

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 2073/10-11  
(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 eighth meeting**  
**held on Thursday, 24 March 2011, at 10:45 am**  
**in the Chamber 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  
Hon WONG Ting-kwong, BBS, JP  
Hon CHIM Pui-chung  
Hon Paul TSE Wai-chun  
Hon Alan LEONG Kah-kit, SC

**Members absent** : Dr Hon Joseph LEE Kok-long, SBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Starry LEE Wai-king, JP  
Hon Paul CHAN Mo-po, MH, 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 CHEUNG Man-yiu  
Senior Government Counsel

Mr Manuel NG  
Government Counsel

**Attendance by  
invitation : For item II**

The Real Estate Developers Association of Hong Kong

Mr Louis LOONG  
Secretary General

The Hong Kong Institute of Surveyors

Dr Lawrence POON  
Immediate Past Chairman of General Practice  
Division

Property Agencies Association

Mr Tony KWOK  
Chairman

Hong Kong Chamber of Professional Property  
Consultants Ltd

Mr Lawrence WONG  
President

**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

Miss Mandy POON  
Legislative Assistant (1)1

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**I. Confirmation of minutes**

(LC Paper No. CB(1) 1642/10-11 — Minutes of the meeting held on 9 February 2011)

The minutes of the meeting held on 9 February 2011 were confirmed.

**II. Meeting with deputations and the Administration**

Meeting with deputations

2. The Chairman invited views from the following deputations -

(a) The Real Estate Developers Association of Hong Kong;

(b) The Hong Kong Institute of Surveyors;

(c) Property Agencies Association (LC Paper No. CB(1) 1689/10-11(01)); and

(d) Hong Kong Chamber of Professional Property Consultants Ltd (LC Paper No. CB(1) 1672/10-11(01)).

3. Members also noted the following submissions from deputations not attending the meeting -

LC Paper No. CB(1) 1672/10-11(02) — Submission from Mr David WEBB

- LC Paper No. CB(1) 1672/10-11(03) — Submission from Hong Kong Institute of Estate Agents
- LC Paper No. CB(1) 1672/10-11(04) — Submission from The Hong Kong Association of Banks
- LC Paper No. CB(1) 1689/10-11(02) — Submission from The Law Society of Hong Kong

Meeting with the Administration

- (LC Paper No. CB(1) 1672/10-11(05) — List of follow-up actions arising from the discussion at the meeting on 10 March 2011
- LC Paper No. CB(1) 1689/10-11(03) — Draft Committee Stage amendments on the acquisition and disposal of properties, and further exemptions provided by the Administration
- LC Paper No. CB(1) 1689/10-11(04) — Administration's response to CB(1) 1121/10-11(03))

Relevant papers

- (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) 1536/10-11(02) — List of follow-up actions arising from the discussion at the meeting on 23 February 2011
- LC Paper No. CB(1) 1536/10-11(03) — Draft Committee Stage amendments provided by the Administration)

4. The Bills Committee deliberated (Index of proceedings attached in **Annex**).
5. The Administration was requested to -
  - (a) provide (in tabular form) the Administration's response to the further written submissions on the Bill (including those from deputations not attending the meeting);
  - (b) seriously consider putting in place an appeal mechanism for exemption from payment of special stamp duty (SSD);

- (c) consider further extending the scope of exemptions from SSD to cover -
- (i) genuine minority owners who had unknowingly purchased a property less than 24 months before the lot was put to compulsory sale in consultation with the Development Bureau;
  - (ii) those who had to sell their properties within 24 months after acquisition due to severe illness;
  - (iii) sale of properties under Individual Voluntary Arrangement; and
  - (iv) bare sites/units in an existing old building disposed of for the purpose of redevelopment/units acquired by a party pursuant to a joint development agreement/transfer of units or bare sites owned by different members of the same group as set out in the submission from The Real Estate Developers Association of Hong Kong (LC Paper No. CB(1)991/10-11(01));
- (d) advise the definition of “associated companies”, and the rationale for exempting transfer of properties between associated companies from SSD but not transfer between siblings. To consider including siblings in the category of close relative for exemption from SSD;
- (e) advise whether money lenders fell into the definition of financial institution under proposed sections 29CA(8)(f) and 29DA(11)(b)(vi); and
- (f) seriously consider including a sunset clause for SSD and if not, the timing and circumstances under which the Administration would consider dispensing with SSD.

6. Members agreed to continue discussion on the Bill at the next meeting on Friday, 1 April 2011, at 3:00 pm or immediately after the House Committee meeting, whichever was later.

