

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 1642/10-11  
(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 fifth meeting**  
**held on Wednesday, 9 February 2011, at 2:30 pm**  
**in Conference Room A of the Legislative Council Building**

**Members present** : Hon James TO Kun-sun (Chairman)  
Hon Albert HO Chun-yan  
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-ye, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon WONG Kwok-hing, MH  
Dr Hon Joseph LEE Kok-long, SBS, JP  
Hon WONG Ting-kwong, BBS, JP  
Hon Paul CHAN Mo-po, MH, JP  
Hon Paul TSE Wai-chun  
Hon Alan LEONG Kah-kit, SC

**Members absent** : Hon LEE Wing-tat  
Hon Ronny TONG Ka-wah, SC  
Hon CHIM Pui-chung  
Hon Starry LEE Wai-king, JP

**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)1

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**I. Confirmation of minutes**

(LC Paper No. CB(1) 1190/10-11 — Minutes of the meeting held  
on 21 December 2010)

The minutes of the meeting held on 21 December 2010 were confirmed.

## II. Meeting with the Administration

(LC Paper No. CB(1) 1238/10-11(01) — List of follow-up actions arising from the discussion at the meeting on 21 January 2011

LC Paper No. CB(1) 1246/10-11(01) — Administration's response to CB(1) 1238/10-11(01))

### 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)

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)

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)

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

3. The Administration was requested to -

(a) provide the number of resale transactions of commercial premises within 24 months in the first nine months of 2010 and the same period in 2009 as well as after the announcement of special stamp duty (SSD) on 19 November 2010;

(b) provide a supplementary paper explaining why Mr James TO's previous Committee Stage amendment to the Stamp Duty (Amendment) Bill 2010 requiring confirmor to pay an additional stamp duty for a chargeable agreement for sub-sale was said to have the effect of double taxation while SSD under the Bill would not;

(c) update the statistics on suspected speculation cases in the form of

shares transfer of “property holding companies” until January 2011. To also consider the feasibility of putting in place a notification mechanism on shares transfer of “property holding companies” registered overseas;

- (d) provide actual figures of rents in the private market following the announcement of SSD;
- (e) seriously reconsider expanding the exceptions for SSD to include involuntary cases such as order of court, divorce, succession to estate, terminal illness etc.;
- (f) provide the number of Provisional Agreement for Sale and Purchase signed before the announcement of SSD on 19 November 2010;
- (g) advise the existing ordinances other than revenue ordinances which had retrospective effect. To also elaborate the relevant sections and the controversies involved;
- (h) advise the effects on the title of a property (including whether there was a charge on the property) if the property had been sold for say three times within a short time but only the last transaction had been properly stamped (including SSD); and
- (i) consider including in the Bill a presumption clause on speculation for resale within a specified period such that a person who had justifiable reason could apply to the Commissioner of Inland Revenue and the Board of Review where appropriate for exemption from payment of SSD.

### **III. Any other business**

4. There being no other business, the meeting ended at 4:30 pm.

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

**Proceedings of fifth meeting  
held on Wednesday, 9 February 2011, at 2:30 pm  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000552 - 000553	Chairman	The Bills Committee's acceptance of Miss Tanya CHAN's notice for withdrawal from the Bills Committee	
<i>Agenda Item I - Confirmation of minutes</i>			
000553 - 000633	Chairman	The minutes of the meeting held on 21 December 2010 (LC Paper No. CB(1) 1190/10-11) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000634 - 001819	Chairman Ms Miriam LAU Administration Mr Abraham SHEK	<p>Continuation of discussion on the Administration's response as set out in LC Paper No. CB(1) 984/10-11(01).</p> <p><u>Part (e) - To consider extending the scope of the Bill to cover commercial properties to deter the spread of speculative activities to the commercial sector</u></p> <p>Ms Miriam LAU's view/enquiry -</p> <p>(a) speculative activities on commercial premises would push up rentals and affect the survival of small and medium enterprises; and</p> <p>(b) the circumstances under which further anti-speculative measures would be deemed necessary.</p> <p>Chairman's views -</p> <p>(a) speculation on commercial premises would also push up property prices and in turn adversely affect the livelihood of the general public;</p> <p>(b) need for adequate supply of land for commercial developments; and</p> <p>(c) need for comparison on resale transactions of commercial premises within 24 months in the first nine months of 2010 and the same period in 2009.</p>	The Administration to provide the number of resale transactions of commercial premises within 24 months in the first nine months of 2010 and the same period in 2009 as well as after the announcement of SSD on 19 November 2010.

