

Bills Committee on Inland Revenue (Amendment) Bill 2013
Follow-up to the meeting on 3 June 2013

Purpose

As undertaken by the Administration at the meeting of the Bills Committee on 3 June 2013, we recapitulate, for Members' reference, in the ensuing paragraphs the responses made by the Administration to address issues raised by Members in the course of considering the submissions made by the deputations and during the clause-by-clause examination of the captioned Bill at the last meeting.

Statutory Safeguards

2. At present, as a responsible member of the international community, Hong Kong exchanges tax information with other jurisdictions under the framework of comprehensive avoidance of double taxation agreements ("CDTAs") with a view to enhancing tax transparency. Our existing exchange of information ("EoI") regime under CDTAs is generally based on the 2004 version of the Organisation for Economic Cooperation and Development ("OECD") Model Tax Convention on Income and on Capital ("Model Tax Convention"). After the legal framework for tax information exchange agreements ("TIEAs") is in place, in order to afford legal protection to taxpayers in terms of privacy and confidentiality of information exchanged, we will model on our current approach on CDTAs to strive to include relevant safeguards in the texts of TIEAs. Each and every CDTA and TIEA signed will be implemented as subsidiary legislation domestically subject to negative vetting by the Legislative Council. The existing Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. leg. BI) ("the Disclosure Rules"), providing for domestic statutory safeguards in addition to those provided in individual agreements, will be extended and become applicable to EoI under both CDTAs and TIEAs.

Legal Professional Privilege

3. One of the safeguards provided for in the CDTAs/TIEAs is that there is no obligation on a Contracting Party to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, including such information covered by legal professional privilege. The restriction on disclosure of legally privileged materials is legally binding on the Inland Revenue Department (“IRD”).

4. It is stated in the OECD Model Tax Convention that a requested jurisdiction may decline to disclose information relating to confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under domestic law. In this regard, it is relevant to note that domestically, the protection of legal professional privilege has all along been afforded under section 51(4A) of the Inland Revenue Ordinance (Cap. 112) (“IRO”), which states that “nothing in subsection (4) shall require disclosure by counsel or solicitor of any privileged information or communication given or made to him in that capacity”. Hence, under the IRO, IRD has no power to require furnishing of information that is subject to legal professional privilege. As for the OECD model text for TIEAs (at **Annex A**), Article 7(3) reads as follows –

“The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- (a) produced for the purposes of seeking or providing legal advice or
- (b) produced for the purposes of use in existing or contemplated legal proceedings.”.

Amendments to Section 51B of the IRO

5. Enhancing the existing EoI arrangement in respect of our restrictive position on tax types can provide us with more flexibility to persuade key jurisdictions to commence CDTA negotiations with Hong Kong and ensure that our EoI arrangement is on par with the international standard. Hence, we propose under the Bill to provide such flexibility by way of amending section 49(1A) of the IRO to serve as an enabling provision to allow EoI in relation to any tax imposed by the laws of the territory concerned (i.e. our CDTA/TIEA partner). In practice, we will adopt a positive listing approach to set out the tax types to be covered for EoI in each CDTA/TIEA.

6. Section 51B(1) of the IRO provides the magistrate with the power to issue search warrant for documents for domestic tax purposes. Section 51B(1AA) stipulates that section 51B(1) also applies to any tax of a territory outside Hong Kong where arrangements have been made under section 49(1A) with the government of that territory (i.e. for the purposes of double taxation relief and EoI). Now that we propose to amend section 49(1A) to the effect that it will no longer be restricted to income tax only, it is necessary to amend the reference to “income or profits” in section 51B(1AA) correspondingly to include “sums or values” which are the bases for other jurisdictions to compute their non-income tax. We would like to stress that section 51B(1AA) has no application to taxes charged under the IRO and it merely relates to taxes of a territory outside Hong Kong for the purposes of CDTAs or TIEAs as appropriate.

7. More importantly, since we have no plan to change the existing record-keeping requirements under sections 51C and 51D of the IRO, a person has no obligation to provide to IRD, for EoI purposes, information which is not in his possession or control and is not required to be kept under the IRO, even when IRD acts on a valid EoI request and exercises its information-gathering power to approach him for the relevant information. Accordingly, the person will face no legal consequences under the IRO for failure to provide the relevant information. Unless our CDTA/TIEA partner provides grounds for believing that the information requested is in the possession or control of

the person in Hong Kong but the person claims that he is not in possession or control of the relevant information and IRD has reasonable grounds to believe that the person's claim is false, we do not envisage that IRD will apply to the magistrate for search warrant under section 51B(1AA) for EoI purposes. Even if there is such application from IRD under the above-mentioned circumstances, it is ultimately for the magistrate to decide based on all relevant considerations whether a search warrant should be issued to IRD. As a matter of fact, IRD has not applied for any search warrant for EoI purposes over the years.

