

立法會
Legislative Council

LC Paper No. CB(1)511/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/5/12

Bills Committee on Stamp Duty (Amendment) Bill 2013

**Minutes of fourth meeting on
Monday, 15 July 2013, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon Starry LEE Wai-king, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Charles Peter MOK
Hon Kenneth LEUNG
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Hon Tony TSE Wai-chuen
- Members attending** : Hon LEE Cheuk-yan
Hon TANG Ka-piu
- Members absent** : Hon Abraham SHEK Lai-him, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP

Public officers attending : Agenda item I

Financial Services and the Treasury Bureau

Ms Mable CHAN, JP
Deputy Secretary for Financial Services and the Treasury (Treasury) 2

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

Transport and Housing Bureau

Mrs Vicki KWOK
Principal Assistant Secretary for Transport and Housing (Housing) (Private Housing)

Inland Revenue Department

Mr TAM Tai-pang
Deputy Commissioner of Inland Revenue (Operations)

Mr HONG Wai-kuen
Senior Superintendent of Stamp Office

Department of Justice

Miss Shandy LIU Wing-man
Senior Assistant Law Draftsman

Mr Manuel NG Man-chun
Government Counsel

Clerk in attendance: Ms Annette LAM
Chief Council Secretary (1)3

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mr Ken WOO
Council Secretary (1)5

Action

I. Meeting with the Administration

(LC Paper No. CB(1)1289/12-13(01) -- List of follow-up actions arising from the discussion at the meeting on 31 May 2013

LC Paper No. CB(1)1289/12-13(02) -- Administration's response to issues raised at the meeting on 31 May 2013

LC Paper No. CB(1)1503/12-13(01) -- List of follow-up actions arising from the discussion at the meeting on 13 June 2013

LC Paper No. CB(1)1503/12-13(02) -- Administration's response to issues raised at the meeting on 13 June 2013 and views expressed by deputations on the Bill

Relevant papers issued previously

LC Paper No. CB(3)471/12-13 -- The Bill

LC Paper No. CB(1)1132/12-13(01) -- Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members only))

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

2. The Chairman, Mr James TIEN, Mr Tony TSE, Mr WONG Ting-kwong, Mr Tommy CHEUNG and Mr Paul TSE made declaration of interests respectively.

Follow-up actions required of the Administration

3. The Administration was requested to:

- (a) in respect of the transactions of sale and purchase of residential properties conducted during the period between March and

May 2013 involving individual buyers who were holders of Hong Kong Identity Card, provide breakdown on the number and proportion of transactions by first-time home buyers and by those holding one or more than one other property in Hong Kong on the date of acquisition; and

- (b) provide the justifications and the basis for setting the six-month period for Hong Kong Permanent Residents who acquire a new residential property to dispose of their only other residential property in Hong Kong, with an analysis on the time frame for completing the necessary formalities in the process of replacing their property within the said period.

Date of next meeting

4. The Chairman advised members that the next meeting would be held in September 2013 to meet with the Administration. Members would be informed of the relevant meeting arrangements in due course.

(Post-meeting note: With the concurrence of the Chairman, the next meeting of the Bills Committee had been scheduled for Monday, 23 September 2013, at 10:45 am. Members were informed of the meeting arrangements vide LC Paper No. CB(1)1658/12-13 on 5 August 2013.)

II. Any other business

5. There being no other business, the meeting ended at 12:41 pm.

Council Business Division 1
Legislative Council Secretariat
10 December 2013

**Proceedings of the fourth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2013
on Monday, 15 July 2013, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
001128 – 001245	Chairman Mr James TIEN	Opening remarks Disclosure of direct or indirect pecuniary interest by members	
001246 – 002140	Chairman Administration	The Administration's response to members' views and concerns raised at the meeting of the Bills Committee on 31 May 2013 (LC Paper No. CB(1)1289/12-13(02)).	
002141 – 003052	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai's suggestion that sale and purchase transactions of non-residential properties for long-term investment (eg. holding for at least three years) and self-use be exempted from the enhanced ad valorem stamp duty ("AVD") rates.</p> <p>The Administration's response:</p> <p>(a) following the introduction of the enhanced Special Stamp Duty ("SSD") and the Buyer's Stamp Duty ("BSD") in October 2012, the upward momentum in property prices of residential property market had been temporarily arrested. However, on entering 2013, there were renewed signs of exuberance in the residential property market. To forestall the shifting of the exuberant condition in the residential property market to the already overheated non-residential property market, the Government introduced demand-side management measures for the non-residential property market with a view to achieving the immediate cooling effect;</p> <p>(b) AVD chargeable on property transactions had all along been applicable to all types of properties, irrespective of whether residential or non-residential properties were involved; and</p> <p>(c) if the Government were to differentiate between non-residential properties acquired for self-use and those for speculation, it would need to introduce a new SSD tackling</p>	

