

立法會
Legislative Council

LC Paper No. CB(1)341/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/12

Bills Committee on Stamp Duty (Amendment) Bill 2012

Minutes of sixth meeting on
Monday, 18 March 2013, at 10:45 am
in Conference Room 2 of the Legislative Council Complex

Members present : Hon Starry LEE Wai-king, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon LEE Cheuk-yan
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon WU Chi-wai, MH
Hon YIU Si-wing
Hon Charles Peter MOK
Hon CHAN Yuen-han, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Kenneth LEUNG
Hon TANG Ka-piu
Dr Hon CHIANG Lai-wan, JP

Members absent : Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon POON Siu-ping, BBS, MH
Hon Tony TSE Wai-chuen

Public officers attending : Agenda item I

Transport and Housing Bureau

Ms Agnes WONG, JP
Deputy Secretary for Transport and Housing
(Housing)

Mrs Vicki KWOK
Principal Assistant Secretary for Transport and
Housing (Housing) (Private Housing)

Mr Kasper NG
Senior Administrative Officer (Private Housing)

Financial Services and the Treasury Bureau

Ms Shirley KWAN
Principal Assistant Secretary for Financial Services
and the Treasury (Treasury) (Revenue)

Inland Revenue Department

Mr Richard WONG, JP
Deputy Commissioner of Inland Revenue
(Operations)

Ms TSE Yuk-yip, JP
Assistant Commissioner of Inland Revenue

Mr HONG Wai-kuen
Senior Superintendent of Stamp Office

Department of Justice

Ms Monica LAW
Senior Assistant Law Draftsman

Ms Selina LAU
Senior Government Counsel

Clerk in attendance: Ms Annette LAM
Chief Council Secretary (1)3

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Ms Sophie LAU
Chief Council Secretary (1)2

Miss Rita YUNG
Council Secretary (1)3

Action

I. Meeting with the Administration

(LC Paper No. CB(1)511/12-13(01) -- List of follow-up actions arising from the discussion at the meeting on 25 January 2013

LC Paper No. CB(1)511/12-13(02) -- Administration's response to issues raised at the meeting on 25 January 2013

LC Paper No. CB(1)598/12-13(01) -- List of follow-up actions arising from the discussion at the meeting on 4 February 2013

LC Paper No. CB(1)598/12-13(02) -- Administration's response to issues raised at the meeting on 4 February 2013

- LC Paper No. CB(1)511/12-13(03) -- Hon Tony TSE Wai-chuen's letter dated 25 January 2013
(English version only)
- LC Paper No. CB(1)554/12-13(01) -- Administration's response to Hon Tony TSE Wai-chuen's letter dated 25 January 2013
- LC Paper No. CB(1)511/12-13(04) -- Hon James TO Kun-sun's letter dated 30 January 2013
(Chinese version only)
- LC Paper No. CB(1)562/12-13(01) -- Administration's response to Hon James TO Kun-sun's letter dated 30 January 2013
- LC Paper No. CB(1)521/12-13(02) -- Letter from Assistant Legal Adviser to the Administration dated 1 February 2013
- LC Paper No. CB(1)561/12-13(01) -- Administration's response to Assistant Legal Adviser's letter dated 1 February 2013
- LC Paper No. CB(1)598/12-13(03) -- List of follow-up actions arising from the discussion at the meeting on 18 February 2013
- LC Paper No. CB(1)692/12-13(01) -- Administration's response to issues raised at the meeting on 18 February 2013 and views expressed by deputations on the Bill
- LC Paper No. CB(1)598/12-13(04) -- Letter from Assistant Legal Adviser to the Administration dated 20 February 2013
- LC Paper No. CB(1)692/12-13(02) -- Administration's response to Assistant Legal Adviser's letter dated 20 February 2013

LC Paper No. CB(1)692/12-13(03) -- List of follow-up actions arising from the discussion at the meeting on 28 February 2013

LC Paper No. CB(1)715/12-13(01) -- Administration's response to issues raised at the meeting on 28 February 2013

LC Paper No. CB(1)674/12-13(01) -- Hon Tony TSE Wai-chuen's letter dated 4 March 2013
(*English version only*)

LC Paper No. CB(1)692/12-13(04) -- Hon James TO Kun-sun's letter dated 11 March 2013
(*Chinese version only*)

Relevant papers issued previously

LC Paper No. CB(3)263/12-13 -- The Bill

LC Paper No. CB(1)454/12-13(02) -- Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)

File Ref: Nil -- Legislative Council Brief issued by the Transport and Housing Bureau

LC Paper No. LS17/12-13 -- Legal Service Division Report)

The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

2. The Chairman reminded members that under rule 83A of the Rules of Procedure (RoP) of the Legislative Council, they should disclose the nature of any direct or indirect pecuniary interest before they spoke. The Bills Committee discussed the alternative arrangement of an one-off declaration of interests in writing.

