

**立法會**  
**Legislative Council**

LC Paper No. CB(1)996/18-19  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/18/2

**Bills Committee on Inland Revenue (Amendment) (No. 7) Bill 2018**

**Minutes of the third meeting on  
Tuesday, 8 January 2019, at 2:30 pm  
in Conference Room 2B of the Legislative Council Complex**

**Members present** : Hon Kenneth LEUNG (Chairman)  
Hon James TO Kun-sun  
Hon Charles Peter MOK, JP  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon CHUNG Kwok-pan

**Public Officers  
attending** : **Agenda item I**

Financial Services and the Treasury Bureau

Mr Andrew LAI, JP  
Deputy Secretary (Treasury)2

Ms Pecvin YONG  
Principal Assistant Secretary (Treasury)(Revenue 1)

Inland Revenue Department

Mr CHIU Kwok-kit, JP  
Deputy Commissioner (Technical)

Mr LEUNG Kin-wa  
Chief Assessor (Profits Tax)

Ms LEUNG To-shan  
Senior Assessor (Tax Treaty)

Ms WONG Ka-yee  
Senior Assessor (Special Duty)

Ms WONG Pui-ki  
Senior Assessor (Research)

Department of Justice

Miss Betty CHEUNG  
Senior Assistant Law Draftsman

Ms Carmen CHAN  
Senior Government Counsel

**Clerk in attendance** : Ms Doris LO  
Chief Council Secretary (1)2

**Staff in attendance** : Mr Bonny LOO  
Assistant Legal Adviser 4

Mr Raymond CHOW  
Senior Council Secretary (1)10

Ms Christina CHIU  
Legislative Assistant (1)2

**I Meeting with the Administration**

Matters arising from the meeting on 17 December 2018

(LC Paper No. CB(1)402/18-19(01) — Administration's responses to the written submissions received and views expressed by deputations at the meeting on 17 December 2018)

Clause-by-clause examination of the Bill

- (LC Paper No. CB(3)98/18-19 — The Bill  
File Ref.: TsyB R 00/800/24/0 (C) — Legislative Council Brief  
LC Paper No. LS14/18-19 — Legal Service Division Report  
LC Paper No. CB(1)241/18-19(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(1)241/18-19(02) — Background brief prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)241/18-19(03) — Letter from Assistant Legal Adviser to the Administration dated 12 November 2018
- LC Paper No. CB(1)241/18-19(04) — Administration's response to Assistant Legal Adviser's letter dated 12 November 2018 [LC Paper No. CB(1)241/18-19(03)]
- LC Paper No. CB(1)247/18-19(01) — Letter from Assistant Legal Adviser to the Administration dated 30 November 2018
- LC Paper No. CB(1)337/18-19(03) — Administration's response to Assistant Legal Adviser's letter dated 30 November 2018 [LC Paper No. CB(1)247/18-19(01)]

Draft amendments to the Bill proposed by the Administration

- (LC Paper No. CB(1)410/18-19(01) — Draft amendments to the Bill proposed by the Administration)

(A list of other relevant papers previously issued is available on the Legislative Council website at: <https://www.legco.gov.hk/yr18-19/english/bc/bc03/general/bc03.htm>)

Declaration of interest

The Chairman indicated that at the request of some foreign banks/public institutions, he had discussed with the Inland Revenue Department about a year ago some technical issues relating to the proposal of allowing the deduction of interest expenses payable to overseas export credit agencies under the Inland Revenue (Amendment) (No. 7) Bill 2018 ("the Bill"), but he declared that he had no direct or indirect pecuniary interest in the legislative proposal.

Discussion

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

3. The Bills Committee continued the clause-by-clause examination of the Bill and considered the draft amendments to the Bill proposed by the Administration.

