

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

**The Administration's responses to questions raised by the
Assistant Legal Adviser of the Legislative Council in the letter of
14 August 2015**

This paper sets out the Administration's responses to the questions raised by the Assistant Legal Adviser of the Legislative Council in the letter of 14 August 2015.

Clause 7 – section 68AA(1)

2. At present, the Board of Review (Inland Revenue Ordinance) (“the Board”) will, among others, request the parties to appeal to submit documents or information to substantiate their positions. As far as the appellants are concerned, they will be asked to submit any documents or information that can prove the assessment appealed against is excessive or incorrect.

3. However, the existing Inland Revenue Ordinance (“IRO”) does not contain any provisions empowering the Board to issue directions to parties to appeal or sanction non-compliance with such directions. As such, from time to time, there are late submissions of documents and information for the Board's hearings. This has affected the proceedings of the Board and may also lead to re-scheduling of hearings for the hearing panel and parties concerned to review the documents and information. The proposed new section 68AA(1) aims to ensure orderly and timely submission of documents and information by parties to an appeal and deter non-compliance with the Board's directions, by empowering the presiding person to refuse to admit any documents and information as evidence in the hearing of an appeal if they are not produced in compliance with the directions given.

4. The proposed arrangement will not prejudice or limit the right to appeal of the appellant, who under the existing section 68(4) of IRO shall have the onus of proving that the assessment appealed against is excessive or incorrect. Since the directions would normally cover the timing and manner of submission but would not prescribe exhaustively the exact documents and information that are to be submitted, the situation where certain evidence related to an appeal is precluded from

consideration by the Board as it is “not under any direction of the presiding person” would not arise. That said, all documents and information which the appellant seeks to rely on to support his appeal should be produced in compliance with the Board’s directions (e.g. deadline for submission).

Clause 7 – section 68AA(3) and (6)

5. In drafting the proposed new sections 68AA(3) and (6), we have made reference to Rule 5, Order 2 of the Rules of High Court (Cap. 4 sub. leg. A), which is silent on the detailed requirements and arrangement for lodging an application for relief from sanction. We consider it appropriate to follow a similar approach by not specifying such details in the legislation.

6. The “other directions of the presiding person” as mentioned in the proposed new section 68AA(6)(e) include directions on the date of hearing, the language of proceedings, and the acceptance of witness and/or representatives to be present at the hearing.

**Financial Services and the Treasury Bureau
August 2015**