

立法會
Legislative Council

LC Paper No. CB(1) 1363/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/10/2

Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010

Minutes of third meeting
held on Tuesday, 4 January 2011, at 4:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon James TO Kun-sun (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Starry LEE Wai-king, JP
Hon Paul CHAN Mo-po, MH, JP
Hon Paul TSE Wai-chun
Hon Alan LEONG Kah-kit, SC
- Member attending** : Dr Hon Priscilla LEUNG Mei-fun
- Members absent** : Hon Albert HO Chun-yan
Hon Tanya CHAN

**Public officers
attending**

: For item I

Transport and Housing Bureau

Ms Annette LEE
Deputy Secretary for Transport and Housing (Housing)

Mr Eugene FUNG
Principal Assistant Secretary for Transport and
Housing (Housing)(Private Housing)

Financial Services and the Treasury Bureau

Ms Shirley KWAN
Principal Assistant Secretary for Financial Services &
the Treasury (Treasury)(Revenue)

Inland Revenue Department

Mr Richard WONG
Deputy Commissioner of Inland Revenue (Technical)

Mr HONG Wai-kuen
Senior Superintendent of Stamp Office

Department of Justice

Mr Sunny CHAN
Senior Assistant Law Draftsman

Mr Manuel NG
Government Counsel

**Attendance by
invitation**

: For item I

The Hong Kong Institute of Surveyors

Dr Lawrence POON
Immediate Chairman of General Practice Division

Property Agencies Association

Mr Tony KWOK
Chairman

Hong Kong Chamber of Professional Property
Consultants Ltd

Mr Lawrance WONG
President

Property Agents Association

Mr Simon WONG
Association Legal Consultant

Webb-site.com

Mr David M WEBB
Founder

Society of Hong Kong Real Estate Agents Ltd

Mr Denys KWAN
Chairman

Hong Kong Real Estate Agencies General Association

Mr Andy WONG
Chief Secretary

The Real Estate Developers Association of Hong
Kong

Mr Louis LOONG
Secretary General

Hong Kong Owners Club

Mr SHEA Hing-wan
Chairman

Lion Rock Institute

Mr Peter WONG
Executive Director

Century 21 Goodwin Property Consultants

Mr Eric LEE
Chairman & Chief Executive Officer

Momentum 107

Mr HO Man-kit
Convenor

Tony Kan & Co Solicitors & Notaries

Mr Alvin CHUNG
Partner

Hong Kong Institute of Real Estate Administrators

Mr Stanley WONG
Vice President

The Law Society of Hong Kong

Mr Terry YEUNG
Member of Property Committee

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mrs Mary TANG
Senior Council Secretary (1)2

Miss Mandy POON
Legislative Assistant (1)4

I. Meeting with deputations and the Administration

Meeting with deputations

The Chairman invited views from the following deputations -

- (a) The Hong Kong Institute of Surveyors
- (b) Property Agencies Association

- (c) Hong Kong Chamber of Professional Property Consultants Ltd
(LC Paper No. CB(1) 950/10-11(01))
- (d) Property Agents Association
(LC Paper No. CB(1) 950/10-11(02))
- (e) Webb-site.com
(LC Paper No. CB(1) 822/10-11(03))
- (f) Society of Hong Kong Real Estate Agents Ltd
- (g) Hong Kong Real Estate Agencies General Association
- (h) The Real Estate Developers Association of Hong Kong
(LC Paper No. CB(1) 991/10-11(01))
- (i) Hong Kong Owners Club
- (j) Lion Rock Institute
- (k) Century 21 Goodwin Property Consultants
(LC Paper No. CB(1) 964/10-11(01))
- (l) Momentum 107
(LC Paper No. CB(1) 950/10-11(03))
- (m) Tony Kan & Co Solicitors & Notaries
(Appendix II to LC Paper No. CB(1) 855/10-11(02))
- (n) Hong Kong Institute of Real Estate Administrators
- (o) The Law Society of Hong Kong
(LC Paper No. CB(1) 983/10-11(01))

2. Members also noted the following submissions from deputations not attending the meeting -

LC Paper No. CB(1) 964/10-11(02) — Submission from Association of Chartered Certified Accountants Hong Kong (English version only)