8. As far as any possible legal consequences, the existing section 80(2D) of the IRO provides that “[a]ny person who without reasonable excuse gives any incorrect information in relation to any matter or thing affecting the person's own liability (or the liability of any other person) to any tax of a territory outside Hong Kong commits an offence if –

- (a) arrangements having effect under section 49(1A) are made with the government of that territory; and
- (b) that tax is the subject of a provision of the arrangements that requires disclosure of information concerning tax of that territory,

and is liable to a fine at level 3.”

The current Bill does not propose any offence provisions.

Amendments to Section 4 of the Disclosure Rules

9. In order to fine-tune our current limitation on disclosure, we propose to amend section 4 of the Disclosure Rules to allow for the exchange of information generated prior to the effective date of the relevant CDTA or TIEAs, **provided that** the standard of “**foreseeable relevance**” is satisfied upon examination of the particulars provided by the CDTA/TIEA partner in its EoI request, and the requested information relates to the carrying out of the provisions of the relevant CDTA/TIEA or the administration or enforcement of the tax laws of the CDTA/TIEA partner concerning taxes imposed in periods **after** the CDTA/TIEA becomes effective.

10. As provided in the EoI Article of the OECD Model Tax Convention (at **Annex B**), the competent authorities of the Contracting Parties shall exchange information as is foreseeably relevant for **carrying out the provisions of the convention or administration or enforcement of the domestic tax laws of the Contracting Parties**.

11. In amending section 4 of the Disclosure Rules to effect the proposed fine-tuning of the limitation on disclosure, we have adopted the wording as proposed to align with the OECD’s model text (highlighted in paragraph 10 above). As such, the amended section 4 as proposed under the Bill reads as follows –

“The Commissioner must not disclose any information in response to a disclosure request unless the Commissioner is satisfied that the information relates to –

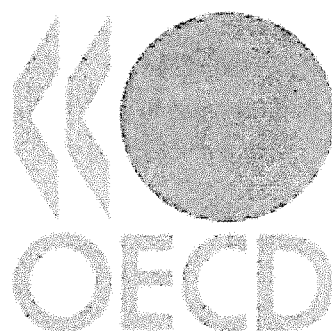
- (a) the carrying out of the provisions of the relevant arrangements in respect of any period that starts after the arrangements have come into operation; or
- (b) the administration or enforcement of the tax law of the requesting government’s territory in respect of any period that starts after the relevant arrangements have come into operation.”.

By virtue of the definition of “relevant arrangements” in the existing section 2 of the Disclosure Rules, “relevant arrangements” in the amended section 4 as set out above would refer to CDTAs/TIEAs into which Hong Kong enters. For sake of clarity that EoI for purposes of either “carrying out of the provisions of the relevant arrangements” or “administration or enforcement of the tax law” should be subject to our limitation on disclosure (i.e. after the relevant CDTAs/TIEAs have taken effect), we see the need to set out the two purposes in two limbs and qualify each by the prerequisite “in respect of any period that starts after the relevant arrangements have come into operation”.

Response to the Written Submission from the Society of Chinese Accountants and Auditors

12. Our response to the written submission from the Society of Chinese Accountants and Auditors is incorporated in the table of responses at **Annex C**, which is an updated version of our responses issued to the Bills Committee on 3 June 2013.

Financial Services and the Treasury Bureau
5 June 2013



AGREEMENT ON EXCHANGE OF INFORMATION ON TAX MATTERS

II. TEXT OF THE AGREEMENT

MULTILATERAL VERSION

The Parties to this Agreement, desiring to facilitate the exchange of information with respect to taxes have agreed as follows:

BILATERAL VERSION

The government of _____ and the government of _____, desiring to facilitate the exchange of information with respect to taxes have agreed as follows:

Article 1

Object and Scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2

Jurisdiction

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

Article 3

Taxes Covered

MULTILATERAL VERSION

1. This Agreement shall apply:
 - a) to the following taxes imposed by or on behalf of a Contracting Party:
 - i) taxes on income or profits;
 - ii) taxes on capital;

BILATERAL VERSION

1. The taxes which are the subject of this Agreement are:
 - a) in country A, _____;

iii) taxes on net wealth;

b) in country B, _____.

iv) estate, inheritance or gift taxes;

b) to the taxes in categories referred to in subparagraph a) above, which are imposed by or on behalf of political sub-divisions or local authorities of the Contracting Parties if listed in the instrument of ratification, acceptance or approval.

2. The Contracting Parties, in their instruments of ratification, acceptance or approval, may agree that the Agreement shall also apply to indirect taxes.

