

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1168/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/9/14/2

**Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2015**

**Minutes of the first meeting**  
**held on Tuesday, 7 July 2015, at 9:00 am**  
**in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon Kenneth LEUNG (Chairman)  
Hon Starry LEE Wai-king, JP  
Hon Charles Peter MOK, JP  
Hon Dennis KWOK  
Hon Hon SIN Chung-kai, SBS, JP
- Member absent** : Hon Cyd HO Sau-lan, JP
- Public Officers attending** : **Agenda item II**  
Ms Mable CHAN, JP  
Deputy Secretary for Financial Services and the Treasury  
(Treasury)<sup>2</sup>  
Mr Gary POON  
Principal Assistant Secretary for Financial Services and the  
Treasury (Treasury) (Revenue)  
Mr TAM Tai-pang, JP  
Deputy Commissioner of Inland Revenue (Operations)  
Inland Revenue Department  
Mr Tony WONG  
Chief Assessor (Appeals)<sup>2</sup>  
Inland Revenue Department

Mr Michael LAM  
Senior Assistant Law Draftsman (I)1  
Department of Justice

Mr Peter SZE  
Senior Government Counsel  
Department of Justice

**Clerk in Attendance :** Ms Sharon CHUNG  
Chief Council Secretary (1)2

**Staff in attendance :** Miss Winnie LO  
Assistant Legal Adviser 7

Mr Raymond CHOW  
Senior Council Secretary (1)6

Miss Joey LAW  
Clerical Assistant (1)2

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Action

**I. Election of Chairman**

Mr Charles Peter MOK, the member who had the highest precedence in the Council among those present at the meeting, presided over the election of Chairman of the Bills Committee. He invited nominations for the chairmanship.

2. Mr SIN Chung-kai nominated Mr Kenneth LEUNG and the nomination was seconded by Mr Dennis KWOK. Mr LEUNG accepted the nomination. There being no other nomination, Mr LEUNG was elected Chairman of the Bills Committee. Members agreed that there was no need to elect a Deputy Chairman.

**II. Meeting with the Administration**

(LC Paper No. CB(3)756/14-15	-- The Bill
File Ref: TsyB R 183/700-6/3/0 (C)	-- Legislative Council Brief
LC Paper No. LS75/14-15	-- Legal Service Division Report
LC Paper No. CB(1)1066/14-15(01)	-- Marked-up copy of the Bill prepared by the Legal

Action

	Service	Division
	(Restricted to members)	
LC Paper No. CB(1)1066/14-15(02)	--	Paper on Inland Revenue (Amendment) (No. 3) Bill 2015 prepared by the Legislative Council Secretariat (background brief))

3. Mr Kenneth LEUNG declared that he was a member of the Board of Review (Inland Revenue Ordinance) ("BoR") between 1999 and 2008.

4. The Bills Committee deliberated (index of proceedings in the **Appendix**).

Follow-up actions

Admin 5. The Administration was requested to provide the following information --

- (a) the success rate, numbers of successful and unsuccessful cases of tax appeals to BoR per year over the past five years; and
- (b) which side, the taxpayers or the Commissioner of Inland Revenue, had a higher success rate in tax appeals during each of the past two years.

Invitation of views

6. Members agreed that a notice should be posted on the website of the Legislative Council ("LegCo") and the Clerk should write to relevant organizations to seek views on the Inland Revenue (Amendment) (No. 3) Bill 2015 ("the Bill"). Members also decided that the Bills Committee would consider inviting the deputations to the next meeting should they request to present their views to the Bills Committee at a meeting.

*(Post-meeting note: The notice was posted on the LegCo website on 17 July 2015 and the letters were sent to 18 District Councils and relevant organizations on the same day.)*

Action

Date for the next meeting

7. The Chairman suggested that the next meeting be held before mid-September and that the Clerk should fix a date having regard to members' availability.

*(Post-meeting note: With the concurrence of the Chairman, the second meeting has been scheduled for 11 September 2015, at 2:30 pm. The notice of meeting was issued to members vide LC Paper No. CB(1)1122/14-15 on 17 July 2015.)*

**III. Any other business**

8. There being no other business, the meeting ended at 9:36 am.

Council Business Division 1  
Legislative Council Secretariat  
5 August 2015

**Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2015**

**Proceedings of the first meeting  
on Tuesday, 7 July 2015, at 9:00 am  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda Item I - Election of Chairman</b>			
000153 – 000315	Mr Charles Peter MOK Mr Kenneth LEUNG Mr Dennis KWOK Mr SIN Chung-kai	Election of Chairman	
<b>Agenda Item II - Meeting with the Administration</b>			
000316 – 001236	Administration Chairman	The Administration's briefing on the Bill  The Chairman declared that he was a member of the Board of Review ("BoR") between 1999 and 2008.	
001237 – 002000	Mr SIN Chung-kai Administration	Mr SIN Chung-kai enquired about --  (a) the reasons for taxpayers to lodge frivolous appeals with BoR;  (b) the number of frivolous tax appeals received by BoR in the past and the anticipated reduction in the number of such cases after the proposed amendments came into effect; and  (c) the expected effect of raising the ceiling of costs to be paid by the appellant from \$5,000 to \$25,000 in deterring frivolous tax appeals.  The Administration replied that --  (a) It would not speculate on the reasons for taxpayers to lodge frivolous cases with BoR. However, it was noteworthy that the establishment of BoR provided an inexpensive and convenient channel for taxpayers who were dissatisfied with tax assessments to lodge appeals.  (b) The ceiling of the costs to be paid by the appellant was stipulated in the law and could be varied by the Secretary for Financial Services and the Treasury by an order subject to the scrutiny of LegCo under the negative vetting procedure. As the proposed increase of the cost ceiling was consistent with the	