Follow-up actions to be taken by the Administration

4. The Administration was requested to:

- (a) explain whether and why it was necessary to include the proposed new section 50L to provide that the Commissioner of Inland Revenue might publish non-statutory guidelines on the interpretation of any provisions of Part 8A (Returns by Reporting Financial Institutions) of, and Schedules 17C (Non-reporting Financial Institutions and Excluded Accounts), 17D (Due Diligence Requirements) and 17E (Reportable Jurisdictions and Participating Jurisdictions) to, the Inland Revenue Ordinance (Cap. 112) (collectively "Part 8A-related provisions");
- (b) explain the consequences, including any criminal consequences, of the failure on the part of a person to comply with: (i) any Part 8A-related provisions; and (ii) the provisions of any such guideline published under the proposed new section 50L, in particular in the light of the proposed section 50L(2)(b) which stipulated that "... the provision of the guideline *must* be taken into account in interpreting the Part 8A-related provisions..." (*emphasis added*) in any proceedings under Cap. 112 before a court; and
- (c) provide examples of other ordinances or subsidiary legislation that contained a provision similar to the proposed new section

50L(2)(b) requiring the court to take into account a relevant guideline in interpreting a statutory provision or in determining a question arising in the proceedings.

Legislative timetable and meeting arrangement

5. The Chairman said that the Bills Committee had completed the clause-by-clause examination of the Bill. The Bills Committee agreed that subject to any views members might have on the Administration's response to the above issues (in paragraph 4), the Chairman would decide whether a further meeting was necessary. If no further meeting would be held, the Bills Committee would complete scrutiny of the Bill.

*(Post meeting notes:*

- A response to the above issues and a set of revised draft amendments to the Bill provided by the Administration were circulated to members vide LC Paper No. CB(1)454/18-19(02) on 14 January 2019;
- members were notified vide LC Paper No. CB(1)454/18-19 issued on 14 January 2019 of the advice of the Legal Adviser to the Bills Committee that the Legal Service Division ("LSD") noted the Administration's clarification in its response that while a relevant guideline must be taken into account by the court in interpreting any Part 8A-related provisions or in determining a question arising in the proceedings, the guideline does not bind the court. As such, subject to members' views, LSD had no further comments in relation to the legal and drafting aspects of the proposed new section 50L. The Legal Adviser to the Bills Committee also confirmed that no difficulties relating to the legal and drafting aspects of the revised draft amendments to the Bill had been identified; and
- members were notified vide LC Paper No. CB(1)468/18-19 issued on 16 January 2019 that the Secretariat had not received by the specified deadline any request from members for holding a meeting to discuss the Administration's response to the above issues or its revised draft amendments to the Bill. In this connection, the Bills Committee had completed the scrutiny of the Bill. Members were also notified that the Administration intended to resume the Second Reading debate on the Bill at the Council meeting of 20 February 2019. The Chairman would report the deliberations of the Bills Committee to the House Committee on 25 January 2019. The deadline for giving notice to move amendments to the Bill would be 11 February 2019.)

