

**立法會**  
**Legislative Council**

LC Paper No. CB(1)848/20-21  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/4/20

**Bills Committee on Inland Revenue (Amendment)  
(Tax Concessions for Carried Interest) Bill 2021**

**Minutes of the first meeting  
held on Tuesday, 9 March 2021, at 4:30 pm  
in Conference Room 1 of the Legislative Council Complex**

- Members present** : Hon CHEUNG Kwok-kwan, JP (Chairman)  
Hon WONG Ting-kwong, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Holden CHOW Ho-ding  
Hon CHAN Chun-ying, JP
- Member absent** : Hon Christopher CHEUNG Wah-fung, SBS, JP
- Public Officers attending** : Agenda item II  
Financial Services and the Treasury Bureau  
  
Ms May CHAN, JP  
Deputy Secretary (Financial Services)1  
  
Ms Candy LAU  
Principal Assistant Secretary (Financial Services)3  
  
Mr Winston CHAN  
Assistant Secretary (Financial Services)(1)2  
  
Hong Kong Monetary Authority  
  
Mr Kenneth HUI  
Head (Market Development)

Inland Revenue Department

Ms Wings LEUNG  
Deputy Commissioner (Technical) (Acting)

Miss HUI Chiu-po  
Chief Assessor (Profits Tax)A (Acting)

Ms Rosina LAU  
Senior Assessor (Research)1

Department of Justice

Mr Jonathan LUK  
Senior Government Counsel

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

**Staff in attendance** : Ms Doreen WAN  
Assistant Legal Adviser 9

Ms Mandy LI  
Senior Council Secretary (1)6

Mr Patrick CHOI  
Council Secretary (1)6

Miss Yolanda CHEUK  
Legislative Assistant (1)6

Action

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**I. Election of Chairman (and Deputy Chairman)**

Election of Chairman

Mr WONG Ting-kwong, the member who had the highest precedence in the Council among members of the Bills Committee on Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Bill 2021 ("the Bills Committee") present at the meeting, presided over the election of Chairman of the Bills Committee. He invited nominations for the chairmanship.

2. Mr CHAN Chun-ying nominated Mr CHEUNG Kwok-kwan and the nomination was seconded by Mr Paul TSE. Mr CHEUNG Kwok-kwan accepted the nomination. There being no other nomination, Mr CHEUNG Kwok-kwan was elected Chairman of the Bills Committee. Mr CHEUNG then took over the chair.
3. Members agreed that there was no need to elect a Deputy Chairman.

## **II. Meeting with the Administration**

(LC Paper No. CB(3)327/20-21 — The Bill

File Ref.: ASST/3/1/8/1C — Legislative Council Brief

LC Paper No. LS34/20-21 — Legal Service Division Report

LC Paper No. CB(1)633/20-21(01) — Marked-up copy of the Bill prepared by the Legal Service Division  
(Restricted to members only)

LC Paper No. CB(1)633/20-21(02) — Background brief prepared by the Legislative Council Secretariat)

## Discussion

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

## Invitation of views

5. In view of the coronavirus disease 2019 epidemic situation, members agreed that written views on the Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Bill 2021 ("the Bill") would be invited by posting a notice on the website of the Legislative Council ("LegCo"), and that a public hearing session would not be held.

*(Post-meeting note: The notice was posted on the LegCo website on 9 March 2021 to invite the public to provide written submissions on the Bill.)*

Action

Legislative timetable

6. The Chairman concluded that the Bills Committee had completed the scrutiny of the Bill. The Bills Committee would not propose any amendments to the Bill.

7. The Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting of 28 April 2021. The Chairman informed members that he would report the deliberations of the Bills Committee to the House Committee on 16 April 2021. The deadline for giving notice to move amendments to the Bill would be 19 April 2021.

