits generated by CDTAs for Hong Kong's taxpayers and the overall economy, DS(Tsy)2 said that it was difficult to quantify such benefits. She explained that while it was generally accepted that CDTAs had led more overseas companies to invest in Hong Kong, and thereby creating more jobs for local people, it would be difficult to vindicate whether the increase of overseas companies in Hong Kong was due to the conclusion of the CDTAs. There was a wide range of factors affecting the decision to invest in Hong Kong, including global economy and the investment environment.

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6. Ir Dr Raymond HO supported the Administration's proposal, as Hong Kong was lagging behind major trading competitors in terms of the size of its CDTA network. To ensure the standard and continuity of the negotiation work which was highly technical, it would be undesirable for CDTA work to be taken up by a number of IRD directorate staff in turn. He firmly believed that the work had to be taken up by a dedicated directorate officer.

7. In reply to Mr CHEUNG Man-kwong, Principal Assistant Secretary for Financial Services and the Treasury (Treasury) (Revenue) said that of the 13 CDTAs signed with other countries and two upgrades of the exchange of information (EoI) provisions in the existing CDTAs, only eight of them had gone through local legislative process. The Administration would arrange for the remaining CDTAs to go through the local legislative process in 2011. Out of the eight CDTA orders which had already gone through the local legislative process, about three or four of them had been ratified by the legislatures of the signatory countries.

8. Mr James TO queried the need for the proposed post and expressed doubts about the lead time required in the preparation of CDTAs and the additional workload arising. In his opinion, since the Administration had successfully signed CDTAs with different jurisdictions, it should be able to draw up a CDTA "template" or "model agreement" for subsequent negotiations to follow. He opined that additional posts should only be created when the increase in workload had proven to be beyond the present staffing capacity.

9. DS(Tsy)2 said that as Hong Kong had now entered into CDTAs with different jurisdictions, it was necessary for Hong Kong to implement these agreements in accordance with the articles provided therein. She anticipated that CDTA-related workload would increase in different areas, in particular those relating to EoI with other countries. She stressed that failure to meet the CDTA requirements would adversely affect Hong Kong's position as a major trading centre. To maintain Hong Kong's competitiveness, there was great urgency for Hong Kong to enter into CDTA with as many countries as possible. There was hence a genuine need to bring in additional directorate input to steer the CDTA-related work within the Inland Revenue Department (IRD). As pointed out in paragraph 29 of the paper, the Administration had examined the possibility of sharing out CDTA-related duties amongst the two Deputy Commissioners of Inland Revenue (DCIRs) and the five Assistant Commissioners of Inland Revenue (ACIRs), and found that all of them were already heavily laden with their own responsibilities and could afford no time to share out CDTA-related duties. To ensure continuity and to map out an overall strategy, it would be more appropriate for Hong

Kong to designate a directorate grade officer to attend to all CDTA-related business. The counterparts of Hong Kong are often dedicated officials from the relevant tax authorities or ministries of finance. On Mr TO's suggestion of formulating a model agreement for CDTA, Deputy Commissioner of Inland Revenue (Technical) ((DCIR(T))) explained that some countries might not want to adopt the same conditions as the Organization for Economic Cooperation and Development (OECD) countries. Some countries would seek to make variations by including unique terms and conditions that best suit their interests. It was therefore impracticable to apply a model agreement to all CDTAs. DCIR(T) added that in negotiating with trading partners on CDTA, one of the strategies the Administration was adopting was to negotiate first with those countries whose model deviates less from that of the OECD. CDTA negotiations would become more complicated and difficult when Hong Kong negotiated with other countries, and a great deal of workload would be generated in these negotiations.

10. Mr James TO remained unconvinced of the Administration's explanation. He opined that the Administration should provide further information to show how the negotiations and implementation of CDTAs and the plan to expand the CDTA network of Hong Kong had led to the increase of workload of IRD. He urged the Administration to provide examples of CDTAs which showed differences from the "model agreements", which had led to additional workload to the Administration having to finalize these CDTAs. The Administration agreed to provide the information.

Target of the number of CDTAs to be signed

11. Mrs Regina IP said that the New People's Party supported the Administration's proposal. She considered that the CDTA negotiation work of bilateral agreements involved considerable work, and that the proposed three-year tenure would not be long enough for the work. She asked whether the Administration had set a target for the number of countries with which Hong Kong intended to sign CDTAs.

12. DS(Tsy)2 said that the Administration hoped to sign CDTAs with as many countries as possible. Due to resource constraints, priority would be given to major trading partners and countries with good trading potentials. It was the Administration's target for Hong Kong to sign new CDTAs with no less than ten jurisdictions.

