

立法會
Legislative Council

LC Paper No. CB(1) 2817/10-11
(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 thirteenth meeting
held on Monday, 30 May 2011, at 8:30 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon James TO Kun-sun (Chairman)
Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon WONG Ting-kwong, BBS, JP
Hon Starry LEE Wai-king, JP
Hon Paul CHAN Mo-po, MH, JP
Hon Paul TSE Wai-chun
- Members absent** : Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon Ronny TONG Ka-wah, SC
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

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) 2281/10-11 — Minutes of the meeting held
on 18 April 2011)

The minutes of the meeting held on 18 April 2011 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 2316/10-11(01) — Revised draft Committee Stage amendments provided by the Administration

LC Paper No. CB(1) 2316/10-11(02) — Committee Stage amendments proposed by Hon Abraham SHEK

LC Paper No. CB(1) 2316/10-11(03) — List of follow-up actions arising from the discussion at the meeting on 19 May 2011

LC Paper No. CB(1) 2316 /10-11(04) — Administration’s response to CB(1) 2316/10-11(03)

LC Paper No. CB(1) 2316/10-11(05) — Marked-up copy of the Bill incorporating the draft Committee Stage amendments received so far (as at 24 May 2011)

LC Paper No. CB(1) 2316/10-11(06) — Marked-up copy of the Bill incorporating the Committee Stage amendments proposed by Hon Abraham SHEK)

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

3. The Bills Committee completed scrutiny of the Bill, as well as the Committee Stage amendments (CSAs) proposed by the Administration and Mr Abraham SHEK.

4. Members agreed to the following legislative timetable -

Date for Public Officers to issue consultation letter to House Committee Chairman	Date of House Committee meeting to consider Bills Committee report	Deadline for Public Officers to give notice for resumption of Second Reading debate	Deadline for giving notice of Committee Stage amendments under Rule 57(2)	Target Legislative Council meeting where Second Reading debate is to be resumed
7 June 2011	10 June 2011	7 June 2011	13 June 2011	22 June 2011

III. Any other business

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

Council Business Division 1
Legislative Council Secretariat
25 July 2011

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

**Proceedings of thirteenth meeting
held on Monday, 30 May 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>			
000416 - 000509	Chairman	The minutes of the meeting held on 18 April 2011 (LC Paper No. CB(1) 2281/10-11) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000510 - 001358	Chairman Administration	Administration's explanation on the revised Committee Stage amendments (CSAs) and its response to issues raised at the meeting on 19 May 2011 (LC Paper Nos. CB(1) 2316/10-11(01) and (04) respectively).	
001359 - 002044	Chairman Administration	<p>Clause-by-clause examination of the marked-up copies of the Bill incorporating the draft CSAs proposed by the Administration and Mr Abraham SHEK.</p> <p>Administration's explanation on the new section 29CA(3A) regarding the applicability of the special stamp duty (SSD) to buildings and lands.</p>	
002045 - 003006	Chairman Administration Assistant Legal Adviser 7 (ALA7)	<p>Discussion on the applicability of SSD to resale of a property with an additional storey built thereon within 24 months of acquisition.</p> <p>Administration's explanation that under proposed section 29CA(2), SSD would be chargeable as appropriate to a property with an additional storey built thereon within 24 months of acquisition as it would be regarded as the same "residential property concerned".</p> <p>ALA7's reference to the definition of immovable property under the Interpretation and General Clauses Ordinance (Cap.1) and its application to a property with an additional storey built thereon.</p> <p>Chairman's disagreement to the Administration's views as stated in paragraph 4 of LC Paper No. CB(1) 2316/10-11(04) on the charging of SSD in respect of the property with an additional storey built thereon after acquisition.</p>	