**III. Any other business**

8. There being no other business, the meeting ended at 5:20 pm.

Council Business Division 1  
Legislative Council Secretariat  
29 April 2021

**Bills Committee on Inland Revenue (Amendment)  
(Tax Concessions for Carried Interest) Bill 2021**

**Proceedings of the first meeting  
on Tuesday, 9 March 2021, at 4:30 pm  
in Conference Room 1 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
<b>Agenda item I — Election of Chairman</b>			
000346 – 000553	Mr WONG Ting-kwong Mr CHAN Chun-ying Mr Paul TSE Mr CHEUNG Kwok-kwan	Election of Chairman	
<b>Agenda item II — Meeting with the Administration</b>			
000554 – 000725	Chairman	Opening remarks	
000726 – 001306	Chairman Administration	Briefing by the Administration on the Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Bill 2021 ("the Bill")  Members agreed to invite written submissions on the Bill from the public and that a public hearing session would not be held.	
001307 – 002418	Chairman Mr CHAN Chun-ying Administration	Mr CHAN Chun-ying supported the Bill and asked:  (a) if a private equity ("PE") fund sold its investment in a private company through an initial public offering ("IPO"), whether the proposed tax concession regime ("the regime") would apply to the carried interest arising from profits earned from such transaction;  (b) whether the Administration would consider expanding the definition of "qualifying employee" in the Bill to include, apart from local employment, a person employed by an overseas associated corporation to carry out investment management services in Hong Kong;  (c) whether a local employee of a qualifying person would be eligible for salaries tax concession if carried interest was paid by an overseas associated corporation of the qualifying person;	

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		<p>(d) whether a special purpose entity ("SPE") established by a privately-offered fund would be regarded as a tax resident of Hong Kong; and</p> <p>(e) whether the Administration would review the definition of "fund" to include investment funds with a single investor ("fund of one"). Fund of one was a popular investment structure adopted by pension funds and multinational corporations.</p> <p>The Administration advised that:</p> <p>(a) privately-offered funds, including PE funds, were exempted from the payment of profits tax in respect of assessable profits derived from qualifying transactions in local and overseas private companies (including a PE fund exited through an IPO), subject to meeting the relevant exemption conditions. The Inland Revenue Department ("IRD") had issued a Departmental Interpretation and Practice Notes ("DIPN") and clarified that, if a fund sold its investment in the investee private company through an IPO, it was in substance no different from a transaction in listed securities or a transaction in securities of an investee private company. The fund would continue to be eligible for profits tax exemption in respect of the divestment if the exemption conditions remained satisfied. The Administration considered that the interpretation in the DIPN was clear and should be similarly applied under the regime;</p> <p>(b) the legislative proposal should comply with the latest international taxation standards including anti-Base Erosion and Profit Shifting ("BEPS") measures of the Organisation for Economic Co-operation and Development ("OECD"). To be eligible for the proposed salaries tax concession, an individual had to be a "qualifying employee" as defined under section 8(4) of the proposed new Schedule 16D, which meant that an individual (a) who was employed by a qualifying person or its associated corporation or associated partnership carrying on a business in Hong Kong, and (b) who was carrying out the duties of the employment by providing investment management services in Hong Kong for or on behalf of the qualifying person. In other words, an individual who was employed</p>	

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		<p>by a company not carrying on a business in Hong Kong would not be eligible for salaries tax concession under the regime;</p> <p>(c) the qualifying employee's assessable income from the employment chargeable to salaries tax would be calculated in accordance with section 8(3) of the proposed new Schedule 16D. According to section 8(2) of that Schedule, the assessable income would have to be accrued to the qualifying employee from an employment under which investment management services in Hong Kong were provided by such qualifying employee for or on behalf of a qualifying person for a certified investment fund or a specified entity. The qualifying employee shall provide relevant documentary proof to the Commissioner of Inland Revenue ("the Commissioner") in relation to the distribution of eligible carried interest if the carried interest in question was not paid by a qualifying person directly;</p> <p>(d) an SPE was established solely for the purpose of holding (whether directly and indirectly) and administering one or more investee private companies. An SPE was not allowed to carry on any trade or activities other than the above purposes. As SPE was wholly or partially owned by a fund, IRD would take into account the location of central management and control of the fund in considering an SPE's tax resident status; and</p> <p>(e) the definition of "fund" under section 20AM of the Inland Revenue Ordinance (Cap. 112) was drawn up taking into consideration the definition of "collective investment scheme" in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571). To qualify as a fund, an arrangement should satisfy a number of requirements, such as the property was managed as a whole by or on behalf of the person operating the arrangements; and/or the contributions of the participating persons and the profits or income from which payments were made to them were pooled. Moreover, IRD had issued a DIPN which covered the interpretation and practices in relation to the profits tax exemption for privately-offered</p>	