3. This Agreement shall also apply to any identical taxes imposed after the date of entry into force of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of entry into force of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

Article 4

Definitions

MULTILATERAL VERSION

BILATERAL VERSION

1. For the purposes of this Agreement, unless otherwise defined:

a) the term "Contracting Party" means any party that has deposited an instrument of ratification, acceptance or approval with the depositary;

b) the term "competent authority" means the authorities designated by a Contracting Party in its instrument of acceptance, ratification or approval;

a) the term "Contracting Party" means country A or country B as the context requires;

b) the term "competent authority" means

i) in the case of Country A,
_____;

ii) in the case of Country B,
_____;

- c) the term “person” includes an individual, a company and any other body of persons;
- d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- e) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- f) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- g) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- h) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- i) the term “tax” means any tax to which the Agreement applies;
- j) the term “applicant Party” means the Contracting Party requesting information;
- k) the term “requested Party” means the Contracting Party requested to provide information;
- l) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- m) the term “information” means any fact, statement or record in any form whatever;
- n) the term “depository” means the Secretary-General of the Organisation for Economic Co-operation and Development; *This paragraph would not be necessary*
- o) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;
- p) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under

the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.
2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:
 - a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
 - b) information regarding the ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.
5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:
 - (a) the identity of the person under examination or investigation;
 - (b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
 - (c) the tax purpose for which the information is sought;
 - (d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
 - (e) to the extent known, the name and address of any person believed to be in possession of the requested information;

(f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

(g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.

b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6

Tax Examinations Abroad

MULTILATERAL VERSION

1. A Contracting Party may allow representatives of the competent authority of another Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of a Contracting Party, the competent authority of another Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph

BILATERAL VERSION

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph

2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

Article 7

Possibility of Declining a Request

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
 - (a) produced for the purposes of seeking or providing legal advice or
 - (b) produced for the purposes of use in existing or contemplated legal proceedings.
4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).
5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

Article 8

Confidentiality

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

Article 9

Costs

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

Article 10

Implementation Legislation

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

Article 11

Language

This article may not be required.

Requests for assistance and answers thereto shall be drawn up in English, French or any other language agreed bilaterally between the competent authorities of the Contracting Parties under Article 13.

Article 12

Other international agreements or arrangements

This article may not be required

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Contracting Parties which relate to co-operation in tax matters.

Article 13

Mutual Agreement Procedure

1. Where difficulties or doubts arise between two or more Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities of those Contracting Parties shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of two or more Contracting Parties may mutually agree:

a) on the procedures to be used under Articles 5 and 6;

b) on the language to be used in making and responding to requests in accordance with Article 11.

3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

4. Any agreement between the competent authorities of two or more Contracting Parties shall be effective only between those Contracting Parties.

5. The Contracting Parties may also agree on other forms of dispute resolution.

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.

4. *The paragraph would not be necessary.*

Article 14

Depositary's functions

The article would be unnecessary

1. The depositary shall notify all Contracting Parties of:

a. the deposit of any instrument of ratification, acceptance or approval of this Agreement;

b. any date of entry into force of this Agreement in accordance with the provisions of Article 15;

c. any notification of termination of this Agreement;

d. any other act or notification relating

to this Agreement.

2. At the request of one or more of the competent authorities of the Contracting Parties, the depositary may convene a meeting of the competent authorities or their representatives, to discuss significant matters related to interpretation or implementation of the Agreement.

Article 15

Entry into Force

1. This Agreement is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be submitted to the depositary of this Agreement.

2. Each Contracting Party shall specify in its instrument of ratification, acceptance or approval vis-à-vis which other party it wishes to be bound by this Agreement. The Agreement shall enter into force only between Contracting Parties that specify each other in their respective instruments of ratification, acceptance or approval.

3. This Agreement shall enter into force on 1 January 2004 with respect to exchange of information for criminal tax matters. The Agreement shall enter into force on 1 January 2006 with respect to all other matters covered in Article 1.

For each party depositing an instrument after such entry into force, the Agreement shall enter into force on the 30th day following the deposit of both instruments.

4. Unless an earlier date is agreed by the Contracting Parties, the provisions of this Agreement shall have effect

1. This Agreement is subject to ratification, acceptance or approval by the Contracting Parties, in accordance with their respective laws. Instruments of ratification, acceptance or approval shall be exchanged as soon as possible.

2. This Agreement shall enter into force on 1 January 2004 with respect to exchange of information for criminal tax matters. The Agreement shall enter into force on 1 January 2006 with respect to all other matters covered in Article 1.

3. The provisions of this Agreement shall have effect:

- with respect to criminal tax matters for taxable

- with respect to criminal tax matters for taxable periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004;
- with respect to all other matters described in Article 1 for all taxable periods beginning on or after January 1 2006 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2006.

In cases addressed in the third sentence of paragraph 3, the Agreement shall take effect for all taxable periods beginning on or after the sixtieth day following entry into force, or where there is no taxable period for all charges to tax arising on or after the sixtieth day following entry into force.

- periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004;
- with respect to all other matters described in Article 1 for all taxable periods beginning on or after January 1 2006 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2006.

Article 16

Termination

1. Any Contracting Party may terminate this Agreement vis-à-vis any other Contracting Party by serving a notice of termination either through diplomatic channels or by letter to the competent authority of the other Contracting Party. A copy shall be provided to the depositary of the Agreement.

2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the depositary.

3. Any Contracting Party that terminates the Agreement shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

Termination

1. Either Contracting Party may terminate the Agreement by serving a notice of termination either through diplomatic channels or by letter to the competent authority of the other Contracting Party.

