

立法會
Legislative Council

LC Paper No. CB(1) 1770/10-11
(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 sixth meeting
held on Wednesday, 23 February 2011, at 8:30 am
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
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Starry LEE Wai-king, JP
Hon Paul CHAN Mo-po, MH, JP
Hon Paul TSE Wai-chun

Members absent : Hon CHIM Pui-chung
Hon Alan LEONG Kah-kit, SC

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

I. Confirmation of minutes

(LC Paper No. CB(1) 1363/10-11 — Minutes of the meeting held
on 4 January 2011)

The minutes of the meeting held on 4 January 2011 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 1371/10-11(01) — List of follow-up actions arising from the discussion at the meeting on 9 February 2011

LC Paper No. CB(1) 1371/10-11(02) — Administration's response to CB(1) 1371/10-11(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) 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

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))

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

3. The Administration was requested to -

(a) advise the types of information required for assessing the need for payment of special stamp duty (SSD) in respect of Provisional Agreement for Sale and Purchase (PASP) signed before the announcement of SSD on 19 November 2010 and/or not registered at the Land Registry. To also advise whether a photocopy of PASP would be accepted as evidence;

(b) consider exempting owners who were unwilling but obliged to sell their properties under compulsory sale for redevelopment from

payment of SSD. To also relay to the Lands Tribunal members' request for it to take the plight of these owners into account in reaching a decision under section 4(6)(a)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545);

- (c) advise the application of SSD in cases where transactions had not been completed after the signing of PASP;
- (d) provide the number of PASP signed after the announcement of SSD on 19 November 2010 up till gazettal of the Bill to ascertain the impact of the retrospective effect of the Bill;
- (e) advise whether there were other existing ordinances (apart from those provided before) which had been passed with retrospective effect. To also elaborate the relevant sections under the Inland Revenue (Amendment) Ordinance 1987 and Inland Revenue (Amendment) Ordinance 1992 with retrospective effect;
- (f) elaborate the impracticality for implementation of exemptions from SSD on a case-by-case basis; and
- (g) update all the statistics previously provided on a monthly basis during the course of deliberation of the Bills Committee.

4. Members agreed to the following schedule of meetings -

<u>Date</u>	<u>Time</u>
Thursday, 10 March 2011	8:30 am
Thursday, 24 March 2011	10:45 am
Friday, 1 April 2011	3:00 pm or immediately after the House Committee meeting, whichever was later
Monday, 18 April 2011	8:30 am

5. The Administration was requested to provide the proposed Committee Stage amendments (CSAs) for consideration at the next meeting. The next meeting would be held on 10 March 2011, subject to the availability of CSAs.

