

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1880/13-14  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/5/12

**Bills Committee on Stamp Duty (Amendment) Bill 2013**

**Minutes of tenth meeting on  
Friday, 14 March 2014, at 11:00 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 Abraham SHEK Lai-him, GBS, JP  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon WONG Ting-kwong, SBS, JP  
Dr Hon LAM Tai-fai, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon LEUNG Che-cheung, BBS, MH, JP  
Hon SIN Chung-kai, SBS, JP

**Members absent** : Hon James TIEN Pei-chun, GBS, JP  
Hon Charles Peter MOK  
Hon Kenneth LEUNG  
Hon Dennis KWOK  
Hon Tony TSE Wai-chuen

**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, JP  
Deputy Commissioner (Operations)

Ms TSE Yuk-yip, JP  
Assistant Commissioner 3

Mr HONG Wai-kuen  
Senior Superintendent of Stamp Office

Department of Justice

Mr Allen LAI  
Senior Government Counsel

Mr Manuel NG Man-chun  
Acting Senior Government Counsel

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

**Staff in attendance :** Mr KAU Kin-wah  
Senior Assistant Legal Adviser 3

Mr Ken WOO  
Senior Council Secretary (1)5

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Action

**I. Meeting with the Administration**

(LC Paper No. CB(1)1060/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 24 February 2014

LC Paper No. CB(1)1060/13-14(02) -- Administration's response to issues raised at the meeting on 24 February 2014

LC Paper No. CB(1)971/13-14(01) -- Hon James TO Kun-sun's letter dated 24 February 2014  
(*Chinese version only*)

Clause-by-clause examination of the Bill

*Starting from clause 10 - section 29AN*

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

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

Committee stage amendments

LC Paper No. CB(1)1847/12-13(01) -- Draft Committee stage amendments proposed by Hon Abraham SHEK Lai-him

LC Paper No. CB(1)1847/12-13(02) -- Draft Committee stage amendment proposed by Hon Andrew LEUNG Kwan-yuen

LC Paper No. CB(1)88/13-14(01) -- Administration's responses to draft Committee stage amendments proposed by Hon Abraham SHEK Lai-him and Hon Andrew LEUNG Kwan-yuen as set out in LC Paper Nos. CB(1)1847/12-13(01) and (02)

- LC Paper No. CB(1)584/13-14(01) -- Draft Committee stage amendments proposed by Hon Tommy CHEUNG Yu-yan
- LC Paper No. CB(1)779/13-14(03) -- Administration's response to draft Committee stage amendments proposed by Hon Tommy CHEUNG Yu-yan as set out in LC Paper No. CB(1)584/13-14(01)

Relevant papers issued previously

- LC Paper No. CB(1)105/13-14(01) -- Mark-up copy of Hon Abraham SHEK Lai-him's proposed Committee stage amendments to the Bill prepared by the Legal Service Division
- LC Paper No. CB(1)105/13-14(02) -- Mark-up copy of Hon Andrew LEUNG Kwan-yuen's proposed Committee stage amendment to the Bill prepared by the Legal Service Division)

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

2. The Chairman, Mr WONG Ting-kwong, Mr Andrew LEUNG, Mr Tommy CHEUNG, Mr James TO, Mr LEUNG Che-cheung and Mr Abraham SHEK disclosed their respective interests.

Follow-up actions required of the Administration

3. The Administration was requested to:
- (a) provide transaction figures in respect of acquisitions of replacement properties to replace original properties affected by specified ordinances, such as the transaction volume and transacted prices of both the original and the replacement properties, since the announcement of the enhanced Special

Stamp Duty, Buyer's Stamp Duty and the doubled ad valorem stamp duty ("AVD") measures;

- (b) with regard to transactions involving both a residential flat and a car parking space as separate and distinct properties with their respective considerations separately set out in one agreement, consider members' views that the car parking space should not be chargeable at the enhanced AVD rate, and that the applicable AVD rate should not be based on the "total consideration of the whole transaction";
- (c) address members' concern on possible circumvention of the enhanced AVD rate in cases where multiple residential properties were acquired under a single agreement for sale by a Hong Kong Permanent Resident who was not the beneficial owner of any other residential property in Hong Kong on the date of acquisition of the properties, such agreement would only be chargeable at the old AVD rate on the total consideration; and
- (d) in respect of replacement property under the proposed section 29AL(3), provide for the scenario in which the property to be replaced include both a residential property and a non-residential property (e.g. a residential flat and a car parking space).

*(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1219/13-14(02) on 11 April 2014.)*

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on Friday, 28 March 2014 at 10:45 am to meet with the Administration.

