

立法會
Legislative Council

LC Paper No. CB(1)1779/12-13
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/12/2

Bills Committee on Inland Revenue (Amendment) Bill 2013

**Minutes of the fourth meeting held on
Monday, 3 June 2013, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

- Members present** : Hon Kenneth LEUNG (Chairman)
Hon CHAN Kin-por, BBS, JP (Deputy Chairman)
Hon Starry LEE Wai-king, JP
Hon Alan LEONG Kah-kit, SC
Hon YIU Si-wing
Hon Charles Peter MOK
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
- Members absent** : Hon James TO Kun-sun
Hon SIN Chung-kai, SBS, JP
- Public officers attending** : **Agendas item I and II**

Ms Mable CHAN, 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)

Miss Crystal YIP
Assistant Secretary for Financial Services and the
Treasury (Treasury) (Revenue) 1

Mr Brian CHIU Kwok-kit, JP
Deputy Commissioner of Inland Revenue
(Technical)

Ms Mabel MEI
Chief Assessor (Tax Treaty)
Inland Revenue Department

Mrs Paulina WONG
Senior Assessor (Tax Treaty) 2
Inland Revenue Department

Mr Michael LAM
Senior Assistant Law Draftsman
Department of Justice

Mr Peter SZE
Senior Government Counsel
Department of Justice

**Attendance by
Invitation**

: Agenda item I

Ms Janice FUNG Rui-xian
Research Assistant
The Lion Rock Institute

Mr Stephen KWOK
President
Hong Kong Small and Medium Enterprises

Mr David O'REAR
Chief Economist
Hong Kong General Chamber of Commerce

Ms LAU Ka-shi
Chairman
Hong Kong Trustees' Association

Mr Philip HUNG
President
The Taxation Institute of Hong Kong

Mrs Sally WONG
Chief Executive Officer
Hong Kong Investment Funds Association

Mr David WEISNER
Chairman of Taxation Committee
The American Chamber of Commerce in Hong Kong

Ms Christine TANG
Representative of Taxation Committee
The Hong Kong Association of Banks

Clerk in attendance : Ms Sharon CHUNG
Chief Council Secretary (1)6

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Mr Fred PANG
Council Secretary (1)6

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I Meeting with deputations and the Administration

Submissions from organizations/individuals not attending the meeting

(LC Paper No. CB(1)1004/12-13(01) -- Submission from The Law Society of Hong Kong dated 2 May 2013

LC Paper No. CB(1)1146/12-13(04) -- Submission from Mr David LAI, Wan Chai District Council member dated 13 May 2013

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- LC Paper No. CB(1)1146/12-13(06) -- Submission from Association of Chartered Certified Accountants Hong Kong dated 24 May 2013
- LC Paper No. CB(1)1146/12-13(07) -- Submission from Capital Markets Tax Committee of Asia dated 24 May 2013
- LC Paper No. CB(1)1146/12-13(08) -- Submission from The Chinese Manufacturers' Association of Hong Kong dated 24 May 2013
- LC Paper No. CB(1)1146/12-13(09) -- Submission from German Industry and Commerce Ltd./German Chamber of Commerce, Hong Kong dated 24 May 2013
- LC Paper No. CB(1)1146/12-13(11) -- Submission from Hong Kong Securities Association dated 24 May 2013
- LC Paper No. CB(1)1146/12-13(12) -- Submission from KPMG Tax Limited dated 24 May 2013
- LC Paper No. CB(1)1185/12-13(01) -- Submission from Hong Kong Institute of Certified Public Accountants dated 29 May 2013
- LC Paper No. CB(1)1185/12-13(02) -- Submission from International Chamber of Commerce -- Hong Kong, China dated 29 May 2013
- LC Paper No. CB(1)1185/12-13(03) -- Submission from Federation of Hong Kong Industries dated 31 May 2013)

Declaration of interest

The Chairman declared that his work involved the provision of tax advisory services. Ms Starry LEE declared that she was an accountant in a firm which provided tax advisory services but she was not involved in such services.

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Welcoming remarks by the Chairman

2. The Chairman welcomed the attendance of the deputations. He reminded them that when addressing the Bills Committee, they would not be protected by the privileges and immunities under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and their written submissions were also not protected by the said Ordinance.