**II Any other business**

6. There being no other business, the meeting ended at 4:17 pm.

Council Business Division 1  
Legislative Council Secretariat  
2 May 2019

**Proceedings of the third meeting of the  
Bills Committee on Inland Revenue (Amendment) (No. 7) Bill 2018  
on Tuesday, 8 January 2019, at 2:30 pm  
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda Item I – Meeting with the Administration</b>			
001045-001136	Chairman	Opening remarks	
001137-002141	Chairman Administration	Briefing by the Administration on its responses to the written submissions received and views expressed by deputations on the Inland Revenue (Amendment) (No. 7) Bill 2018 ("the Bill") at the meeting on 17 December 2018 (LC Paper No. CB(1)402/18-19(01))	
002142-003014	Chairman Assistant Legal Adviser 4 ("ALA4") Administration	<p>The Chairman sought elaborations on:</p> <p>(a) the concept of credit impairment, the three stages of expected credit loss ("ECL"), whether the ECL model mainly applied to debt instruments, and the reasons for allowing tax deduction only for Stage 3 of ECL under the Bill; and</p> <p>(b) the application of the special treatment of impairment loss under the proposed new section 18K, including impairment loss in respect of conventional business loans, trade debts and bad debts (especially in cases where the debtors went into liquidation).</p> <p>The Administration responded that:</p> <p>(a) the Hong Kong Financial Reporting Standard 9 (Financial Instruments) categorized financial assets into three stages in the determination of credit impairment: Stage 1 – not credit-impaired (credit risk had not increased significantly since initial recognition); Stage 2 – not credit-impaired (credit risk had increased significantly since initial recognition); and Stage 3 – credit-impaired. The ECL model generally applied to financial assets that were debt instruments measured at amortized cost or fair value through other comprehensive income, including loans, trade receivables and debt securities;</p> <p>(b) only at Stage 3 of ECL the loan's credit risk had increased to the point where it was considered credit-impaired and tax deduction could be allowed. Currently, only a few jurisdictions allowed tax deduction</p>	

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		<p>for all three stages of ECL with different approaches, hence it was not a must for jurisdictions to have tax treatment tallied entirely with accounting treatment. The proposal of allowing tax deduction only for Stage 3 of ECL was consistent with the existing tax treatment of bad debts/doubtful debts under the Inland Revenue Ordinance (Cap. 112) that no tax deduction was allowed for non-credit-impaired debts; and</p> <p>(c) if fair value basis was not elected for tax reporting (i.e. assessable profits were computed on realization basis), deduction of bad debts/doubtful debts would be allowed in accordance with the existing section 16(1)(d) of Cap. 112; if fair value basis was elected for tax reporting, deduction of impairment loss would be allowed in accordance with the proposed new section 18K(3).</p> <p>ALA4 pointed out that the relevant webpage of the Inland Revenue Department ("IRD") on the decision of the Court of Final Appeal ("CFA") in <i>Nice Cheer Investment Ltd v Commissioner of Inland Revenue</i> (2013) 16 HKCFAR 813 ("Nice Cheer case") currently translated "fair value" as "公允價值", as opposed to "公平價值" as used in the Chinese text of the Bill. IRD undertook to revise "公允價值" on its webpage to "公平價值" after the passage of the Bill to ensure the consistent use of the correct Chinese expression.</p>	
<p><b>Clause-by-clause examination of the Bill</b>            [The Bill (LC Paper No. CB(3)98/18-19)]            [Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)241/18-19(01))]            [Draft amendments to the Bill proposed by the Administration (LC Paper No. CB(1)410/18-19(01))]</p>			
003015-003737	Chairman Administration	<p>The Bills Committee continued the clause-by-clause examination of the Bill and considered the draft amendments to the Bill proposed by the Administration.</p> <p><u>Clause 3 – Sections 18G to 18L added</u></p> <p><i>18K – Financial instrument: special treatment of impairment loss</i></p> <p>The Chairman sought clarifications on:</p> <p>(a) whether tax deduction was allowed in respect of a bond that was downgraded (i.e. the credit rating had been lowered) if the realization basis was adopted for tax computation and reporting; and</p> <p>(b) the applicability of the proposed new section 18K(6) to (8) on mergers/acquisitions.</p>	