3. Dr LAM Tai-fai, Mr Paul TSE, Mr Jeffrey LAM, Mr Tommy CHEUNG, Mr WU Chi-wai and Mr James TO made declaration of interests respectively.

4. In the course of deliberation, members had discussed issues relating to the suggestion of exempting companies owned by Hong Kong permanent residents (HKPRs) from the Buyer's Stamp Duty (BSD).

5. The Administration was requested to reconsider exempting companies whose shareholders were all HKPRs from the BSD, and to consider ways, such as declaration made by company directors/shareholders, to minimize abuse.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)793/12-13(02) on 2 April 2013.)

II. Any other business

6. There being no other business, the meeting ended at 12:44 pm.

Council Business Division 1
Legislative Council Secretariat
18 November 2013

**Proceedings of the sixth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2012
on Monday, 18 March 2013, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000524 – 000636	Chairman	Opening remarks	
000637– 000844	Chairman Mr CHAN Kam-lam Mr Abraham SHEK	Discussion on alternative arrangement of an one-off declaration of interests in writing	
000845 – 000939	Chairman Administration	<p>The Administration advised that after the last meeting held on 28 February 2013, the following three papers had been provided to the Bills Committee:</p> <p>(a) Administration's response to issues raised at the meeting on 18 February 2013 and views expressed by deputations on the Bill (LC Paper No. CB(1)692/12-13(01));</p> <p>(b) Administration's response to Assistant Legal Adviser's letter dated 20 February 2013 (LC Paper No. CB(1)692/12-13(02)); and</p> <p>(c) Administration's response to issues raised at the meeting on 28 February 2013.</p>	
000940 – 002853	Chairman Mr Abraham SHEK Mr Paul TSE Administration	<p>Mr Abraham SHEK's and Mr Paul TSE's views –</p> <p>(a) it was not uncommon for Hong Kong permanent residents (HKPRs) to purchase residential properties in the name of companies owned by them. BSD would, in effect, deprive HKPRs of their existing option to purchase residential properties in the name of companies owned by them;</p> <p>(b) a number of deputations, including The Real Estate Developers Association of Hong Kong, had suggested that companies whose shareholders were all HKPRs should be exempted from the BSD by way of a declaration mechanism; and</p> <p>(c) the possibility of abuse of the declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>would be limited as making false declaration would attract criminal liability.</p> <p>The Administration's response –</p> <ul style="list-style-type: none"><li data-bbox="587 443 1257 842">(a) under the legal framework of Hong Kong, companies were all along distinguished by whether they were established locally or overseas, instead of making reference to the HKPR status of shareholders. To identify a company for the exemption from the BSD on the basis of the HKPR status of its shareholders would cause confusion to the fundamental legal principle that "a company was an entity independent of its shareholders";<li data-bbox="587 882 1257 1429">(b) the suggested declaration mechanism failed to tackle the problem that HKPR shareholders could circumvent the BSD through transferring company shares and thereby the ownership of the residential property indirectly to non-HKPR shareholders by various means. Such ways included nomination, declaration of trust or authorization, allotment of new shares, or issue of new class of shares, etc. Upon the completion of company shares transfer, the original shareholders might appear to remain as shareholders of the company. In reality, however, the control of the company had been transferred to someone else;<li data-bbox="587 1469 1257 1760">(c) there was no way for the Inland Revenue Department (IRD) to be informed of such transfer of entitlement, even if the declaration mechanism as proposed by members and deputations was in place. Practically, IRD would not be able to carry out effective investigations to safeguard the mechanism from being abused;<li data-bbox="587 1800 1257 2085">(d) for companies which owned residential properties and with more than one shareholders, complication or dispute might arise in respect of the liability to pay the BSD if one of the shareholders sold his/her shares to a non-HKPR without the knowledge of the other shareholders after making the declaration at the purchase of the relevant	

