

立法會
Legislative Council

LC Paper No. CB(1) 1483/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/10/2

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

Minutes of fourth meeting
held on Friday, 21 January 2011, at 3:00 pm
in Conference Room A of the Legislative Council Building

Members present : Hon James TO Kun-sun (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LEE Wing-tat
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Paul CHAN Mo-po, MH, JP
Hon Paul TSE Wai-chun
Hon Alan LEONG Kah-kit, SC

Members absent : Hon Albert HO Chun-yan
Hon WONG Kwok-hing, MH
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon Starry LEE Wai-king, JP
Hon Tanya CHAN

Public officers : **For item II**
attending

Transport and Housing Bureau

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

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

Inland Revenue Department

Mr WONG Kuen-fai
Deputy Commissioner of Inland Revenue (Technical)

Mr HONG Wai-kuen
Senior Superintendent of Stamp Office

Department of Justice

Ms Phyllis KO
Senior Assistant Law Draftsman

Mr Raymond CHAN
Senior Assistant Law Officer (Civil Law)

Mr CHEUNG Man-yiu
Senior Government Counsel

Mr Manuel NG
Government Counsel

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

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mrs Mary TANG
Senior Council Secretary (1)2

I. Confirmation of minutes

(LC Paper No. CB(1) 1094/10-11 — Minutes of the meeting held on
17 December 2010)

The minutes of the meeting held on 17 December 2010 were confirmed.

II. Meeting with the Administration

- (LC Paper No. CB(1) 1121/10-11(01) — Concerns raised by Hon Albert CHAN
- LC Paper No. CB(1) 1121/10-11(02) — Submission from The Hong Kong Conveyancing and Property Law Association Ltd
- LC Paper No. CB(1) 1121/10-11(03) — List of follow-up actions arising from the discussion at the meeting on 4 January 2011
- LC Paper No. CB(1) 1125/10-11(01) — Administration's response to some of the items in CB(1) 855/10-11(02) and CB(1) 964/10-11(04) (Part II)

Relevant papers

- (LC Paper No. CB(1) 855/10-11(02) — List of follow-up actions arising from the discussion at the meeting on 17 December 2010
- LC Paper No. CB(1) 964/10-11(04) — List of follow-up actions arising from the discussion at the meeting on 21 December 2010
- LC Paper No. CB(1) 984/10-11(01) — Administration's response to some of the items in CB(1) 855/10-11(02) and CB(1) 964/10-11(04) (Part I)

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

3. The Administration was requested to -

- (a) provide the actual number of resale within 24 months in the first nine months of 2010 and the same period in 2009. Of these transactions, the number of cases which involved changing of flats by existing owners;
- (b) advise the application of the terms “acquire” and “dispose of” in the following resale cases -
 - (i) A vendor (Mr A) signed a Provisional Agreement for Sale and Purchase (PASP) with Mr B who later cancelled the agreement. After cancellation, Mr A subsequently signed another PASP with Mr C;

- (ii) Mr A signed a PASP with Mr B who later nominated Mr C as the purchaser; and
 - (iii) Mr A signed a PASP with Mr B who later nominated his own shell company as the purchaser;
- (c) advise other additional legislative/administrative factors which the Administration had considered before reaching the conclusion that holding the seller alone liable for the special stamp duty (SSD) was not practical;
 - (d) advise the factors which the Administration would take into account to determine when SSD was no longer necessary; and
 - (e) consider the feasibility of including an extension mechanism for the proposed sunset clause for SSD subject to the approval of the Legislative Council.
4. On the instruction of the Chairman, a letter had been sent to the Secretary for Transport and Housing on 24 January 2011 requesting a formal reply on the anti-speculative measures which the Administration had considered.