Time marker	Speaker	Subject(s)	Action required
		<p>overall objective of the Bill, the Administration had included the proposal in the Bill together with the other proposals in one go.</p> <p>(c) The proposed increase of the cost ceiling from \$5,000 to \$25,000 was intended to preserve the deterrent effect against frivolous tax appeals, rather than recovering the full cost of a hearing, which was estimated to be \$80,800.</p> <p>(d) The Administration intended to review the cost ceiling on a regular basis to preserve its deterrent effect.</p>	
002001 – 002246	Chairman Administration	<p>The Chairman requested the Administration to provide the following information --</p> <p>(a) which side, the taxpayers or the Commissioner of Inland Revenue, had a higher success rate in tax appeals during each of the past two years; and</p> <p>(b) whether the Administration or the Inland Revenue Ordinance (Cap. 112) ("IRO") had specified any timeframe for the chairman/deputy chairmen of BoR to deliver their decision on a tax appeal case.</p> <p>The Administration replied that no timeframe was specified for BoR to deliver its decision on a case. Depending on the complexity of a case, the time taken for conducting a hearing ranged from half-day to one week. On average, three sessions (half-day for each session) of hearing were required for a case. For some complicated cases, it took two to three months for BoR to deliver its decisions after hearing the cases.</p>	The Administration to take follow-up actions as per paragraph 5(b) of the minutes
002247 – 002912	Mr Dennis KWOK Administration Chairman	Referring to the proposed new section 69AA(1)(b)(i), which stated that the Court of First Instance ("CFI") would not receive any further evidence on hearing a tax appeal, Mr Dennis KWOK considered that the provision might be unjust to the appellant. He opined that the Ladd v Marshall principle, i.e. allowing the court to have the discretion to admit fresh evidence, should be adopted.	

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		<p>The Administration replied that --</p> <p>(a) The proposed new section 69AA(1)(b) would preserve the current arrangement in IRO under which the final authority on questions of fact rests with BoR, and appeals could be made to courts against BoR's decisions on grounds involving questions of law only.</p> <p>(b) The provision that CFI or the Court of Appeal ("CA") "must not receive any further evidence" when handling appeals against BoR's decisions on grounds involving questions of law was similar to the provision for tribunals such as the Labour Tribunal Ordinance (Cap. 25) and the Small Claims Tribunal Ordinance (Cap. 338). The Judiciary had been consulted on the provision.</p> <p>(c) Despite the provision mentioned in (b) above, the proposed new section 69AA(1)(b)(ii) stated that CFI could reverse or vary any conclusion made by BoR on questions of fact only if the court found that the conclusion was erroneous in point of law.</p> <p>(d) CFI could also remit an appeal case back to BoR with any directions (including a direction for a new hearing) that the court thought fit.</p> <p>The Chairman said that the appellant had plenty of time to collect evidence before his/her case was heard by BoR.</p>	
002913 – 003011	Mr SIN Chung-kai Administration	Mr SIN Chung-kai sought information from the Administration on the success rate, numbers of successful and unsuccessful cases of tax appeals to BoR per year over the past five years.	The Administration to take follow-up actions as per paragraph 5(a) of the minutes
003012 – 003504	Chairman Administration	<p>The Chairman enquired --</p> <p>(a) about the composition of BoR, and whether the panel for BoR had been filled up;</p> <p>(b) about the time spent by BoR members on attending the hearing sessions of appeal cases per year, and whether the caseload was too</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>heavy for them;</p> <p>(c) whether the Administration had enclosed the feedback of the Joint Liaison Committee on Taxation ("JLCT") on the Bill in its papers submitted to the Bills Committee; and</p> <p>(d) whether the Administration had consulted stakeholders other than JLCT on the Bill.</p> <p>The Administration replied that --</p> <p>(a) The statutory membership of BoR comprised a chairman, a maximum of 10 deputy chairmen and not more than 150 other members. At present, the number of deputy chairmen and members appointed to BoR had yet to reach the respective statutory limits.</p> <p>(b) After an increase in the number of tax appeals per year to around 70 a few years ago, the number had remained at about 40 per year in recent years. Yet, the cases had become more complex. Therefore, BoR members had to spend a lot of time on handling the cases. In view of the heavy workload of BoR, the Administration had taken steps to recruit more members to BoR by inviting professional bodies to make nominations for the Administration's consideration.</p> <p>(c) Being a body consisting of taxation and legal professionals, JLCT was the Administration's main consultation channel on the Bill. JLCT had discussed the proposals set out in the Bill twice in recent years and, as mentioned in the LegCo Brief, it had no difficulty with the broad directions of the proposals.</p>	
003505 – 003650	Chairman Mr SIN Chung-kai	<p>Invitation of views</p> <p>Date for the next meeting</p>	