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		<p>funds. The DIPN specified that, in certain circumstances, an arrangement might be considered as a fund if it had only one investor at its initial stage of operation. The actual eligibility of an arrangement as a fund would have to be determined based on the specific circumstances of the individual case.</p> <p>Mr CHAN Chun-ying suggested that upon the resumption of the Second Reading debate on the Bill at the Council meeting, the Secretary for Financial Services and the Treasury should make it clear in his speech that if a PE fund sold its investment in a private company to the public through an IPO, the regime would apply to the carried interest arising from profits earned from such transaction.</p>	
002419 – 003533	Chairman Mr Holden CHOW Administration	<p>Mr Holden CHOW noted that, according to section 5(3) of the proposed new Schedule 16D, two conditions had to be satisfied for the proposed profits tax concession to apply, namely (a) the average number of full-time employees in Hong Kong carrying out the investment management services concerned should be adequate in the opinion of the Commissioner and be two or more; and (b) the total amount of operating expenditure incurred in Hong Kong was adequate in the opinion of the Commissioner and amounted to HK\$2 million or more. He asked how these conditions were set and whether references had been made to the <i>modus operandi</i> of existing PE funds operating in Hong Kong.</p> <p>The Administration responded that it had taken into account the local market landscape such as the total operating expenditure of PE funds, and the views gathered from an industry consultation on the preliminary proposal from August to September 2020. The views expressed by the industry had, where appropriate, been incorporated into the current Bill, such as lowering the local operating expenditure threshold from HK\$3 million to HK\$2 million.</p> <p>Mr Holden CHOW further enquired about the Administration's assessment on (a) the number of PE firms that would be able to enjoy the tax concessions in Hong Kong after implementing the regime; and (b) the estimated revenue forgone arising from the regime.</p>	



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		<p>The Administration advised that currently there were about 581 PE firms in Hong Kong. It was envisaged that the number would likely increase upon implementation of the regime. PE funds would also bring in demands for investment management services, relevant professional services and related economic activities. While tax treatment was one of the factors influencing the choice of jurisdiction for fund domiciliation and operations alongside other considerations, it was difficult to estimate at this stage the number of PE funds that would be attracted to operate and be managed in Hong Kong under the regime.</p> <p>As regards funds being managed in Hong Kong, since carried interest received by their investment management service providers was chargeable to profits tax together with other service income (e.g. management fees) derived from investment management services rendered in Hong Kong, IRD had not maintained a separate breakdown of tax revenue arising from carried interest in its database. On the other hand, many PE funds and their investment management service providers were currently carrying out their business and investment management activities offshore, and thus they were not subject to taxation in Hong Kong. It was therefore difficult to estimate the financial implications of the regime accurately. That said, the Administration anticipated that the tax concessions would attract more PE funds to operate in Hong Kong and the existing PE funds would expand their scope of business so that additional tax revenue would be generated from management fees.</p> <p>Mr Holden CHOW sought clarification on whether a PE fund registered and operated overseas could take advantage of the regime by simply registering in Hong Kong and meeting the minimum number of full-time employees and the minimum amount of operating expenditure requirements under the Bill, while retaining a substantial portion of its operations and personnel in another jurisdiction.</p> <p>The Administration said that in determining whether a preferential tax regime met the international standards on counteracting BEPS, OECD would take into account whether the regime could meet the substantial activities requirements to ensure that those beneficiaries of the preferential tax regime</p>	