LC Paper No. CB(1) 964/10-11(03) — Submission from Chu & Lau Solicitors & Notaries (English version only)

LC Paper No. CB(1) 983/10-11(02) — Submission from The Hong Kong Association of Banks (English version only)

LC Paper No. CB(1) 983/10-11(03) — Submission from PricewaterhouseCoopers Ltd (English version only)

Meeting with the Administration

(LC Paper No. CB(1) 855/10-11(02) — List of follow-up actions arising from the discussion at the meeting on 17 December 2010

LC Paper No. CB(1) 964/10-11(04) — List of follow-up actions arising from the discussion at the meeting on 21 December 2010)

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

4. The Administration was requested to -

- (a) provide (in tabular form) the Administration's response to all the written submissions (including those from deputations not attending the meeting) on the Bill; and
- (b) explain the application of the special stamp duty in respect of compulsory sale for redevelopment.

II. Any other business

5. There being no other business, the meeting ended at 6:45 pm.

Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010

**Proceedings of the third meeting
on Tuesday, 4 January 2011, at 4:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000333 - 000740	Chairman	Opening remarks	
000741 - 001148	Dr Lawrence POON, The Hong Kong Institute of Surveyors (HKIS)	<p>Expression of views -</p> <p>(a) the introduction of special stamp duty (SSD) to curb property speculation was considered acceptable and understandable;</p> <p>(b) it might not be necessary to specify the party to be responsible for paying SSD which would be decided by the market and reflected in the property price;</p> <p>(c) it should be clearly set out in the Bill that Provisional Agreement for Sale and Purchase (PASP) signed before 20 November 2010 would be regarded as having acquired the property to avoid disputes over the application of SSD; and</p> <p>(d) banks would likely tighten the criteria for mortgage having regard to the increased risk arising from SSD.</p>	
001149 - 001533	Mr Tony KWOK, Property Agencies Association (PAA)	<p>Expression of views -</p> <p>(a) PAA supported the need to curb property speculation but the introduction of SSD was overly drastic;</p> <p>(b) SSD would adversely affect the property market and the free economy of Hong Kong. It would also set a bad precedent and deter investments;</p> <p>(c) both SSD and prudential risk management measures would not only affect property speculators but also genuine home-buyers;</p> <p>(d) need to clarify issues such as the application of SSD to PASP signed before 20 November 2010 and the party responsible for payment of SSD;</p> <p>(e) need to provide an appeal mechanism for</p>	

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		<p>SSD; and</p> <p>(f) consideration should be given to exempting first-time home buyers and those who changed flats from SSD.</p>	
001534 - 001941	Mr Lawrance WONG, Hong Kong Chamber of Professional Property Consultants Ltd (HKCPPC)	<p>Expression of views (LC Paper No. CB(1) 950/10-11(01)) -</p> <p>(a) while SSD had effectively deterred short-term resale, it would be more appropriate to levy tax on profits incurred from property sales;</p> <p>(b) PASP signed before 20 November 2010 should be exempted from SSD;</p> <p>(c) genuine home buyers who had to sell their flats within 24 months after acquisition because of special circumstances beyond their control should be exempted from SSD;</p> <p>(d) home ownership assistance, including re-launching of the Home Ownership Scheme and various loan schemes, should be provided. The ultimate solution was to increase the land supply; and</p> <p>(e) the prudential risk management measures had adversely affected genuine home buyers in mortgage lending.</p>	
001942- 002204	Mr Simon WONG, Property Agents Association	<p>Expression of views (LC Paper No. CB(1) 950/10-11(02)) -</p> <p>(a) there was much confusion in the property market as to whether PASP was binding or not;</p> <p>(b) consideration should be given to shortening the holding period for SSD from 24 months to 12 months, and adjusting the rates of SSD for resale within six months and 12 months to 10% and 5% respectively; and</p> <p>(c) need to spell out in the Bill the party who should be liable for SSD.</p>	

