

立法會
Legislative Council

LC Paper No. CB(2)223/18-19

(These minutes have been
seen by the Administration)

Ref : CB2/BC/2/17

Bills Committee on Inland Revenue (Amendment) (No. 4) Bill 2018

**Minutes of the third meeting
held on Thursday, 19 July 2018, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon Kenneth LEUNG (Chairman)
Hon Holden CHOW Ho-ding (Deputy Chairman)
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Chi-chuen
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, JP
Dr Hon Helena WONG Pik-wan
Hon CHUNG Kwok-pan
Dr Hon Pierre CHAN
- Members attending** : Hon CHAN Kin-por, GBS, JP
Hon Charles Peter MOK, JP
- Member absent** : Hon Alice MAK Mei-kuen, BBS, JP
- Public Officers attending** : Mr FONG Ngai
Deputy Secretary for Food and Health (Health) 3
Food and Health Bureau
- Miss Lily LEE Lee-man
Principal Assistant Secretary for Food and Health
(Health) 4
Food and Health Bureau

Ms Iris YICK Pui-yin
Assistant Secretary for Food and Health (Health) 4A
Food and Health Bureau

Mr Derek LEE Chi-chung
Chief Research Scientist (Research Office) A,
Research Office
Food and Health Bureau

Mr CHIU Kwok-kit
Deputy Commissioner (Technical)
Inland Revenue Department

Ms WONG Pui-ki
Senior Assessor (Research) 2
Inland Revenue Department

Mr Salvador TSANG Hoi-fung
Government Counsel
Department of Justice

Clerk in attendance : Ms Maisie LAM
Chief Council Secretary (2) 5

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 4

Ms Priscilla LAU
Council Secretary (2) 5

Miss Maggie CHIU
Legislative Assistant (2) 5

Action

I. Meeting with the Administration

[LC Paper Nos. CB(3)608/17-18, CB(2)1602/17-18(02) to (06), CB(2)1729/17-18(08), CB(2)1817/17-18(01) to (03) and CB(2)1828/17-18(01) and (02)]

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

Action

Clause-by-clause examination of the Bill

2. The Bills Committee completed clause-by-clause examination of the Chinese text of the Bill. In respect of the English text of the Bill, the Legal Adviser to the Bills Committee did not raise any issues (other than those already covered in his correspondence with the Administration) which required the Bills Committee to consider.

Draft amendments to the Bill

3. The Bills Committee considered the draft amendments proposed by the Administration to the Bill as set out in the Administration's paper (LC Paper No. CB(2)1817/17-18(03)), which sought to amend (a) the proposed section 26J(4) of the Inland Revenue Ordinance (Cap. 112) ("the Ordinance") to the effect that the definition of "sibling" would cover both an individual who was adopted by the parents of the taxpayer (or of the taxpayer's spouse) and, if the taxpayer (or the taxpayer's spouse) was adopted, the natural children of the adoptive parents of the taxpayer (or of the taxpayer's spouse); (b) the existing sections 63CA and 63E of the Ordinance to cover the concessionary deduction proposed to be provided for by the Bill under the proposed section 26K of the Ordinance; and (c) the proposed sections 80 and 82A of the Ordinance in respect of penalty and additional tax in lieu of prosecution for a failure to comply with the proposed section 26M(3)(a) of the Ordinance. Members did not raise objection to the proposed amendments.

4. The Bills Committee considered the draft amendments proposed by Dr KWOK Ka-ki to the Bill [LC Paper No. CB(2)1828/17-18(02)], which sought to amend the definition of "VHIS policy" (i.e. an insurance policy that is in whole or in part issued under an insurance plan certified by the Secretary for Food and Health to be in compliance with the Government's Voluntary Health Insurance Scheme) in the proposed section 26I(1) of the Ordinance to (a) specify that the coverage of the VHIS policy was to include not more than five specialist outpatient visits per year; and (b) require that no less than 80% of the qualifying premiums of VHIS policies should be used for direct funding of healthcare cost.

