

**立法會**  
**Legislative Council**

Ref: CB1/BC/15/98/2

LC Paper No. CB(1)364/99-00  
(These minutes have been  
seen by the Administration)

**Bills Committee on Revenue Bill 1999**

**Minutes of meeting held on  
Tuesday, 8 June 1999, at 2:30 pm  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon Margaret NG (Chairman)  
Hon Mrs Selina CHOW LIANG Shuk-ye, JP  
Hon CHAN Kam-lam  
Hon Andrew WONG Wang-fat, JP  
Hon Mrs Miriam LAU Kin-ye, JP

**Members absent** : Hon Albert HO Chun-yan  
Hon LEE Cheuk-yan  
Hon Eric LI Ka-cheung, JP  
Hon Ronald ARCULLI, JP  
Hon Christine LOH  
Hon CHAN Yuen-han  
Hon SIN Chung-kai  
Hon Andrew CHENG Kar-foo

**Public officers attending** : Mr Martin GLASS  
Deputy Secretary for the Treasury  
  
Miss Amy TSE  
Principal Assistant Secretary for the Treasury  
  
Miss Vivian SUM  
Assistant Secretary for the Treasury  
  
Ms Sherman CHAN  
Senior Assistant Law Draftsman  
Department of Justice  
  
Mr Roy TANG

Principal Assistant Secretary for Transport

Mr Lawrence KWAN  
Chief Traffic Engineer, Hong Kong  
Transport Department

Mr Y Y CHU  
Chief Assessor  
Inland Revenue Department

Mr Thomas LI  
Senior Assessor  
Inland Revenue Department

Mr Richard YUEN  
Deputy Secretary for Economic Services

Mr Raymond TANG  
Assistant Director of Marine

**Clerk in attendance :** Miss Odelia LEUNG, Chief Assistant Secretary (1)1

**Staff in attendance :** Ms Bernice WONG, Assistant legal Advisor 1  
Mr KAU Kin-wah, Assistant Legal Advisor 6  
Mrs Mary TANG, Senior Assistant Secretary (1)2

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## **I Meeting with the Administration**

### Deferred payment of stamp duty chargeable on an agreement for sale of residential property

Mrs Miriam LAU was concerned about the financial implications and the difficulties associated with the provision of a banker's undertaking by corporate purchasers. She said that these might explain the low number of applications for deferred payment of stamp duty from corporate purchasers since 1 April 1999. She further pointed out that the Administration's worry about default payment of stamp duty by corporate purchasers was unfounded because conveyancing solicitors were obliged to ensure the stamping of agreements in the conveyancing of properties.

2. The Chief Assessor, Inland Revenue Department (CA/IRD) said that the low application rate for deferred payment of stamp duty by corporate

Action

purchasers since 1 April 1999 was due to the fact that the specified application form was not ready until the later part of April 1999. The other reason could be that corporate purchasers were reluctant to take the trouble of securing a banker's undertaking if the property transaction was expected to be completed within a short period of time. CA/IRD stressed that the Administration did not have any doubt about the professionalism and integrity of conveyancing solicitors and recognized the usual conveyancing practice for solicitors to insist on stamping of the agreements from which their clients derived title to the property. However, solicitors had to act according to clients' instruction. It would be practically difficult for them to ensure the stamping of all sub-sale agreements, particularly in a sellers' market.

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3. Mrs Miriam LAU said that she reserved her position on the proposed requirement. She considered that there should be no difference in the requirements for application for deferred payment of stamp duty in respect of an individual or a corporate purchaser. She pointed out that the statistics provided by the Administration earlier regarding default payment of additional stamp duty and profits tax by companies were irrelevant to the issue at stake. In response to members, the Administration would provide a comparison of the amount and percentages of outstanding additional stamp duty and outstanding profit tax arising from property transactions owed by individuals and companies.

4. Mr Andrew WONG enquired whether it would be treated as two transactions if a couple who purchased a property changed it to sole ownership before completion of the assignment. CA/IRD said that under clause 18, a sale and purchase agreement which was cancelled or not completed for reasons beyond the control of the purchaser would be exempted from payment of stamp duty. The exemption, however, did not extend to an agreement which was not completed by reason of the occurrence of the specified events under the new section 29C(11)(b), which included sub-sale and nominating or directing the transfer of the property by the purchaser of the subject agreement to a third party. CA/IRD said that this provision was necessary to safeguard against evasion of stamp duty by a confirmor who cancelled the agreement and arranged a third party to sign another agreement for sale.

