

立法會
Legislative Council

LC Paper No. CB(1) 2281/10-11
(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 tenth meeting
held on Monday, 18 April 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 Miriam LAU Kin-yee, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
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 CHAN Kam-lam, SBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon CHIM Pui-chung
Hon Alan LEONG Kah-kit, SC
- Public officers attending** : **For item II**
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 Law Society of Hong Kong

Mr Terry YEUNG
Member of Property Committee

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) 1887/10-11 — Minutes of the meeting held on 10 March 2011)

The minutes of the meeting held on 10 March 2011 were confirmed.

II. Meeting with deputation and the Administration

Meeting with The Law Society of Hong Kong

(LC Paper No. CB(1) 1946/10-11(01) — Submission from The Law Society of Hong Kong (English version only))

2. At the Chairman's invitation, Mr Terry YEUNG, Member of Property Committee, highlighted the salient points in the submission from The Law Society of Hong Kong (LS).

Meeting with the Administration

(LC Paper No. CB(1) 1933/10-11(01) — Revised and consolidated draft Committee Stage amendments provided by the Administration

LC Paper No. CB(1) 1933/10-11(02) — List of follow-up actions arising from the discussion at the meeting on 1 April 2011

LC Paper No. CB(1) 1933/10-11(03) — Administration's response to CB(1) 1933/10-11(02)

LC Paper No. CB(1) 1933/10-11(04) — Marked-up copy of the Bill incorporating the draft Committee Stage amendments received so far)

Relevant papers

(LC Paper No. CB(3) 278/10-11 — The Bill

Ref: HD(CR)5/50/1/177 — The Legislative Council Brief)

3. The Administration was requested to -

(a) provide a written response to LS's submission;

(b) consider including in the speech to be delivered by the Secretary for Transport and Housing at the resumption of Second Reading debate on the Bill a clarification that a mortgage (whether in favour of a financial or non-financial institution) was not chargeable with stamp duty and special stamp duty (SSD);

(c) consider reviewing the need for SSD every two years; and

(d) advise the definition of residential property under the Stamp Duty Ordinance (Cap. 117). To also advise whether the definition covers properties that could be used for both residential and commercial purposes.

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

5. Members agreed to the following schedule of meetings -

Thursday, 5 May 2011 at 8:30 am;

Thursday, 12 May 2011 at 8:30 am; and

Thursday, 19 May 2011 at 10:45 am.

III. Any other business

6. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
24 May 2011

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

**Proceedings of tenth meeting
held on Monday, 18 April 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>			
000445 - 000511	Chairman	The minutes of the meeting held on 10 March 2011 (LC Paper No. CB(1) 1887/10-11) were confirmed.	
<i>Agenda Item II - Meeting with deputations and the Administration</i>			
000512 - 000555	Chairman Ms Miriam LAU	Ms Miriam LAU's request for expediting the scrutiny of the Bill in light of its retrospective effect.	
000556 - 001746	Chairman Mr Terry YEUNG, The Law Society of Hong Kong (LS) Ms Audrey EU	Mr Terry YEUNG/LS's explanation on LS's submission (LC Paper No CB(1)1946/10-11(01)) - (a) according to the revised Committee Stage amendments (CSAs), a transferor acquired and disposed of a residential property "on the date when he made a chargeable agreement for sale". However, some agreements for sale were not "chargeable" with stamp duty. It would be difficult to ascertain the "date of acquisition" for these agreements for the purpose of calculating the 24 months' holding period to determine whether special stamp duty (SSD) was payable; and (b) examples of agreements for sale which were not chargeable with stamp duty included mortgages made in favour of non-financial institutions, agreements for exchange or partition at no payment of equality money, agreements and conditions of exchange granted by Government in favour of lessees, and sale of property of a bankrupt and sale of property of company being wound up.	
001747 - 002152	Chairman Administration	Administration's response - (a) in principle, there was no conflict between the Administration's revised CSAs and LS's views as set out in its letter of 15 April 2011;	The Administration to provide a written response to LS's submission.