2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party.

3. A Contracting Party that terminates the Agreement shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof, the undersigned, being duly authorised thereto, have signed the Agreement.

**EoI Article in
the OECD Model Tax Convention on Income and on Capital
(2004 version)**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Inland Revenue (Amendment) Bill 2013 (“the Bill”)**The Administration’s Responses to Written Submissions from Deputations**

(Updated version as at 5 June 2013)

Comments / Issues Raised	Organizations / Persons	The Administration’s Responses
<i>A. General Matters</i>		
1. The Government’s move of putting in place a legal framework for Hong Kong to enter into standalone tax information exchange agreements (“TIEAs”) is supported.	Association of Chartered Certified Accountants Hong Kong Capital Markets Tax Committee of Asia German Chamber of Commerce, Hong Kong Hong Kong Securities Association	<ul style="list-style-type: none">• Noted.

Comments / Issues Raised	Organizations / Persons	The Administration's Responses
	<p>Hong Kong Trustees' Association</p> <p>Hong Kong Investment Funds Association</p> <p>KPMG</p> <p>The American Chamber of Commerce in Hong Kong</p> <p>The Taxation Institute of Hong Kong</p>	
<p>2. The Bill should be passed as soon as possible.</p>	<p>The American Chamber of Commerce in Hong Kong</p> <p>Hong Kong Investment Funds Association</p>	<ul style="list-style-type: none"> • Agreed.

Comments / Issues Raised	Organizations / Persons	The Administration's Responses
	The Hong Kong Association of Banks	
3. Hong Kong should proceed to work on a comprehensive legal framework for TIEAs provided that there is adequate statutory protection to protect taxpayers' confidentiality and the constitutional rights of Hong Kong residents.	Law Society of Hong Kong	<ul style="list-style-type: none"> Noted. As we work to put in place a legal framework to allow Hong Kong to enter into TIEAs, we are mindful of the need to continue to uphold the existing highly prudent safeguards to protect taxpayers' privacy and confidentiality of information exchanged under both comprehensive agreements for avoidance of double taxation ("CDTAs") and TIEAs. Same as the current approach for CDTAs, we will strive to include the safeguards in the texts of the future TIEAs, which will be implemented as subsidiary legislation domestically subject to negative vetting by the Legislative Council ("LegCo"). The current Inland Revenue (Disclosure of Information) Rules (Cap. 112BI) ("the Disclosure Rules"), which provides for a notification and review system in handling requests for exchange of information ("EoI") and related appeals in the context of CDTAs, has been functioning well. Against this background, we propose extending the same mechanism to both CDTAs and TIEAs signed in future.

Comments / Issues Raised	Organizations / Persons	The Administration's Responses
<p>4. Hong Kong cannot afford to be labelled by the international community as uncooperative in terms of EoI. However, if Hong Kong is to conclude TIEAs which do not provide for double taxation relief, there may be a higher incidence of double taxation on Hong Kong companies.</p>	<p>Federation of Hong Kong Industries</p>	<ul style="list-style-type: none"> Given the benefits of CDTAs, it will remain our future policy priority to seek to conclude CDTAs with our trading and investment partners.
<p>5. Hong Kong should not take forward the proposals to introduce a legal framework for TIEAs and to enhance the existing EoI arrangement under CDTAs. If Hong Kong takes an aggressive approach with respect to EoI, Hong Kong's attractiveness to international investors would be undermined and Hong Kong enterprises' compliance costs would increase. The Government should instead step up efforts to expand</p>	<p>The Chinese Manufacturers' Association of Hong Kong</p>	<ul style="list-style-type: none"> The introduction of the TIEA framework is essential to Hong Kong's international reputation and competitiveness. As advised by the Global Forum on Transparency and Exchange of Information for Tax Purposes ("the Global Forum"), whether Hong Kong could pass the Phase 2 peer review will largely hinge on the availability of a legal framework for TIEAs. Failing the Phase 2 peer review, Hong Kong may run the risk of being labeled as an uncooperative jurisdiction, which is highly undesirable for Hong Kong's international reputation and may in turn undermine our position and competitiveness as an international business and financial centre.

Comments / Issues Raised	Organizations / Persons	The Administration's Responses
Hong Kong's network of CDTAs and ride on CDTA as a vehicle for EoI.		<ul style="list-style-type: none"> As for providing flexibility in the coverage of tax types and modifying in the light of operational requirements the limitation on disclosure for EoI under the CDTA framework, we aim to meet our CDTA partners' practical requirements, thereby standing a better chance of persuading the key jurisdictions to commence CDTA negotiations with Hong Kong.
6. It is unnecessary for the Government to release information of Hong Kong people to another jurisdiction with a view to eliminating double taxation. Disclosure of information would become a disincentive to investors and undermine Hong Kong's competitiveness. In any event, there is no obligation for Hong Kong, being part of China rather than a sovereign state, to disclose Hong Kong people's information.	Mr David Lai	<ul style="list-style-type: none"> It is well-recognised that CDTAs provide enhanced certainty and stability in respect of tax liabilities arising from cross-border trade and investment. As a business facilitation initiative, the Government has been committed to establishing a network of CDTAs with Hong Kong's major trading and investment partners. Hong Kong, as a responsible member of the international community, is also committed to enhancing tax transparency and preventing tax evasion. We have therefore incorporated in all the CDTAs that Hong Kong has signed an article on EoI that is on par with the prevailing international standard as far as practicable. Under the EoI article, Hong Kong as a party to the relevant CDTA has the obligation to carry out information exchange upon request by the CDTA partner.