5. The Assistant Legal Advisor 1 (ALA 1) drew members' attention to her correspondence with the Administration regarding the application for deferred payment of stamp duty for sub-sale agreements (Re: Paper Nos. CB(1)1456/98-99(01) and (02)). She pointed out the anomaly whereby a purchaser involved in a sequence of sub-sales had to ensure the stamping of the previous agreements before he could apply for deferred payment of stamp duty. However, if the purchaser chose to settle the stamp duty without applying for deferment, his solicitor would be able to execute the conveyance on sale on payment of the fixed stamp duty of \$100 under section 29D(2)(a) and to register the agreement with the Land Registry. In the latter case, it would not be necessary for the conveyancing solicitor to ensure that all the previous

agreements were duly stamped in order to have the conveyance on sale stamped at the fixed duty.

6. In response, CA/IRD explained that the proposed arrangement of requiring a purchaser to ensure the stamping of all previous agreements before applying for deferred payment was meant to protect the Administration from exposing to the risk of indebtedness by a series of purchasers involved in a sequence of sub-sales of the same property. The proposed arrangement would ensure that only one application for deferment of stamp duty would be dealt with at a time in a sequence of sub-sales of the same property.

7. The Chairman considered the proposed arrangement grossly unfair as a purchaser's entitlement to deferred payment of stamp duty would be contingent upon the stamping of all previous agreements. The proposed arrangement would shift the Administration's responsibility for ensuring the stamping of agreements to purchasers who wished to apply for deferred payment of stamp duty.

Sub-sale of property while an agreement was in the course of registration

8. ALA 1 pointed out that where a sub-sale of the property occurred in the course of registration of an agreement for sale with the Lands Registry, the purchaser might not be able to provide the original documents for stamping under section 5 of the Stamp Duty Ordinance (the Ordinance).

9. CA/IRD advised that as a standing practice, stamp duty could be paid to Inland Revenue Department (IRD) in the absence of the relevant instrument and IRD would issue a certificate of payment accordingly. This practice was commonly applied to cases involving deed of gifts, absence of owners from Hong Kong and loss of original documents.

10. Members were of the view that although the presentation of a copy of the instrument was always allowed as a standing practice, it was desirable to enshrine such a practice in law.

11. The Senior Assistant Law Draftsman (SALD) said that while an express provision could be provided for the presentation of copies of instruments for the payment of stamp duty under section 5 of the Ordinance, this might have implications on other provisions of legislation requiring the production of original documents. There would be no difficulty in reflecting members' view as far as drafting was concerned. The law could be drafted to the effect that where it was shown to the satisfaction of the Collector that it was impracticable to present the original instrument, a copy could be presented for stamping. The Administration agreed to consider members' suggestion.

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12. As regards late stamping on an agreement (which had been endorsed by the Collector under the new section 29C(13) and was in the course of

registration) arising from the occurrence of a specified event, CA/IRD said that a penalty under section 9 of the Stamp Duty Ordinance would be imposed subject to the Collector's power of remission in appropriate cases. The same arrangement would apply to a body corporate as the banker's undertaking provided by a body corporate was to secure payment of stamp duty but not penalty.

Obligation to ensure that all other agreements were stamped before proceeding with the conveyancing

13. Referring to the Administration's assertion that there was no direct obligation on conveyancing solicitors to ensure the stamping of all other agreements before proceeding with conveyancing, ALA1 said that this might be true to the extent that a failure to stamp an instrument did not go to title, but it was a matter of conveyancing and good practice since an unstamped instrument could not be used by the vendor to prove good title. She referred members to the judgment of Town Bright Industries Ltd v Bermuda Trust (Hong Kong) Ltd and Another (1998)2 HKC 445 (pages 456 to 458).

14. Mrs Miriam LAU confirmed that in actual practice, conveyancing solicitors insisted on stamping of the agreements from which their clients derived title to the property.

15. CA/IRD said that the Administration was aware of the quoted case which ruled that failure to ensure the stamping of an instrument chargeable with stamp duty did not go to title and that an unstamped instrument could not be received as evidence in court unless a suitable undertaking from the solicitor on the stamping of documents was given. It followed that a conveyancing solicitor, when checking all the transaction documents of the property concerned to ensure that a good title could be passed, did not have to ensure that all such documents were stamped before proceeding with the conveyancing. CA/IRD further pointed out that in a sellers' market, solicitors might be subject to varied or contrary instructions by clients to proceed with this conveyancing despite that the stamp duty on previous agreements had not been paid.

16. The Chairman said that as the Administration had stated their position on the issue, it was up to members to decide whether or not to move amendments.