Time marker	Speaker	Subject(s)	Action required
		<p>Mr Abraham SHEK's request for information on speculative activities involving commercial premises following the announcement of special stamp duty (SSD) on 19 November 2010.</p> <p>Administration's response -</p> <p>(a) transactions of non-residential premises were commercial activities; and</p> <p>(b) there would be close monitoring on both residential and non-residential property markets to ensure their healthy and stable development.</p>	
001820 - 002625	Chairman Administration Mr Abraham SHEK	<p><u>Part (f) - Whether there was a question of double taxation if property transactions would be subject to both SSD and profits tax</u></p> <p>Chairman's request for explanation on why his previous Committee Stage amendment (CSA) to the Stamp Duty (Amendment) Bill 2010 requiring confirmor to pay an additional stamp duty for a chargeable agreement for sub-sale was said to have the effect of double taxation while SSD under the Bill would not.</p> <p>Administration's explanation -</p> <p>(a) there were differences between the Chairman's earlier CSA to the Stamp Duty (Amendment) Bill 2010 requiring confirmors to pay additional stamp duty and the proposed SSD in the present Bill;</p> <p>(b) SSD was an extraordinary measure which was meant to increase the cost of short-term transactions in order to curb speculation in residential properties; and</p> <p>(c) stamp duty and profits tax were different levies. Unlike profits tax, stamp duty (including SSD) was not a tax on profits in nature.</p>	The Administration to provide a supplementary paper explaining why Mr James TO's previous CSA to the Stamp Duty (Amendment) Bill 2010 requiring confirmor to pay an additional stamp duty for a chargeable agreement for sub-sale was said to have the effect of double taxation while SSD under the Bill would not.
002626 - 004629	Chairman Administration Ms Miriam LAU Mr Albert HO	<p><u>Part (g) - Whether there was an increase in the number of shell companies and property transactions through these companies after announcement of SSD on a monthly basis while the Bills Committee was in session</u></p> <p>Chairman's enquiries -</p>	The Administration to -  (a) update the statistics on suspected

Time marker	Speaker	Subject(s)	Action required
		<p>(a) the latest statistics on suspected speculation cases in the form of shares transfer of “property holding companies” by local and overseas registered companies; and</p> <p>(b) whether consideration could be given to introducing a notification mechanism on shares transfer of “property holding companies” registered overseas.</p> <p>Ms Miriam LAU's concern about evasion of tax by “property holding companies” registered overseas which were engaged in property speculation.</p> <p>Mr Albert HO's enquiry on whether the Inland Revenue Department (IRD) would be "lifting the corporate veil" in dealing with speculation cases in the form of shares transfer of “property holding companies”.</p> <p>Administration's response -</p> <p>(a) SSD was not applicable to the transfer of shares of “property holding companies”;</p> <p>(b) since April 2010, the Stamp Office of IRD had compiled statistics on those suspected speculation cases in the form of shares transfer of “property holding companies”;</p> <p>and</p> <p>(c) IRD had been actively tracking and taking follow-up actions on property speculation cases, including cases involving shares transfer of “property holding companies”, to ensure that profits derived from property speculation were duly taxed.</p>	<p>speculation cases in the form of shares transfer of “property holding companies” until January 2011; and</p> <p>(b) consider the feasibility of putting in place a notification mechanism on shares transfer of “property holding companies” registered overseas.</p>
004630- 005027	Chairman Ms Miriam LAU Administration	<p><u>Part (h) - Other prudential risk management measures for mortgage lending which the Hong Kong Monetary Authority had considered</u></p> <p>Chairman's enquiry on the mortgage lending practices.</p> <p>Administration's explanation on the prudential risk management measures for mortgage lending.</p>	

Time marker	Speaker	Subject(s)	Action required
005028 - 005517	Chairman	<p><u>Part (i) - Provision of assistance to genuine home buyers who had difficulties in securing mortgage as a result of the prudential risk management measures for mortgage lending and the prevailing mortgage policy of the Hong Kong Mortgage Corporation Limited in respect of private residential properties</u></p> <p><u>Part (j) - Experience in overseas jurisdictions in preventing property bubble</u></p> <p><u>Part (k) - Timely release of information on the property market</u></p>	
005518 - 005709	Chairman	<p><u>Part (l) - Whether rents in the private residential property market would rise as a result of SSD</u></p> <p><u>Part (m) - Consequential amendments to the Land Titles Ordinance (Cap. 585)</u></p>	The Administration to provide actual figures of rents in the private market following the announcement of SSD.
005710 - 005911	Chairman Dr Margaret NG	Dr Margaret NG's enquiry on the number of Provisional Agreement for Sale and Purchase (PASP) signed before the announcement of SSD on 19 November 2010 to facilitate understanding on the extent of effect of the retrospective application of SSD.	The Administration to provide the number of PASP signed before the announcement of SSD on 19 November 2010.
005912 - 010356	Chairman Ms Audrey EU Administration Dr Margaret NG Mr Albert HO	<p>Ms Audrey EU's view/enquiry -</p> <p>(a) need to carefully examine the CSAs to be introduced by the Administration with regard to the definitions of "acquire" and "dispose of"; and</p> <p>(a) whether involuntary cases of resale within 24 months would be exempted from SSD.</p> <p>Mr Albert HO's request for expanding the exceptions for SSD to include involuntary cases, such as order of court, divorce, succession to estate, terminal illness etc.</p>	The Administration to seriously reconsider expanding the exceptions for SSD to include involuntary cases such as order of court, divorce, succession to estate, terminal illness etc.
010357 - 010744	Chairman Ms Audrey EU	Ms Audrey EU's requests for establishing a mechanism to apply for exemption from SSD in hardship cases, and enlisting the services of the Board of Review which had already been set up to review appeals against tax.	