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		<p>The Administration responded that:</p> <p>(a) IRD made tax assessment on a case-by-case basis depending on the facts and circumstances. If assessable profits were computed on realization basis, provisions for diminution in the value of trading stocks would be tax deductible in general (i.e. the diminution in value was material and likely to be permanent), save that in the light of CFA's judgment in the Nice Cheer case, any unrealized profits derived from financial instruments was not assessable to tax; and</p> <p>(b) the proposed new section 18K(6) to (8) was applicable in limited circumstances, namely where (e.g. in a merger) the loss allowance in respect of the credit-impaired loan was transferred to the transferee by the transferor, being a financial institution, and the loan was not transferred by way of a sale.</p>	
003738-004624	Chairman Administration	<p><u>Clause 3 – Sections 18G to 18L added</u></p> <p><i>18L – Financial instrument: special treatment of equity instrument, financial liability, embedded derivative, preference share, non-arm's length loan, etc.</i></p> <p>On the Chairman's enquiries, the Administration advised that:</p> <p>(a) under the proposed new section 18L(9), the interest of non-arm's length loan would be computed at the contractual interest rate (instead of effective interest rate) if the fair value basis was elected for tax reporting, but the proposed new section 18L(9) would not affect the operation of sections 50AAF and 50AAK of Cap. 112; and</p> <p>(b) IRD would consider the nature of the relevant transaction(s) in entirety in determining whether an amount of profit, gain, loss, income or expense recognized in respect of a hedging instrument should be disregarded in tax assessment.</p>	
004625-005037	Chairman Administration	<p><u>Clause 4 – Section 16 amended (ascertainment of chargeable profits)</u></p> <p>Declaration of interest by the Chairman</p> <p>On the enquiry of the Chairman regarding the definition of "export credit business" proposed to be added to section</p>	