Reasons for refusing application for deferred stamp duty payment

17. ALA1 pointed out that IRD was not obliged under the provisions of the Bill to set out the reasons for refusing an application for deferred payment of stamp duty in the notice of decision. CA/IRD said that since the conditions for making an application for deferred payment of stamp duty were clearly stated in the proposed section 29C(12), the Administration did not consider it necessary to set out the reasons for refusal in the notice of decision, although in

Action

Admin.

practice the reasons would always be given. He said that various existing provisions of the Stamp Duty Ordinance empowered IRD to refuse claims or applications without requiring it to state the reasons e.g. a claim for intra-group relief under section 45, or an application for refund of misused stamps under section 49, or for unwanted adhesive stamps under section 50. Where there were formal channels of appeal, reasons for refusal would be stated in the notice of decision. In response to members, the Administration would consider making an express provision to the effect that IRD should set out the reasons for refusing an application for deferred payment of stamp duty in the notice of decision.

Clause by clause examination of the Bill

18. Members continued with clause-by-clause examination of the Bill.

*Clauses 15 and 18 to 21 - Stamp Duty Ordinance*

19. Members noted a submission which expressed concern about the power of the Collector under the new section 29C(12)(a) of Stamp Duty Ordinance to impose conditions for deferred payment of stamp duty. Members noted the Administration's clarification that the Collector did not have such power.

*Clause 22 - Air Passenger Departure Tax Ordinance*

*Clauses 23 and 24 - Fixed Penalty (Traffic Contraventions) Ordinance*

20. Members noted the clauses.

*Clause 25 - Fixed Penalty (Criminal Proceedings) Ordinance*

21. Members agreed to defer discussion on the clause since the proposal to increase the fixed penalty for smoky vehicles under subclause (b) would be discussed at the next meeting on 15 June 1999.

*Clauses 26, 27, 38 to 42, 44 and 45 - Merchant Shipping (Fees) Regulations*

22. DS for Tsy said that the proposed amendments to abolish or reduce some of the fees payable by ship owners and shipping companies would stimulate the shipping industry by making it more attractive and competitive to register ships in Hong Kong. The Assistant Director of Marine added that the proposed amendments were well received by the shipping industry and about 50 more ships totalling 1,500,000 tonnes would be expected to register in Hong Kong by the end of the year.

*Clauses 28 to 32 - Business Registration Ordinance*

23. CA/IRD said that these clauses provided for the issue of business registration certificates with a validity period of three years. SALD explained

Action

that the new section 6(5A), (5B) and (5C) provided for the issue of branch registration certificates. Clause 29 provided for the payment of fees. Clauses 30 and 31 amended Schedule 1 and 2 to the Ordinance. The amendments to forms were dealt with under clause 32.

*Clauses 33 to 37 - Road Tunnels (Government) Ordinance and Regulations*

24. Mrs Miriam LAU considered that the assessment provided by the Administration on the possible impact of the toll adjustments was over simplified (Re: LC Paper No. CB(1)1456/98-99(04)). She said that the assessment had not taken into account the decrease in the number of private vehicles using the Cross-Harbour Tunnel (CHT) as a result of the toll increase. The Assistant Commissioner for Transport (Acting) said that the assessment was based on traffic models which took into consideration traffic growth and population distribution. The estimated traffic flow also had regard to the fact that traffic flow would be stabilised after the CHT tolls were increased for a period of time.

*Clauses 46 to 48 - Cross-Harbour Tunnel Ordinance and Cross-Harbour Tunnel (Passage Tax) Ordinance*

25. Members noted that clauses 46 and 47 would repeal the Cross-Harbour Tunnel Ordinance, Cap. 203 and Cross-Harbour Tunnel (Passage Tax) Ordinance, Cap. 274. The Principal Assistant Secretary for Transport (PAS/T) explained the Administration's paper on the proposed regulation-making power for the Secretary for Transport (S for T) under clause 48 of the Bill (Re: LC Paper No. CB(1)1456/98-99(05)). The provision would enable S for T to make the necessary consequential amendments pursuant to the repeal of Cap. 203 and Cap. 274.

26. ALA1 drew members' attention to the extent of the regulation-making power of S for T under clause 48. She explained that the proposed power was not confined to amending subsidiary legislation but would enable S for T to amend provisions of any Ordinance as well. This type of "Henry VIII clause" was rarely made, except in very special circumstances. ALA1 said that she had requested the Administration to provide, as soon as possible, the draft regulations for members' scrutiny.

27. The Chairman expressed concern about the extent of the regulation-making power conferred on the S for T. PAS/T said that the consequential amendments and the amendments relating to saving and transitional arrangements to be made by S for T had been set out in the paper. He assured members that it was not the intention to make amendments other than those mentioned in the paper. In response to members, the Administration agreed to provide the draft regulations in two weeks' time.

28. Members agreed that the next meeting on 15 June 1999 would be devoted

Action

to discussing the proposed increase in the fixed penalty for smoky vehicles and receiving deputations.

**II Any other business**

29. There being no other business, the meeting ended at 4:15 pm.

Legislative Council Secretariat

8 November 1999