Comments / Issues Raised	Organizations / Persons	The Administration's Responses
<i>B. Policies/Strategies for Pursuing CDTAs or TIEAs</i>		
1. The Government has been very proactive in recent years in pursuing expansion of Hong Kong's network of CDTAs with significant trading partners.	The American Chamber of Commerce in Hong Kong German Chamber of Commerce, Hong Kong	<ul style="list-style-type: none"> • Agreed.
2. The Government's practical approach to continue to prioritise CDTAs over TIEAs and to seek to persuade other jurisdictions to enter into the former rather than the latter is supported.	The Hong Kong Association of Banks	<ul style="list-style-type: none"> • Noted.
3. The Government should uphold its policy of giving priority to negotiation of CDTAs rather than TIEAs in future. Where there is a jurisdiction insisting on a TIEA with Hong Kong, the jurisdiction	International Chamber of Commerce - Hong Kong, China The Taxation Institute of Hong Kong	<ul style="list-style-type: none"> • Given the benefits of CDTAs, it will remain our future policy priority to seek to conclude CDTAs with our trading and investment partners. Nonetheless, we reckon the international standard that preference for CDTA over TIEA cannot be a reason for refusing to enter into an EoI agreement. Hence, while we will make our utmost efforts

Comments / Issues Raised	Organizations / Persons	The Administration's Responses
<p>concerned should provide clear explanation for not entering into a CDTA. Even if Hong Kong has signed a TIEA with a particular jurisdiction, the Government should continue its efforts in persuading that jurisdiction to enter into a CDTA with Hong Kong.</p>		<p>to persuade our trading and investment partners to pursue CDTAs with Hong Kong, we could not preclude the possibility of entering into TIEAs with some jurisdictions.</p>
<p>4. Hong Kong should retain the right to choose whether it enters into a CDTA or a TIEA with a particular jurisdiction. There may be some benefits to conclude TIEAs with jurisdictions commonly used to incorporate investment vehicles, e.g. Cayman Islands and British Virgin Islands.</p>	<p>KPMG</p>	<ul style="list-style-type: none"> The prevailing international standard is that preference for CDTA over TIEA cannot be a reason for refusing to enter into an EoI agreement. Hence, while we will make our utmost efforts to persuade our trading and investment partners to pursue CDTAs with Hong Kong, we could not preclude the possibility of entering into TIEAs with some jurisdictions. Suggested TIEA partners for Hong Kong noted.

Comments / Issues Raised	Organizations / Persons	The Administration's Responses
<p>5. The EoI arrangement under CDTAs and TIEAs need not be the same. The EoI arrangement under CDTAs could be made more attractive.</p>	<p>Hong Kong Institute of Certified Public Accountants</p> <p>International Chamber of Commerce - Hong Kong, China</p>	<ul style="list-style-type: none"> The EoI arrangement under TIEAs should be on par with that under CDTAs. Otherwise, Hong Kong would likely be questioned on its sincerity in adopting the prevailing international EoI standard.
<p>6. Once there is in place a legal framework for TIEAs, the prospect of entering into CDTAs with other jurisdictions would be compromised.</p>	<p>The Chinese Manufacturers' Association of Hong Kong</p> <p>Hong Kong Institute of Certified Public Accountants</p>	<ul style="list-style-type: none"> Given the benefits of CDTAs, it will remain our future policy priority to seek to conclude CDTAs with our trading and investment partners. Nonetheless, we reckon the international standard that preference for CDTA over TIEA cannot be a reason for refusing to enter into an EoI agreement. Hence, while we will make our utmost efforts to persuade our trading and investment partners to pursue CDTAs with Hong Kong, we could not preclude the possibility of entering into TIEAs with some jurisdictions.
<p>7. The Government should negotiate CDTAs where the partners have significant trading or investment relations with Hong Kong, practise</p>	<p>Law Society of Hong Kong</p>	<ul style="list-style-type: none"> Agreed.