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		<p>speculative activities relating specifically to non-residential properties. Not only was it undesirable as a new duty would need to be introduced in addition to existing ones, its effectiveness in cooling down the non-residential property market immediately was also in doubt as the duty would only be payable upon the disposal of the non-residential properties.</p> <p>Referring to the thousands of estate agents who took to the streets on 7 July 2013 in protest against the stamp duty measures, Mr SIN urged the Administration to address the concerns and requests of the protesters, such as exempting companies whose shareholders were all Hong Kong Permanent Residents ("HKPRs") from BSD.</p> <p>The Administration's response:</p> <ul style="list-style-type: none">(a) the Transport and Housing Bureau ("THB"), the Financial Services and the Treasury Bureau and the Inland Revenue Department ("IRD") had met with the Estate Agents Authority and trade representatives on 5 July 2013 to address their concerns on the Bill and respond to their requests;(b) as regards the proposal for exempting companies whose shareholders were all HKPRs from BSD, the Administration explained that:<ul style="list-style-type: none">(i) given the extremely low interest rates, excessive liquidity and tight housing supply situation, to exempt companies whose shareholders were all HKPRs from BSD would send out a wrong message to the public that the Government was less than determined in cooling down the property market, hence causing the exuberant state in the property market to revive;(ii) a company was an entity independent of its shareholders in law. To exempt a company on the basis of the HKPR status of its shareholders would cause confusion to this fundamental legal principle under the company law.	

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		<p>Corporate buyers could also circumvent BSD through transferring the beneficial interest in the shares of the company, and in essence, the ownership of the residential property in question, to non-HKPRs. The stamp duty measures had to be consistent with each other to avoid weakening their effectiveness; and</p> <p>(iii) although BSD would add to the cost of property acquisition for company buyers, it would not have much impact on home buyers as the majority of HKPRs acquired properties as individual buyers. The demand-side management measures were extraordinary measures introduced under exceptional circumstances. The Administration would continue to monitor the property market closely and make appropriate adjustments to the measures in a timely manner.</p>	
003053 – 003802	Chairman Mr James TIEN Administration	<p>Referring to the Administration's opening remarks that property prices had been stabilized after the introduction of the Stamp Duty (Amendment) Bill 2013 ("the Bill") in February 2013 as property prices had risen by only less than 2% between March and May 2013, Mr James TIEN opined that the saying was misleading as, for the case of the acquisition of residential properties at above \$20 million, buyers who were beneficial owners of another residential property had to pay an additional AVD rate of 4.25%, meaning that property prices had actually risen by some 6% during the above period. The fact that the transaction figures remained stagnant since the introduction of the Bill showed that the measures had not been effective in facilitating HKPRs from buying home.</p> <p>The Administration's response:</p> <p>(a) in line with the Government's policy to accord priority to the home ownership needs of HKPRs, HKPRs who were not beneficial owners of any other residential property in Hong Kong on the date of acquisition of a residential property would still be charged at the old AVD rates. Doubling the AVD</p>	