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

7. There being no other business, the meeting ended at 12:40 pm.

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

**Proceedings of eighth meeting  
held on Thursday, 24 March 2011, at 10:45 am  
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000438 - 000557	Chairman	The minutes of the meeting held on 9 February 2011 (LC Paper No. CB(1) 1642/10-11) were confirmed.	
<i>Agenda Item II - Meeting with deputations and the Administration</i>			
000558 - 001441	Chairman Administration	Administration's explanation on the proposed Committee Stage amendments (CSAs) on acquisition and disposal of properties and further exemptions as set out in LC Paper No. CB(1) 1689/10-11(03).	
001442 - 001944	Chairman Mr Louis LOONG, The Real Estate Developers Association of Hong Kong (REDA)	Mr Louis LOONG/REDA's views -  (a) the proposed CSAs had addressed some of the concerns on exemptions from payment of special stamp duty (SSD);  (b) Law Society of Hong Kong's comment on the proposed CSAs regarding acquisition and disposal of properties would be needed;  (c) consideration should be given to including a sunset clause for SSD and if not, the Administration should clearly set out the circumstances under which SSD would be dispensed with; and  (d) SSD should not apply to sales of bare sites, sales of units in an existing old building disposed of for the purpose of redevelopment, sales of units acquired by a party pursuant to a joint development agreement, and transfer of units or bare sites owned by different members of the same group, since all of these were non-speculative in nature.	
001945 - 002411	Chairman Dr Lawrence POON, The Hong Kong Institute of Surveyors (HKIS)	Dr Lawrence POON/HKIS's views -  (a) exemptions from payment of SSD should be provided for normal property transactions which were non-speculative in nature;	

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		<p>(b) need for early enactment of the Bill to avoid uncertainties associated with the application of SSD which had been affecting the valuation of properties; and</p> <p>(c) liability for payment of SSD need not be set out in the Bill as this would be agreed between the vendor and the purchaser.</p>	
002412 - 003052	Chairman Mr Tony KWOK, Property Agencies Association (PAA)	<p>Mr Tony KWOK/PAA's views -</p> <p>(a) the surge in property prices was attributable to the low interest rate environment and inadequate flat supply;</p> <p>(b) a long-term housing policy, including the need to increase the supply of land for housing, should be put in place;</p> <p>(c) support for specifying in the land sale conditions the minimum number of flats and the unit size restrictions to increase the supply of small and medium sized flats;</p> <p>(d) support for re-launching of Home Ownership Scheme (HOS) and Home Starter Loan Schemes, revitalization of secondary HOS market, and provision of more subsidized housing;</p> <p>(e) SSD had not been effective in curbing the surge in property prices, and more effective measures might need to be identified;</p> <p>(f) under SSD and the prudential supervisory measures for mortgage lending, owners would incline not to sell their flats within 24 months to avoid SSD, and would not be able to change flats due to the tightening of mortgage lending, thereby reducing the supply of residential flats and affecting the healthy development of the property market; and</p> <p>(g) an appeal mechanism should be introduced for exemption from payment of SSD since there had been a lot of confusion about the application of SSD.</p>	
003053 - 003619	Chairman Mr Lawrence WONG, Hong	<p>Mr Lawrence WONG/HKCPPC's views -</p> <p>(a) the need for SSD should be regularly</p>	The Administration to provide (in tabular form) its response to

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	Kong Chamber of Professional Property Consultants Ltd (HKCPPC)	<p>reviewed;</p> <p>(b) investors tended to hold their properties as a long-term investment following the announcement on SSD given the low risk in the prevailing low interest rate environment, resulting in a significant reduction in the number of residential properties put up for sale and undermining the interactive nature of the property market;</p> <p>(c) nomination of additional purchaser in the Agreement for Sale and Purchase (ASP) should be exempted from the payment of SSD as this would unlikely be speculative in nature; and</p> <p>(d) SSD had in fact driven speculation from the residential property market to the commercial property market, thereby affecting commercial rentals as well as the economy as a whole.</p>	the further written submissions on the Bill (including those from deputations not attending the meeting)
003620 - 004714	<p>Chairman Mr LEE Wing-tat Administration Mr Lawrence WONG/HKCPC Dr Lawrence POON/HKIS</p>	<p>Mr LEE Wing-tat's enquiries -</p> <p>(a) whether exemption from payment of SSD would be applied to transfer of properties from parents to children; and</p> <p>(b) whether the trend of property investment by Mainlanders had spread to the lower end of the property market.</p> <p>Administration's response that the Bill had already provided exemption from payment of SSD for transfer of properties between spouses, parents or children.</p> <p>Mr Lawrence WONG/HKCPC's views -</p> <p>(a) Mainland investors were keen to buy Hong Kong properties, both in the higher and lower end of the property market; and</p> <p>(b) there was a need to assess the impact of property investment by Mainlanders on the local community.</p> <p>Dr Lawrence POON/HKIS's views that the normal supply and demand approach was not applicable to the property market which was governed by economic outlook and market</p>	