Comments / Issues Raised	Organizations / Persons	The Administration's Responses
<p>residence-based income tax regimes and levy substantial withholding taxes. For jurisdictions which do not meet the aforesaid criteria, Hong Kong could consider negotiating TIEAs with them.</p>		
<p>C. Tax Types</p>		
<p>1. The draft wording “in relation to any tax imposed by the laws of Hong Kong or the territory concerned” under Clause 4 of the Bill is too vague which may result in unintended difficulties in treaty negotiation. It is necessary to be clear in the power given in the negotiation of a CDTA/TIEA. It is suggested to set out explicitly the types of tax that can be included in a CDTA/TIEA.</p>	<p>Association of Chartered Certified Accountants Hong Kong</p> <p>International Chamber of Commerce - Hong Kong, China</p>	<ul style="list-style-type: none"> • We need to enhance our EoI arrangement in respect of our current restrictive position in the area of tax types, so that we can have more flexibility in this respect to persuade the key jurisdictions to commence CDTA negotiations with Hong Kong, to meet the practical needs of our CDTA/TIEA partners and to ensure that our EoI arrangement is on par with the international standard. The relevant provision is an enabling provision which reflects the relevant Article in the Model Tax Convention of the Organisation for Economic Cooperation and Development (“OECD”). We will in practice adopt a positive listing approach to set out the tax types to be covered in each CDTA/TIEA. The relevant CDTA/TIEA will be implemented as subsidiary

Comments / Issues Raised	Organizations / Persons	The Administration's Responses
		legislation domestically subject to negative vetting by LegCo.
<i>D. Limitation on Disclosure</i>		
1. It should be clearly stated that the information exchanged is not to be used for the purpose of imposing tax on any periods prior to the CDTA/TIEA is in effect.	Association of Chartered Certified Accountants Hong Kong	<ul style="list-style-type: none"> It is clearly stated in the Bill that the requested information should relate to the carrying out of the provisions of the relevant CDTA/TIEA or the administration or enforcement of the tax laws of the CDTA/TIEA partner concerning taxes imposed in periods after the CDTA/TIEA becomes effective.
2. The proposed enhancement to the existing EoI arrangement (as reflected in Clause 8 of the Bill) violates privacy of personal information related to income or finances.	Mr David Lai	<ul style="list-style-type: none"> As we work to enhance the EoI arrangement under CDTAs, we will continue to uphold the existing highly prudent safeguards to protect taxpayers' privacy and confidentiality of information exchanged. The Disclosure Rules, which provides for a notification and review system in handling requests for EoI and related appeals, will continue to be applicable.
3. It is proposed that a criterion higher than "foreseeably relevant" be set for	The Society of Chinese Accountants and	<ul style="list-style-type: none"> It is the international standard to exchange information which is "foreseeably relevant". Exchanging information

Comments / Issues Raised	Organizations / Persons	The Administration's Responses
requests for documents and/or information before TIEA comes into operation so as to protect the interests of our taxpayers.	Auditors	which existed prior to the entry into force of the relevant CDTA/TIEA is subject to the overriding conditions that the standard of “foreseeable relevance” is met, and the information must relate to the carrying out of the provisions of the relevant CDTA/TIEA or the administration or enforcement of the tax laws of the CDTA/TIEA partner concerning taxes imposed in periods after the CDTA/TIEA becomes effective.
<i>E. Safeguards for Taxpayers</i>		
1. Necessary safeguards are already in place to protect taxpayers' privacy and confidentiality of information exchanged. The proposed extension of the existing Disclosure Rules to cover both CDTAs and TIEAs in future is agreeable.	Federation of Hong Kong Industries The Hong Kong Association of Banks Hong Kong Investment Funds Association Hong Kong Securities Association	<ul style="list-style-type: none"> • Noted.

Comments / Issues Raised	Organizations / Persons	The Administration's Responses
<p>2. The current approach that protections for taxpayers are enshrined in the Disclosure Rules and Inland Revenue Department's non-binding Departmental Interpretation and Practice Notes ("DIPN") is unsatisfactory. A number of key safeguards which are now featured in IRD's DIPN should be placed within the legislative framework, namely -</p> <p>(a) EoI should be conducted upon request only;</p> <p>(b) EoI should be restricted to taxes covered by CDTAs;</p> <p>(c) there should be no sharing of information exchanged with other law enforcement authorities and judicial authorities for non-tax related purposes;</p> <p>(d) there should be no disclosure of information to oversight authorities or third jurisdiction;</p>	<p>Federation of Hong Kong Industries</p> <p>Hong Kong Institute of Certified Public Accountants</p> <p>Hong Kong Trustees' Association</p> <p>Law Society of Hong Kong</p>	<ul style="list-style-type: none"> As we work to put in place a legal framework to allow Hong Kong to enter into TIEAs, we will continue to uphold the existing highly prudent safeguards to protect taxpayers' privacy and confidentiality of information exchanged under both CDTAs and TIEAs. To recapitulate, Hong Kong will continue to undertake to provide the following safeguards when pursuing CDTAs or TIEAs - <ul style="list-style-type: none"> (a) we will only exchange information upon receipt of requests and no information will be exchanged on an automatic or spontaneous basis; (b) information sought should be foreseeably relevant, i.e. no fishing expeditions; (c) information received by our CDTA/TIEA partners should be treated as confidential; (d) information will only be disclosed to the tax authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of and the determination of appeals in relation to taxes falling within the scope of EoI but not for release to their oversight bodies unless there are legitimate reasons given by the CDTA/TIEA partners;