13. Mr LAU Kong-wah opined that to further promote Hong Kong as a good place for global investment, Hong Kong should aim at signing more CDTAs with other countries. He hoped the Administration would adopt a more flexible target for the coming years. DS(Tsy)2 advised that the target of ten CDTAs was the minimum to be achieved in three years. The

Administration would endeavour to sign CDTAs with as many countries as possible.

14. Dr PAN Pey-chyou noted from paragraphs 14 and 15 of the Administration's paper that Mainland China and Singapore had entered into 91 and 63 CDTAs respectively with different countries. He enquired why Hong Kong only aimed at a modest target.

15. DS(Tsy)2 advised that a major obstacle in our CDTA negotiations was that some former provisions of the Inland Revenue Ordinance (Cap. 112) did not allow EoI with treaty partners in the absence of a domestic tax interest in the information to be exchanged. Such legal obstacle rendered Hong Kong unable to adopt the latest international EoI standard of OECD. As a result, many jurisdictions, in particular OECD countries, which had already adopted the latest EoI standard, did not have the incentive of CDTA negotiations with Hong Kong. In March 2010, the Inland Revenue (Amendment) Ordinance 2010 (1 of 2010) came into operation, enabling Hong Kong to adopt the prevailing international standard on EoI. This had led to remarkable progress in expanding Hong Kong's CDTA network.

Filling of the post

16. Prof Patrick LAU enquired about the recruitment arrangements for the CA post. In response, DS(Tsy)2 advised that as taxation was a technical field of work, it was the intention of the Administration to fill the CA post through internal re-deployment.

17. The item was voted on and endorsed. At the request of Mr James TO, this item would be voted on separately at the Finance Committee (FC) meeting scheduled for 28 January 2011.

EC(2010-11)16 Proposed retention of one supernumerary post of Administrative Officer Staff Grade C (D2) in the Financial Services Branch of Government Secretariat: Financial Services and the Treasury Bureau with effect from 13 February 2011 up to 15 July 2012 to provide continued directorate support to complete the current legislative and related work in relation to the enhancement of the anti-money laundering regime in Hong Kong

18. The Chairman advised that the Administration's proposal aimed to retain one supernumerary Administrative Officer Staff Grade C (AOSGC) post of D2 ranking for the period from 13 February 2011 to 15 July 2012 to

provide directorate support for the legislative and other work for enhancing the anti-money laundering (AML) regime in Hong Kong.

Responsibilities of the supernumerary post

19. Seeing AML as an on going task of every jurisdiction, Ms LI Fung-ying asked why the post was retained only for 17 months. She also enquired about the responsibilities of the proposed supernumerary AOSGC post. Deputy Secretary for Financial Services and the Treasury (Financial Services)2 (DS(FS)) advised that AML was a long-term commitment of the Administration. The proposal to retain the supernumerary post for another 17 months was to cope with the workload arising from the legislative work as well as work relating to the follow-up to the mutual evaluation (ME) conducted by the Financial Action Task Force (FATF) on Hong Kong's AML regime in 2007-2008. As part of the Administration's effort, the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill (the Bill) had been introduced into Legislative Council (LegCo) in November 2010, which was being scrutinized in detail by the bills committee formed by LegCo. The AOSGC officer would continue to be an important member on Hong Kong's delegation to FATF meetings and AML-related international fora, and would need to monitor closely FATF's discussions on the review of the international standards and formulate Hong Kong's input to the discussions. Another major factor to be considered was that after LegCo has approved the creation of the supernumerary post in February 2009, FATF has promulgated a new requirement for jurisdictions to seek removal from its regular follow-up process within four years from the relevant ME. This put a deadline for Hong Kong to seek removal from the follow-up process by mid-2012 at the latest. This was a very important task and would require a lot of preparatory and lobbying work to be supported by the proposed AOSGC officer. We had not been able to take into account the workload related to this major task when we sought the approval from the Finance Committee for the creation of the post. It was envisaged that upon completion of the new AML regime for financial institutions and the related policy work, the volume of work of this supernumerary post would be substantially reduced. By then and under such situation, Financial Services Branch (FSB) would be able to delete the post and take on relevant duties and responsibilities by means of internal redeployment within FSB.

International status of Hong Kong's AML work

20. Mrs Regina IP recalled that when she was serving as the Secretary for Security some years ago, Hong Kong earned a worldwide recognition for its achievements in anti-money laundering work. In 2001, the Commissioner for Narcotics of Hong Kong was invited to serve as the chairman of FATF. DS(FS) responded that Hong Kong continued to command high regard by

follow members of FATF for its work on AML, as illustrated by FATF's invitation in 2010 to Hong Kong to chair an expert group to look into AML-related issues. That expert group was still in operation.

