立法會 Legislative Council

LC Paper No. CB(1)1883/13-14 (These minutes have been seen by the Administration)

Ref: CB1/BC/5/12

Bills Committee on Stamp Duty (Amendment) Bill 2013

Minutes of thirteenth meeting on Friday, 25 April 2014, at 2:30 pm in Conference Room 2B 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 WONG Ting-kwong, SBS, JP Dr Hon LAM Tai-fai, 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 Tony TSE Wai-chuen

Members absent: Hon Andrew LEUNG Kwan-yuen, GBS, JP

Hon LEUNG Che-cheung, BBS, MH, JP

Hon SIN Chung-kai, SBS, 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

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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

Acting Chief Assessor (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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I. Meeting with the Administration

(LC Paper No. CB(1)1150/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 14 March 2014

LC Paper No. CB(1)1219/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 28 March 2014

LC Paper No. CB(1)1219/13-14(02) -- Administration's responses to issues raised at the meetings on 14 and 28 March 2014

LC Paper No. CB(1)1280/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 14 April 2014

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

LC Paper No. CB(1)1219/13-14(03) -- Administration's response to Hon James TO Kun-sun's letter dated 24 February 2014

LC Paper No. CB(1)1280/13-14(02) -- Hon James TO Kun-sun's (Chinese version only) letter dated 16 April 2014

Clause-by-clause examination of the Bill

Starting from clause 18 - section 29DH

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)

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LC Paper No. CB(1)1096/13-14(02) -- Administration's response to Senior Assistant Legal Adviser's letter dated 14 January 2014 as set out in LC Paper No. CB(1)1096/13-14(01)

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)

LC Paper No. CB(1)1201/13-14(01) -- Draft Committee stage amendments proposed by Hon Tony TSE Wai-chuen

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LC Paper No. CB(1)1280/13-14(03) -- Administration's response to draft Committee stage amendments proposed by Hon Tony TSE Wai-chuen as set out in LC Paper No. CB(1)1201/13-14(01)

Relevant papers issued previously

of LC Paper No. CB(1)105/13-14(01) Mark-up copy Hon Abraham SHEK Lai-him's proposed Committee stage amendments the Bill to 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. <u>The Chairman, Mr James TIEN, Mr Kenneth LEUNG, Mr WONG Ting-kwong, Mr Abraham SHEK</u> and <u>Mr Paul TSE</u> disclosed their respective interests.

Follow-up action required of the Administration

3. <u>The Administration</u> was requested to:

- (a) clarify in respect of the acquisition of a residential property on behalf of a Hong Kong Permanent Resident ("HKPR") minor by his/her trustee/guardian, which party (the HKPR minor or his/her trustee/guardian) would be the person to declare that the minor was a HKPR and was not a beneficial owner of any other residential property in Hong Kong;
- (b) explain why the exemption from the enhanced ad valorem stamp duty arrangement in respect of the acquisition of a residential property on behalf of a HKPR minor by his/her trustee/guardian was not applicable to the purchase of Tenants

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Purchase Scheme flats, and consider extending the exemption to cover the acquisition of such flats; and

- (c) given the actual beneficial ownership of a property might belong to a person/company other than the purchaser due to the great variety of trust arrangements:
 - (i) consider clarifying the meaning of "beneficial owner" as defined in the Bill so that it applied only to the purchaser and not any other person/company by virtue of any trust arrangements, and set out in the relevant declaration form that the purchaser and the beneficial owner of an acquired property was the same person; and
 - (ii) the Secretary for Financial Services and the Treasury should address the point on "beneficial owner" in his speech on the resumption of the second reading debate on the Bill.

(*Post-meeting note*: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1401/13-14(01) on 12 May 2014.)

Date of next meeting

4. <u>The Chairman</u> reminded members that the next meeting would be held on Tuesday, 13 May 2014 at 4:30 pm to meet with the Administration.

(*Post-meeting note*: On the instruction of the Chairman, an additional meeting of the Bills Committee would be held on Monday, 5 May 2014, at 4:30 pm prior to the meeting scheduled for 13 May 2014. Members were informed of the above meeting arrangements vide LC Paper No. CB(1)1323/13-14 on 28 April 2014.)

