

立法會
Legislative Council

LC Paper No. CB(1)1310/14-15
(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 second meeting
held on Friday, 11 September 2015, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon Kenneth LEUNG (Chairman)
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon Charles Peter MOK, JP
Hon SIN Chung-kai, SBS, JP
- Member absent** : Hon Dennis KWOK
- Public Officers attending** : **Agenda items II & III**
Ms Mable CHAN, JP
Deputy Secretary for Financial Services and the
Treasury (Treasury)²

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)2
Inland Revenue Department

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

Mr Peter SZE
Senior Government Counsel
Department of Justice

**Attendance by
Invitation** : **Agenda item II**

Mr Michael OLESNICKY
Chairman
The Joint Liaison Committee on Taxation

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

Ms Christina SHIU
Legislative Assistant (1)2

Action

I. Confirmation of minutes
(LC Paper No. CB(1)1168/14-15 -- Minutes of meeting on
7 July 2015)

The minutes of the first meeting held on 7 July 2015 were confirmed.

Action

II. Meeting with deputations and the Administration

Submission from deputations attending the meeting

(LC Paper No. CB(1)1204/14-15(01) -- Submission from the Joint Liaison Committee on Taxation dated 24 August 2015)

Submissions from deputations not attending the meeting

(LC Paper No. CB(1)1204/14-15(02) -- Submission from the Hong Kong Institute of Certified Public Accountants dated 24 August 2015

LC Paper No. CB(1)1204/14-15(03) -- Submission from the Hong Kong Bar Association dated 24 August 2015

LC Paper No. CB(1)1204/14-15(04) -- Submission from the Law Society of Hong Kong dated 1 September 2015)

Administration's response to the submissions received by the Bills Committee

(LC Paper No. CB(1)1204/14-15(05) -- Administration's response to the submissions received by the Bills Committee)

2. The Chairman declared that he was an ex-member of the Board of Review (Inland Revenue Ordinance) ("BoR") and currently an ex-officio member of the Joint Liaison Committee on Taxation ("JLCT").

3. At the invitation of the Chairman, Mr Michael OLESNICKY, Chairman of JLCT ("Chairman/JLCT"), presented his views on the Inland Revenue (Amendment) (No. 3) Bill 2015 ("the Bill") to the Bills Committee (index of proceedings in the **Appendix**).

4. Chairman/JLCT expressed concerns on the proposed requirement for appellants to apply to the Court of First Instance for leave ("the leave requirement") to appeal against the decisions of BoR, and the proposed threshold for the grant of leave ("the leave threshold"), as set out in clause 8 (the proposed amended section 69(2) and (3)(e)) of the Bill. The Chairman invited JLCT to provide written information to the Bills Committee on the

Action

leave requirement(s) and the leave threshold(s), if any, for appeals against the decision of the tax review authorities in other jurisdictions, such as the United Kingdom and Australia, and a comparison of the requirement(s) and the threshold(s)(if any) with those proposed in the Bill.

(Post-meeting note: JLCT's further submission was circulated to members vide LC Paper No. CB(1)1254/14-15(01) on 18 September 2015. The Administration's response to the submission was circulated to members vide LC Paper No. CB(1)1269/14-15(01) on 29 September 2015.)

5. The Bills Committee noted the written submissions from the other three organizations not attending the meeting.

III. Meeting with the Administration

Matters arising from the meeting on 7 July 2015

- | | |
|-----------------------------------|---|
| (LC Paper No. CB(1)1204/14-15(06) | -- Follow-up actions to be taken by the Administration for the meeting on 7 July 2015 |
| LC Paper No. CB(1)1204/14-15(07) | -- Administration's response to issues raised by members at the meeting on 7 July 2015) |

Letters from Assistant Legal Adviser to the Administration

- | | |
|-----------------------------------|--|
| (LC Paper No. CB(1)1204/14-15(08) | -- Letter from Assistant Legal Adviser to the Administration dated 14 August 2015 |
| LC Paper No. CB(1)1204/14-15(09) | -- Administration's response to the letter from Assistant Legal Adviser dated 14 August 2015 |
| LC Paper No. CB(1)1204/14-15(10) | -- Letter from Assistant Legal Adviser to the Administration dated 28 August 2015 |

Action

LC Paper No. CB(1)1204/14-15(11) -- Administration's response to the letter from Assistant Legal Adviser dated 28 August 2015)

Other relevant papers previously issued

(LC Paper No. CB(3)756/14-15
File Ref.: TsyB R 183/700-6/3/0 (C) -- The Bill
-- 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 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))

6. The Bills Committee deliberated and examined the Bill clause by clause (index of proceedings in the **Appendix**).

7. In connection with the proposed amendments in clause 3 of the Bill that "某宗"/"該宗" in certain provisions under section 65 of the Inland Revenue Ordinance (Cap. 112) be changed to "某項"/"該項", the Translation and Interpretation Division of the Legislative Council Secretariat ("TID") was requested to provide information about the meaning and usage of the words "宗" and "項".