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		<p>would increase the transaction costs of certain groups of buyers and dampen demand from those who already owned or were beneficial owners of any other residential property, thereby alleviating the overall demand for properties; and</p> <p>(b) the Government reckoned that the fundamental solution to the tight supply in the residential property market was to increase the housing and land supply in the long term. The proposed measures were meant to cool down the overheated property markets at the time when the demand could not be met immediately.</p> <p>In respect of the transactions for residential properties conducted during the period between March and May 2013 involving individual buyers who were holders of Hong Kong Identity Card ("HKIC"), Mr TIEN requested the Administration to provide a breakdown on the number and proportion of transactions by first-time home buyers and by those holding one or more than one other property in Hong Kong on the date of acquisition.</p> <p>The Administration undertook to provide the information as requested. It also advised that the percentage of residential property transactions where buyers were holders of HKIC out of total transactions rose from 82.3% in 2010 to 95.6% during January to April 2013.</p>	<p>The Administration to follow up as stated in paragraphs 3(a) of the minutes.</p>
003803 – 004447	Chairman Mr Kenneth LEUNG Administration	<p>Mr Kenneth LEUNG's views and concern:</p> <p>(a) suggested that the difference between the existing and the enhanced AVD rates should be refunded to companies who made appropriate declarations that the non-residential properties acquired were either for self-use or use by its group of companies after a holding period of, say, two years or more; and</p> <p>(b) it was highly unlikely that the Bill would be passed by the Legislative Council ("LegCo") without appropriate exemptions.</p>	

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		<p>The Administration responded that to widen the scope of exemption and to differentiate between non-residential properties acquired for self-use and those for speculation might send out a wrong message to the public that the Government was less than determined in cooling down the property market and would undermine the effectiveness of the demand-side management measures. Nonetheless, the Administration would continue to listen to the views of the Bills Committee and the various stakeholders on the exemption proposal.</p> <p>Mr LEUNG suggested providing exemption for one non-residential property for each company. He urged the Administration to come up with feasible proposals for further consultation with the Bills Committee.</p>	
004448 – 005828	Chairman Mr James TO Administration	<p>Mr James TO enquired about the ways in which the Government could encourage property owners to make available their residential properties for sale in the market to meet the demand.</p> <p>The Administration's response:</p> <p>(a) the objective of the Bill was to cool down the residential property market immediately by way of demand-side management, thereby assisting HKPRs in acquiring residential properties. To the majority of the public, however, home ownership was an important decision of their own. Whether they would actually acquire residential properties or make available their residential properties for sale in the market depended on such factors as individuals' economic and family considerations;</p> <p>(b) the Government had no intention to intervene with market operations. In taking forward the Bill, the Government aimed at curbing market exuberance so as to ensure the stable and healthy development of the property market. The Administration would continue to closely monitor the market with a view to evaluating the impact of the proposed measures on HKPRs; and</p> <p>(c) the Government was determined to adopt the</p>	

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		<p>supply-led strategy as the basis for addressing the housing needs. The Government was now conducting a Long Term Housing Strategy review which aimed to ensure optimal use of the existing land and housing resources to meet the housing needs of the community in the medium and long term. THB expected to issue the above review document in September 2013 for public consultation.</p>	
005829 – 010805	<p>Chairman Mr SIN Chung-kai Administration</p>	<p>Mr SIN Chung-kai's views and concerns:</p> <ul style="list-style-type: none"> (a) whether an agreement for sale that was entered into before the date when the Bill was deemed to have taken effect would be subject to the new AVD rate; (b) the effect on those property transactions that had been effected since the Bill was introduced, if the Bills Committee did not support the resumption of the second reading of the Bill, or that the second reading could not be resumed due to filibuster at the Council; and (c) the objective indicators/targets to be met for the withdrawal of the proposed measures. <p>The Administration's response:</p> <ul style="list-style-type: none"> (a) IRD would keep track of all the relevant property transactions between 23 February 2013, the date when the Bill was deemed to have taken effect, and the gazettal date of the Amendment Ordinance, if enacted. Demand notes for AVD underpaid would be issued after that gazettal date. Agreements for sale that were entered into on or before 22 February 2013 would be subject to the old AVD rates; and (b) in order that adjustments to the proposed measures could be made in a timely manner in response to the development in the property market, the Bill proposed to include a provision empowering the Financial Secretary to amend the value bands and rates of AVD by way of subsidiary legislation 	

