

立法會
Legislative Council

LC Paper No. CB(1)1037/18-19
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/18

**Bills Committee on Inland Revenue (Profits Tax Exemption for Funds)
(Amendment) Bill 2018**

**Minutes of second meeting held on
Wednesday, 16 January 2019, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Kenneth LEUNG (Chairman)
Hon James TO Kun-sun
Hon WONG Ting-kwong, GBS, JP
Hon Charles Peter MOK, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP

Members absent : Hon CHUNG Kwok-pan
Hon CHAN Chun-ying, JP
Hon CHEUNG Kwok-kwan, JP

Member attending : Hon WU Chi-wai, MH

Public Officers attending : Agenda item I
Financial Services and the Treasury Bureau

Mr Chris SUN, JP
Deputy Secretary (Financial Services)1

Miss Carrie CHANG
Principal Assistant Secretary (Financial Services)1

Mr Winston CHAN
Assistant Secretary (Financial Services)(1)2

Inland Revenue Department

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

Miss HUI Chiu-po
Senior Assessor (Research)1

Department of Justice

Ms Rayne CHAI
Senior Assistant Law Draftsman

Ms Frances HUI
Senior Assistant Law Draftsman

Clerk in attendance : Mr Daniel SIN
Chief Council Secretary (1)6

Staff in attendance : Mr Alvin CHUI
Assistant Legal Adviser 3

Ms Mandy LI
Senior Council Secretary (1)6

Mr Patrick CHOI
Council Secretary (1)6

Miss Yolanda CHEUK
Legislative Assistant (1)6

Action

I. Meeting with the Administration
Submissions received from organizations

(LC Paper No. CB(1)447/18-19(01) — Submission from the Hong Kong Institute of Chartered Secretaries (English version only)

- LC Paper No. CB(1)447/18-19(02) — Submission from Hong Kong Trustees' Association (English version only)
- LC Paper No. CB(1)447/18-19(03) — Submission from Hong Kong Venture Capital and Private Equity Association (English version only)
- LC Paper No. CB(1)447/18-19(04) — Submission from Alternative Investment Management Association (English version only)
- LC Paper No. CB(1)447/18-19(05) — Submission from Asia Securities Industry and Financial Markets Association (English version only)
- LC Paper No. CB(1)447/18-19(06) — Submission from PricewaterhouseCoopers Limited (English version only)
- LC Paper No. CB(1)447/18-19(07) — Submission from Deloitte Advisory (Hong Kong) Limited (English version only) (Restricted to members)
- LC Paper No. CB(1)447/18-19(08) — Submission from Hong Kong Institute of Certified Public Accountants (English version only)
- LC Paper No. CB(1)447/18-19(09) — Submission from KPMG Tax Services Limited (English version only)
- LC Paper No. CB(1)447/18-19(10) — Submission from Ernst & Young Tax Services Limited (English version only)

LC Paper No. CB(1)464/18-19(01) — Submission from the Hong Kong Society of Financial Analysts (English version only))

Relevant papers

(LC Paper No. CB(3)243/18-19 — The Bill

File Ref.: — Legislative Council Brief
ASST/3/1/5C (2018) Pt. 19

LC Paper No. LS30/18-19 — Legal Service Division Report

LC Paper No. CB(1)414/18-19(01) — Marked-up copy of the Bill prepared by the Legal Service Division
(Restricted to members)

LC Paper No. CB(1)414/18-19(02) — Background brief prepared by the Legislative Council Secretariat

LC Paper No. CB(1)414/18-19(03) — Letter from Assistant Legal Adviser to the Administration dated 3 January 2019

LC Paper No. CB(1)423/18-19(01) — Administration's reply to Assistant Legal Adviser's letter dated 3 January 2019 [LC Paper No. CB(1)414/18-19(03)]

Discussion

The Bills Committee deliberated (index of proceedings in the **Appendix**).

(Post-meeting note: The Administration's response to the written submissions to the Bill [LC Paper No. CB(1)472/18-19(01)], which was tabled at the meeting, was issued to members on 16 January 2019.)

Legislative timetable

2. The Chairman said that the Bills Committee had completed scrutiny of the Bill. He would report the Bills Committee's deliberations to the House Committee on 25 January 2019. The Chairman informed members that the Administration intended that the Second Reading debate on the Bill should be resumed at the Council meeting of 20 February 2019. He reminded members that the deadline for serving notices of amendments to the Bill would be 11 February 2019.

II. Any other business

3. There being no other business, the meeting ended at 8:59 am.

Council Business Division 1
Legislative Council Secretariat
7 May 2019

**Bills Committee on Inland Revenue (Profits Tax Exemption for Funds)
(Amendment) Bill 2018**

**Proceedings of second meeting
on Wednesday, 16 January 2019, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I — Meeting with the Administration			
000750 – 002544	Chairman Administration	Briefing by the Administration on its response to written submissions, which was tabled at the meeting [LC Paper No. CB(1)472/18-19(01)]	
002545 – 003140	Chairman Administration	<p>The Chairman sought clarification on whether a company which undertook both commercial and investment activities might make use of the "no tainting" principle of the Bill and claim profits tax exemption in respect of the income derived from investment activities.</p> <p>The Administration explained that an arrangement must first satisfy the definition of "fund" under the Bill in order to qualify for profits tax exemption. A business undertaking for general commercial or industrial purposes which carried out commercial or industrial transactions would not meet this requirement.</p> <p>The Chairman queried whether a commercial co-investment contract under which contracting parties agreed to participate in an investment would meet the definition of a "fund" under the Bill.</p> <p>The Administration explained that the reference to "arrangement" in the definition of fund in the proposed section 20AM(2) encompassed the concept of contractual arrangements as well as legal arrangements in civil law jurisdictions. Therefore, a fund in the context of the Bill could be in the legal form of, for example, a partnership, a limited partnership, unit trust, open-ended fund companies, mutual fund corporation or contractual arrangement.</p> <p>The Chairman sought clarification on what sorts of "non-resident person" might still qualify for tax exemption under section 20AC of the Inland Revenue Ordinance (Cap. 112) after the passage of the Bill.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration advised that on and after 1 April 2019 (when the amended Ordinance would take effect), a reference to a "non-resident person" in section 20AC would cover non-resident non-fund entities, which would mainly include non-resident individuals and non-resident enterprises without permanent establishment in Hong Kong, and non-resident enterprises and corporations which did not fall within the meaning of "fund" as defined in the proposed section 20AM.</p> <p>The Administration added that, providing these entities continued to meet the exemption conditions under the amended section 20AC, they would continue to be entitled to profits tax exemption under that section after the passage of the Bill.</p>	
Agenda item II — Any other business			
003141 – 003335	Chairman	Legislative timetable and concluding remarks	