

立法會
Legislative Council

LC Paper No. CB(1)1264/17-18
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/17

Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2018

**Minutes of second meeting
on Friday, 25 May 2018, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon Kenneth LEUNG (Chairman)
Hon WONG Ting-kwong, GBS, JP
Hon Charles Peter MOK, JP
Hon Dennis KWOK Wing-hang
Hon CHUNG Kwok-pan
Dr Hon Junius HO Kwan-yiu, JP

Members absent : Hon Paul TSE Wai-chun, JP
Hon WU Chi-wai, MH

**Public officers
attending** : Agenda item II

Commerce and Economic Development Bureau

Mr Gary POON
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry) 2

Miss Alice CHOI
Principal Assistant Secretary for Commerce and Economic
Development (Commerce and Industry) 3

Intellectual Property Department

Ms Joyce POON
Assistant Director of Intellectual Property (Copyright)

Miss Maggie WONG
Senior Solicitor (Advisory) 2

Inland Revenue Department

Mr KK CHIU, JP
Deputy Commissioner (Technical)

Ms Fiona WONG
Senior Assessor (Research) 2

Department of Justice

Mr Alan CHONG
Senior Government Counsel

Clerk in attendance: Mr Desmond LAM
Chief Council Secretary (1)3

Staff in attendance: Ms Vanessa CHENG
Assistant Legal Adviser 5

Ms Connie HO
Senior Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)3

Miss Zoe YIP
Clerical Assistant (1)3

I. Meeting with the Administration

Submissions received from organizations and the Administration's response

- (LC Paper No. CB(1)970/17-18(01) -- Submission dated 3 May 2018 from Hong Kong Institute of Patent Attorneys Limited
- LC Paper No. CB(1)970/17-18(02) -- Submission dated 3 May 2018 from Hong Kong Brands Protection Alliance Limited
- LC Paper No. CB(1)970/17-18(03) -- Submission dated 4 May 2018 from Hong Kong Chinese Patent Attorneys Association
- LC Paper No. CB(1)970/17-18(04) -- Submission dated 7 May 2018 from Hong Kong & Kowloon Plastic Products Merchants United Association Limited
- LC Paper No. CB(1)970/17-18(05) -- Submission dated 8 May 2018 from The Taxation Institute of Hong Kong
- LC Paper No. CB(1)970/17-18(06) -- Submission dated 8 May 2018 from The Association of Hong Kong Accountants
- LC Paper No. CB(1)970/17-18(07) -- Submission dated 9 May 2018 from Hong Kong Productivity Council
- LC Paper No. CB(1)970/17-18(08) -- Submission dated 9 May 2018 from Hong Kong Applied Science and Technology Research Institute
- LC Paper No. CB(1)970/17-18(09) -- Submission dated 9 May 2018 from Association of Chartered Certified Accountants Hong Kong

- LC Paper No. CB(1)970/17-18(10) -- Submission dated 9 May 2018 from PricewaterhouseCoopers Limited
- LC Paper No. CB(1)970/17-18(11) -- Submission dated 10 May 2018 from Hong Kong Institute of Certified Public Accountants
- LC Paper No. CB(1)970/17-18(12) -- Administration's response to written submissions received from organizations

Clause-by-clause examination of the Bill

- LC Paper No. CB(3)452/17-18 -- The Bill
- LC Paper No. CB(1)842/17-18(01) -- Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)
- File Ref: CITB CR 81/45/2 -- Legislative Council Brief issued by the Commerce and Economic Development Bureau
- LC Paper No. LS49/17-18 -- Legal Service Division Report
- LC Paper No. CB(1)842/17-18(02) -- Paper on Inland Revenue (Amendment) (No. 2) Bill 2018 prepared by the Legislative Council Secretariat (background brief)
- LC Paper No. CB(1)842/17-18(03) -- Assistant Legal Adviser's letter dated 18 April 2018 to the Administration

LC Paper No. CB(1)860/17-18(01) -- Administration's reply to Assistant Legal Adviser's letter dated 18 April 2018

LC Paper No. CB(1)970/17-18(13) -- Assistant Legal Adviser's letter dated 11 May 2018 to the Administration

LC Paper No. CB(1)970/17-18(14) -- Administration's reply to Assistant Legal Adviser's letter dated 11 May 2018

Draft amendment to the Bill

LC Paper No. CB(1)990/17-18(01) -- Draft amendment proposed by the Administration)

Discussion

The Bills Committee deliberated (Index of proceedings attached at **Annex**).

II. Any other business

Proposed amendment to the Bill

2. The Bills Committee raised no objection to the draft amendment proposed by the Administration (LC Paper No. CB(1)990/17-18(01)).

Legislative timetable

3. The Bills Committee completed the scrutiny of the Bill and raised no objection to the Administration's proposal to resume the debate on the Second Reading of the Bill at the Council meeting of 20 June 2018. The Chairman informed members that the Bills Committee would make an oral report to the House Committee at its meeting on 1 June 2018. He also reminded members that the deadline for giving notice to move amendments to the Bill was 9 June 2018.

