

Bills Committee on Inland Revenue (Amendment) (No.3) Bill 2015
The Administration's responses to the submissions received by the Bills Committee

Issues	Response from the Administration
A. Leave requirements	
<p>The Joint Liaison Committee on Taxation (“JLCT”) (echoed by the Law Society of Hong Kong and the Hong Kong Institute of Certified Public Accounts (“HKICPA”)) suggests that the leave requirement should be removed, but the Hong Kong Bar Association (“HKBA”) supports that leave to appeal must first be sought from the Court of First Instance (“CFI”).</p>	<ol style="list-style-type: none"> 1. The proposed requirement for applying to CFI for leave to appeal against the decision of the Board of Review (Inland Revenue Ordinance) (“the Board”) is meant to preserve the sifting function currently performed by the case stated procedure whereby appeals on issues of fact will be screened out. The issue of whether the appeal involves a question of law will first be dealt with by the CFI under the enhanced appeal mechanism. Leave to appeal to CFI is also required for appeals against decisions of the Labour Tribunal, Small Claims Tribunal, and Minor Employment Claims Adjudication Board on questions of law. 2. The Board has all along been handling tax appeals in a professional manner. In operation, the Board forms panel to hear individual tax appeals. Each hearing panel must comprise at least three members, including the Chairman or a Deputy Chairman (“DC”) of the Board as the chairperson. As required under section 65(1) of the Inland Revenue Ordinance (“IRO”), the Chairman and DCs must be persons with legal training and experience. 3. The procedures for seeking CFI’s leave to appeal against the Board’s decision on a question of law are set out in the proposed amended section 69. Whilst the CFI may direct that the application be considered at a hearing, the provision has allowed for the flexibility for the CFI to determine the leave application without a hearing on the basis of written submissions

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	<p>only (c.f. the proposed amended section 69(3)(c)). Similar flexibility applies to the CA, if the CFI refuses to grant leave to appeal and the applicant makes a further application to the CA for leave to appeal against the Board’s decision (cf. the proposed amended section 69(5)(c)).</p> <p>4. Appeals against the Board’s decision on a question of law (i.e. case stated procedures) for cases regarding “additional tax” assessed under section 82A and cases involving other taxes follow same procedures. They should continue to be the same under the Bill.</p> <p>5. We have consulted the Judiciary which agrees with the leave requirements.</p>
B. Leave threshold	
<p>The threshold for the grant of leave is too high (JLCT, HKBA, Law Society and HKICPA).</p>	<p>1. The proposed threshold set out under the proposed section 69(3)(e)(ii) for application to the CFI for leave to appeal is reproduced below -</p> <p><i>“(A) the proposed appeal has a reasonable prospect of success; or (B) there is some other reason in the interest of justice why the proposed appeal should be heard”.</i></p> <p>The proposed threshold, as suggested by the Judiciary, serves to enable that the limited judicial resources could be put to their best use, by filtering out unmeritorious applications for leave (albeit on points of law) during the leave process. Similar threshold is provided for interlocutory appeals under section 14AA of the High Court Ordinance (Cap.4), following a legislative amendment taking effect from 2 April 2009 to implement the</p>

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	<p>recommendations of the Final Report on Civil Justice Reform.</p> <p>2. Similar threshold has also been introduced for the following vide the same legislative exercise -</p> <p>(a) Leave to appeal to the Court of Appeal (“CA”) against a judgment, order or decision of the Lands Tribunal on the ground that such judgment, order or decision is erroneous in point of law; and</p> <p>(b) Leave to appeal to the CA from any judgment, order or decision of a District Judge in any civil cause or matter.</p> <p>Under the Lands Tribunal Ordinance (Cap.17), the decision of the Lands Tribunal shall be final and appeal may be made to the CA on the ground that such decision is erroneous in point of law. The law has expressly stated that leave shall not be granted unless it is satisfied that “the appeal has a reasonable prospect of success” or “there is some other reason in the interests of justice why the appeal should be heard”.</p>
C. Board Hearings	
<p>A full-time panel of specialist members should be appointed to handle all complex tax cases. A part-time general panel of members should be retained for non-complex cases. (HKICPA)</p>	<p>The Board, with its current composition and arrangement for holding hearings, has been working generally smoothly over the years. The proposals set out in the Bill will enhance the effectiveness and efficiency of the Board as a whole. We do not see the need for an overhaul in the structure of the Board.</p>