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		<p>sentiment. Buyers would be keen to buy properties if property prices were expected to rise, and would back down if property prices would fall.</p>	
004715 - 005842	<p>Chairman Dr Margaret NG Administration Dr Lawrence POON/HKIS</p>	<p>Dr Margaret NG's views/concerns -</p> <p>(a) it would be unfair to impose SSD on genuine minority owners who had unknowingly purchased a property less than 24 months before the lot was put to compulsory sale, particularly in the absence of an appeal channel on payment of SSD; and</p> <p>(b) as the Lands Tribunal (LT) was not empowered under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) (LCSRO) to prescribe conditions of sale in the compulsory sale order regarding payment of SSD, consideration should be given to amending the Bill to empower LT to exempt these genuine minority owners from payment of SSD.</p> <p>Administration's response -</p> <p>(a) could not rule out the possibility of speculation in the sale of properties before a land lot was put to compulsory sale under a Compulsory Sale Order granted under LCSRO;</p> <p>(b) individual minority owners could join together to become majority owners to organize joint sales to realize the redevelopment potential of their lots;</p> <p>(c) minority owners could make representation to LT for imposing conditions of sale in the compulsory sale order regarding payment of SSD; and</p> <p>(d) exempting compulsory sale from payment of SSD might attract speculation of flats with high redevelopment potential.</p> <p>Dr Lawrence POON/HKIS's support that genuine minority owners who were forced to sell their flats under a compulsory sale order should be exempted from payment of SSD.</p>	<p>The Administration to consider further extending the scope of exemptions from SSD to cover genuine minority owners who had unknowingly purchased a property less than 24 months before the lot was put to compulsory sale in consultation with the Development Bureau.</p>

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005843 - 010447	Chairman Ms Audrey EU Administration	<p>Ms Audrey EU and the Chairman's request for including siblings in the category of close relatives for exemption from payment of SSD, taking into account that siblings were entitled inheritance of estate.</p> <p>Administration's response -</p> <p>(a) the proposed arrangement that adding/deleting names to/from a chargeable agreement or Assignment would be subject to SSD was an anti-tax avoidance measure. Exemptions were proposed for cases involving spouses, parents and children in accordance with the existing regime under the Stamp Duty Ordinance (Cap. 117). It would create a big loophole for speculation to extend the exemption to cover, say, unmarried couples, other relatives, and business partners; and</p> <p>(b) education and publicity efforts would be stepped up to remind buyers of the need for payment of SSD in the event of addition or deletion of non-exempted persons to chargeable agreements and/or assignments within 24 months counting from the date of acquisition of the property by the original purchaser(s).</p>	<p>The Administration to consider including siblings in the category of close relative for exemption from SSD.</p>
010448 - 011331	Chairman Mr Albert HO Administration	<p>Mr Albert HO's views/enquiries -</p> <p>(a) genuine minority owners who were forced to sell their flats under a compulsory sale order should be exempted from payment of SSD;</p> <p>(b) consideration should also be given to exempting sale of properties under Individual Voluntary Arrangement (IVA) to avoid bankruptcy from SSD; and</p> <p>(c) whether money lenders fell into the definition of financial institution under proposed sections 29CA(8)(f) and 29DA(11)(b)(vi).</p> <p>Administration's explanation that financial institutions included licensed banks, restricted licensed banks, and deposit-taking companies regulated by the Hong Kong Monetary Authority.</p>	<p>The Administration to -</p> <p>(a) consider further extending the scope of exemptions from SSD to cover sale of properties under IVA; and</p> <p>(b) advise whether money lenders fell into the definition of financial institution under proposed sections 29CA(8)(f) and 29DA(11)(b)(vi).</p>