4. There being no other business, the meeting ended at 11:46 am.

**Proceedings of the second meeting of
the Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2018
on Friday, 25 May 2018, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 – 001055	Chairman	Opening remarks	
001056 – 001801	Chairman Administration	Briefing by the Administration on its responses (LC Paper No. CB(1)970/17-18(12)) to written submissions (LC Paper Nos. CB(1)970/17-18(01)-(11)).	
001802 – 003700	Chairman Mr CHUNG Kwok-pan Assistant Legal Adviser 5 ("ALA5") Administration	<p>In response to Mr CHUNG Kwok-pan's enquiry, the Administration elaborated on the proposed section 15(1)(bb) and explained how the Inland Revenue Department ("IRD") would conduct tax assessment and tax collection in respect of a non-resident person who was chargeable to tax in respect of sums deemed by the proposed section 15(1)(bb) to be trading receipts arising in or derived from Hong Kong.</p> <p>Discussion on the appropriateness of the terms "籌辦人" and "表演者" adopted as the Chinese renditions of the terms "organizer" and "performer" respectively under clause 3(4) of the Bill.</p>	
003701 – 003912	Chairman Mr CHUNG Kwok-pan Administration	<p>In response to Mr CHUNG Kwok-pan's enquiry, the Administration elaborated on its response to the following issues –</p> <p>(a) the proposal of the industrial sector that sections 39E and 16EC of the Inland Revenue Ordinance (Cap. 112) ("IRO") be amended to enable manufacturers to claim tax allowances in respect of the machinery, equipment and intellectual property rights ("IPRs") used in their production procedures located outside Hong Kong; and</p> <p>(b) the views expressed by some deputations in their written submissions that the restriction under the existing section 16EC(4)(b) of IRO should be reviewed or removed.</p> <p>The Administration undertook to convey Mr CHUNG Kwok-pan's views and concerns in respect of the review of sections 39E and 16EC of</p>	The Administration

Time marker	Speaker	Subject(s)	Action required
		IRO to the Financial Services and Treasury Bureau to facilitate its study on the related issues.	to follow up.
003913 – 004213	Chairman Mr CHUNG Kwok-pan Administration	Discussion on the suggestion made by some deputations in their written submissions that the existing section 16EC(2) of IRO be removed as Hong Kong would soon put in place transfer pricing rules vide another bill, namely the Inland Revenue (Amendment) (No. 6) Bill 2017.	
004214 – 004312	Chairman Administration	In response to the Chairman's enquiry, the Administration advised that profits tax deduction for the registration costs of some specified IPRs, such as patents and trade marks, had been provided for under section 16(1)(g) of IRO.	
<p><i>Clause-by-clause examination of the Bill (LC Paper No. CB(3)452/17-18)</i> <i>Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)842/17-18(01))</i></p>			
004313 – 005537	Chairman Mr CHUNG Kwok-pan ALA5 Administration	<p>The Administration took members through the Bill clause-by-clause.</p> <p><u>Clause 1 – Short title</u></p> <p><u>Clause 2 – Inland Revenue Ordinance amended</u></p> <p>Members raised no questions.</p> <p><u>Clause 3 – Section 15 amended (certain amounts deemed trading receipts)</u></p> <p>In response to Mr CHUNG Kwok-pan's enquiry, the Administration elaborated on the meaning of "secret process or formula" in section 15(1)(b) under clause 3(1) of the Bill.</p> <p>Discussion on the meaning of the term "performer's right" in sections 15(1)(b) and 15(1)(ba) under clause 3(1) and (2) of the Bill, and that in the proposed section 15(1)(bb) under clause 3(3) of the Bill (LC Paper Nos. CB(1)970/17-18 (13) and CB(1)970/17-18 (14)).</p> <p>In response to Mr CHUNG Kwok-pan's enquiry, the Administration elaborated on the meaning of "imparting or undertaking to impart knowledge" in section 15(1)(b) under clause 3(1) of the Bill from the operational perspective.</p>	

Time marker	Speaker	Subject(s)	Action required
005538– 010002	Chairman Administration	<p><u>Clause 4 – Section 16 amended (ascertainment of chargeable profits)</u></p> <p><u>Clause 5 – Section 16EA amended (purchase of specified intellectual property rights)</u></p> <p>Members raised no questions.</p>	
010003 – 010043	Chairman Administration	<p><u>Clause 6 – Section 16EC amended (deduction under section 16E or 16EA not allowable under certain circumstances)</u></p> <p>Members raised no questions.</p>	
010044 – 010123	Chairman Administration	<p><u>Clause 7 – Section 20B (persons chargeable in respect of certain profits of a non-resident)</u></p> <p>Members raised no questions.</p> <p>The Bills Committee completed clause-by-clause examination of the Bill.</p>	
010124 – 010521	Chairman Administration	<p>The Administration briefed members on its proposed amendment to the Chinese text of the proposed section 16EA(6)(bb) of IRO under clause 5(2) of the Bill (LC Paper No. CB(1)990/17-18(01)).</p> <p>The Chairman advised that the Bills Committee had completed scrutiny of the Bill and no further meeting would be held.</p> <p>Legislative timetable.</p>	