III. Any other business

5. There being no other business, the meeting ended at 5:05 pm.

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

**Proceedings of fourth meeting
held on Friday, 21 January 2011, at 3:00 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000725 - 000829	Chairman	The minutes of the meeting held on 17 December 2010 (LC Paper No. CB(1) 1094/10-11) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000830 - 001502	Chairman Administration	Discussion on the Administration's response to some of the items on the lists of follow-up actions arising from the discussions at the meetings on 17 and 21 December 2010 (LC Paper No. CB(1) 984/10-11(01)).	
001503 - 002319	Chairman Mr LEE Wing-tat Administration	<p>Mr LEE Wing-tat's views -</p> <p>(a) the effect of the announced measures to curb property speculation made on 19 November 2010 seemed to have died down as evidenced by the rising property prices; and</p> <p>(b) need to ensure a sufficient supply of residential flats otherwise property prices would continue to rise under the prevailing low-interest environment.</p> <p>Administration's response -</p> <p>(a) while more time was required to collect and collate statistics on the property market, it was worth noting that short-term resale had almost disappeared since the announcement of the special stamp duty (SSD);</p> <p>(b) target on land supply for some 20 000 private residential flats on average annually had been set for the next 10 years; and</p> <p>(c) it was expected that some 59 000 residential flats would be available in the market in the next three to four</p>	

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		years, representing an average of 14 800 to 19 700 flats per year.	
002320 - 003041	Chairman Administration Mr Abraham SHEK	<p>Other anti-speculative measures which the Government had considered or may consider introducing if the announced measures were not effective in curbing property speculation</p> <p>Chairman's enquiry on the anti-speculative measures which the Administration had considered before deciding on the introduction of SSD.</p> <p>Administration's response -</p> <p>(a) a package of measures had been introduced to ensure the healthy and stable development of the property market;</p> <p>(b) a comparison between SSD and punitive profits tax in curbing property speculation had been set out in the Annex to LC Paper No CB(1) 1125/10-11(01); and</p> <p>(c) it was inappropriate for the Administration to comment on the measures it had considered or might consider given the market sensitivity.</p> <p>Chairman's dissatisfaction that the Administration had failed to give a direct response to his question. While appreciating the need for confidentiality if the measures were intended for future implementation, the Administration should at least make it clear if this was the case. The Clerk was instructed to write to the Secretary for Transport and Housing (STH) requesting a formal reply on the anti-speculative measures which the Administration had considered.</p>	
003042 - 003455	Chairman Mr CHAN Kam-lam	Mr CHAN Kam-lam's views that members should focus discussion on the Bill rather than other anti-speculative measures which the Administration had considered or might consider, which should be followed up by the relevant Panels.	

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003456 - 004020	Chairman Administration Mr Abraham SHEK	Mr Abraham SHEK's views - (a) the Administration should explain why it had decided to adopt SSD among other anti-speculative options; and (b) there was a need to address various concerns raised by The Law Society of Hong Kong on the implementation of SSD.	
004021 - 004125	Chairman Mr WONG Ting-kwong	Mr WONG Ting-kwong's views - (a) it was not necessary for the Administration to explain all the measures it had considered before arriving at the proposals contained in the Bill; and (b) other anti-speculative measures should be followed up by the relevant Panels.	
004126 - 004436	Chairman Ms Miriam LAU	Ms Miriam LAU's view that the Bills Committee was set up to scrutinize the Bill, so members should focus on the Bill. If members found it difficult to support the Bill, they could vote against it.	
004437 - 004759	Chairman Mr Ronny TONG Ms Miriam LAU Mr Abraham SHEK	Mr Ronny TONG's views - (a) as the Bills Committee could not include other anti-speculative measures in the Bill even if those other anti-speculative measures were considered feasible, members should focus discussion on the Bill and let the relevant Panels follow up other anti-speculative measures; and (b) the retrospective effect of the Bill would be intensified by further delay in the enactment of the Bill. Ms Miriam LAU's view that the relevant Panels should follow up on the other anti-speculative measures, while Mr Abraham SHEK's support for requesting STH to give a formal reply on the anti-speculative measures which the Administration had considered.	