II. Any other business

5. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 1
<u>Legislative Council Secretariat</u>
30 July 2014

Proceedings of the thirteenth meeting of the Bills Committee on Stamp Duty (Amendment) Bill 2013 on Friday, 25 April 2014, at 2:30 pm in Conference Room 2B of the Legislative Council Complex

Time marker	Speaker	Subject(s)	Action required
Agenda It	em I – Meeting with the A	dministration	
000130 - 000407	Chairman Mr James TIEN Mr Kenneth LEUNG Mr WONG Ting-kwong Mr Abraham SHEK	Introductory remarks Disclosure of interests by members	
000408 - 001017	Chairman Administration	The Administration's response to members' views and concerns on replacement properties raised at the meetings of the Bills Committee on 14 and 28 March 2014 (LC Paper No. CB(1)1219/13-14(02)).	
001018 - 001329	Chairman Administration	In reply to the Chairman, the Administration advised that: (a) it would not impose restrictions on the size or value of the replacement property given the lack of an objective basis to determine the relevant restrictions, and it intended to follow the Stamp Duty (Amendment) Ordinance 2014 ("the Amendment Ordinance") in taking a lenient approach to handle the relevant arrangements to avoid causing unnecessary constraints to the affected owners; and (b) if the original property was a unit which could be used for commercial-residential purposes, the Inland Revenue Department ("IRD") would regard the property as a residential property given that part of that property could be used for residential purpose in accordance with the definition set out in section 29A(1) of the Stamp Duty Ordinance (Cap. 117) ("SDO"). If a commercial-residential unit was resumed under specified ordinances, the affected owner could acquire a residential property, which could be a unit for commercial-residential uses as a replacement, and in which case the ad valorem stamp duty ("AVD") would be chargeable at the old rate.	

Time marker	Speaker	Subject(s)	Action required
001330 - 001645	Chairman Administration	The Administration's response on declarations and documentary proof required for applying for exemption from the enhanced AVD (LC Paper No. CB(1)1219/13-14(02)).	•
001646 - 001712	Chairman Administration	In reply to the Chairman, the Administration advised that:	
		(a) in line with the Buyer's Stamp Duty ("BSD") regime, when a purchaser applied for exemption from the enhanced AVD, s/he had to submit relevant documents to IRD to declare that s/he was a Hong Kong Permanent Resident ("HKPR") acting on his/her own behalf and that s/he was not a beneficial owner of any other residential property in Hong Kong on the date of acquisition of the relevant property; and	
		(b) for applications for exemption from the enhanced AVD involving residential property transactions between closely related persons, the parties concerned shall submit relevant documents to prove their relationships. IRD would consider each application with all relevant facts, documents provided (such as birth certificate and marriage certificate) and other supporting information in totality.	
001713 - 002148	Chairman Mr Paul TSE Administration	Mr Paul TSE said that upon the enactment of the Amendment Ordinance in February 2014, some members of the public who had acquired residential properties after the announcement of the BSD measure in October 2012 were recently notified by their lawyers handling the conveyancing transactions concerned to submit before a specified deadline statutory declarations declaring that they were HKPRs acting on their own behalf as requested by IRD in order to be exempted from the BSD. Pointing out that some of them had been charged a fee for handling such declarations, he asked if the Administration would take measures to waive the fees.	
		The Administration responded that: (a) IRD had made known to the public through various channels (media enquiries and the Frequently-asked Questions section in its	

Time marker	Speaker	Subject(s)	Action required
		website) that the declarations could be made at the Public Enquiry Service Centres of the Home Affairs Department or IRD, or through their lawyers or Justices of the Peace. The declaration form was available for collection at IRD's Stamp Office and could be downloaded from IRD's website; and	
		(b) declarations made at law firms using the draft sample declaration form provided by the Administration to The Law Society of Hong Kong ("the Law Society") prior to the enactment of the Amendment Ordinance would also be accepted if the substance of the statutory declaration was not changed and the statutory declaration did not contain words such as "Draft", "Sample", "Specimen", or other words of similar meanings.	
002149 – 002514	Chairman Administration	The Administration's response on AVD payable under different scenarios and the exemption arrangement for property transactions involving closely related persons (Annex to LC Paper No. CB(1)1219/13-14(02)).	
002515 - 002701	Chairman Mr Paul TSE Administration	In reply to Mr Paul TSE's enquiry on the AVD chargeable on an instrument effecting the deletion of name of a closely related person in respect of a joint ownership, the Administration advised that no AVD would be chargeable in respect of the transfer of half of the ownership if the closely related person concerned was not the beneficial owner of any other residential property in Hong Kong at the time of name deletion, otherwise the relevant instrument would be chargeable with half of the AVD at the old rate on the total consideration.	
002702 – 003015	Chairman Mr James TO Administration	In reply to Mr James TO, the Administration reiterated the declaration and documentary proof required for the purpose of exemption under the enhanced AVD regime.	