5. The Bills Committee received the Administration's verbal response which raised concerns about the relevance and admissibility of the draft amendments proposed by Dr KWOK Ka-ki to the Bill. The Administration was requested to provide a written response in this regard after the meeting for onward circulation to members of the Bills Committee.

Admin

Action

6. Members raised various views over the draft amendments proposed by Dr KWOK Ka-ki who indicated that he would decide whether to move the proposed amendments in his own name.

7. Members agreed that there would be no need to hold another meeting to discuss the Administration's written response referred to in paragraph 5 above unless warranted.

Legislative timetable

8. The Bills Committee noted the Administration's intention to resume the Second Reading debate on the Bill at a Council meeting in late October 2018 and raised no objection in this regard. The Chairman informed members that in case the Administration decided to resume the Second Reading debate on the Bill at the Council meeting of 24 October 2018, the Bills Committee would report its deliberations to the House Committee at its meeting on 5 October 2018. The deadline for giving notice of moving amendments to the Bill, if any, would be 13 October 2018. Members would be informed of the legislative timetable in due course.

II. Any other business

9. There being no other business, the meeting ended at 12:05 pm.

Council Business Division 2
Legislative Council Secretariat
9 November 2018

**Proceedings of the third meeting of
the Bills Committee on Inland Revenue (Amendment) (No. 4) Bill 2018
held on Thursday, 19 July 2018, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000405 - 000714	Chairman	Opening remarks	
000715 - 000749	Chairman Admin	Commencement of clause-by-clause examination of the Bill and discussion on the follow-up to issues arising from previous meeting	
000750 - 000911	Chairman Admin Dr KWOK Ka-ki	<u>Examination of the long title and clauses 1 to 7</u>	
000912 - 002229	Chairman Admin Mr CHAN Chi-chuen ALA4 Mr Holden CHOW	<p><u>Examination of clause 8</u></p> <p><i>Interpretation of the term "VHIS policy" (proposed section 26I of the Inland Revenue Ordinance (Cap. 112) ("the Ordinance"))</i></p> <p>The Legal Adviser to the Bills Committee's remark that the Bill did not set out the factors to be taken into account by the Secretary for Food and Health ("the Secretary") in certifying whether an insurance plan was in compliance with the Government's Voluntary Health Insurance Scheme ("VHIS") ("Certified Plan"). According to paragraph 3 of the Legislative Council Brief [File Ref: FH CR 1/3822/13], the Food and Health Bureau ("FHB") had set out the requirements of VHIS in the Standard Plan Policy Template and the Code of Practice for Insurance Companies under the ambit of VHIS, and it would establish a VHIS Office administratively to certify individual indemnity hospital insurance products that were VHIS-compliant.</p> <p><i>"Specified relative": Taxpayer who was adopted by a same-sex couple in any place outside Hong Kong (proposed section 26J of the Ordinance)</i></p> <p>The Administration briefed members on its written response to issues concerning adoption raised at the meeting on 9 July 2018 (paragraphs 2 and 3 of LC Paper No. CB(2)1817/17-18(02) refer).</p> <p>In response to Mr CHAN Chi-chuen's enquiry in relation to issues concerning a taxpayer who was adopted by a same-sex couple in any place outside Hong Kong according to the law of that place as set out under item (a) of LC Paper No. CB(2)1817/17-18(01), the Administration advised that there were no precedent court cases and taxation cases of like nature which involved interpretation of sections 17 and 20F of the Adoption Ordinance (Cap. 290). It undertook to keep in view the development of relevant case law and to look into the taxation-related issue in this regard.</p>	Admin