Presentation by deputations

3. The Bills Committee received views on the Inland Revenue (Amendment) Bill 2013 ("the Bill") from the following deputations:

The Lion Rock Institute

Hong Kong Small & Medium Enterprises Association

Hong Kong General Chamber of Commerce

Hong Kong Trustees' Association
(LC Paper No. CB(1)1146/12-13(01) (English version only))

The Taxation Institute of Hong Kong
(LC Paper No. CB(1)1146/12-13(02) (English version only))

Hong Kong Investment Funds Association
(LC Paper No. CB(1)1146/12-13(03) (English version only))

The American Chamber of Commerce in Hong Kong
(LC Paper No. CB(1)1146/12-13(05) (English version only))

The Hong Kong Association of Banks
(LC Paper No. CB(1)1146/12-13(10) (English version only))

4. Members noted the written response of the Administration, tabled at the meeting, to the written submissions received by the Bills Committee.

(Post-meeting note: The written response was circulated to members vide LC Paper No. CB(1)1223/12-13(01) on 4 June 2013.)

(Index of proceedings attached at the **Appendix**)

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II Meeting with the Administration

- (LC Paper No. CB(3)483/12-13 -- The Bill
LC Paper No. CB(1)988/12-13(01) -- Marked-up copy of the Bill prepared by the Legal Service Division
(*Restricted to members*))

Other relevant papers

- (File Ref.: TsyB R 183/700-6/4/0 (C) -- Legislative Council Brief

LC Paper No. LS41/12-13 -- Legal Service Division Report

LC Paper No. CB(1)988/12-13(02) -- Letter from Assistant Legal Adviser to the Administration dated 19 April 2013

LC Paper No. CB(1)988/12-13(03) -- Administration's response to the letter from Assistant Legal Adviser as set out in LC Paper No. CB(1)988/12-13(02)

LC Paper No. CB(1)988/12-13(04) -- Paper on Inland Revenue (Amendment) Bill 2013 prepared by the Legislative Council Secretariat (Background brief))

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

Follow-up actions

- Clerk 6. The Clerk was requested to send the Administration's response (LC Paper No. CB(1)1223/12-13(01)) to the written submissions received by the Bills Committee to the Law Society of Hong Kong ("LSHK") and asked whether LSHK had any further comments.

(*Post-meeting note: The Clerk sent out the Administration's written response to LSHK on 3 June 2013. LSHK's further submission on the Bill was circulated to members vide LC Paper No. CB(1)1243/12-13(03) on 6 June 2013.*)

- Admin 7. The Administration was requested to provide written information to

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address members' concerns as follows:

Information covered by legal professional privilege

- (a) The Administration had stressed that under the future tax information exchange agreements ("TIEAs"), there was no obligation for the contracting parties to supply information which would be covered by legal professional privilege. According to the Administration, this and other safeguards would be included in the texts of future TIEAs, which would be implemented as subsidiary legislation subject to negative vetting by the Legislative Council. The Bills Committee requested that a model TIEA promulgated by the Organization for Economic Cooperation and Development be provided for members' reference.

Clause 6 -- Section 51B amended (power to issue search warrant)

- (b) The Administration had emphasized that the proposed amendment to subsection (1AA), i.e. repealing "tax concerned" and substituting "tax concerned or any other sums or values in respect of which a person is chargeable to the tax concerned", would only apply to provision of tax information under comprehensive avoidance of double taxation agreements (and the future TIEAs) and have no effect on the requirement for taxpayers to retain business and rent records under sections 51C and 51D of the Inland Revenue Ordinance (Cap. 112) ("IRO"). Members noted that subsection (1) of section 51B, which empowered a magistrate to authorize a search by warrant, also applied to any tax of a territory outside Hong Kong under the circumstances prescribed in subsection (1AA). Members were concerned that if under such a search, a person was found to possess books, records, accounts or documents which might be reasonably required for any tax assessment, the person might commit an offence under IRO on the ground of giving false representation. They were concerned that the proposed amendment might impose new liabilities on taxpayers over retention and provision of business and rent records. The Administration was requested to provide information about the justifications and purpose of the proposed amendment, and whether the amendment would lead to possible criminal offences.

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Clause 8 -- Section 4 amended (information that may be disclosed in response to disclosure request)

- (c) It was proposed that section 4 of the Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. leg. BI) be amended 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: (i) 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 (ii) 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". The Administration was requested to provide the rationale for the proposed amendments and to elaborate on the differentiation between (i) and (ii).

(Post-meeting note: The Administration's supplementary information was circulated to members vide LC Paper No. CB(1)1243/12-13(02) on 6 June 2013.)

III Any other business

8. The Chairman said that subject to the receipt of further submissions from concerned organizations including LSHK, the Bills Committee would meet again at 9:00 am, 7 June 2013, to be confirmed on 6 June 2013.

(Post-meeting note: Members were informed vide LC Paper No. CB(1)1243/12-13 on 6 June 2013 that the next meeting would be held on 7 June 2013.)