Time marker	Speaker	Subject(s)	Action required
		<p>(b) the Inland Revenue Department (IRD) took the view that the definition of “agreement for sale” did not cover a bona fide mortgage (or charge). IRD had set out its view in the “Stamp Office Interpretation and Practice Notes No. 1 (Revised) - Stamping of Agreements for Sale and Purchase of Residential Property” (the Practice Notes). In accordance with the Practice Notes, IRD would not charge ad valorem stamp duty on a usual mortgage (or charge). IRD would adopt the same principle aforementioned for SSD (i.e. it would not charge SSD on a bona fide mortgage (or charge).;</p> <p>(c) transactions by means of agreements for exchange or partition were not common. Besides, the market value of the property would be taken into account for the purpose of determining stamp duty for transactions which involved the payment of equality money;</p> <p>(d) generally speaking, agreements and conditions of exchange granted by the Government were exempted from stamp duty; and</p> <p>(e) sale of property due to bankruptcy/involuntary winding up would be exempted from SSD.</p>	
002153 - 003535	<p>Chairman Mr Ronny TONG Mr Terry YEUNG/LS Administration Ms Miriam LAU</p>	<p>Mr Ronny TONG's views -</p> <p>(a) most of the examples of agreements for sale not chargeable with stamp duty were already exempted from payment of SSD under the Bill/CSAs; and</p> <p>(b) the Bill was targeted at speculative activities and cases which were not speculative in nature should not be chargeable with SSD.</p> <p>Mr Terry YEUNG/LS's views/enquiries -</p> <p>(a) supported the direction of the Bill;</p> <p>(b) it might be difficult to determine the holding period of 24 months in respect of</p>	<p>The Administration to consider including in the speech to be delivered by the Secretary for Transport and Housing at the resumption of Second Reading debate on the Bill a clarification that a mortgage (whether in favour of a financial or non-financial institution) was not chargeable with SD and SSD.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>agreements for sale which were not chargeable; and</p> <p>(c) whether the mortgage of a property would be regarded as an agreement for sale and if so, whether the date of mortgage should be regarded as the date of acquisition of the property.</p> <p>The Administration reiterated that under IRD's Practice Notes, a mortgage (whether in favour of a financial or non-financial institution) was not regarded as an agreement for sale and was not chargeable with ad valorem stamp duty and SSD.</p>	
003536 - 003956	Chairman Mr Paul TSE Mr Terry YEUNG/LS	Mr Terry YEUNG/LS's remark that consideration should be given to deleting the word "chargeable" from proposed section 29CA(4)(a)(i) and 29DA(7)(a)(i) for the purpose of determining the holding period of a residential property.	
003957 - 004529	Chairman Ms Audrey EU Administration Mr Terry YEUNG/LS	Discussion on the exemptions from SSD.	
004530 - 005012	Chairman Administration	Administration's explanation on the revised CSAs as set out under LC Paper No. CB(1) 1933/10-11(01).	
005013 - 005524	Chairman Administration	<p>Administration's explanation on its response to members' concerns raised at the meeting on 1 April 2011 (LC Paper No. CB(1) 1933/10-11(03)).</p> <p>Chairman's request for a review of the need for SSD every two years.</p>	The Administration to consider reviewing the need for SSD every two years.
005525 - 020141	Chairman Administration Mr Albert HO Ms Audrey EU	<p><u>Clause-by-clause examination of the Bill</u> (LC Paper No. CB(1) 1933/10-11(04))</p> <p>Clauses 1 to 10</p> <p>Discussion on the scope of exemption under proposed section 29CA(8)(b)(ii) and (iii) in relation to a residential property in which the agreement was made in relation to a deceased person's estate.</p>	The Administration to advise the definition of residential property under the Stamp Duty Ordinance (Cap. 117). To also advise whether the definition covered properties that could be used for both residential and commercial purposes.

Time marker	Speaker	Subject(s)	Action required
		Discussion on the definition of residential property, and whether the definition covered properties that could be used for both residential and commercial purposes.	
020142 - 020446	Chairman	Schedule of meetings.	

Council Business Division 1
Legislative Council Secretariat
24 May 2011