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		16(3), the Administration replied that some overseas export credit agencies might involve in the provision of loans but this was not the case for the Hong Kong Export Credit Insurance Corporation.	
005038-010037	Chairman ALA4 Administration	<p><u>Clause 5 – Section 50A amended (interpretation)</u></p> <p>ALA4 drew members' attention that, according to the Administration's advice in its earlier response (LC Paper No. CB(1)241/18-19(04)) to his letter (LC Paper No. CB(1)241/18-19(03)):</p> <p>(a) pursuant to the Inland Revenue (Amendment) Ordinance 2018 that came into operation on 1 January 2019, section 50A(6)(c)(iii) had already been amended to include the enforcer (as well as the protector) of the entity; and</p> <p>(b) the notices to be published by the Secretary for Financial Services and the Treasury in the Gazette under the proposed new sections 50A(16A) and 50L(5) would be subsidiary legislation subject to scrutiny by the Legislative Council ("LegCo").</p> <p>The Chairman enquired about the meaning of "2020-covered institution" and whether such institution would be required to report information about the pre-existing accounts for the period before 2020.</p> <p>The Administration clarified that "2020-covered institutions", the definition of which would be added to section 50A(1), would need to collect information covering the period between 1 January and 31 December 2020 for the first time on the relevant financial accounts they maintained for individuals and entities and to report such information in the reporting year 2021. The collection and reporting of information would continue for the years thereafter.</p>	
010038-013253	Chairman Mr James TO ALA4 Administration	<p><u>Clause 6 – Section 50L added</u></p> <p><i>50L – Guidelines published by Commissioner</i></p> <p>The Chairman enquired:</p> <p>(a) whether it was upon the request of the Organisation for Economic Co-operation and Development ("OECD") that the proposed new section 50L was added to provide for the publication of guidelines on the interpretation of the provisions of Part 8A (Returns by Reporting Financial Institutions) of, and Schedules 17C (Non-reporting Financial Institutions and Excluded</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Accounts), 17D (Due Diligence Requirements) and 17E (Reportable Jurisdictions and Participating Jurisdictions) to, Cap. 112 (collectively "Part 8A-related provisions");</p> <p>(b) the difference, in terms of the effect on taxpayers, between the above guidelines and IRD's Departmental Interpretation and Practice Notes; and whether any subsequent amendments to the guidelines would have retrospective effect; and</p> <p>(c) whether any other guidelines had been published by IRD on the interpretation of provisions in Cap. 112.</p> <p>The Administration explained that:</p> <p>(a) to facilitate financial institutions' understanding of their obligations under Cap. 112 for fulfilling the due diligence and reporting requirements under the Common Reporting Standard ("CRS"), IRD had administratively published the Guidance for Financial Institutions ("Guidance") which summarized the relevant provisions in the CRS and was based on the Commentaries on CRS and CRS Implementation Handbook published by OECD (collectively "CRS publications") as long as they were applicable to Hong Kong;</p> <p>(b) in reviewing and assessing the implementation of the CRS in Hong Kong, OECD had examined Cap. 112 and the Guidance. OECD recommended that, among others, the publishing of the Guidance should be backed up by legal provision so as to ensure that the CRS was effectively complied with in practice. The proposed new section 50L was therefore necessary to meet OECD's recommendation. Under the proposed section 50L, the Commissioner of Inland Revenue ("CIR") might publish the guidelines in the Gazette or in any way he considered appropriate;</p> <p>(c) the proposed new section 50L(2) clearly stipulated that a failure on the part of a person to comply with the provisions of any guideline published under the proposed new section 50L did not by itself render the person liable to any proceedings, whether before a court or otherwise, but in any proceedings under Cap. 112 before a court, the court must take into account a relevant provision of the guideline in interpreting a Part 8A-related provision or in determining any question arising in the proceedings; and</p> <p>(d) arrangement similar to the proposed new section 50L(2)(b) had been provided for in other ordinances, such as the Securities and Futures Ordinance (Cap. 571).</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Mr James TO opined that:</p> <ul style="list-style-type: none"> <li>(a) it was unnecessary to provide under the proposed new section 50L for the publication of non-statutory guidelines to interpret the Part 8A-related provisions which would lead to duplication and redundancy; and</li> <li>(b) the Administration should instead consider making direct and single reference to CRS publications in the law, so as to obviate the problem of interpretation in cases of discrepancies between the guidelines published by CIR and CRS publications, or the need to update the guidelines as amendments to CRS publications might be made from time to time.</li> </ul> <p>The Administration replied that:</p> <ul style="list-style-type: none"> <li>(a) OECD had reviewed and agreed on the proposed new section 50L, which clearly set out that the guidelines issued by CIR on the interpretation of the Part 8A-related provisions should secure consistency between the effect given to the Part 8A-related provisions and the effect to be given to the CRS in accordance with the CRS publications; and</li> <li>(b) not all parts of the voluminous CRS publications were applicable to Hong Kong, while the guidelines summarized the relevant provisions.</li> </ul> <p>ALA4 pointed out that (a) pursuant to the proposed new section 50L(3), a guideline published under the proposed new section 50L(1) was not subsidiary legislation; whereas (b) pursuant to the proposed new section 50L(5), amendments to the definitions of CRS and CRS publications in subsection (4) would have to be given effect to by notice in the Gazette subject to the scrutiny of LegCo.</p> <p>On the Chairman's and Mr James TO's further requests, the Administration should provide response to:</p> <ul style="list-style-type: none"> <li>(a) explain whether and why it was necessary to include the proposed new section 50L to provide that CIR might publish non-statutory guidelines on the interpretation of Part 8A-related provisions;</li> <li>(b) explain the consequences, including any criminal consequences, of the failure on the part of a person to comply with: (i) any Part 8A-related provisions; and (ii) the provisions of any such guideline published under the</li> </ul>	<p>Administration (paragraph 4 of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>proposed new section 50L, in particular in the light of the proposed section 50L(2)(b) which stipulated that "... the provision of the guideline <i>must</i> be taken into account in interpreting the Part 8A-related provisions..." (<i>emphasis added</i>) in any proceedings under Cap. 112 before a court; and</p> <p>(c) provide examples of other ordinances or subsidiary legislation that contained a provision similar to the proposed new section 50L(2)(b) requiring the court to take into account a relevant guideline in interpreting a statutory provision or in determining a question arising in the proceedings.</p>	
013254-013339	Chairman Administration	<p><u>Clause 7 – Schedule 17C amended (non-reporting financial institutions and excluded accounts)</u></p> <p><u>Clause 8 – Schedule 17D amended (due diligence requirements)</u></p> <p>Members raised no queries.</p>	
013340-013603	Chairman Administration	<p><u>Clause 9 – Schedule 17E amended (reportable jurisdictions and participating jurisdictions)</u></p> <p>The Chairman enquired about:</p> <p>(a) the mechanism of activating the exchange relationships under automatic exchange of financial account information in tax matters ("AEOI") with the reportable jurisdictions listed in column 1 of Part 1 of Schedule 17E; and</p> <p>(b) whether AEOI with a reportable jurisdiction started/would start from the reporting year specified in column 2 of Part 1 of Schedule 17E opposite that jurisdiction.</p> <p>The Administration replied that:</p> <p>(a) Hong Kong activated exchange relationships under AEOI with other jurisdictions on the basis of (i) bilateral competent authority agreements or (ii) a multilateral competent authority agreement under the Convention on Mutual Administrative Assistance in Tax Matters (the Convention was extended to Hong Kong by the Central People's Government and was given effect by the Inland Revenue (Convention on Mutual Administrative Assistance in Tax Matters) Order (Cap. 112DC)); and</p>	