Time marker	Speaker	Subject(s)	Action required
010745 - 011009	Chairman Dr Margaret NG Administration	Dr Margaret NG's views -  (a) need for a clear policy on SSD which was meant to target at property speculation; and  (b) cases of involuntary resale which were non-speculative in nature should not be subject to SSD.	
011010 - 011502	Chairman Dr Raymond HO Ms Audrey EU Administration Dr Margaret NG	Discussion on the proposed section 29DA(8) in clause 10 which provided that if a person acquired any residential property under a will, the date of acquisition by the person would be the date on which the deceased person concerned acquired the property.	
011503 - 011637	Chairman Administration	Discussion on the Administration's response as set out in LC Paper No. CB(1) 1125/10-11(01).	
011638 - 011926	Chairman Dr Margaret NG Administration	Dr Margaret NG's requests -  (a) information on the existing ordinances other than revenue ordinances which had retrospective effect; and  (b) elaboration on the relevant sections and the controversies involved	The Administration to advise the existing ordinances other than revenue ordinances which had retrospective effect. To also elaborate the relevant sections and the controversies involved.
011927 - 012527	Chairman Ms Audrey EU Administration	<u>Part (b) - To advise the circumstances/consequences if the commencement date in clause 1(2) was repealed or amended</u>  Discussion on whether the Bill had retrospective effect given that SSD would be payable at the point of resale of properties acquired on or after 20 November 2010 and resold within 24 months.	
012528 - 013326	Chairman Mr Albert HO Administration Dr Margaret NG	Mr Albert HO's concern about the effects on the title of a property (including whether there was a charge on the property) if the property had been sold for say three times within a short time but only the last transaction had been properly stamped (including SSD).	The Administration to advise the effects on the title of a property (including whether there was a charge on the property) if the property had been

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			sold for say three times within a short time but only the last transaction had been properly stamped (including SSD).
013327 - 013935	Chairman Dr Margaret NG Administration	Administration's explanation on the existing revenue ordinances which had retrospective effect as set out in paragraph 6 of LC Paper No. CB(1) 1125/10-11(01)	
013936 - 015616	Chairman Administration Ms Audrey EU Dr Margaret NG Mr Albert HO	<p><u>Part (c) - To consider expanding the exceptions for SSD to include financial hardship and substantial changes of circumstances, as well as providing an appeal mechanism on SSD</u></p> <p>Ms Audrey EU's suggestion of including in the Bill a presumption clause on speculation for resale within a specified period such that a person who had justifiable reason could apply to the Commissioner of Inland Revenue and the Board of Review where appropriate for exemption from payment of SSD.</p> <p>Mr Albert HO's request for provision of statutory exemptions in the Bill to cater for involuntary cases such as mortgagee sale.</p> <p>Mr WONG Kwok-hing's view that resale of properties necessitated by terminal illness should be exempted from SSD.</p> <p>Chairman's concern about possible exploitation of SSD exemptions by property speculators.</p> <p>Administration's response that in order not to undermine the effectiveness of SSD, individual or personal circumstances could not be catered for, as it would not be practicable for IRD or an Appeal Panel to grant exemption on a case-by-case basis. Also, the law should be clear and without ambiguity, any exemptions to be considered had to be fair and measurable in an objective manner, and the types of exemptions should be clearly set out in the Bill.</p>	The Administration to consider including in the Bill a presumption clause on speculation for resale within a specified period such that a person who had justifiable reason could apply to the Commissioner of Inland Revenue and the Board of Review where appropriate for exemption from payment of SSD.
015617 - 015926	Chairman Administration	<u>Part (e) - To provide a flowchart on the application of stamp duty in respect of property transactions</u>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		Administration's explanation on the flowchart on the application of stamp duty in respect of property transactions.	

Council Business Division 1  
Legislative Council Secretariat  
18 March 2011