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		<p>subject to negative vetting by LegCo. The Administration would consider adjustments to the measures by making reference to a basket of indicators, including property prices, housing affordability of the general public, volume of property transactions, supply of residential properties, mortgage payments, rent-to-income ratio etc.. The Administration had also undertaken to conduct a review and report to LegCo one year after the enactment of the legislation concerning the extraordinary measures of enhanced SSD and BSD.</p>	
010806 – 011512	Chairman Administration	<p>The Chairman's concern for not modeling on the experience of Singapore and Macau on reducing the stamp duty rate with a longer holding period.</p> <p>The Administration's response:</p> <ul style="list-style-type: none"> (a) when contemplating the relevant demand-side management measures, the Administration needed to look at Hong Kong's own specific circumstances, taxation system and characteristics. The Administration had also made reference to overseas practices, including also the United Kingdom ("UK") and Australia. In UK, the rate of stamp duty corresponded to the property value; (b) under Singapore's stamp duty regime, the liability for stamp duty payment basically rested with the buyers, which was fundamentally different from Hong Kong's system where both the sellers and buyers were jointly and severally liable to AVD. Given that speculative activities for industrial properties had been on the rise, Singapore introduced the Seller's Stamp Duty targeting at industrial properties for the first time in January 2013 to further cool down the market. From the information available, there was no apparent improvement with regard to the transaction volume and price level since its implementation, its effectiveness had yet to be observed; and (c) different jurisdictions would formulate their appropriate policies and measures having 	

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		<p>regard to their own specific circumstances. It might thus not be appropriate to draw conclusions on the effectiveness of their measures by direct comparison.</p> <p>In response to the Chairman, the Administration advised that Singapore's recent Seller's Stamp Duty was introduced to target at industrial properties only.</p> <p>The Chairman urged the Administration to consider members' views on exemption arrangements. Concurring with Mr Kenneth LEUNG, she opined that consideration could be given to refunding the difference between the existing and the enhanced AVD rates to companies who made appropriate declarations that the non-residential properties acquired were for self-use after the properties concerned were held for a specified period of time.</p>	
011513 – 012148	Chairman Mr Paul TSE Administration	<p>Mr Paul TSE's views and concerns:</p> <p>(a) the purpose of stamp duties in Australia and UK was to tackle tax avoidance while Singapore, market exuberance. The experience of Singapore was thus more appropriate in the context of Hong Kong. The Singapore Government had introduced the stamp duty measures very prudently in order not to affect business environment, and Hong Kong could in fact model on Singapore's measure under which the enhanced AVD was charged regressively with a longer property holding period; and</p> <p>(b) the Government had announced the measures hastily without understanding the mechanism of the industry, and the measures had proven to be ineffective in achieving the intended objectives.</p> <p>The Administration's response:</p> <p>(a) reiterated that different jurisdictions would formulate their policies and measures having regard to their own specific circumstances; and</p>	

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		<p>(b) in the non-residential property market, there were hectic trading activities in 2013 in respect of retail, office and flatted factory space which rose by 235%, 46% and 106% respectively over the long-term average. Prices of retail, office and flatted factory space also surged by cumulative 145%, 68% and 231% respectively compared with the peak in 1997. The Government considered the new round of measures necessary to cool down the property market immediately.</p> <p>Responding to Mr TSE's question on the need for the proposed measures as the overheated property market would cool down by itself in response to the changes to the external environment, the Administration advised that it had been monitoring the property market closely on a daily basis. In order for adjustments to the measures to be made in a timely manner, the Administration had proposed in the Bill a provision empowering the Financial Secretary to amend the value bands and rates of AVD by way of subsidiary legislation subject to negative vetting.</p>	
012149 – 012917	Chairman Mr Tony TSE Administration	<p>Mr Tony TSE's disclosure of direct or indirect pecuniary interest and expression of views and concerns:</p> <p>(a) the proposed measures to increase the cost of acquisition generally by doubling across the board the rates of the existing AVD applicable to both residential and non-residential properties were too stringent and might give a message to global investors that Hong Kong did not welcome foreign investments;</p> <p>(b) the Government should consider refunding the difference between the new and old AVD rates if it had been proved that, after a specific holding period, that the properties concerned were acquired for non-speculative purposes; and</p> <p>(c) the provision of a six-month period for buyers of a new residential property to dispose of their only other residential property was way too short. Given that the allowed presale period before flats were completed would be</p>	