(Post-meeting note: The information provided by TID was circulated to members vide LC Paper No. CB(1)1254/14-15(02) on 18 September 2015.)

8. Meanwhile, the Administration was requested to provide a flow chart to illustrate the correlation among the provisions relating to appeals concerning assessment to tax (i.e. the proposed amended sections 68, 69, 69A and the proposed new sections 68AA, 68AAB, 69AA) and their applicability to appeals concerning assessment to additional tax, and to explain why it was not

Action

necessary to include "69AA" and "69A" in the proposed amendment to section 82B(3) in order to make the proposed new section 69AA and the proposed amended section 69A applicable to appeals against assessment to additional tax to BoR.

(Post-meeting note: The supplementary information provided by the Administration was circulated to members vide LC Paper No. CB(1)1262/14-15(01) on 22 September 2015.)

Legislative timetable

9. The Chairman said that the Bills Committee had completed the clause-by-clause examination of the Bill, and members would be advised on the date, to be proposed by the Administration, for resumption of the Second Reading debate on the Bill.

(Post-meeting note: The Administration has proposed to resume the Second Reading debate on the Bill at the Council meeting of 4 November 2015. The Chairman will report the deliberations of the Bills Committee to the House Committee on 23 October 2015. The deadline for giving notice to move Committee Stage amendments, if any, to the Bill is 26 October 2015. Members were informed of the above dates vide LC Paper No. CB(1)1294/14-15 on 7 October 2015.)