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004800 - 005323	Chairman Administration	<p>The basis for the threshold of 24 months and the various regressive rates for SSD</p> <p>Chairman's views -</p> <p>(a) some resale transactions did not involve speculation but changing of flats by owner-occupiers; and</p> <p>(b) need to provide a more detailed breakdown on resale transactions.</p> <p>Administration's response -</p> <p>(a) the shorter the holding period, the higher chances of speculation involved in the transactions;</p> <p>(b) the surge in resale within 12 months had indicated a shift in speculative activities to a shorter horizon; and</p> <p>(c) the introduction of SSD was meant to increase the cost of short-term resale, thereby deterring short-term speculation.</p>	
005324 - 010030	Chairman Ms Miriam LAU Administration	<p>Ms Miriam LAU's views/requests -</p> <p>(a) anti-speculative measures should not affect the upgrading of flats by owner-occupiers;</p> <p>(b) need to provide statistics on resale transactions; and</p> <p>(c) need to ascertain the effectiveness of SSD as property prices had risen again after a slight drop following the announcement of SSD.</p> <p>Administration's response -</p> <p>(a) of the 119 000 property transactions in the first nine months of 2010, 12 400 or 10% involved resale within 12 months;</p> <p>(b) for the same period in 2009, 5 800 of 100 400 property transactions or 5.8% involved resale within 12 months;</p>	<p>The Administration to provide the actual number of resale within 24 months in the first nine months of 2010 and the same period in 2009. Of these transactions, the number of cases which involved changing of flats by existing owners.</p>

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		<p>(c) while it would take time to collect and collate information on the sales trend of the property market, the initial feedback was that short-term speculation had been significantly reduced; and</p> <p>(d) property prices were affected by various factors. A package of measures, including increasing land supply for housing, had been/would be introduced to ensure the healthy and stable development of the property market.</p>	
010031 - 010737	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK's views/concerns -</p> <p>(a) the supply of residential flats was insufficient to meet the demand, as evidenced by the record-low supply of first-hand residential flats in 2009. This was due to the failure of the Administration in putting in place a policy on supply of flats in the private sector; and</p> <p>(b) SSD had serious impacts on the property market as it would affect the supply and resale of flats.</p> <p>Administration's response -</p> <p>(a) a package of measures, which included increasing land supply for housing, had been introduced to stabilize the property market; and</p> <p>(b) with the withdrawal of speculators, genuine home buyers would be able to enter the property market.</p>	
010738 - 011127	Chairman Ms Miriam LAU	<p>Ms Miriam LAU's views/concerns -</p> <p>(a) SSD had not been effective in stabilizing property prices judging from the recent surge in property prices;</p> <p>(b) as SSD had impacts on the disposal of properties, this should not be regarded as a long-term measure; and</p>	

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		(c) supported the levy of profits tax which was a more effective measure to curb property speculation.	
011128 - 011521	Chairman Mr Abraham SHEK	Mr Abraham SHEK's views/concerns - (a) SSD had affected the supply of flats in the secondary market as owners would tend to lease out rather than selling their flats amid the uncertainties arising from SSD; and (b) the resultant decrease in supply of flats in the secondary market had pushed up the property prices.	
011522 - 012127	Chairman Ms Miriam LAU	Ms Miriam LAU's request for explanation on the application of the terms "acquire" and "dispose of" in the following resale cases - (a) a vendor (Mr A) signed a Provisional Agreement for Sale and Purchase (PASP) with Mr B who later cancelled the agreement. After cancellation, Mr A subsequently signed another PASP with Mr C; (b) Mr A signed a PASP with Mr B who later nominated Mr C as the purchaser; and (c) Mr A signed a PASP with Mr B who later nominated his own shell company as the purchaser. Administration's response - Committee Stage amendments (CSAs) to address comments, enquiries and concerns about the terms "acquire" and "dispose of" would be submitted to the Bills Committee for consideration at the next meeting on 9 February 2011.	The Administration to explain the application of the terms "acquire" and "dispose of" in the different resale cases.
012128 - 013636	Chairman Administration	Whether the Government would consider only holding the seller liable for SSD Chairman's views - (a) it would be more desirable to set out a	