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		<p>The Legal Adviser to the Bills Committee cited, for members' reference, (a) section 20H of the Adoption Ordinance which stated that the Court might declare that a Convention adoption shall not be recognized in Hong Kong on the ground that the adoption was manifestly contrary to public policy, taking into account the best interests of the infant; and (b) paragraph 42 of the <i>Departmental Interpretation and Practice Notes No. 18 (Revised)</i> issued by the Commissioner of Inland Revenue ("the Commissioner") in January 2005 which stated that an overseas adoption was recognized in Hong Kong if it was legally valid according to the law of the place where it took place and the adoptive parents had a superior right in respect of the custody of the child to that of the natural parents.</p> <p>Mr Holden CHOW's remark that a marriage celebrated or contracted under the Marriage Ordinance (Cap. 181) was, in law, the voluntary union for life of one man and one woman to the exclusion of all others.</p>	
002230 - 002426	Chairman Admin ALA4	<p><i>Meaning of "specified relative" (proposed section 26J of the Ordinance)</i></p> <p>The Legal Adviser to the Bills Committee drew members' attention to the reply given by the Administration in LC Paper No. CB(2)1602/17-18(05) seeking to justify the differential treatment under the Bill in relation to taxpayers in a heterosexual marriage and taxpayers in a same-sex marriage entered into outside Hong Kong according to the law of the place where it was entered into.</p>	
002427 - 004225	Chairman Admin Mr Holden CHOW Dr KWOK Ka-ki	<p><i>Qualifying premiums paid under VHIS policy (proposed section 26K of the Ordinance)</i></p> <p>Dr KWOK Ka-ki and Mr Holden CHOW's concern about the mechanism to be put in place to guard against the possibility that a VHIS provider would charge unreasonably high premiums for policies issued under Certified Plans; and the Chairman's enquiry as to whether the Commissioner would refer those cases where, in his or her opinion, the qualifying premiums paid during a year of assessment for an insured person under a VHIS policy were not commensurate with the risk profile of the insured person, to the Insurance Authority.</p> <p>The Administration's advice that:</p> <p>(a) the proposed section 26K(4) of the Ordinance was an anti-avoidance provision aimed at guarding against any possible abuse of tax deduction by claiming unreasonably high premium for a VHIS policy in order to avoid liability for the payment of tax or to reduce the amount thereof;</p> <p>(b) officers of the Inland Revenue Department were required under the Ordinance to preserve secrecy with regard to all matters that might come to their knowledge in the performance of their duties under the Ordinance, and could not communicate any such matter to any person other than</p>	

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		<p>the person to whom such matter related or his or her executor or the authorized representative of such person or such executor;</p> <p>(c) the VHIS Office of FHB, which would be responsible for administering VHIS, would publish online information on the up-to-date Certified Plans offered by different VHIS providers, which covered, among others, the policy terms and conditions, the benefit schedule and the age-banded premium schedule. This would foster market competition and help keep premium levels under better check; and</p> <p>(d) in the course of handling enquiries and complaints related to the compliance with VHIS, the VHIS Office of FHB might refer, as necessary, those complaints that might amount to suspected "misconduct" of insurance companies to the Insurance Authority which was responsible for regulating and supervising the insurance industry.</p> <p>Dr KWOK Ka-ki and Mr Holden CHOW's view that the VHIS Office of FHB should maintain a close communication with the Insurance Authority to closely monitor the operation of VHIS, including the claim-related performance of the VHIS providers.</p>	
004226 - 004312	Chairman Admin	<p><u>Examination of clause 9</u></p> <p>In response to the Chairman's enquiry, the Administration advised that a person who without reasonable excuse failed to notify the Commissioner in writing of a refund of qualifying premiums paid under a VHIS policy, which was made after the person claimed a deduction under the proposed section 26K, within three months after the date of refund would commit an offence and be liable on conviction to a fine at level 3 (i.e. \$10,000) and a further fine of treble the amount of tax which had been undercharged.</p>	
004313 - 004501	Chairman Admin	<p><u>Examination of clauses 10 to 13</u></p> <p>Members raised no queries.</p>	
004502 - 004635	Chairman Admin ALA4	Draft amendments to the Bill	
004636 - 004945	Chairman Admin Mr Holden CHOW	Briefing by the Administration on its draft amendments to the Bill [LC Paper Nos. CB(2)1817/17-18(03) and CB(2)1828/17-18(01)]. Members raised no queries.	
004946 - 010044	Chairman Dr KWOK Ka-ki Admin	<p>Briefing by Dr KWOK Ka-ki on his draft amendments to the Bill [LC Paper No. CB(2)1828/17-18(02)].</p> <p>The Administration's verbal response to the draft amendments, which raised concerns about their relevance and admissibility.</p>	
010045 - 010431	Chairman Mr CHAN Kin-por	Mr CHAN Kin-por expressed objection to the two sets of draft amendments proposed by Dr KWOK Ka-ki to the Bill on the following grounds:	