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<p>(e) there should be no obligation to carry out measures at variance with domestic laws and practices; and</p> <p>(f) there should be no obligation to provide information not obtainable under domestic laws.</p>		<p>(e) information requested should not be disclosed to a third jurisdiction;</p> <p>(f) there is no obligation to supply information under certain circumstances, for example, where the information would disclose any trade, business, industrial, commercial or professional secret or trade process, or which is not obtainable under the laws or in the normal course of administration, including information that would be covered by legal professional privilege, etc.; and</p> <p>(g) we will not assist in conducting tax examinations abroad or collecting taxes for other jurisdictions.</p>
<p>3. Provisions should be introduced to allow taxpayers recourse to the courts / administrative appeals tribunal in the event of a dispute concerning any information to be exchanged.</p>	<p>Federation of Hong Kong Industries</p> <p>Hong Kong Institute of Certified Public Accountants</p> <p>Hong Kong Trustees' Association</p> <p>KPMG</p> <p>The Taxation Institute of Hong Kong</p>	<p>The above safeguards would be reflected in the texts of CDTAs/TIEAs (including their protocols), which would each be enacted as a piece of subsidiary legislation subject to LegCo's negative vetting.</p> <ul style="list-style-type: none"> Under the current regime, the safeguards on taxpayers' rights and confidentiality of information exchanged are provided in the texts of individual CDTAs (including their protocols). After signature thereof, the CDTAs are

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<p>4. Individuals should be able to challenge information disclosures not merely on the basis that the information is factually incorrect, but also on the basis that it is legally privileged, would disclose a trade, business, industrial, commercial or professional secret or trade process, on the basis that it is not foreseeably relevant, on the basis that the EoI breaches the safeguard stated in DIPN, or IRD releasing information for inappropriate reasons. There should be a right to appeal to the courts in order to satisfy the test of Article 35 of the Basic Law.</p>	<p>Law Society of Hong Kong</p>	<p>implemented as subsidiary legislation domestically, which would afford legal protection to taxpayers of their rights and confidentiality of information exchanged. At the same time, the Disclosure Rules put in place domestic statutory safeguards in addition to those provided in individual CDTAs by way of providing for a notification and review system and setting out the particulars to be contained in a disclosure request. The Disclosure Rules provide that a disclosure request may only be approved if the Commissioner of Inland Revenue or an officer not below the rank of chief assessor authorised by him is personally satisfied that the disclosure request complies with the arrangements, conditions and safeguards as set out under the relevant CDTA. The Disclosure Rules, providing the statutory safeguards, are legally binding on IRD. The DIPN only serves to enable the public to better understand the safeguards provided in the CDTAs and how the Disclosure Rules operate.</p> <ul style="list-style-type: none"> • A person may challenge the validity of the decision in respect of a disclosure request made under the Disclosure Rules, including approval of a disclosure request,

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		<p>permission to waive particulars in the Schedule to the Disclosure Rules, and partial approval or refusal for amendments to information to be disclosed, by way of an application to court for a judicial review.</p> <ul style="list-style-type: none"> • Besides, OECD requires that a jurisdiction's internal procedures cannot unduly delay effective EoI. We believe that our existing approach has taken into account various considerations and struck a balance between the protection of taxpayers' rights and the facilitation of effective EoI. • As for the scope of EoI in terms of tax types, it is one of our current legislative proposals to enhance the existing arrangements by providing flexibility in the coverage of tax types for the purpose of EoI (i.e. not confined to taxes covered by the CDTAs). In doing so, we could stand a better chance of persuading jurisdictions to commence CDTA negotiations with Hong Kong.
5. The legislative framework for TIEAs should contain restriction on disclosure of items subject to legal	Law Society of Hong Kong	<ul style="list-style-type: none"> • All along, the protection of legal professional privilege has been afforded under section 51(4A) of the Inland Revenue Ordinance (Cap. 112) ("IRO"), which states that "nothing

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professional privilege.		in subsection (4) shall require disclosure by counsel or solicitor of any privileged information or communication given or made to him in that capacity". Accordingly, we consider that it is not necessary to repeat the safeguard in the legal framework for TIEAs.
6. It is not clear whether there will be any restrictions on the provision of information to a requesting party where the information relates to a third jurisdiction.	Hong Kong Institute of Certified Public Accountants	<ul style="list-style-type: none"> • EoI is not limited to information relating to the affairs of residents of the contracting parties. Often, the tax administration of one of the contracting parties will have an interest in receiving information on activities carried on in the other contracting party by a particular person resident in a third jurisdiction because the tax liability of the latter as a non-resident taxpayer is at issue. There are also circumstances under which a person of a third jurisdiction is interposed in the chain of information flow. For these reasons, the standard EoI Article invariably stipulates that EoI is not restricted by Article 1 (which defines the persons covered by the CDTA).
7. The Government should clarify its policy position in relation to allowing information exchanged to be passed	Hong Kong Institute of Certified Public Accountants	<ul style="list-style-type: none"> • The OECD EoI Article allows the use of tax information exchanged for other purposes provided that such use is allowed under the laws of both contracting parties and the