IV. Any other business

10. There being no other business, the meeting ended at 4:20 pm.

Council Business Division 1
Legislative Council Secretariat
13 October 2015

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

**Proceedings of the second meeting
on Friday, 11 September 2015, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I -- Confirmation of minutes			
000333 – 000417	Chairman	Confirmation of minutes of the meeting on 7 July 2015 [LC Paper No. CB(1)1168/14-15]	
Agenda Item II -- Meeting with deputations and the Administration			
000418 – 000643	Chairman	The Chairman declared that he was an ex-member of the Board of Review (Inland Revenue Ordinance) ("BoR") and currently an ex-officio member of the Joint Liaison Committee on Taxation ("JLCT").	
000644 – 001305	JLCT	Presentation of views [LC Paper No. CB(1)1204/14-15(01)]	
001306 – 002047	Administration	<p>In addition to its response set out in LC Paper No. CB(1)1204/14-15(05), the Administration said that –</p> <p>(a) The view that BoR was different from other tribunals (namely the Labour Tribunal and Small Claims Tribunal) in that the cases handled by BoR involved larger amount of money was not an issue in considering the proposed requirement for the appellant to apply to the Court of First Instance ("CFI") for leave ("the leave requirement") to appeal against the decision of BoR. Moreover, the Lands Tribunal also handled cases involving substantial sums and leave would be required for appeal to the court against its decisions.</p> <p>(b) With regard to JLCT's view that members of BoR were not judicial officers, unlike the adjudicators of the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Labour Tribunal or the Small Claims Tribunal, it should be pointed out that under the Inland Revenue Ordinance (Cap. 112) ("IRO"), the presiding person of a BoR hearing to determine a tax appeal was required to be a person with legal training and experience.</p> <p>(c) With the number of tax appeals lodged with BoR increasing, precedents on taxation appeal cases were building up for the Inland Revenue Department and the legal/tax professionals. Moreover, the decisions made by BoR were compiled and made public every year.</p>	
002048 – 002225	Mr SIN Chung-kai Administration	<p>On Mr SIN Chung-kai's enquiry on whether the appellant applying to the court for leave to appeal against a decision of BoR would be required to pay the costs, the Administration advised that --</p> <p>(a) The court had a discretion to order the losing party to pay costs of the hearing if a hearing was held.</p> <p>(b) Under the proposed amended section 69, the court was provided with the flexibility to either determine an application for leave without a hearing on the basis of written submissions only, or direct that the application be considered at a hearing.</p>	
002226 – 002630	Chairman JLCT Administration	<p>With regard to the proposed threshold for the grant of leave ("the leave threshold") set out in the proposed section 69(3)(e), the Chairman enquired whether the leave threshold would have an impact on the intended effect of the proposal to abolish the present case stated procedure, i.e. to enhance the tax appeal mechanism and improve the efficiency and effectiveness of BoR.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration replied that --</p> <p>(a) Under the present case stated procedure, the appellant should make an application for BoR to state a case on a question of law arising from its decision for the opinion of CFI, which was not only costly and time-consuming, but also affected BoR's capacity in handling other tax appeals.</p> <p>(b) By contrast, in other jurisdictions, such as the United Kingdom and Australia, appeals against decisions of tax review authorities might be brought to the court direct.</p> <p>(c) While the leave requirement would take up some judicial resources, the Bill would allow the court to have the flexibility to determine an application for leave with or without a hearing, and this would help speed up the processing time for appeals against BoR's decisions.</p> <p>The Chairman invited JLCT to provide written information to the Bills Committee on the leave requirement(s) and the leave threshold(s), if any, for appeals against the decision of the tax review authorities in other jurisdictions, such as the United Kingdom and Australia, and a comparison of the requirement(s) and the threshold(s)(if any) with those proposed in the Bill.</p>	<p>JLCT to provide further submission as per paragraph 4 of the minutes</p>
<p>002631 – 002900</p>	<p>Mr SIN Chung-kai JLCT</p>	<p>Mr SIN Chung-kai expressed concern on whether the leave requirement, together with the requirement for the losing party in a tax appeal to pay costs, would constitute a double burden deterring a party aggrieved by a decision of BoR from appealing to the court.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>JLCT replied that under the present case stated procedure, each party bore its own costs of making an application for BoR to state a case. However, under the proposed enhanced appeal mechanism, the losing party would have to pay the costs of both parties eventually, making the costs of appeal more expensive for the losing party.</p>	
002901 – 003435	Administration	<p>The Administration's briefing on its response to the views submitted by the organizations not attending the meeting on the Bill [LC Paper No. CB(1)1204/14-15(05)]</p>	
Agenda Item III - Meeting with the Administration			
003436 – 004149	Chairman Administration	<p>The Administration's briefing on its response to the matters raised by members at the meeting on 7 July 2015 [LC Paper No. CB(1)1204/14-15(07)]</p> <p>Referring to the small number of requests for stating a case on a question of law arising from BoR's decisions in recent years, the Chairman asked whether --</p> <p>(a) it was necessary to set out the leave threshold in IRO as long as the court would exercise its judgement on whether to grant a leave for appeal; and</p> <p>(b) the leave threshold in clause 8 of the Bill was suggested by the Judiciary or the Administration.</p> <p>The Administration replied that --</p> <p>(a) The number of requests for stating a case on a question of law arising from BoR's decisions varied from year to year and there was no clear trend.</p> <p>(b) In view of the heavy workload of the court in handling appeal cases from</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>various tribunals (including BoR) and lower courts, the Judiciary had called on the Administration to introduce thresholds for granting leave to ensure a better use of judicial resources.</p>	
<u>Clause-by-clause examination of the Bill</u>			
004150 – 004240	Administration	<p><u>Clause 1 -- Short title and commencement</u></p> <p><u>Clause 2 -- Inland Revenue Ordinance amended</u></p> <p>Briefing on the above clauses</p> <p>Members raised no queries.</p>	
004241 – 004708	Chairman Ms Cyd HO Administration	<p><u>Clause 3 -- Section 65 amended (constitution of the Board of Review)</u></p> <p>The Administration's briefing on the above clause</p> <p>The Chairman and Ms Cyd HO enquired about the rationale for changing "某宗"/"該宗" in certain provisions under section 65 of IRO to "某項"/"該項" as the quantifier of an appeal. The Chairman also asked if the amendments were proposed on the basis that "一宗個案" (a case) might be made up of "數項上訴" (a number of appeals).</p> <p>The Administration explained that the primary purpose of the proposed amendments was to ensure consistency of the use of the Chinese term "項" across IRO. Moreover, the quantifier "項" could associate with more nouns than "宗".</p> <p>Ms Cyd HO suggested that the Translation and Interpretation Division of the Legislative Council Secretariat ("TID") should be requested to provide information about the meaning and usage of the words "宗" and "項".</p>	TID to take follow-up actions as per paragraph 7