9. There being no other business, the meeting ended at 5:02 pm.

Bills Committee on Inland Revenue (Amendment) Bill 2013

**Proceedings of the fourth meeting
on Monday, 3 June 2013, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000349 - 000751	Chairman Ms Starry LEE	Chairman's opening remarks Declaration of interest by the Chairman and Ms Starry LEE	
<u>Meeting with Deputations and the Administration</u>			
000752 - 000917	Chairman	Welcoming remarks	
000918 - 001142	The Lion Rock Institute	Presentation of views that -- (a) The Government should not share personal information of any person living in Hong Kong with any foreign country beyond what was required in the Comprehensive Double Taxation Agreements ("CDTAs"). (b) The purpose of "exchange of information" ("EoI") was designed for foreign bureaucracies to find and tax more, so that governments and their politicians might possess more and therefore justify their increasing imprudent government spending.	
001143 - 001321	Hong Kong Small & Medium Enterprises Association	Presentation of views that -- (a) It was important for Hong Kong to meet international standards in respect of EoI. (b) In entering into standalone tax information exchange agreements	

Time marker	Speaker	Subject(s)	Action required
		("TIEAs"), the Government should impose safeguards on taxpayers' privacy and confidentiality of information to be exchanged.	
001322 - 001605	Hong Kong General Chamber of Commerce	<p>Presentation of views that --</p> <p>(a) Between CDTAs and TIEAs, the Government should opt for CDTAs, which would bring benefits to Hong Kong, as the default negotiating position with trading and investment partners.</p> <p>(b) If Hong Kong would enter into a TIEA, the contracting party must be a jurisdiction that by its law provided no less legal protection of confidential information and personal data than that of Hong Kong.</p> <p>(c) Legislative amendments should be introduced so that other than situations relating to factually incorrect information, taxpayers who were subjects of EoI requests had the right to raise objections and/or pursue their rights in the courts if the information sought was legally privileged, involved trade, business or professional secrets or trade process, or was not foreseeably relevant.</p>	
001606 - 001742	Hong Kong Trustees' Association	<p>Presentation of views that --</p> <p>(a) Having regard to international economic developments, it was no longer credible for Hong Kong to resist the introduction of a legal framework for TIEAs.</p> <p>(b) The granting of a TIEA and the EoI pursuant to a TIEA must be subject to appropriate safeguards to protect legitimate taxpayer confidentiality.</p>	

Time marker	Speaker	Subject(s)	Action required
001743 - 002125	The Taxation Institute of Hong Kong	<p>Presentation of views that --</p> <p>(a) It was pivotal that the Government upheld its policy of giving greater priority to negotiation of a CDTA than a TIEA in future.</p> <p>(b) There should be a mechanism in place to allow taxpayers recourse to the court should they wish to challenge the information disclosure or any refusal by the Commissioner of Inland Revenue or the Financial Secretary to amend any information to be disclosed.</p> <p>(c) There should be more guidance as to what was meant by information in a person's "control" in clauses 5 and 7 of the Bill.</p>	
002126 - 002405	Hong Kong Investment Funds Association	<p>Presentation of views that --</p> <p>(a) The Government should enhance the EoI arrangements under the framework of CDTAs and put in place a legal framework to enter into standalone TIEAs with other jurisdictions.</p> <p>(b) The Government had introduced the necessary safeguards to protect taxpayers' privacy and the confidentiality of information exchanged.</p>	
002406 - 002721	The American Chamber of Commerce in Hong Kong	<p>Presentation of views that --</p> <p>(a) The Bill was a critical step to enable Hong Kong to demonstrate its willingness to move toward the new international norms regarding EoI. Failure to adopt the Bill would leave Hong Kong behind international</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>norms in this respect and make Hong Kong a target for international attention and criticism.</p> <p>(b) The Bill should be supported and the Government had a realistic assessment of the various policy considerations.</p>	
002722 - 003006	The Hong Kong Association of Banks	<p>Presentation of views that --</p> <p>(a) There had been increasing demand internationally for transparency of tax information. Ability and willingness to exchange tax information had become the norm. Countries which were labelled as uncooperative were named and shamed.</p> <p>(b) In a report released by the Organization for Economic Cooperation and Development ("OECD") in 2000, OECD explicitly stated that its members would impose sanctions against jurisdictions which refused to cooperate. These sanctions included imposing withholding taxes on certain payments; imposing transactional charges or levies on transactions; disallowing deductions, exemptions, credits and other allowances related to transactions, etc.</p>	
003007-003104	Chairman Mr CHAN Kin-por	<p>The Chairman invited questions from members.</p> <p>Mr CHAN Kin-por requested that the Administration should respond to the views of the Hong Kong General Chamber of Commerce about taking CDTAs as the default negotiation position and safeguarding taxpayers' privacy as well as information confidentiality.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's response that --</p> <p>(a) Given the benefits of CDTAs, it would remain the Administration's policy priority to seek to conclude CDTAs with trading and investment partners. However, the international standard was that preference for CDTA over TIEA could not be a reason for refusing to enter into an EoI agreement. Hence, while the Administration would make its utmost efforts to persuade trading and investment partners to pursue CDTAs with Hong Kong, it could not preclude the possibility of entering into TIEAs with some jurisdictions.</p> <p>(b) The Administration would continue to uphold the existing prudent safeguards to protect taxpayers' privacy and confidentiality of information exchanged under both CDTAs and TIEAs. The safeguards would be reflected in the texts of CDTAs/TIEAs, which would be enacted as a piece of subsidiary legislation subject to LegCo's negative vetting. At the same time, the Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. leg. BI) ("the Disclosure Rules") put in place domestic statutory safeguards in addition to those provided in individual CDTAs/TIEAs.</p>	
003105 – 004008	Chairman Administration	<p>The Chairman's enquiry about protection of information which involved commercial secrets or legal professional privilege</p> <p>The Administration's response that there was no obligation to supply such information under an EoI request</p>	

