



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF :  
本函檔號 OUR REF : LS/B/18/14-15  
電話 TELEPHONE : 3919 3510

傳真 FAX : 2877 5029  
電郵 E-MAIL : [wwylo@legco.gov.hk](mailto:wwylo@legco.gov.hk)

By Fax (2179 5848)

14 August 2015

Mr POON Wai Wing, Gary  
Prin AS for Financial Services & the Treasury (R)  
Financial Services and the Treasury Bureau  
24/F, Central Government Offices  
2 Tim Mei Avenue  
Tamar  
Hong Kong

Dear Mr POON,

### **Inland Revenue (Amendment) (No. 3) Bill 2015**

I am scrutinizing the legal and drafting aspects of the Bill and would like to seek clarification on the following points -

#### Clause 7 – section 68AA(1)

The proposed new section 68AA(1) of the Inland Revenue Ordinance (Cap. 112) provides for the power of the person presiding at the hearing of an appeal before the Board of Review (presiding person) to give directions on the provision of documents and information (section 68AA(1)(a)), and to refuse to admit in evidence any document or information that is not provided in compliance with the directions given under section 68AA(1)(a) by a party (defaulting party) (section 68AA(1)(b)).

This appears to have the effect of allowing only the evidence (document or information) which is provided in compliance with the directions of the presiding person, but not otherwise. Please let us know whether this is the legislative intent of the proposed new section 68AA(1), and if so, please explain the reason for such legislative intent.

Further, it is expressly stated that the proposed new section 68AA(1) is "without limiting section 68". Section 68(4) provides that "the onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant". In a situation where the appellant has certain evidence which is relevant to the appeal but not under any direction of the presiding person to be provided, how can the appellant ensure that such evidence will be considered by the Board? In discharging the onus of proof under section 68(4), how would this situation be dealt with in the light of the proposed new section 68AA(1)(b)?

Clause 7 – section 68AA(3) and (6)

The proposed new section 68AA(3) provides that the defaulting party may apply to the presiding person for relief against the decision to refuse to admit in evidence any document or information that is not provided in compliance with the directions given under subsection (1)(a). However, the provision is silent on how such application can be made. Please clarify and consider specifying the requirements for such application e.g. in writing.

The proposed new section 68AA(6)(e) provides that in determining the application for relief, the presiding person must consider "the extent to which the defaulting party has complied with other directions of the presiding person". What are the "other directions of the presiding person" apart from those given under the proposed new section 68AA(1)(a)? Please clarify.

I would appreciate if you could let me have the said information (in both Chinese and English with soft copy to Miss Kathy NG at pcng@legco.gov.hk) at your earliest convenience, and in any event not later than 28 August 2015.

Yours sincerely,



(Winnie LO)

Assistant Legal Adviser

c.c. LA  
SALA2  
CCS(1)2