Time marker	Speaker	Subject(s)	Action required
003016 - 003526	Chairman Administration Mr James TO Senior Assistant Legal Adviser 3 ("SALA3")	The Administration's response on arrangements in respect of exchange of properties (LC Paper No. CB(1)1219/13-14(02)). The Administration advised that in respect of the exchange of properties provided under the Stamp Duty (Amendment) Bill 2013 ("the 2013 Bill"), the Administration would propose to make technical amendments to the relevant provisions to the effect that exemption was only applicable to "any consideration paid for equality" in respect of the residential property under the exchange arrangement. If "any consideration paid for equality" was related to the non-residential property, the AVD would be chargeable at the enhanced rate as in other cases of non-residential property transactions. In reply to Mr James TO, SALA3 said that the proposed amendments had addressed the concern raised.	•
003527 - 004145	Chairman Administration	The Administration's response on the acquisition of a public housing flat under the Tenants Purchase Scheme ("TPS") (LC Paper No. CB(1)1219/13-14(02)). In reply to the Chairman, the Administration advised that purchasers of TPS flats must be sitting tenants who were 18 years old or above. Therefore it was not allowed to acquire a TPS flat on behalf of or jointly with a minor.	
004146 – 004908	Chairman Mr James TO Administration Mr Paul TSE	Mr James TO pointed out that some purchasers of TPS flats were in fact non-HKPR widows, and it was always hard for them to secure loan for the mortgage payment. He therefore requested the Administration to consider exempting these purchasers from the enhanced AVD in the relevant instruments.	
004909 – 005850	Chairman Mr Paul TSE Administration	Mr Paul TSE noted that the Administration had no intention to withdraw exemption from the enhanced AVD for acquisitions of residential properties made on behalf of a HKPR minor by his/her trustee/guardian as the relevant instrument would be subject to a 15% BSD already. While he supported that exemptions should be granted as far as practicable, he queried why exemptions	

Time marker	Speaker	Subject(s)	Action required
		were not considered based on the policy intent to combat speculation (as in the case of BSD) but the stamp duty burden of property purchasers, and urged the Administration to be consistent in its policy consideration.	
		The Administration responded that exemptions should be drawn up by taking a stringent approach to ensure the effectiveness of the measures. In considering exemptions, it should have due regard to the general circumstances rather than individual scenarios so that all exemptions provided could be appropriately codified.	
005851 – 010204	Chairman Mr James TO Administration	Mr James TO requested the Administration to clarify, in respect of the acquisition of a residential property on behalf of a HKPR minor by his/her trustee/guardian, which party (the HKPR minor or his/her trustee/guardian) would be the person to declare that the minor was a HKPR and was not a beneficial owner of any other residential property in Hong Kong. The Administration undertook to clarify the above point, and pointed out that if a declarer truly believed that the declaration was based on true facts without knowingly intent to make false representation, s/he would not be criminally liable.	The Administration to follow up as stated in paragraph 3(a) of the minutes.
010205 - 010426	Chairman Mr Abraham SHEK Administration	Mr Abraham SHEK sought explanation for the non-applicability of exemption arrangement in respect of acquisition of a residential property on behalf of a HKPR minor by his/her trustee/guardian to the purchase of TPS flats. He urged the Administration to consider extending the exemption to cover the acquisition of TPS flats for the reason that it would not encourage speculation because the purchasers, even involving minors, were all sitting tenants. The Chairman urged the Administration to exempt across-the-board the acquisition of TPS flats from the enhanced AVD in view of the insignificant impact of the exemption.	The Administration to follow up as stated in paragraph 3(b) of the minutes.