Time marker	Speaker	Subject(s)	Action required
004009-004151	Chairman	The Chairman thanked the deputations for presenting their views on the Bill to the Bills Committee.	
<u>Meeting with the Administration</u>			
004152 – 005225	Chairman	The Chairman suggested that members take some time to read the written response of the Administration (tabled at the meeting) (LC Paper No. CB(1)1223/12-13(01)) to the written submissions received by the Bills Committee.	
005226 – 010052	Chairman Administration	The Chairman's enquiries on the circumstances under which tax information exchanged might be used by the requesting jurisdiction for non-tax related purposes The Administration's response	
010053 – 010616	Mr YIU Si-wing Administration	Mr YIU Si-wing's enquiry about the action that the Administration could take in the event that a CDTA/TIEA partner made use of tax information exchanged for purposes other than those agreed or had passed it to third parties without the Inland Revenue Department's authorization The Administration's response	
010617-010908	Assistant Legal Adviser 3 (ALA3) Administration	ALA3's enquiry about the enabling provisions that permitted the use of tax information exchanged (under CDTAs/TIEAs) for non-tax related purposes The Administration's response	
010909 - 011245	ALA3 Administration Chairman	Enquiries of ALA3 and the Chairman about protection of information covered by legal professional privilege	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's response</p> <p>The Chairman requested that a model TIEA be provided to the Bills Committee for reference so that members would have better knowledge about the provisions under TIEA relevant to protection of legal professional privilege.</p>	<p>The Administration to take action as in para. 7(a) of the minutes</p>
011246 - 011642	- Break -		
011643 - 012800	Mr Alan LEONG Administration Chairman ALA3	<p>Mr Alan LEONG's enquiry on protection of information covered by legal professional privilege in the context of EoI under CDTAs/TIEAs</p> <p>The Administration's response</p> <p>Mr LEONG suggested that the Clerk send the Administration's written response to submissions to the Law Society of Hong Kong ("LSHK") and asked whether LSHK had further views on the Bill.</p> <p>Mr LEONG enquired whether, after the Bills Committee had finished clause-by-clause examination of the Bill, it could hold further meetings to scrutinize the Bill if it received further views on the Bill from concerned organizations.</p> <p>ALA3 advised that it was open to members of a Bills Committee to request the Chairman to convene a meeting after completion of the clause-by-clause examination, if necessary.</p> <p>The Chairman advised that, even if the Committee finished the clause-by-clause examination of the Bill at the meeting today, another meeting could be arranged on 7 June.</p>	<p>The Clerk to take action as in para. 6 of the minutes</p>
012801 - 013857	Mr Dennis KWOK Administration	Discussion on the impact of the decision of the Supreme Court of the United	