**II. Any other business**

5. There being no other business, the meeting ended at 12:53 pm.

**Proceedings of the tenth meeting of  
the Bills Committee on Stamp Duty (Amendment) Bill 2013  
on Friday, 14 March 2014, at 11:00 am  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda Item I – Meeting with the Administration</b>			
000757 – 000915	Chairman Mr WONG Ting-kwong Mr Andrew LEUNG Mr Tommy CHEUNG Mr James TO Mr LEUNG Che-cheung	Disclosure of interests by members	
000916 – 001530	Chairman Administration	Briefing by the Administration on its response to members' views and concerns raised at the meeting of the Bills Committee on 24 February 2014 (LC Paper No. CB(1)1060/13-14(02)) ("the Administration's paper").	
001531 – 002609	Chairman Mr James TO Administration	<p>In response to the Chairman, the Administration advised that:</p> <p>(a) according to Inland Revenue Department (IRD)'s record, there were about 30 cases where the trustees acted on behalf of holders of Hong Kong Identity Card who were minors in the acquisition of residential properties since the announcement of the enhanced Special Stamp Duty ("SSD"), Buyer's Stamp Duty ("BSD") and the enhanced ad valorem stamp duty ("AVD") measures. The transactions concerned would be subject to the BSD;</p> <p>(b) as proposed under the Stamp Duty (Amendment) Bill 2013 ("the 2013 Bill"), a trustee or guardian acting on behalf of a Hong Kong Permanent Resident ("HKPR") minor or mentally incapacitated person in the acquisition of a residential property would not be liable to the enhanced AVD rates provided that the minor or mentally incapacitated person concerned was not the beneficial owner of any other residential property in Hong Kong on the date of acquisition; and</p> <p>(c) as set out in section 29A(1) in section 6 of the Stamp Duty (Amendment) Ordinance</p>	

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		<p>2014 (2 of 2014), "mentally incapacitated person (精神上無行為能力的人)" meant "a person who is mentally disordered or mentally handicapped within the meaning of the Mental Health Ordinance (Cap. 136) and is, because of his or her mental state, incapable of managing and administering his or her property and affairs". The proof of the above mental status had to be supported by the relevant medical certificate.</p> <p>In reply to Mr James TO, the Administration advised that transactions for the majority of the said some 30 cases were entered into by trustees holding declarations of trust.</p> <p>Mr James TO referred to paragraph 4 of the Administration's paper and expressed concern that the exemption arrangement for a HKPR minor or mentally incapacitated person was prone to be abused, as documentary evidence, such as a self-declared trust instrument, would be accepted as proof. He urged the Administration to plug the loophole by granting exemption from the enhanced AVD for guardians or trustees appointed under the Mental Health Ordinance or by the court only.</p>	
002610 – 010608	<p>Chairman Mr Andrew LEUNG Mr Abraham SHEK Mr James TO Mr WONG Ting-kwong Administration Senior Assistant Legal Adviser 3 ("SALA3")</p>	<p>Mr Andrew LEUNG requested the Administration to provide transaction figures in respect of acquisitions of replacement properties to replace original properties affected by specified ordinances, such as the transaction volume and transacted prices of both the original and the replacement properties, since the announcement of the enhanced SSD, BSD and the enhanced AVD measures.</p> <p>Mr Abraham SHEK disclosed interests.</p> <p>In reply to Mr Abraham SHEK, the Administration explained that to provide flexibility in the replacement purchases of the affected owners who had been made to sell their original properties not of their own volition, if the property replaced was jointly owned by two persons cohabiting (not legally married), each of them could be exempted from the enhanced AVD for purchasing one replacement property,</p>	<p>The Administration to follow up as stated in paragraph 3(a) of the minutes.</p>

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		<p>irrespective of whether or not each of them was the beneficial owner of any other residential or non-residential property in Hong Kong.</p> <p>In response to Mr James TO, the Administration explained that for the acquisition of a residential property together with a non-residential property (e.g. a residential flat and a car parking space) by a HKPR who was not the beneficial owner of any other residential property in Hong Kong on the date of acquisition:</p> <p>(a) where the acquisition of a residential and non-residential property was made under one single agreement for sale for one consideration, IRD would ascertain if the properties concerned were assigned by a single title deed. If it was confirmed that the properties concerned could not be separately and distinctly traded, IRD would regard the agreement as an agreement for a residential property transaction and charge at the old AVD rate on the whole consideration; and</p> <p>(b) where the residential and non-residential properties were separate and distinct properties with their respective considerations separately set out in an agreement for sale, the residential property could be exempted from the enhanced AVD whereas the non-residential property would be liable to AVD at the new rate based on the total consideration of the whole transaction.</p> <p>Mr James TO expressed concern on the Administration's response above and pointed out that:</p> <p>(a) it was unreasonable that for transactions involving both a residential flat and a car parking space as separate and distinct properties with their respective considerations separately set out in an agreement, the car parking space would be chargeable at the enhanced AVD rate with the applicable AVD rate based on the total consideration of the whole transaction. He urged the Administration not to subject the</p>	