Time marker	Speaker	Subject(s)	Action required
010427 – 010854	Chairman Mr Abraham SHEK Mr James TO Administration	Mr Abraham SHEK reiterated his view made at the last meeting that the Administration should have regard to the different interpretations of car parking spaces under certain lease conditions. Mr James TO urged the Administration to consider exempting the acquisition of one to two car parking spaces from the enhanced AVD to address the self-use needs of owner-occupiers.	
010855 - 011612	Chairman Mr Paul TSE Mr James TO Administration	Mr Paul TSE disclosed interests. He noted from the Administration's response that since a company was legally an entity independent of its shareholder(s), a person who acquired a residential property in his/her own name in Hong Kong would not be regarded as a beneficial owner of any other residential property even if s/he held residential properties in Hong Kong through property-holding companies of which s/he was a company director/shareholder on the date of acquisition. He however pointed out that from the legal point of view, beneficial ownership of a property would belong to the person who provided funds rather than the purchaser. Company buyers of properties had in fact been required to declare the actual beneficial owner in applying for mortgage loans from financial institutes. Given that the actual beneficial ownership of a property might belong to a person/company other than the purchaser due to the great variety of trust arrangements, he requested the Administration to consider clarifying the meaning of "beneficial owner" as defined in the 2013 Bill so that it applied only to the purchaser and not any other person/company by virtue of any trust arrangements. Mr James TO echoed Mr TSE's views. He considered it important to provide a clear meaning of "beneficial owner" in the 2013 Bill, and set out in the relevant declaration form that the purchaser and the beneficial owner of an acquired property was the same person. He also considered that the Secretary for Financial Services and the Treasury ("SFST") should address the point on "beneficial owner" in his speech on the resumption of the second reading debate on the 2013 Bill.	The Administration to follow up as stated in paragraph 3(c) of the minutes.

Time marker	Speaker	Subject(s)	Action required
011613 – 011926	Chairman Mr James TO Administration	In response to Mr James TO's concern on the absence of exemption arrangement for the transfer of non-residential properties for business uses by parents to their children, the Administration advised that the issue was set out in Mr TO's letter to the Administration dated 16 April 2014, and the Administration would respond to the issue in its written reply.	- requirement of the control of the
011927 - 012543	Chairman Mr Paul TSE Administration Mr James TO	Mr Paul TSE referred to the letter dated 22 February 2013 issued by the IRD informing the Law Society of the introduction of the enhanced AVD measures, and pointed out that legal practitioners had understood from the letter that the proposed exemption arrangements would be applicable to, inter alia, an instrument covering only one and not multiple residential properties as the phrase "acquisition of a residential property" was consistently used throughout the letter. In view of the stark contrast between the above and the Administration's current stance that a single transaction instrument covering multiple residential properties would be exempted from the enhanced AVD if the HKPR purchaser was not the beneficial owner of any other residential property in Hong Kong, he urged the Administration to correct the misunderstanding of the trade.	
		The Administration responded that: (a) it had met with and explained to the Law Society that the enhanced AVD measure was built upon the prevailing AVD regime, and it was necessary to uphold the existing instrument-based stamp duty regime under which the applicable value bands and rates were determined on the basis of the total consideration of the instrument. The relevant correspondences with the Law Society had also been copied to the Bills Committee for reference; and (b) in considering the relevant exemption, the Administration needed to give due regard to practical situations such as the acquisition of two adjoining flats or a multi-storeyed property (as in the case of some parts of the New Territories) for home ownership purpose.	

Time marker	Speaker	Subject(s)	Action required
		Mr James TO said he learnt from some estate agents that they were aware that where multiple residential properties were acquired under a single agreement by a HKPR who was not the beneficial owner of any other residential property in Hong Kong, the agreement would be regarded as one single transaction and be chargeable at the old AVD rate on the total consideration.	_
012544 - 013006	Chairman Mr James TO Administration	Mr James TO urged the Administration to attend to the following: (a) the possible implications arising from the drafting of the declaration form to declare one being not a beneficial owner of any other residential property in Hong Kong; and (b) in cases where multiple residential properties and one non-residential property were acquired under a single agreement by a HKPR who was not the beneficial owner of any other residential property in Hong Kong, whether the whole instrument would be chargeable at the old or the enhanced AVD rate.	
013007 - 013800	Chairman Administration	The Administration's response to Mr James TO's letter dated 24 February 2014 on the proposed negative vetting mechanism to adjust future AVD rates (LC Paper No. CB(1)1219/13-14(03)).	
013801 - 014218	Chairman Mr James TO	Mr James TO expressed the following views: (a) he was opposed to the present proposal to empower the Financial Secretary ("FS") to adjust the value bands and the rates of AVD by way of subsidiary legislation subject to negative vetting by the Legislative Council ("LegCo"). Since the Secretary for Transport and Housing ("STH") had during scrutiny of the Stamp Duty (Amendment) Bill 2012 ("the 2012 Bill") proposed that any proposed increase in Special Stamp Duty ("SSD") or BSD rates in future would be taken forward by way of a bill to amend the SDO as in the present case while downward adjustments would be effected by way of subsidiary legislation subject to	