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002205 - 002636	Mr David M WEBB, Webb-site.com	<p>Expression of views (LC Paper No. CB(1) 822/10-11(03)) -</p> <p>(a) need to explain the changes in circumstances which warranted the introduction of SSD which had been previously ruled out by the Administration despite repeated requests from Members;</p> <p>(b) SSD amounted to partial confiscation of the value of property for anyone who sold the property within 24 months, which was against Article 105 of the Basic Law in protecting the right to acquire and dispose of properties;</p> <p>(c) SSD would not only affect speculators but also genuine home-owners who had to sell their properties within two years because of special circumstances beyond their control;</p> <p>(d) Hong Kong was built on the foundation of risk taking and free market commerce under which speculative activities would be subject to profits tax. The introduction of SSD would amount to intervention at its worst; and</p> <p>(e) supported the prudential risk management measures adopted by the Hong Kong Monetary Authority to reduce the loan-to-value (LTV) ratio for mortgage lending and to apply the stress test to avoid tax payers having to bail out the banking system.</p>	
002637 - 003029	Mr Denys KWAN, Society of Hong Kong Real Estate Agents Ltd	<p>Expression of views -</p> <p>(a) supported measures to curb speculation;</p> <p>(b) as PASP was binding in nature, the signing of PASP should be regarded as having acquired the property;</p> <p>(c) owners would choose to prolong the resale of their properties beyond the holding period of 24 months to avoid SSD;</p> <p>(d) should clearly set out in the Bill that sellers should be liable for SSD to avoid</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>confusion in property transactions;</p> <p>(e) prudential risk management measures would affect mortgage lending by genuine home buyers; and</p> <p>(f) speculators would choose to set up property-holding shell companies to circumvent SSD.</p>	
003030 - 003441	Mr Andy WONG, Hong Kong Real Estate Agencies General Association (HKREAGA)	<p>Expression of views -</p> <p>(a) the announcement of SSD on 19 November 2010 had caused a lot of confusion, particularly on the application of SSD to PASP signed before 20 November 2010. A number of buyers had since cancelled the transactions with forfeiture of deposits;</p> <p>(b) consideration should be given to exempting PASP signed on or before 20 November 2010, first-time home buyers and those who changed flats from SSD;</p> <p>(c) prudential risk management measures would affect mortgage lending by genuine home-buyers; and</p> <p>(d) an appeal mechanism against SSD should be provided to cater for special circumstances.</p>	
003442 - 003944	Mr Louis LOONG, The Real Estate Developers Association of Hong Kong (REDA)	<p>Expression of views (LC Paper No. CB(1) 991/10-11(01)) -</p> <p>(a) REDA supported the policy objectives to curb speculative activities, and to ensure healthy and stable operation of the property market. However, it was doubtful whether SSD would be able to achieve the intended objectives;</p> <p>(b) the introduction of SSD would undermine the free market economy of Hong Kong. SSD would also have the undesirable effect of delaying the supply of flats and the pace of urban redevelopment;</p> <p>(c) need to provide a clear definitions for the terms "acquire" and "dispose of" in the</p>	

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		<p>Bill;</p> <p>(d) the scope of exemptions for SSD should be expanded to take account of the special circumstances where genuine home buyers had to sell their property within two years;</p> <p>(e) need to provide for a sunset clause in the Bill for SSD which was meant to be an extraordinary measure and might not be necessary in the long run; and</p> <p>(f) need to review the retrospective effective of the Bill.</p>	
003945 - 004255	Mr SHEA Hing-wan, Hong Kong Owners Club (HKOC)	<p>Expression of views -</p> <p>(a) would support SSD if it was targeted only at speculators. However, speculators could set up property holding shell companies to circumvent SSD;</p> <p>(b) genuine home buyers who had to sell their properties within two years should not be subject to SSD; and</p> <p>(c) need to allow a cooling period of three days for purchase of properties.</p>	
004256 - 004707	Mr Peter WONG, Lion Rock Institute	<p>Expression of views -</p> <p>(a) while SSD could help curb property speculation, it would reduce the liquidity of the property market and dampen the desire of investment in properties, which might not be beneficial to Hong Kong;</p> <p>(b) the reduction in LTV ratio alone would cool down the property market and there was no need for SSD; and</p> <p>(c) there were still affordable flats available in urban districts for home buyers.</p>	
004708 - 005143	Mr Eric LEE, Century 21 Goodwin Property Consultants	<p>Expression of views (LC Paper No. CB(1) 964/10-11(01)) -</p> <p>(a) supported SSD if it could ensure a healthy and stable development of the property market;</p>	