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		<p>default position in the Bill that sellers would be responsible for paying SSD to cater for the situation where no agreement could be reached on the party to be held liable for payment of SSD;</p> <p>(b) an express provision requiring sellers to pay SSD would facilitate the conveyancing process, as sellers should know whether the resale was within 24 months and thereby subject to SSD; and</p> <p>(c) estate agents should be able to establish a practice to ensure that sellers would pay SSD, for example, by setting aside a percentage of the purchase price for settlement of SSD.</p> <p>Administration's response -</p> <p>(a) all parties executing a chargeable instrument were jointly and severally liable to pay the stamp duty under the present Stamp Duty Ordinance (Cap. 117);</p> <p>(b) the regime on stamp duty was operating well and the market was familiar with the practice;</p> <p>(c) even if it was specified in the Bill that SSD was to be paid by the seller, the buyer would have to pay SSD if the seller failed to do so, in order to have the instrument registered with the Land Registry (LR) for protection of title;</p> <p>(d) conveyancing solicitors would be required to ascertain the need for SSD and to set out in the sale and purchase agreement the party responsible for payment of SSD; and</p> <p>(e) proposed CSAs to the definitions of “acquire” and “dispose of” would explain the determination of the holding period and the applicability of SSD.</p>	

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013637 - 014200	Chairman Ms Miriam LAU Administration Mr WONG Ting-kwong	<p>Ms Miriam LAU's views/concerns -</p> <p>(a) it would not be easy to define in the Bill the default position of holding sellers liable for payment of SSD as proposed by the Chairman;</p> <p>(b) the holding of both buyers and sellers jointly and severally liable for stamp duty under the existing regime was to ensure revenue collection;</p> <p>(c) holding the seller alone liable for SSD could not resolve the problem as the buyer would have to pay SSD in the event of default in SSD payment by the seller, in order to have the instrument registered with LR;</p> <p>(d) conveyancing solicitors would need to be extra careful in ensuring the payment of SSD; and</p> <p>(e) it might not be possible to set aside a percentage of the purchase price for settlement of stamp duty or SSD in the case of negative equity.</p>	
014201- 015100	Chairman Ms Miriam LAU	<p>Chairman's views that consideration could be given to spelling out clearly in the Bill that the buyer could proceed to register the instrument with LR even if the seller failed to pay SSD.</p> <p>Ms Miriam LAU's concerns -</p> <p>(a) the Chairman's proposal would only be feasible if SSD was to be separated from the conveyancing process and regarded as the seller's personal liability;</p> <p>(b) the proposed arrangement would however complicate the conveyancing process. Besides, the new owner would have difficulty in reselling the property in the event of default in payment of SSD even if the instrument was registered with LR; and</p>	<p>The Administration to advise other additional legislative /administrative factors which the Administration had considered before reaching the conclusion that holding the seller alone liable for the SSD was not practical.</p>

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		(c) the Inland Revenue Department would have difficulties in recovering SSD from sellers who had emigrated.	
015101 - 020602	Chairman Ms Miriam LAU	<p>Feasibility of including a sunset clause for SSD</p> <p>Ms Miriam LAU's views/enquiry-</p> <p>(a) the factors which the Administration would take into account to determine when SSD was no longer necessary; and</p> <p>(b) need for a review of SSD which, being a draconian measure, should not be implemented on a long-term basis as this would have an impact on disposal of properties.</p> <p>Chairman's enquiry on the feasibility of including an extension mechanism for the proposed sunset clause for SSD subject to the approval of the Legislative Council, similar to that adopted for the removal of rent control under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).</p> <p>Administration's response -</p> <p>(a) would continue to closely monitor the development of the property market, and would take timely and appropriate measures as and when necessary to ensure the stable and healthy development of the market; and</p> <p>(b) the normal legislative process would be adopted to amend the relevant legislation if SSD was considered no longer necessary.</p>	<p>The Administration to -</p> <p>(a) advise the factors which it would take into account to determine when SSD was no longer necessary; and</p> <p>(b) consider the feasibility of including an extension mechanism for the proposed sunset clause for SSD subject to the approval of the Legislative Council.</p>
020603 - 020614	Chairman	Date of next meeting.	