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		<p>extended from 20 months to 30 months and Home Ownership Scheme subsidized flats from 15 months to 24 months, such provision would likely force buyers of a new residential property to have to rent a house before their new home was ready for occupation.</p> <p>The Administration responded that the six-month period for buyers of a new residential property to dispose of their only other residential property was proposed having regard to the need to ensure that no buyers would be allowed to own more than one residential property for a long period of time that might undermine the effectiveness of the measures.</p> <p>Mr TSE requested the Administration to provide the justifications and the basis for setting the six-month period for HKPRs who acquired a new residential property to dispose of their only other residential property in Hong Kong, with an analysis on the timeframe for completing the necessary formalities in the process of replacing their property within the said period.</p>	<p>The Administration to follow up as stated in paragraphs 3(b) of the minutes.</p>
012918 – 013738	Chairman Mr WONG Ting-kwong Administration	<p>Mr WONG Ting-kwong's disclosure of direct or indirect pecuniary interest.</p> <p>Mr WONG urged the Administration to address the public's call for improving the Bill and to address the genuine needs of enterprises, such as acquiring non-residential properties for business development.</p> <p>The Administration's response:</p> <p>(a) the Administration had, since the introduction of the Bill, been gauging the views of the public and the relevant stakeholders on the Bill; and</p> <p>(b) while the proposed measures might cause inconvenience to the business community, they were extraordinary measures introduced under exceptional circumstances. Enterprises would ultimately benefit from a stable business environment featured by a stable development of the property market.</p>	

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013739 – 014703	Chairman Mr Tommy CHEUNG Administration	<p>Mr Tommy CHEUNG's disclosure of direct or indirect pecuniary interest and expression of views and concerns:</p> <ul style="list-style-type: none"> (a) the state of exuberance in the property market could be attributable to factors other than speculative activities, such as an increase in property value posed by redevelopment projects; (b) various chambers of commerce had expressed grave concerns over the adverse impact of the Bill on foreign investors. The Bill would also seriously affect many small and medium enterprises who mortgaged their properties to finance their business operations; and (c) expressed objection to the bill as it now stood, and urged the Administration to accede to public's views for amendments to the Bill. <p>The Administration's response:</p> <ul style="list-style-type: none"> (a) the Administration had discussed the Bill with the trade. It would continue the dialogue with the relevant stakeholders; and (b) the Administration would keep an eye on the trend and prices of the local property market, and would make appropriate adjustments to the measures in a timely manner upon careful assessment by making reference to a basket of indicators, such as movements in interest rate and liquidity etc.. 	
014704 – 015332	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai questioned the need to empower the Financial Secretary to adjust the value bands and rates of AVD by means of subsidiary legislation subject to LegCo's negative vetting. He opined that this would, apart from giving too much and unnecessary flexibility to the Government for making future adjustments, also run the risk of not allowing LegCo to have sufficient time to scrutinize the subsidiary legislation before the relevant deadline. The Subcommittee on Import and Export (General) (Amendment) Regulation 2013 which was affected by the filibuster in the Council was an example.</p>	

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		<p>The Administration explained that by stipulating in the Bill that adjustments to the value bands and rates of AVD might be made by means of subsidiary legislation subject to LegCo's negative vetting, the Administration could make any necessary adjustments on any appointed date by notice published in the Gazette. This would allow the Administration to make flexible and timely adjustments having regard to the market conditions.</p>	
015333 – 015607	Chairman Mr Paul TSE Administration	<p>Mr Paul TSE's disclosure of direct or indirect pecuniary interest. He asked whether the Administration had responded to the requests of The Law Society of Hong Kong ("Law Society") as detailed in page three of its submission (LC Paper No. CB(1)960/12-13(01)).</p> <p>The Administration advised that its response to the views expressed by various professional bodies, including those of the Law Society and The Hong Kong Association of Banks, were set out in the Administration's paper (LC Paper No. CB(1)1503/12-13(02)). It would also meet with the Law Society for further discussion on the technical and implementation details.</p> <p>The Chairman urged the Administration to make use of the summer recess to touch base with the related professional bodies, and to report the relevant deliberations with the Law Society to the Bills Committee in writing.</p>	
015608 – 015713	Chairman	Meeting arrangements	