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D. Cost ceiling	
Proposed increase in the ceiling of costs to \$25,000 (HKBA supports, and others have no views)	Noted.
E. Textual amendments suggested by HKBA	
(a)	<p>S.69(3)(a)(ii) / S.69(5)(a)(ii)</p> <p>- the statement in support of the summons for leave to appeal should also set out “the question of law involved in the proposed appeal”.</p> <p>Under the proposed s.69(3)(a)(ii) / s.69(5)(a)(ii), for the purposes of an application for leave to appeal, the application must be, among others, made by a summons supported by a statement setting out “the grounds of the appeal” and “the reasons why leave should be so granted”. Under the proposed amended s.69(1), appeals may be made against the Board’s decisions “on a ground involving only a question of law”. Hence, the “grounds of the appeal” should cover the question of law involved. As such, there is no need for the proposed s.69(3)(a)(ii) / s.69(5)(a)(ii) to further require the statement to set out “the question of law involved in the proposed appeal”.</p>
(b)	<p>S.69(3)(f)(ii)</p> <p>- the basis for such provision for the Court of First Instance to “impose any terms it thinks fit” if it grants leave to appeal, when no similar provision exists in respect of the case stated procedure.</p> <p>In drawing up the provision, we have made reference to Order 59 Rule 2A(6) of the Rules of the High Court (Cap. 4, sub. leg. A), which provides that, where the CA grants an application for leave to appeal, “it may impose such terms as it thinks fit”.</p>

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(c)	S.69AA(2) - proposed amendments to follow largely the existing s.69(7) of IRO.	HKBA's proposed textual amendments do not serve the purpose of applying to CA the arrangements as set out in proposed s.69AA(1) for CFI's hearing on the appeal against the Board's decision in the context of tax appeal cases (e.g. that the court may confirm, reduce, increase or annul the assessment determined by the Board, or remit the matter back to the Board with any directions that the court thinks fit).
(d)	S.69AA(3) - any particular useful purpose?	It provides certainty in respect of the applicability of the High Court Ordinance to the proceedings before the CA under s.69AA.
(e)	S.69A(1), (1A) (leapfrog provisions) - need for imposing a time-limit for seeking leave from the CA for the leapfrog arrangement.	Open-minded to HKBA's suggestion.
(f)	S.69A(4) - any particular useful purpose?	It provides certainty in respect of the applicability of the High Court Ordinance to the proceedings before the CA under s.69A.
(g)	The Board's power to refuse to admit "late" documents or information may be expressly provided under s.68(7) of the IRO.	The existing s.68(7) of the IRO only provides for the general power to be exercised at the hearing. The power under the proposed s.68AA(1)(b) is designed to deter non-compliance with directions given by the Board on the provision of documents and information for the hearing. In relation to the latter, procedures have been provided in ss.68AA(2) to (6) for the defaulting party to apply for relief from sanction.

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(h)	May need a new provision, in place of the proposed new s.68AA, to empower the presiding person to “make such order or direction as may be necessary for or ancillary to the conduct of the hearing or the performance of the Board of Review’s function in an appeal”.	The proposed amendments are too general and do not serve the purpose of empowering the Board to sanction non-compliance with the directions given by the Board regarding the provision of documents and information for hearings.
(i)	S.68AAB	<p>HKBA’s proposed textual amendments to the proposed s.68AAB are unnecessary, given that -</p> <p>(a) it is appropriate to use the term “Board” instead of “Board of Review” which is already mentioned in sub-section (3);</p> <p>(b) there is no need to repeat the reference to “such a party, witness, counsel, solicitor or person representing a party” in subsection (4), which is already mentioned in sub-section (3); and</p> <p>(c) the current formulation (viz. “as the person would have in civil proceedings in the Court of First Instance”) is clear and has been adopted in other legislation (e.g. s.64A(2) of the Construction Workers Registration Ordinance (Cap. 583), s.121(2) of the Lifts and Escalators Ordinance (Cap. 618), etc.).</p>