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		<p>(b) while there had been a significant drop in the number of property transactions, the property prices had not dropped which had in fact continued to rise over the past few months. This might be due to the decrease in flat supply as owners tended not to sell their flats lest they would be caught by SSD. The situation would be aggravated if further measures were to be introduced to regulate the property market in the event that the property prices continued to rise;</p> <p>(c) SSD would no longer be required if the low interest rate environment and the inflow of funds did not prevail; and</p> <p>(d) instead of implementing drastic measures to curb speculation, efforts should be made to increase land supply for housing and provide more assistance to home buyers.</p>	
005144 - 005424	Mr HO Man-kit, Momentum 107	<p>Expression of views (LC Paper No. CB(1) 950/10-11(03)) -</p> <p>(a) there was a lack of consultation on SSD which was tantamount to usurping of private assets;</p> <p>(b) the introduction of SSD was at variance with the simple tax regime adopted in Hong Kong;</p> <p>(c) the best way to curb speculation was to provide sufficient supply of land for housing rather than introducing new taxes; and</p> <p>(d) consideration should be given to including a sunset clause in the Bill so that SSD could be removed within a specified timeframe.</p>	
005425 - 005734	Mr Alvin CHUNG, Tony Kan & Co Solicitors & Notaries	<p>Expression of views (Appendix II to LC Paper No. CB(1) 855/10-11(02)) -</p> <p>(a) Inland Revenue Department (IRD)'s interpretation on whether PASP was binding was different from prevailing conveyancing practice;</p>	

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		<p>(b) IRD should not assume the role of the court in interpreting the law on transfer of equitable ownership;</p> <p>(c) the Bill should not have any retrospective effect to all binding PASPs executed prior to 20 November 2010, regardless of whether a party had the right to ask for specific performance; and</p> <p>(d) the Bill should not have the effect of altering an innocent party's right or liability already committed prior to 20 November 2010.</p>	
005735 - 010124	Mr Stanley WONG, Hong Kong Institute of Real Estate Administrators (HKIREA)	<p>Expression of views -</p> <p>(a) supported in principle the introduction of administrative measures to prevent property bubble, but not the use of legislative means, such as SSD, to regulate the ever-changing property market;</p> <p>(b) need for a sunset clause for SSD in the Bill;</p> <p>(c) need for an appeal mechanism in the Bill for genuine home owners who had to sell their properties due to circumstances beyond their control; and</p> <p>(d) the Administration should increase land supply for housing to ensure healthy and stable development of the property market, rather than introducing punitive measures.</p>	
010125 - 010906	Mr Terry YEUNG, The Law Society of Hong Kong (LS)	<p>Expression of views (LC Paper No. CB(1) 983/10-11(01)) -</p> <p>(a) the meaning of the terms "acquire" and "dispose of" remained unclear for the purpose of SSD. IRD's policy in this regard was also inconsistent and confusing;</p> <p>(b) for the sake of certainty, the date of any agreement for sale/purchase of immovable property, whether provisional or formal, should be taken as the date of acquisition/disposal of the property.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Otherwise, lawyers would have difficulty in ascertaining whether SSD should be payable in a resale, given the confusion over the date of acquisition of property;</p> <p>(c) need to clarify the application of SSD in cases of divorce, sale of properties under a compulsory sale order granted under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545), enforcement actions by a mortgagee in a mortgagor default situation (including sale by mortgagee in possession, receiver sale or foreclosure order etc); and</p> <p>(d) for the sake of fairness, the liability of a purchaser who had been held liable to pay SSD should be limited to the stated consideration in the document, which should be deemed to have been duly stamped for all purposes except the vendor's personal liability to pay SSD. A time limit should be set for the adjudication process for stamp duty.</p>	
010907 - 011807	Chairman Administration	<p>Administration's response -</p> <p><u>Liability for SSD</u></p> <p>(a) under the present Stamp Duty Ordinance (Cap. 117) (SDO), all the parties executing a chargeable instrument were jointly and severally liable to pay the stamp duty. Under the proposed Bill, for transactions on properties which had been held for shorter than 24 months, buyers and sellers would negotiate on which party should pay SSD. While it had been the market practice for buyers to pay the current ad valorem stamp duty, this might not necessarily be the case upon the implementation of SSD given that buyers could choose to buy properties which had been held for more than 24 months instead;</p> <p><u>Exemptions and appeal mechanism</u></p> <p>(b) the granting of too many exemptions might undermine the deterrent effect of the Bill;</p>	The Administration to provide (in tabular form) response to all the written submissions (including those from deputations not attending the meeting) on the Bill.