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<p>to third parties in other jurisdictions. It is not clear how the restriction stated by the Government in this regard, i.e. allowing the use of tax information exchanged for non-tax purposes, when such information may be used for such other purposes under the laws of both sides, will be reflected in the context of a specific CDTA or TIEA and how it will be monitored or enforced. It is also uncertain whether information used for non-tax purposes by CDTA/TIEA partners could be passed on to a third jurisdiction.</p>		<p>competent authority of the supplying party authorizes such use. OECD allows the sharing of tax information by the tax authorities of the receiving party with other law enforcement agencies and judicial authorities in that jurisdiction on certain high priority matters (e.g. to combat money laundering, corruption and terrorism financing). In this regard, we would meet the requirement by allowing our present and future CDTA/TIEA partners to use the information received from Hong Kong for other purposes when such information may be used for such other purposes as specified under the laws of both sides and the competent authority of Hong Kong (i.e. IRD) authorizes such use. This has taken into account the fact that our domestic legislation (i.e. the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), the Organized and Serious Crimes Ordinance (Cap. 455) and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)) require any persons with knowledge or suspicion, including IRD officers, to disclose confidential information to authorized officers of law enforcement agencies designated under the relevant legislation to enable them to perform their duties thereunder. It should be noted that such information</p>

Comments / Issues Raised	Organizations / Persons	The Administration's Responses
		exchanged cannot be passed to any third jurisdiction, which is a safeguard stated in the CDTA/TIEA.
8. It is proposed that relevant safeguards be included in the main legislation.	The Society of Chinese Accountants and Auditors	<ul style="list-style-type: none"> Relevant safeguards would be incorporated into the texts of CDTAs/TIEAs, which would each be enacted as a piece of subsidiary legislation subject to LegCo's negative vetting. There are also safeguards in the Disclosure Rules which are part of local subsidiary legislation. A provision providing for the safeguards will have the force of law no matter whether it is enacted in the form of primary legislation or in the form of subsidiary legislation. Hence, we consider that it is not necessary to set out the safeguards in the primary legislation.
<i>F. Operational Matters</i>		
1. The Government should provide more guidance as to what is meant by information in a person's "control" as amended by Clauses 5 and 7 of the Bill.	The Taxation Institute of Hong Kong	<ul style="list-style-type: none"> It is necessary to amend sections 51 and 52 of the IRO to include the term "control" so as to align with the wording of the OECD TIEA model text. Clauses 5 and 7 of the Bill seek to amend sections 51 and 52 of the IRO respectively to provide that the power under those sections to obtain information is exercisable not only in respect of

Comments / Issues Raised	Organizations / Persons	The Administration's Responses
2. It is desirable that information to be exchanged is confined to that physically located in Hong Kong in order to ensure the practicality of implementation of the legislation.	Association of Chartered Certified Accountants Hong Kong	information possessed by a person, but also in respect of information in a person's control.
3. When the term "or control" is added under section 51 of the IRO, it is not clear whether a person who legally has control of some documents which exist in other countries need to provide the information if the law of the other countries forbids the provision of such documents.	The Society of Chinese Accountants and Auditors	<ul style="list-style-type: none"> Similar to the existing requirement for information in possession by a person, a person is required under the proposed section 51(4) to furnish information that is in his control notwithstanding that such information may be in other jurisdictions. The scenario under which the provision of such information is forbidden by the law of the relevant jurisdiction may be accepted as "reasonable excuse" under section 51(4B)(a) of the IRO.
G Administrative Matters		
1. IRD should have adequate resources to handle requests under TIEAs.	Law Society of Hong Kong	<ul style="list-style-type: none"> At present, IRD's Tax Treaty Section is responsible for CDTA negotiation and implementation. We will keep in view the need for additional resources for IRD after the TIEA framework is in place.
2. There is no need for IRD to seek new/additional resources so as to	International Chamber of Commerce - Hong	

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accord favoured treatment to TIEAs.	Kong, China	
3. The requesting party to EoI should be responsible for the cost of providing assistance.	Law Society of Hong Kong The Society of Chinese Accountants and Auditors	<ul style="list-style-type: none"> We will keep in view the need for charging after the TIEA framework is in place, by having reference to the practice of other jurisdictions in implementing TIEAs.
4. There should be regular review of agreements that Hong Kong has entered into.	International Chamber of Commerce - Hong Kong, China	<ul style="list-style-type: none"> Similar to the current approach, after the entry into force of CDTAs/TIEAs, IRD will keep under constant review the relevant agreements and stand ready to raise with the competent authorities of the CDTA/TIEA partners any particular issue arising from the implementation of the agreements.

Financial Services and the Treasury Bureau
5 June 2013