Time marker	Speaker	Subject(s)	Action required
		<p>In reply to the Chairman's enquiry on whether " 某宗"/"該宗" in other ordinances would be amended to "某項"/"該項" for the sake of consistency, the Administration advised that whether such a standardization was warranted would involve much more extensive considerations.</p>	<p>of the minutes</p>
004709 – 005024	Chairman Administration	<p><u>Clause 3 -- Section 65 amended (constitution of the Board of Review)</u></p> <p>Discussion on the use of "the Board of Review" and "the Board" in IRO</p>	
005025 – 005048	Administration	<p><u>Clause 4 -- Section 66 amended (right of appeal to the Board of Review)</u></p> <p>Briefing on the above clause</p> <p>Members raised no queries.</p>	
005049 – 005219	Chairman Administration	<p><u>Clause 5 -- Section 67 amended (transfer of appeals under section 66 for hearing and determination by Court of First Instance instead of Board of Review)</u></p> <p>The Administration's briefing on the above clause</p> <p>In response to the Chairman's enquiry, the Administration advised that "clear day" had the same meaning as "day" in IRO and the proposed amendment from "clear day" to "day" was to ensure consistency.</p>	
005220 – 005721	Chairman Administration	<p><u>Clause 6 -- Section 68 amended (hearing and disposal of appeals to the Board of Review)</u></p> <p>The Administration's briefing on the above clause</p> <p>In response to the Chairman's enquiry, the Administration advised that "an authorized</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>representative" in the existing section 68(2) of IRO did not mean "only one authorized representative", and pursuant to section 7(2) of the Interpretation and General Clauses Ordinance (Cap. 1), words and expressions in the singular included the plural.</p>	
<p>005722 – 010952</p>	<p>Chairman Assistant Legal Adviser 7 ("ALA7") Administration</p>	<p><u>Clause 7 -- Section 68AA and 68AAB added</u></p> <p>The Administration's briefing on the above clause and its response to the views of the Hong Kong Bar Association ("HKBA") on the clause [LC Paper No. CB(1)1204/14-15(05)]</p> <p>ALA7 briefed members on the questions on the above clause raised in her letter to the Administration dated 14 August 2015 [LC Paper No. CB(1)1204/14-15(08)]. The Administration briefed members on its response [LC Paper No. CB(1)1204/14-15(09)].</p> <p>In response to the Chairman's enquiries about the proposed new sections 68AA and 68AAB, the Administration advised that --</p> <p>(a) An application for relief against the decision of the presiding person of an appeal hearing to refuse to admit in evidence any document or information that was not provided in compliance with the direction of the presiding person would be determined by the same presiding person, with or without a hearing.</p> <p>(b) In setting out the circumstances that the presiding person of an appeal hearing should consider when determining an application for relief (as per the proposed new section 68AA(6)), the Administration had made reference to</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>similar criteria in Order 2, Rule 5 of the Rules of the High Court (Cap. 4A).</p> <p>(c) The proposed new section 68AAB provided for the privileges and immunities for BoR members, parties to the hearing as well as other persons appearing before BoR.</p>	
010953 – 012022	Chairman Mr SIN Chung-kai Administration	<p><u>Clause 8 -- Section 69 substituted</u></p> <p>The Administration's briefing on the above clause</p> <p>In reply to the enquiries of the Chairman and Mr SIN Chung-kai regarding the proposed amended section 69, the Administration advised that --</p> <p>(a) The application to CFI for leave must be made by a summons supported by a statement setting out the grounds of the appeal and the reasons why leave should be granted.</p> <p>(b) The proposed section 69(4) stated that if CFI refused to grant leave to an appeal, the appellant might make a further application to the Court of Appeal ("CA") for leave to appeal against the decision of BoR, whereas the proposed amended section 69A detailed the leapfrogging arrangement where an appeal against BoR's decision could be brought to CA direct.</p>	
012023 – 012604	Chairman Administration	<p><u>Clause 9 -- Section 69AA added</u></p> <p>The Administration's briefing on the above clause</p> <p>The Chairman asked about the action that the court could take in case the relevant parties had mistakenly failed to submit an</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>important piece of evidence before BoR.</p> <p>The Administration advised that, whilst the proposed section 69AA provided that the court must not receive any further evidence on hearing an appeal against a decision of BoR, it also provided that CFI could, for example, remit the matter back to BoR with any direction (including a direction for a new hearing) that it thought fit. Moreover, CFI could reverse or vary any conclusion made by BoR if it found that the conclusion was erroneous in point of law.</p>	