Time marker	Speaker	Subject(s)	Action required
		<p>(c) exemptions were already provided to sale of properties due to bankruptcy and involuntary winding up;</p> <p><u>Compliance with Basic Law</u></p> <p>(d) stamp duty was charged in accordance with Article 108 of Basic Law (BL);</p> <p>(e) Articles 6 and 105 of BL were not applicable to legitimate taxation. Therefore, SSD did not contravene Articles 6 and 105. Article 107 of BL did not apply to the present measure to curb speculation of residential properties.</p> <p><u>Inclusion of a sunset clause</u></p> <p>(f) it was not possible for the Administration to pre-determine the date when SSD was deemed not necessary to curb speculation. The Administration intended to go through the legislative process in a normal manner to amend the legislation when SSD was considered no longer necessary;</p> <p><u>Impact of prudential risk management measures</u></p> <p>(g) the prudential risk management measures would not affect properties valued less than \$6.8 million; and</p> <p><u>Definition of "acquire" and "dispose of"</u></p> <p>(h) written explanation would be provided on the meaning of "acquire" and "dispose of".</p>	
011808 - 012807	Chairman Mr LEE Wing-tat Mr Terry YEUNG/LS Mr SHEA Hing-wan /HKOC Mr Lawrence WONG /HKCPPC Mr David M WEBB, Webb-site.com	Discussion on the need for exemptions by genuine home buyers who had to resell their properties within 24 months under special circumstances which were beyond their control.	
012808 - 013910	Chairman Dr Margaret NG Mr Stanley WONG /HKIREA	Discussion on the retrospective effect of the Bill and the need for clarity on the date of acquisition of property.	

Time marker	Speaker	Subject(s)	Action required
	Mr Denys KWAN, Society of Hong Kong Real Estate Agents Ltd Dr Lawrence POON /HKIS Mr Tony KWOK/PAA		
013911 - 014634	Chairman Mr CHAN Kam-lam Mr David M WEBB, Webb-site.com	Discussion on the need for anti-speculative measures and a sunset clause for SSD.	
014635 - 015409	Chairman Mr Ronny TONG	Mr Ronny TONG's views - (a) did not agree that SSD was unconstitutional; (b) while both buyer and seller were jointly and severally liable to pay stamp duty under SDO, the market would determine which party should pay; and (c) exemptions, if needed, should be clear and fair.	
015410 - 015610	Chairman Mr Louis LOONG /REDA Administration Mr Lawrence WONG /HKCPPC	Discussion on exemptions for SSD.	The Administration to explain the application of SSD in respect of compulsory sale for redevelopment.
015611 - 020311	Chairman Dr Priscilla LEUNG	Dr Priscilla LEUNG's declaration of interest in holding properties and expression of views - (a) supported measures to ensure a stable and healthy development of the property market; (b) the Bill should set out clearly the party which should be held liable for SSD; and (c) exemptions from SSD should be provided for the resale of owner-occupied premises.	

Time marker	Speaker	Subject(s)	Action required
020312 - 020803	Chairman Mr Paul TSE	Mr Paul TSE's enquiries - (a) whether SSD was in compliance with the Basis Law; and (b) whether SSD would be an appropriate measure to ensure a stable and healthy development of the property market.	
020804 - 021648	Chairman Mr Stanley WONG /HKIREA Mr Tony KWOK/PAA Mr Andy WONG /HKREAGA Mr SHEA Hing-wan /HKOC Dr Lawrence POON /HKIS Mr Louis LOONG /REDA	Discussion on the need for SSD, the liability for SSD payment and scope of exemptions.	