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011332 - 011842	Chairman Administration	<p>Chairman's concerns -</p> <p>(a) there was no certainty that LT would prescribe conditions of sale in the compulsory sale order regarding payment of SSD; and</p> <p>(b) it would be unfair to minority owners who were forced to sell their flats under a compulsory sale order since they were not allowed to apply for legal aid but had to pay SSD if the sale was within 24 months of acquisition.</p>	
011843 - 012552	Chairman Dr Margaret NG Administration	<p>Dr Margaret NG's enquiries/views -</p> <p>(a) the definition of “associated companies”;</p> <p>(b) the rationale for exempting transfer of properties between associated companies from SSD but not transfer between siblings;</p> <p>(c) the basis on which LT could prescribe conditions of sale in the compulsory sale order regarding payment of SSD ; and</p> <p>(d) should seriously consider exempting genuine minority owners who were forced to sell their flats under a compulsory sale order from payment of SSD.</p> <p>Administration's response-</p> <p>(a) Transport and Housing Bureau (THB) would reflect members’ request for exempting genuine minority owners who were forced to sell their flats under a compulsory sale order to the Development Bureau for further consideration; and</p> <p>(b) would give further thought to the request for not applying SSD in the case of addition/deletion of names if the persons were the brothers/sisters of the original purchaser(s).</p>	<p>The Administration to advise the definition of “associated companies”, and the rationale for exempting transfer of properties between associated companies from SSD but not transfer between siblings.</p>
012553 - 013459	Chairman Mr Abraham SHEK Administration Mr Louis LOONG/ REDA	<p>Mr Abraham SHEK's views -</p> <p>(a) as SSD was targeted at speculative activities, genuine minority owners who were forced to sell their flats under a compulsory sale order should be exempted</p>	<p>The Administration to consider further extending the scope of exemptions from SSD to cover bare sites/units in an</p>

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		<p>from SSD. This should be clearly set out in the Bill after consultation with the Development Bureau; and</p> <p>(b) consideration should be given to including in the Bill exemptions from SSD suggested by REDA in its earlier submission.</p> <p>Administration's response -</p> <p>(a) the law should be clear and without ambiguity. Any exemptions had to be fair and measurable in an objective manner to avoid loopholes; and</p> <p>(b) THB had discussed with the Development Bureau on issues relating to the sale of properties under a compulsory sale order granted under LCSRO. In view of members' views expressed at this meeting, THB would further reflect members' request for exempting genuine minority owners who were forced to sell their flats under a compulsory sale order to the Development Bureau for consideration.</p> <p>Mr Louis LOONG/REDA's views that SSD should not apply to sales of bare sites, sales of units in an existing old building disposed of for the purpose of redevelopment, sales of units acquired by a party pursuant to a joint development agreement, and transfer of units or bare sites owned by different members of the same group, all of which were non-speculative in nature.</p>	<p>existing old building disposed of for the purpose of redevelopment/units acquired by a party pursuant to a joint development agreement/transfer of units or bare sites owned by different members of the same group as set out in the submission from REDA (LC Paper No. CB(1) 991/10-11(01)).</p>
013500 - 014552	<p>Chairman Ms Miriam LAU Administration Mr Tony KWOK/PAA</p>	<p>Ms Miriam LAU's views -</p> <p>(a) SSD not only failed to achieve the desired purpose of curbing speculation but also had the adverse effect of restraining dealings;</p> <p>(b) the retrospective effect of the Bill would be further exacerbated by the long time taken in scrutinizing the Bill; and</p> <p>(c) more exemptions from payment of SSD should be provided for genuine cases involving hardship such as severe illness. Care should be taken to ensure SSD would not create undue hardship for genuine home buyers.</p>	<p>The Administration to consider further extending the scope of exemptions from SSD to cover those who had to sell their properties within 24 months after acquisition due to severe illness.</p>

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014553 - 014942	Chairman Mr Tony KWOK/PAA Administration Mr Lawrence WONG/HKCPPC	Mr Tony KWOK/PAA's views -  (a) SSD not only failed to achieve the objective of curbing speculation, but also reduced the supply of residential flats; and  (b) the continued application of SSD should be reviewed after implementation for a certain period of time.  Mr Lawrence WONG/HKCP's support for a regular review of the need for SSD.	The Administration to seriously consider including a sunset clause for SSD and if not, the timing and circumstances under which the Administration would consider dispensing with SSD.
014943 - 015207	Chairman Mr LEE Wing-tat	Mr LEE Wing-tat's view that members could not support the Bill if it failed to provide exemptions from SSD for cases involving genuine hardship, such as serious illness which had necessitated the resale of properties within 24 months.	
015208 - 015420	Chairman Ms Miriam LAU Mr Abraham SHEK	Ms Miriam LAU's reference to a survey conducted earlier which had revealed that 60% to 70% of interviewees supported an appeal mechanism on payment of SSD.	The Administration to seriously consider putting in place an appeal mechanism for exemption from payment of SSD.