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		<p>car parking space to the enhanced AVD rate; and</p> <p>(b) since the price of a residential flat could be more expensive than a car parking space, charging the car parking space at the new AVD rate with the applicable rate based on the total consideration of the whole transaction was grossly inappropriate. Buyers acquiring a residential flat together with a car parking space might not be aware of the increase in acquisition cost if this was not explained clearly to them. He requested the Administration to review the relevant mechanism.</p> <p>The Chairman shared Mr James TO's concern that buyers who acquired a car parking space together with a residential flat might not be aware of the substantial increase in the cost of acquiring the car parking space under the enhanced AVD measure.</p> <p>Mr WONG Ting-kwong remarked that it was a common practice, both in the first- or second-hand markets, that considerations for a residential flat and a car parking space purchased were set out separately in an agreement for sale or acquired through separate instruments. It was also common for home buyers to acquire a car parking space for self-use at a later stage when their financial situation improved. He urged the Administration to consider exempting the acquisition of a car parking space from the enhanced AVD.</p> <p>Mr Abraham SHEK considered it unreasonable that the acquisition of a car parking space and a residential flat as separate and distinct properties should be liable to AVD at the new rates as it was common that car parking spaces in a residential development would only be made available for sale years after the residential units were sold.</p> <p>Mr Andrew LEUNG expressed reservation over subjecting the acquisition of a car parking space with a residential flat to the enhanced AVD.</p> <p>The Administration responded that where an instrument involved both residential and</p>	

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		<p>non-residential properties, the applicable exemption arrangement would depend on the nature of individual properties but the stamp duty rate applicable would be based on the total consideration of the whole transaction. Such practice had been consistently in use for the calculation of AVD rates. The mechanism was particularly important in dealing with situations where multiple properties were acquired under a single agreement. Justifications for the practice had been explained clearly to The Law Society of Hong Kong and the trade.</p> <p>The Chairman requested the Administration to consider, in respect of transactions involving both a residential flat and a car parking space as separate and distinct properties with their respective considerations separately set out in one agreement, members' views that the car parking space should not be chargeable at the enhanced AVD rate, and that the applicable AVD rate should not be based on the "total consideration of the whole transaction".</p> <p>The Administration's response to SALA3 that:</p> <p>(a) IRD might charge stamp duty on the aggregated consideration for separate instruments which constituted a series of transactions at a rate based on the aggregated consideration, examples of which included instruments signed between the same buyer(s) and seller(s) within the same day, and cases where IRD had reason to believe that the transactions were interdependent; and</p> <p>(b) for affected owners who had been made to sell their original properties not of their own volition, it was up to them to declare which property was the replacement property if they acquired more than one property, provided that the date of disposal of the original property was earlier than the date of acquisition of the replacement property and that the replacement property and the original property must belong to the same category, i.e. one residential property to replace another residential property, or one non-residential property to replace another</p>	<p>The Administration to follow up as stated in paragraph 3(b) of the minutes.</p>

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		<p>non-residential property.</p> <p>In response to the Chairman, the Administration explained that in accordance with the definition of "non-residential property" and "residential property" set out in section 29A(1) of the Stamp Duty Ordinance (Cap. 117) ("SDO"), a property would be regarded as a residential property if part of that property could be used for residential purpose.</p>	
010609 – 012530	<p>Chairman Administration Mr James TO Mr Andrew LEUNG Mr WONG Ting-kwong Mr Abraham SHEK</p>	<p>The Chairman referred to scenario (d) in Annex I of the Administration's paper and expressed concern on the possible circumvention of the enhanced AVD rates in cases where multiple residential properties were acquired under a single agreement for sale by a HKPR who was not the beneficial owner of any other residential property in Hong Kong on the date of acquisition of the properties, such agreement would only be chargeable at the old AVD rate on the total consideration. Such an arrangement would run against the policy intent of the 2013 Bill.</p> <p>Mr James TO, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr Abraham SHEK echoed the Chairman's concern and pointed out that the exemption arrangement might give rise to large-scale speculative activities. They urged the Administration to plug the loophole to avoid evasion of the enhanced AVD.</p> <p>The Administration's response:</p> <p>(a) it took note of members' concern about the stamp duty arrangements in respect of the acquisition of a replacement property involving both a residential and a non-residential property;</p> <p>(b) under the SDO, stamp duty was chargeable on an instrument. Acquisition of several residential properties by the execution of one agreement was regarded as one instrument for the purposes of stamp duty. The instrument would be charged at the applicable rate on the total consideration of the residential properties concerned; and</p>	<p>The Administration to follow up as stated in paragraph 3(c) of the minutes.</p>