012605 – 013021	Mr SIN Chung-kai Administration	<p><u>Clause 10 -- Section 69A amended (right to appeal directly to Court of Appeal against decision of Board of Review)</u></p> <p>The Administration's briefing on the above clause</p> <p>Referring to the submission of HKBA [LC Paper No. CB(1)1204/14-15(03)] which suggested that a time limit of one month should be imposed for the parties who sought leave from CA for the leapfrogging arrangement, the Administration was open-minded on the suggestion.</p> <p>Mr SIN Chung-kai opined that imposition of a time limit was unnecessary as it might hinder taxpayers or the Commissioner of Inland Revenue ("CIR") from appealing against BoR's decisions.</p>	
013022 – 014115	Chairman ALA7 Administration	<p><u>Clause 11 -- Section 82B amended (appeals against assessment to additional tax to Board of Review)</u></p> <p>The Administration's briefing on the above clause.</p> <p>The Chairman asked about the Administration's response to JLCT's view</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>that the leave requirement in respect of tax appeals under section 82A of IRO would prejudice the rights of an appellant, given that additional tax charged by CIR under section 82A was a criminal penalty in effect and a leave procedure was not required for other criminal appeals.</p> <p>The Administration replied that as the present mechanism for appeals against assessment to additional tax to BoR was the same as that for assessment to other tax, the Administration considered it appropriate to apply the enhanced tax appeal mechanism proposed under the Bill to all types of tax assessment.</p> <p>ALA7 briefed members on the issues concerning clause 11 raised in her letter to the Administration dated 28 August 2015 [LC Paper No. CB(1)1204/14-15(10)]. The Administration briefed members on its response [LC Paper No. CB(1)1204/14-15(11)].</p> <p>ALA7 drew members' attention to her view that appeals against assessment to additional tax to BoR under section 82B of IRO were similar in nature to appeals concerning assessment to tax under section 68 of the Ordinance. Yet, under clause 11, the proposed amended section 82B(3) did not include the proposed new section 69AA and the proposed amended section 69A. This could mean that the proposed new section 69AA and the proposed amended section 69A would not be applicable to appeals against assessment to additional tax.</p> <p>The Administration explained that --</p> <p>(a) Section 82B was about the procedures relating to appeals against assessment to additional tax to BoR, whereas the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>proposed sections 69AA and 69A were not related to the procedures for making appeals to BoR (the former concerned hearing of appeals against the decisions of BoR by CFI and the latter governed the revised leapfrogging arrangement). Therefore, it was not necessary to include these two sections in section 82B(3).</p> <p>(b) That said, section 82B had included the proposed amended section 69, and the latter already covered appeals to CFI against the decisions of BoR (which might be one in relation to an appeal against assessment to additional tax or that in relation to tax other than additional tax).</p> <p>The Chairman requested the Administration to provide a flow chart to illustrate the correlation among the provisions relating to appeals concerning assessment to tax (i.e. the proposed amended sections 68, 69, 69A and the proposed new sections 68AA, 68AAB, 69AA) and their applicability to appeals concerning assessment to additional tax, and to explain why it was not necessary to include "69AA" and "69A" in the proposed amendment to section 82B(3) in order to make the proposed new section 69AA and the proposed amended section 69A applicable to appeals against assessment to additional tax to BoR.</p>	<p>The Administration to take follow-up actions as per paragraph 8 of the minutes</p>
014116 – 014534	Chairman Administration	<p><u>Clause 12 -- Section 89 amended (transitional provisions)</u></p> <p><u>Clause 14 -- Schedule 35 added</u></p> <p>The Administration's briefing on the above clauses.</p> <p>Discussion on the transitional arrangements relating to appeals against the decisions of</p>	

Time marker	Speaker	Subject(s)	Action required
		BoR that had been made and delivered before the Bill came into operation.	
014535 – 014738	Chairman Administration	<p><u>Clause 13 -- Schedule 5 amended</u></p> <p>The Administration's briefing on the above clause and its response to the views of the Hong Kong Bar Association ("HKBA") on the clause [LC Paper No. CB(1)1204/14-15(05)].</p> <p>Discussion on the rationale for raising the costs ceiling to be paid by the appellant as might be ordered by BoR from \$5,000 to \$25,000.</p>	
<u>Legislative timetable</u>			
014739 – 015000	Chairman	<p>The Chairman said that the Bills Committee had --</p> <p>(a) completed the clause-by-clause examination of the Bill;</p> <p>(b) requested the Administration, JLCT and TID to provide written information.</p> <p>Legislative timetable</p>	