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		(b) the reporting year in relation to a reportable jurisdiction referred to the year during which reporting financial institutions started to report financial account information of tax residents of that jurisdiction to IRD.	
013604-013748	Chairman Administration	<p><u>Clause 10 – Section 8 amended (charge of salaries tax)</u></p> <p><u>Clause 11 – Section 30B amended (dependent brother or dependent sister allowance)</u></p> <p>Members raised no queries.</p>	
013749-013841	Chairman ALA4 Administration	<p><u>Clause 12 – Section 89 amended (transitional provisions)</u></p> <p><u>Clause 13 – Schedule 48 added</u></p> <p><i>Schedule 48 – Transitional Provisions for Inland Revenue (Amendment) (No. 7) Ordinance 2018</i></p> <p>ALA4 pointed out that under section 2 of the proposed new Schedule 48, the tax treatment of financial instruments under the proposed new sections 18G to 18L would apply in relation to a year of assessment for which the basis period began on or after 1 January 2018. According to the Administration's advice in its earlier response (LC Paper No. CB(1)241/18-19(04)) to his letter (LC Paper No. CB(1)241/18-19(03)), computation of profits in accordance with the proposed sections 18G to 18L would only apply on the taxpayers' election and should have no retrospective effect in the objectionable sense.</p>	
013842-014848	Chairman ALA4 Administration	<p>Briefing by the Administration on its proposed amendments to the Bill (LC Paper No. CB(1)410/18-19(01))</p> <p>ALA4 pointed out that the term "relevant authority" in subsection (a)(iii) to be added to the proposed new section 18G(1) by the first amendment to clause 3 was not defined, and asked whether it was necessary to provide a definition to the term.</p> <p>The Administration responded that it was not necessary to define the term "relevant authority" which was to be understood clearly in context as the authority adopting the financial reporting standard mentioned therein.</p> <p>The Chairman opined that to facilitate identification of various amendment bills to Cap. 112, both a serial number and a short description should be included in their short titles.</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		<p>The Administration responded that:</p> <p>(a) as discussed with ALA4, in the light of Rule 50(2) of the Rules of Procedure, the short title of the Bill currently under consideration should correspond with the title by which it was to be cited if it became law and remain unchanged throughout the passage of the Bill; and</p> <p>(b) the Administration undertook to consider including a short description in the short titles of the amendment bills to Cap. 112 in future, but no serial number would be included alongside or otherwise the short titles would become unnecessarily long.</p> <p>Members raised no queries on the Administration's other proposed amendments.</p>	
014849-015053	Chairman	Legislative timetable and meeting arrangement	
<b>Agenda Item II – Any other business</b>			
015054-015108	Chairman	Concluding remarks	