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		<p>(c) there were not many cases, out of the total transactions, involving the acquisition of multiple residential properties under a single agreement for sale. The Administration would need to strike a balance between tackling tax evasions and facilitating HKPR home buyers who had the genuine need to acquire multiple properties.</p>	
012531 – 013321	Chairman Mr James TO Administration	<p>Mr James TO sought clarifications on whether a commercial property, being a non-residential property, could be accepted as a replacement property to replace a car parking space affected by specified ordinances. He further requested the Administration to, in respect of replacement property under the proposed section 29AL(3), provide for the scenario in which the property to be replaced include both a residential property and a non-residential property (e.g. a residential flat and a car parking space).</p>	<p>The Administration to follow up as stated in paragraph 3(d) of the minutes.</p>
013322 – 013627	Chairman Dr LAM Tai-fai Administration	<p>The Administration's response to Dr LAM Tai-fai's questions that since a company was an entity independent of its shareholder(s) in law:</p> <p>(a) the enhanced AVD rate would not be applicable to a HKPR minority shareholder who acquired a residential property under his/her own name (provided that s/he was not the beneficial owner of any other residential property in Hong Kong on the date of acquisition) even if s/he already owned other residential properties collectively with other company shareholders under the name of the company;</p> <p>(b) the enhanced AVD rate would not be applicable when a HKPR acquired a residential property in his/her own name (provided that s/he was not the beneficial owner of any other residential property in Hong Kong on the date of acquisition) even if s/he was accommodated in a residential property owned by a company of which s/he was a shareholder; and</p> <p>(c) both the BSD and the enhanced AVD rates would be applicable to acquisitions of residential properties in the name of a</p>	

Time marker	Speaker	Subject(s)	Action required
		company.	
013628 – 014630	Chairman Mr James TO Administration	<p>The Administration's response to Mr James TO on exemption arrangements involving property transactions between close relatives that:</p> <ul style="list-style-type: none"> <li>(a) the acquisition or transfer of a residential property between close relatives would be subject to the old AVD rates, irrespective of whether they were HKPRs and whether they were beneficial owners of any other residential property in Hong Kong on the date of the relevant acquisition or transfer. Such an exemption arrangement adopted the same principle as in the SSD and BSD regimes;</li> <li>(b) where there was nomination of close relative(s) to take up the assignment of a residential property or as the additional buyer(s) in the conveyance on sale/agreement for sale was/were closely related to the buyer(s) in the original instrument and all buyers were not beneficial owners of any other residential property in Hong Kong, the new instrument (involving nomination or addition of close relatives) could be exempted from the AVD; and</li> <li>(c) to illustrate by example, if a father and mother owned a residential property and entered into an agreement for sale to sell the property to their son, the instrument would be charged the old AVD rate, irrespective of whether the son was a HKPR and was the beneficial owner of any other residential property in Hong Kong. In the case of the son adding the name of his wife in the assignment, no additional AVD was payable if the son and the wife were not the beneficial owners of any other residential property in Hong Kong, irrespective of whether they were HKPRs.</li> </ul> <p>Mr James TO emphasized that in-laws were members of a nucleus family. He urged the Administration to consider granting exemption from the enhanced AVD rates across-the-board for agreements for sale and conveyances on sale</p>	

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		of residential properties involving in-laws.	
014631 – 014950	Chairman Dr LAM Tai-fai Administration	In response to Dr LAM Tai-fai, the Administration advised that transfer of a residential or non-residential property by virtue of a will, the law of intestacy or right of survivorship, would be exempted from all AVD and BSD, regardless of whether or not the transferee(s) were the beneficial owner of any other residential property in Hong Kong.	
014951 – 015244	Chairman Mr Abraham SHEK Administration	The Administration responded to Mr Abraham SHEK that under the SDO, a company and not its shareholders would be deemed the beneficial owner of all properties acquired in its name. A HKPR shareholder seeking to acquire a residential property in his/her own name would be charged at the old AVD rate if s/he was not the beneficial owner of any other residential property in Hong Kong on the date of acquisition.	
015245 – 015355	Chairman Administration	In response to the Chairman's enquiry, the Administration maintained its position with regard to replacement property and exemption arrangements involving the acquisition or transfer of a residential property between closely related persons as explained in the Administration's paper.	
015356 – 015408	Chairman	Meeting arrangements	