III. Any other business

6. There being no other business, the meeting ended at 10:05 am.

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

**Proceedings of sixth meeting
held on Wednesday, 23 February 2011, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000129 - 000151	Chairman	The minutes of the meeting held on 4 January 2011 (LC Paper No. CB(1) 1363/10-11) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000152- 000354	Chairman	<p><u>Schedule of meetings</u></p> <p>The schedule of meetings as proposed was endorsed.</p>	
000355- 003207	Chairman Administration Ms Miriam LAU	<p>Continuation of discussion on LC Paper No. CB(1) 1125/10-11(01).</p> <p><u>Part (f) - To advise whether it is a usual practice for an Agreement for Sale and Purchase to be completed 14 days after the signing of the Provisional Sales and Purchase Agreement (PASP). If so, the application of SSD to PASP signed 14 days before the announcement of SSD on 19 November 2010</u></p> <p><u>Part (g) - To compare the effectiveness of special stamp duty (SSD) and punitive profits tax (say 90%) in curbing property speculation while minimizing the impact on genuine home buyers</u></p> <p>Ms Miriam LAU's enquiries -</p> <p>(a) applicability of SSD to resale of a property where PASP was signed on or before 19 November 2010 and contained a "must buy must sell" provision but not registered with the Land Registry while the Agreement for Sale and Purchase (ASP) was signed after 19 November 2010 and registered with the Land Registry;</p> <p>(b) the types of information required for assessing the need for payment of SSD; and</p> <p>(c) whether a photocopy of PASP would be accepted as evidence.</p>	<p>The Administration to advise the types of information required for assessing the need for payment of SSD in respect of PASP signed before the announcement of SSD on 19 November 2010 and/or not registered at the Land Registry. To also advise whether a photocopy of PASP would be accepted as evidence.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Administration's explanation -</p> <p>(a) the signing of PASP containing a "must buy must sell" provision would constitute the transfer of equitable ownership of the property, which was a key factor in assessing the need for payment of SSD in respect of PASP signed on or before 19 November 2010; and</p> <p>(b) Committee Stage Amendments (CSAs) to the definitions of "acquire" and "disposed of" were under preparation.</p> <p>Mr Paul TSE's views that solicitors would have to exercise great care in assessing the need for payment of SSD in resale transactions involving PASPs signed on or before 19 November 2010.</p>	
003208 - 003929	Chairman Administration	<p><u>Part (h) - To also advise whether the anti-tax evasion measures under the existing tax legislation can be invoked if the setting up of shell companies was to evade SSD. To consider the feasibility of applying SSD to property transactions through transfer of shares of companies</u></p> <p><u>Part (i) - The application of SSD in respect of compulsory sale for redevelopments</u></p> <p>Chairman's concerns -</p> <p>(a) the liability for payment of SSD by owners who were unwilling but obliged to sell their properties under compulsory sale for redevelopment; and</p> <p>(b) need to relay to the Lands Tribunal members' request for it to take the plight of these owners into account in reaching a decision under section 4(6)(a)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545).</p> <p>Administration's response -</p> <p>(a) under section 4(6)(a)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545), the Lands Tribunal might give directions relating to the sale and purchase of a lot, including settling the particulars and conditions of the sale of the</p>	<p>The Administration to -</p> <p>(a) consider exempting owners who were unwilling but obliged to sell their properties under compulsory sale for redevelopment from payment of SSD; and</p> <p>(b) relay to the Lands Tribunal members' request for it to take the plight of these owners into account in reaching a decision under section 4(6)(a)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545).</p>

Time marker	Speaker	Subject(s)	Action required
		<p>lot. It might also direct a contractual party to pay stamp duty (SD) and/or SSD, notwithstanding the amendments proposed to the Stamp Duty Ordinance (Cap. 117) (SDO) for the introduction of SSD; and</p> <p>(b) would relay Chairman's request to the Development Bureau for consideration.</p>	
003930 - 004013	Chairman Administration	<p><u>Part (j) - The application of SSD in respect of mortgaged properties, including those subject to foreclosure orders</u></p> <p><u>Part (k) - To provide a written response to LC Paper No. CB(1) 822/10-11(03), particularly on the question of conformity with the Basic Law if SSD amounted to a partial confiscation of the value of property sold within 24 months</u></p>	
004014 - 005519	Chairman Administration Ms Audrey EU	<p>Discussion on the Administration's response set out in LC Paper No. CB(1) 1246/10-11(01).</p> <p><u>Part (a) - 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 involve changing of flats by existing owners</u></p> <p><u>Part (b) - To advise the application of the terms "acquire" and "dispose of" in some resale cases</u></p> <p><u>Part (c) - To advise other additional legislative/administrative factors which the Administration had considered before reaching the conclusion that holding the seller alone liable for SSD was not practical.</u></p> <p>Ms Audrey EU's enquiry on the application of SSD in cases where transactions had not been completed after the signing of PASP.</p> <p>Administration's explanation -</p> <p>(a) payment of SD and/or SSD was not required if the transaction had not been completed; and</p> <p>(b) SD and SSD which had been duly paid would be refunded to the relevant party if the transaction had not been completed, but the application for refund had to be made</p>	The Administration to advise the application of SSD in cases where transactions had not been completed after the signing of PASP.