Time marker	Speaker	Subject(s)	Action required
003007 -005607	Chairman Mr Abraham SHEK ALA7	<p>Mr Abraham SHEK's explanation on his proposed CSAs as set out in LC Paper No. CB(1) 2316/10-11(06) to -</p> <ul style="list-style-type: none">(a) exempt the sale/transfer of bare sites within 24 months of acquisition from payment of SSD;(b) in the case where a person acquired a residential property from another person under an instrument on which stamp duty was not chargeable pursuant to section 29H(3) or 45, allow the date of acquisition of the property by that person to be deemed as the date on which the other person acquired the property; and(c) provide for a sunset clause such that SSD would cease to apply at midnight on 19 May 2012 unless extended by resolution passed by the Legislative Council (LegCo). <p>ALA7's comments on Mr Abraham SHEK's proposed CSAs -</p> <ul style="list-style-type: none">(a) the drafting of CSAs would need to be further refined;(b) the sunset clause as drafted would not only apply to SSD but also to the deferral of payment of stamp duty chargeable on residential property transactions valued at \$20 million or below, which was part of the Bill; and(c) need to take into account the implications of the repeal of the Stamp Duty (Amendment) (No.2) Ordinance 2010, if enacted, as a result of the sunset clause with reference to the rights, privileges, obligation or liability accrued or incurred provided under section 23(c) of Cap.1. <p>Mr Abraham SHEK's response -</p> <ul style="list-style-type: none">(a) the proposed CSAs aimed to reflect his dissatisfaction over SSD as this was not well thought through and would affect 1.2 million property owners; and(b) while it was unlikely that his proposed CSAs would have the support of majority of	

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		<p>Members, he would refine the proposed CSAs taking into account the points raised by ALA7.</p> <p>Chairman's comments -</p> <p>(a) there was a need to refine the drafting of the sunset clause if this was only meant to provide a date on which SSD should cease to apply, and not to reinstate deferral of payment of stamp duty; and</p> <p>(b) Members belonging to the Democratic Party would have concerns over the date for cessation of SSD at midnight on 19 May 2012 as proposed under the sunset clause, given the relatively short time remained to ascertain the continued need for SSD.</p>	
005607 - 012014	<p>Chairman Mr WONG Ting-kwong Administration Mr Abraham SHEK ALA7</p>	<p>Discussion on the sunset clause as proposed by Mr Abraham SHEK.</p> <p>Mr WONG Ting-kwong's enquiries/concerns -</p> <p>(a) timely removal of SSD to take account of any drastic changes in the property market which rendered SSD no longer necessary;</p> <p>(b) instead of going through the lengthy legislative process, whether the Administration could exercise administrative power to discontinue SSD if the outcome of the review indicated that SSD was no longer necessary; and</p> <p>(c) the party and the means through which the party could move a resolution to amend/extend the sunset clause, if included.</p> <p>Administration's response -</p> <p>(a) the sunset clause and extension mechanism would undermine the effectiveness of SSD as speculators would know or might try to predict the time frame when SSD might lapse, which would add volatility to the market;</p> <p>(b) the Administration had undertaken to review SSD once every two years after enactment of the Bill, or as circumstances required; and</p>	.

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		<p>(c) would go through the normal legislative process to amend the legislation when SSD was considered no longer necessary. The legislative amendments to remove SSD could be expedited with LegCo's support.</p> <p>Mr Abraham SHEK's remarks -</p> <p>(a) there was a need for the sunset clause to address the concern that SSD would become a permanent tax measure. With the sunset clause, LegCo would be assured of a review before the expiry date and the decision on the continued need for SSD would rest with LegCo;</p> <p>(b) without the sunset clause, the Administration could procrastinate the introduction of the legislative amendments even if the review indicated that SSD was no longer necessary, since the Bill as drafted could not compel the Administration to review SSD; and</p> <p>(c) LegCo might by resolution amend the sunset clause if there was a continued need for SSD.</p> <p>In response to Mr WONG Ting-kwong's enquiry ALA7's advice that LegCo could set up a subcommittee to study the resolution to amend the sunset clause.</p>	
012015 - 012859	Chairman Administration	Continuation of the clause-by-clause examination of the marked-up copies of the Bill incorporating the draft CSAs proposed by the Administration and Mr Abraham SHEK.	
012900 - 013059	Chairman Administration	Acknowledgement of the legislative timetable.	