Time marker	Speaker	Subject(s)	Action required
	Chairman Mr Alan LEONG	<p>Kingdom in <i>R (on the application of Prudential plc and another) v Special Commissioner of Income Tax and another</i> [2013] on the scope of legal professional privilege. The decision held by a 5:2 majority that legal advice privilege should not be extended to communications in connection with advice given by professional people other than lawyers, even where that advice was legal advice which that professional person was qualified to give.</p> <p>Mr Alan LEONG's suggestion that the Bills Committee should await further views of LSHK on protection of legal professional privilege in the context of EoI under CDTAs/TIEAs</p>	
<u>Clause-by-clause examination of the Bill</u>			
013858 - 014138	Administration Chairman	<p><u>Clause 1 -- Short title</u></p> <p><u>Clause 2 -- Enactments amended</u></p> <p>The Administration's briefing on the above clauses</p> <p>The Chairman asked if the amendments proposed would create any new parts to the Inland Revenue Ordinance (Cap. 112) ("IRO").</p> <p>The Administration replied that the amendments would amend IRO and the Disclosure Rules. No new parts would be created.</p>	
014139 - 015154	Administration Chairman ALA3	<p><u>Clause 3 – Part 8 heading amended (double taxation relief)</u></p> <p><u>Clause 4 -- Section 49 amended (double taxation arrangements)</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's briefing on the above clauses</p> <p>The Chairman sought clarification on clause 4(1) (Chinese version).</p> <p>ALA3 advised that clause 4(1) was concerned with arrangements for double taxation relief as well as arrangements for EoI and that the Chinese version of clause 4(1) corresponded with the English text.</p> <p>The Chairman sought clarification on whether clause 4(3) would have any impact on the revenues of the Government from property tax. The Administration's reply in the negative.</p>	
015155 - 015722	Administration Mr YIU Si-wing Chairman	<p><u>Clause 5 -- Section 51 amended (returns and information to be furnished)</u></p> <p>The Administration's briefing on the clause</p> <p>Enquiries of Mr YIU Si-wing and the Chairman about the effect of adding "or control" after "possession" in sections 51(4)(a) and 51(4A)(i) of IRO</p> <p>The Administration's response</p>	
015723 - 021932	Administration Chairman Mr YIU Si-wing	<p><u>Clause 6 -- Section 51B amended (power to issue search warrant)</u></p> <p>The Administration's briefing on the clause</p> <p>The enquiry of the Chairman on the purpose of the clause (the proposed amendment to subsection (1AA), i.e. repealing "tax concerned" and substituting "tax concerned or any other sums or values in respect of which a person is chargeable to the tax concerned")</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The enquiry of Mr YIU Si-wing on the impact of the clause on taxpayers</p> <p>The Administration advised that the proposed amendment would only apply to provision of tax information under CDTAs (and the future TIEAs) and have no effect on the requirement for taxpayers to retain business and rent records under sections 51C and 51D of IRO.</p> <p>The Chairman noted that subsection (1) of section 51B, which empowered a magistrate to authorize a search by warrant, also applied to any tax of a territory outside Hong Kong under the circumstances prescribed in subsection (1AA). If under such a search, a person was found to possess books, records, accounts or documents which might be reasonably required for any tax assessment, the person might commit an offence under IRO on the ground of giving false representation. Members were concerned that the proposed amendment might impose new liabilities on taxpayers over retention and provision of business and rent records. The Administration was requested to provide information about the justifications and purpose of the proposed amendment, and whether the amendment would lead to possible criminal offences.</p>	<p>The Administration to take action as in para. 7(b) of the minutes</p>
021933 - 022943	Administration Chairman	<p><u>Clause 7 -- Section 52 amended (information to be furnished by officials and employers)</u></p> <p><u>Clause 8 -- Section 4 amended (information that may be disclosed in response to disclosure request)</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's briefing on the above clauses</p> <p>Discussion on clause 8</p> <p>Members noted that by virtue of clause 8, section 4 of the Disclosure Rules would be amended 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: (i) 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 (ii) 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. "</p> <p>The Chairman requested the Administration to provide written information about the rationale for the proposed amendments and to elaborate on the differentiation between (i) and (ii).</p>	<p>The Administration to take action as in para. 7(c) of the minutes</p>
022944 - 023101	Administration	<p><u>Clause 9 -- Schedule amended (particulars to be contained in disclosure request)</u></p> <p>The Administration's briefing on the clause</p>	
023102 - 023234	Chairman	<p>The Chairman's remarks that --</p> <p>(a) Technically speaking, the Bills Committee had completed clause-by-clause examination of the Bill.</p> <p>(b) If the Bills Committee received further views on the Bill, in particular</p>	

Time marker	Speaker	Subject(s)	Action required
		those on the protection of information covered by legal professional privilege, from LSHK or other concerned organizations, the Bills Committee would meet again at 9:00 am, 7 June 2013, to be confirmed on 6 June 2013.	

Council Business Division 1
Legislative Council Secretariat
11 September 2013