Time marker	Speaker	Subject(s)	Action required
		<p>within two years from the signing of the stamped agreement.</p> <p>Chairman's indication that he might move CSAs to specify the default position for seller to pay SSD.</p>	
005520 - 010019	Chairman	<p><u>Part (d) - To advise the factors which the Administration will take into account to determine when SSD was no longer necessary and to consider the feasibility of including an extension mechanism for the proposed sunset clause for SSD subject to the approval of the Legislative Council</u></p> <p>Chairman's indication that he might move CSAs to include a sunset clause for SSD with a mechanism for extension subject to the approval of the Legislative Council.</p>	
010020 -012716	Chairman Administration Dr Margaret NG Ir Dr Raymond HO	<p>Discussion on the Administration's response as set out in LC Paper No. CB(1) 1371/10-11(02).</p> <p><u>Part (a) - 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</u></p> <p><u>Part (b) - 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 will not</u></p> <p><u>Part (c) - To 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</u></p> <p><u>Part (d) - To provide actual figures of rents in the private market following the announcement of SSD</u></p> <p><u>Part (e) - To seriously reconsider expanding the exceptions for SSD to include involuntary cases such as order of court, divorce, succession to</u></p>	<p>The Administration to -</p> <p>(a) provide the number of PASP signed after the announcement of SSD on 19 November 2010 up till gazettal of the Bill to ascertain the impact of the retrospective effect of the Bill;</p> <p>(b) advise whether there were other existing ordinances (apart from those provided before) which had been passed with retrospective effect; and</p> <p>(c) elaborate the relevant sections under the Inland</p>

Time marker	Speaker	Subject(s)	Action required
		<p><u>estate, terminal illness etc.</u></p> <p><u>Part (f) - To provide the number of Provisional Agreement for Sale and Purchase signed before the announcement of SSD on 19 November 2010</u></p> <p>Dr Margaret NG's enquiries -</p> <p>(a) the number of PASP signed after the announcement of SSD on 19 November 2010 up till gazettal of the Bill to ascertain the impact of the retrospective effect of the Bill;</p> <p>(b) other existing ordinances (apart from those provided before) which had been passed with retrospective effect; and</p> <p>(c) elaboration on the relevant sections under the Inland Revenue (Amendment) Ordinance 1987 and Inland Revenue (Amendment) Ordinance 1992 with retrospective effect.</p> <p>Mr LEE Wing-tat's indication that he might move CSAs to provide for exemptions from SSD for the following scenarios -</p> <p>(a) owners who were unwilling but obliged to sell their properties under compulsory sale for redevelopment; and</p> <p>(b) those who had to sell their properties due to death or serious illness of the sole bread-winner of the family.</p> <p>Administration's explanation -</p> <p>(a) it was very important that the law should be clear and without ambiguity. Any exemptions to be considered had to be fair and measurable in an objective manner. The types of exemptions should be clearly set out in the Bill; and</p> <p>(b) granting exemptions on a case-by-case basis in the light of individual or personal circumstances, such as financial hardship, would not be practicable for implementation and would undermine the effectiveness of SSD.</p>	<p>Revenue (Amendment) Ordinance 1987 and Inland Revenue (Amendment) Ordinance 1992 with retrospective effect.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Ir Dr Raymond HO's request for elaboration on the impracticality for implementation of exemptions from SSD on a case-by-case basis.</p>	<p>The Administration to elaborate the impracticality for implementation of exemptions from SSD on a case-by-case basis.</p>
012717 - 013017	Chairman Administration	<p><u>Part (g) - To advise the existing ordinances other than revenue ordinances which have retrospective effect. To also elaborate the relevant sections and the controversies involved</u></p> <p><u>Part (h) - To advise the effects on the title of a property (including whether there is a charge on the property) if the property has been sold for say three times within a short time but only the last transaction has been properly stamped (including SSD)</u></p> <p><u>Part (i) - To consider including in the Bill a presumption clause on speculation for resale within a specified period such that a person who has justifiable reason can apply to the Commissioner of Inland Revenue and the Board of Review where appropriate for exemption from payment of SSD</u></p> <p><u>Part (j) - Supplementary information on the number of resale within 12 months in the first nine months of 2010 and the same period in 2009</u></p>	<p>The Administration to update all the statistics previously provided on a monthly basis during the course of deliberation of the Bills Committee.</p>
013018 - 013347	Chairman Administration	<p>Member' request for the Administration to provide the proposed CSAs for discussion at the next meeting on 10 March 2011.</p>	