21. Mr James TO said that it seemed to him that there was one directorate post in the Security Bureau (SB) who used to take care of AML-related duties. The post was subsequently spilt into two, with one serving in SB and the other in FSB. Against this background and given the workload of the post, he was hesitant in supporting the continuation of the post. While he would not vote against the proposal, he would keep a close watch on the actual contributions of the incumbent of this supernumerary post. In any case, he would not support turning this post into a permanent one.

22. Mr IP Wai-ming held a different view. He said that he was a little bewildered about the Administration's criteria for creating supernumerary posts. In view of the scope and complexity of the supernumerary post and the volume of work involved, he could see no reason why this post was not made permanent, since AML was a long-term commitment of the Administration.

23. Deputy Secretary for the Civil Service (1) explained that supernumerary posts were created for short-term service needs or specific projects outside the scope of normal duties of posts on the permanent establishment. The supernumerary AOSGC post under consideration was for a time-limited purpose, i.e. to enhance the local AML regulatory regime for the financial sector with a view to seeking FATF's agreement to remove Hong Kong from its follow-up process by June 2012. On the completion of this specific task, FSB would absorb the day-to-day AML work through internal redeployment.

24. The item was voted on. Members agreed that the Subcommittee should recommend the item to FC for approval.

EC(2010-11)17 Proposed creation of one supernumerary post of Administrative Officer Staff Grade C (D2) in the Financial Services Branch of Government Secretariat: Financial Services and the Treasury Bureau for a period of three years with immediate effect for the establishment of an independent Insurance Authority and a Policyholders' Protection Fund

25. The Chairman advised that the Administration was seeking the support of ESC to create a supernumerary post of AOSGC at D2 level in FSB

for the establishment of an independent Insurance Authority (IIA) and a Policyholders' Protection Fund (PPF) with immediate effect. The Administration's proposal had been discussed by FA Panel on 3 January 2011. While some Panel members considered that the Administration should focus its efforts on PPF in view of resource constraints, other Panel members were concerned about the Administration's arrangements for staff currently serving in the Office of Commissioner of Insurance. Some Panel member asked about details for setting up the provisional office for IIA. Mr James TO indicated at the Panel meeting that Democratic Party had not formed an opinion on IIA and he would reserve his position on the staffing proposal. The Administration had also provided supplementary information to the Panel on 10 January 2011.

26. Mr IP Wai-ming said that while personally he supported the PPF initiative, trade unions of the insurance industry were gravely concerned about the proposal to set up IIA. He noted that in response to requests from the industry, the Administration had agreed to conduct another round of consultation. In these circumstances, he did not consider it an appropriate time for the Administration to put forth the staffing proposal for implementation of the proposed IIA. He said that Members belonging to the Hong Kong Federation of Trade Unions had reservation about the staffing proposal. He asked about the timing and details of the second round of consultation.

27. Ms LI Fung-ying criticised the Administration for putting the cart before the horse, as the Administration had yet to complete the consultation exercise on the proposal of IIA.

28. DS(FS) pointed out that the PPF initiative involved a great deal of policy analysis work and also highly technical issues. Pursuant to the industry and Panel's support of the proposed establishment of PPF in July 2009 when the Panel was consulted on the broad framework of proposals, the Administration had commissioned an actuarial consultancy study in 2010 to assess the levy rate, target fund size, governance and other arrangements for the proposed PPF. The Administration aimed to draw up detailed proposals for public consultation in the first quarter of 2011. As for the proposal to establish an IIA, the Administration was analyzing the public views received during the three-month consultation exercise which was completed in October 2010. There was general support for the establishment of an IIA, whilst there were different views expressed on the details of the proposed IIA. The Administration would continue to engage the insurance industry and stakeholders before finalizing the IIA legislative proposals. In view of the complexity and level of work involved in these two tasks and the need to conduct the public engagement exercises as well as to attend to subsequent legislative and detailed implementation arrangements, he appealed for

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members' support for the Administration's proposal.

29. Mrs Regina IP shared the view of Ms LI Fung-ying, and said that she would not support the staffing proposal as only the first round of consultation on the IIA proposal had been completed. The Chairman remarked that some members had expressed reservations about the staffing proposal, and asked if the Administration would still want members to vote on this item. DS(FS) explained that the supernumerary post was needed to take forward the work to pursue both the IIA and PPF initiatives.

30. The Chairman put the item to vote. The Subcommittee rejected the Administration's proposal.

31. There being no other business, the meeting ended at 9:53 am.

Council Business Division 1
Legislative Council Secretariat
27 January 2011