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		would undertake core income generating activities in the jurisdiction providing the regime. Given the above international taxation standards, many jurisdictions had tightened up their tax regime, and as a result, many industry players were considering to align their fund structures with business activities onshore. It was the Government's objective to encourage fund formation and operation in Hong Kong by offering more attractive tax concession policies. The Government would consider introducing a legal framework that would facilitate these PE funds to re-domicile in Hong Kong.	
<b>Clause-by-clause examination of the Bill</b> [The Bill (LC Paper No. CB(3)327/20-21)] [Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)633/20-21(01))]			
003534 – 003949	Chairman Administration	<u>Clause 1 — Short title</u>  <u>Clause 2 — Inland Revenue Ordinance amended</u>  <u>Clause 3 — Section 2 amended (interpretation)</u>  <u>Clause 4 — Section 4 amended (official secrecy)</u>  <u>Clause 5 — Section 19CA (as amended by section 7 of the Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Ordinance 2020 (15 of 2020)) amended (treatment of unabsorbed losses under sections 19CAB and 19CAC: interpretation)</u>  <u>Clause 6 — Section 20AN amended (certain profits of certain funds exempt from payment of profits tax)</u>  <u>Clause 7 — Section 20AO amended (certain profits of special purpose entities exempt from payment of profits tax)</u>  <u>Clause 8 — Part 6B added</u>  <i>Section 40AC — Schedule 16D: eligible carried interest and its tax treatment</i>  <i>Section 40AD — Power to amend Schedule 16D</i>  <u>Clause 9 — Section 51C amended (business records to be kept)</u>  <u>Clause 10 — Section 80 amended (penalties for failure to make returns, making incorrect returns,</u>	

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		<p><u>etc.)</u></p> <p><u>Clause 11 — Schedule 16C amended (classes of assets specified for transactions for purposes of section 20AN)</u></p> <p>Members raised no queries on the above clauses of the Bill.</p>	
003950 – 005057	<p>Chairman Administration</p> <p>Mr CHAN Chun-ying</p> <p>Mr Holden CHOW</p>	<p><u>Clause 12 — Schedule 16D added</u></p> <p><u><i>Schedule 16D — Eligible Carried Interest and its Tax Treatment</i></u></p> <p>Referring to Part 6 of the proposed new Schedule 16D, Mr CHAN Chun-ying commented that the period to which tax concessions could be backdated was quite generous. He said that there had been cases in the past that the Administration rejected requests for longer backdate periods for other tax concession proposals. He asked the Administration to explain, with examples, whether the current proposal was consistent with previous practice.</p> <p>The Administration responded that the current offer was a conscious decision to attract overseas PE funds to move to and operate in Hong Kong as early as possible.</p> <p>Mr Holden CHOW noted that according to Part 2 of the proposed new Schedule 16D, to qualify for tax concessions under the Bill, the Commissioner had to be satisfied that the number of full-time local employees employed and the total amount of operating expenditure incurred in Hong Kong to carry out investment management services were adequate; and he sought clarification on whether the Commissioner could require the employment of more than two local employees or impose a higher operating expenditure requirement.</p> <p>The Administration advised that the Bill only set out the minimum requirements for eligibility for profits tax concession. Depending on the facts and circumstances of each case, the Commissioner could exercise judgment on whether the number of full-time employees and the total amount of local operating expenditure of qualifying persons were adequate and proportionate to their operation in Hong Kong.</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
005058 – 005244	Mr Holden CHOW Administration	Mr Holden CHOW said that following the implementation of the regime, the Administration should assess its effectiveness and keep a record on, for example, the number of PE funds attracted to operate in Hong Kong, the number of full-time employees hired and the total amount of local operating expenditure incurred by the qualifying persons in Hong Kong, and the revenue forgone resulting from the regime. He asked the Administration to report the relevant findings to the Legislative Council in due course. The Administration undertook to follow up as appropriate.	
005245 – 005306	Chairman Assistant Legal Adviser 9 ("ALA9")	ALA9 advised that no difficulties had been identified in relation to the legal and drafting aspects of the Bill.	
<b>Agenda item III — Any other business</b>			
005307– 005435	Chairman Administration	Legislative timetable and concluding remarks	