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		<p>(a) the proposed amendments might fall outside the scope of the Bill as set out, inter alia, in the long title of the Bill;</p> <p>(b) the proposed amendments were not appropriate since the various features of a VHIS policy being drawn up after rounds of public consultation and discussion with the relevant stakeholders were not set out in the Bill in order to provide flexibility for the implementation of VHIS;</p> <p>(c) according to statistics of the insurance sector, the claim ratio in recent years stood at around 70% for the whole private health insurance market. The 30% expense loading covered, among others, commissions and broker fees as well as administration expenses of the insurers, which accounted for 15% to 25% and 10% to 15% of the amount of the premiums collected respectively; and</p> <p>(d) under the free market principle, the expense loading of insurers, as was the case of the fees and charges for private healthcare services, should not be subject to regulation. Any changes in this regard should not be put forward without a full consultation with the medical and insurance sectors and detailed deliberation.</p>	
010432 - 010717	Chairman Dr Helena WONG Admin	<p>In response to Dr Helena WONG's enquiry about the Administration's rationale for not including private specialist outpatient services as a benefit item in the Standard Plan, the Administration advised that:</p> <p>(a) at present, around 90% of inpatient services (in terms of number of bed days) were provided by public hospitals. An objective of VHIS was to adjust the balance of the public-private healthcare sectors in this regard by improving the accessibility, quality and transparency of individual indemnity hospital insurance products and, hence, consumers' confidence in making use of their insurance coverage to patronize private healthcare services. It should be noted that in terms of attendance, around 70% of outpatient services were provided by the private sector; and</p> <p>(b) including private specialist outpatient services as a benefit item in the Standard Plan would drive up the average premium of the Standard Plan. To provide flexibility, people who wished to have specialist outpatient services covered in their health insurance plans might opt for the relevant Certified Plans which offered additional cover for services not otherwise covered in the basic coverage of Standard Plans and/or provided a higher level of cover for items included in the minimum benefits.</p>	
010718 - 011544	Chairman Mr Holden CHOW Mr KWOK Wai-keung Mr WONG Ting-kwong	<p>While agreeing to the broad direction that there was a need to contain the administration cost of VHIS policies, Mr Holden CHOW remarked that Dr KWOK's proposed amendments might fall outside the scope of the Bill. In addition, it would be inappropriate to set out only the two proposed but not the other</p>	

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		<p>agreed minimum requirements of a VHIS policy under the definition of "VHIS policy".</p> <p>Mr KWOK Wai-keung and Mr WONG Ting-kwong considered that the focus of the discussion of the Bills Committee should be on the legislative proposal of providing concessionary deduction in respect of qualifying premiums paid under VHIS policy, which was the first step to take forward VHIS for the benefit of consumers, but not the minimum requirements of VHIS. While there was no doubt that VHIS needed to be enhanced in the future, any proposals in this regard should be subject to further deliberation.</p>	
011545 - 011854	Chairman ALA4	The Legal Adviser to the Bills Committee's advice on the factors to be considered by the President of the Legislative Council in determining the admissibility of a proposed amendment to the Bill under Rule 57(4)(a) of the Rules of Procedure; and his reiteration that the requirements of VHIS were not currently set out in the Bill but were specified administratively in the Standard Plan Policy Template and the Code of Practice for Insurance Companies under the Ambit of VHIS issued by FHB.	
011855 - 012039	Chairman Dr KWOK Ka-ki	<p>Dr KWOK Ka-ki indicated that he would consider moving his draft amendments to the Bill in his own name.</p> <p>The Administration's undertaking to provide after the meeting its written response to Dr KWOK Ka-ki's draft amendments.</p>	Admin
<i>Agenda item II: Any other business</i>			
012040 - 012350	Chairman Admin Mr WONG Ting-kwong	<p>Legislative timetable</p> <p>Closing remarks</p>	