Time marker	Speaker	Subject(s)	Action required
		negative vetting of the LegCo, he queried why the same could not be considered for the 2013 Bill;	•
		(b) he supported that the Committee stage amendments ("CSAs") moved by Hon Martin LIAO for the 2012 Bill be applied to the 2013 Bill, as this would enable the relevant legislation to come into effect immediately, provide the necessary flexibility for the Administration to make timely response to changes in the property market, and at the same time ensure that the legislative proposal would only be implemented with the support of the majority of the Members returning from the geographical and functional constituencies. (Hon Martin LIAO's CSAs would allow the rates of SSD and BSD be amended by the FS by notice published in the Gazette. While the amended rates would take immediate effect upon gazettal of the notice, FS was required to move a motion to seek the LegCo's approval of the notice. If such a motion was not passed within six months of the date of publication of the notice in the Gazette or was negatived by the LegCo, the notice would cease to have effect. Upon such cessation, the pre-amendment rates would be restored);	
		(c) the proposal to adjust future rates by way of a bill was justified in view of the complexity involved in adjusting the AVD which might give rise to changes to both the value bands and duty rates; and	
		(d) he might propose CSAs similar to the spirit of the CSAs moved by Hon Martin LIAO for the 2012 Bill, and might even vote against the 2013 Bill if the Administration failed to accede to members' request for enhancing the mechanism for future rate adjustment.	
014219 – 015021	Chairman Mr Paul TSE Administration	Mr Paul TSE expressed the following views: (a) the negative vetting mechanism for future rate adjustment was highly undesirable because:	

Time marker	Speaker	Subject(s)	Action required
		(i) future adjustments to the AVD rates would not require the prior approval of the LegCo in the first place. It also went against the established mechanism in which adjustments to stamp duty rates were subject to the LegCo's approval; and	
		(ii) it risked repeating the case of the scrutiny of the Import and Export (General) (Amendment) Regulation 2013 which could not be completed before the expiry of the specified period due to filibuster at the LegCo, and in which case any proposed rate adjustments would take effect as they were presented to the LegCo; and	
		(b) he did not subscribe to the Administration's view that Hon Martin LIAO's proposal would make the basis for charging stamp duty uncertain, as the trade and the public had prepared to pay the adjusted rates which they understood would come into effect upon the passage of the relevant bill that had retrospective effect.	
		The Administration responded that:	
		(a) in view of the market-sensitive and time-critical nature of the property market, the negative vetting mechanism proposed in the 2013 Bill enabled prompt adjustments to be made to the applicable rates in the light of the latest market situations;	
		(b) to adjust stamp duty rates under the negative vetting procedure by way of subsidiary legislation was an established procedure. LegCo's scrutiny power was in no way compromised as it could amend the proposed rates within the specified scrutiny period;	
		(c) since the AVD regime involved more than a single charge rate which was applicable across different value bands, adjusting AVD might involve changes to the value bands and duty rates at the same time and it was	

Time marker	Speaker	Subject(s)	Action required
		not easy to determine whether the proposed adjustments should be regarded as "increasing the duty" or "reducing the duty". The "hybrid" approach adopted for the 2012 Bill was therefore inapplicable to the context of the AVD regime as it would create chaos in implementation; and (d) as regards Hon Martin LIAO's CSAs, if the relevant adjustment was amended or vetoed, or the scrutiny could not be completed before the expiry of the specified period, the duty rates that had been applied to collect stamp duty during the interim period would cease to have effect, thus affecting all the property transactions during the period. IRD would have to follow up with the relevant parties of the transactions for the underpaid AVD, or refund according to the final duty rates so amended or the original rates in the event that the resolution was not passed. This would make the parties to property transactions difficult to grasp the actual situation and bring uncertainties to the market.	
015022 - 015240	Chairman Administration	The Chairman: (a) urged the Administration to address members' concerns on the legislative means for future rate adjustments, including reconsidering the applicability of Hon Martin LIAO's CSAs to the 2013 Bill; and (b) said that she had contacted SFST who had given positive response about attending the Bills Committee meeting at an appropriate juncture to address members' concerns on the various aspects of the 2013 Bill.	
015241 - 015445	Chairman Administration Mr Abraham SHEK	Meeting arrangements	