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		<p>residential property; and</p> <p>(e) the Administration was not assuming that all companies would abuse the declaration mechanism to circumvent the BSD. However, as a responsible Government, the obvious loopholes that might be created by exempting HKPR-owned companies from the BSD should not be ignored. Such loopholes would undermine the effectiveness of the BSD in cooling down the property market and according priority to HKPRs in addressing their home ownership needs.</p>	
002854 – 003139	Chairman Dr LAM Tai-fai	<p>Disclosure of direct or indirect pecuniary interest by Dr LAM Tai-fai</p> <p>Dr LAM Tai-fai's views –</p> <p>(a) many HKPR-owned companies acquired residential properties as long term investment. The BSD would, in effect, deter these normal investment activities; and</p> <p>(b) the Secretary for Transport and Housing (STH) should be invited to attend the meeting of the Bills Committee to exchange views with members on the Bill, including the issues on exempting HKPR-owned companies from the BSD.</p>	
003140 – 005137	Chairman Mr Abraham SHEK Mr WU Chi-wai Mr Tommy CHEUNG Mr Paul TSE Administration	<p>Disclosure of direct or indirect pecuniary interest by Mr Paul TSE</p> <p>Discussion on the possible complications involved in the declaration mechanism in respect of companies with more than one shareholders</p> <p>Mr Abraham SHEK, Mr WU Chi-wai, Mr Tommy CHEUNG and Mr Paul TSE questioned the Administration's rationale for not exempting HKPR-owned companies from the BSD by way of a declaration mechanism.</p> <p>Mr Paul TSE said that the possibility of abuse of the declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD would be limited as false declaration would attract criminal liability. It was impractical for the Administration to stress that the declaration</p>	

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		<p>mechanism should be completely foolproof and without any possible loopholes.</p> <p>Mr Abraham SHEK and Mr Paul TSE reiterated that the BSD would, in effect, deprive HKPRs of their existing option to purchase residential properties in the name of companies owned by them. Mr Paul TSE questioned whether there was satisfactory justification for introducing the BSD which would undermine the reputation and status of Hong Kong as a free-market economy.</p>	
005138 – 005534	Chairman Mr WU Chi-wai Administration	In response to Mr WU Chi-wai's enquiry about the number of cases involving transfer of shares of a company which owned residential properties from a HKPR shareholder to a non-HKPR between 2010 and 2012, the Administration responded that IRD did not maintain such records or statistics.	
005535 – 010023	Chairman Dr LAM Tai-fai	<p>Dr LAM Tai-fai's views –</p> <p>(a) Hong Kong was in general a law-abiding community, and that the possibility of abuse of the declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD would be limited since making false declaration would attract criminal liability; and</p> <p>(b) questioned the Administration's rationale for not exempting HKPR-owned companies from the BSD by way of a declaration mechanism, and suggested that STH should be invited to attend the meeting of the Bills Committee to exchange views with members.</p>	
010024 – 010350	Chairman Mr Abraham SHEK	<p>Mr Abraham SHEK views –</p> <p>(a) agreed that the residential property market was in an exuberant and unhealthy state with property prices rising markedly ahead of income growth in recent years;</p> <p>(b) supported the Administration's target to combat short-term speculative activities in the residential property market to ensure the market's healthy and stable development; and</p> <p>(c) however, the BSD would, in effect, deprive</p>	

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		HKPRs of their existing option to purchase residential properties in the name of companies owned by them.	
010351 – 011032	Chairman Mr Paul TSE Administration	Discussion on the possible complications involved in the declaration mechanism in respect of companies with more than one shareholders, as well as the loopholes that might be created by exempting companies from the BSD	
011033 – 011304	Chairman Mr Jeffrey LAM	<p>Disclosure of direct or indirect pecuniary interest by Mr Jeffrey LAM</p> <p>Mr Jeffrey LAM's views –</p> <p>(a) the possibility of abuse of the declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD would be limited since making false declaration would attract criminal liability; and</p> <p>(b) the Administration should consider exempting HKPR-owned companies from the BSD.</p>	
011305 – 011336	Chairman Mr Tommy CHEUNG	Disclosure of direct or indirect pecuniary interest by Mr Tommy CHEUNG	
011337 – 011632	Chairman Mr WU Chi-wai Administration	<p>Disclosure of direct or indirect pecuniary interest by Mr WU Chi-wai</p> <p>Discussion on the complications that might arise in the scenario where one of the shareholders of a company which owned a residential property transferred his shares to a non-HKPR.</p>	
011633 – 012249	Chairman Dr LAM Tai-fai Administration	<p>Dr LAM Tai-fai's views and enquiries –</p> <p>(a) the possibility of abuse of the declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD would be limited since making false declaration would attract criminal liability; and</p> <p>(b) whether the Administration had estimated the increase in the supply of residential properties to be brought about by the implementation of the SSD and BSD.</p>	

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		<p>The Administration's response –</p> <p>(a) the SSD and BSD were demand-side management measures and were introduced to prevent further exuberance in the housing market; to ensure the healthy and stable development of the residential property market; and to accord priority to HKPR buyers under the tight supply situation in the property market; and</p> <p>(b) the Chief Executive had announced in his 2013 Policy Address a number of short to medium term housing and land supply measures to address the demand and supply imbalance.</p>	
012250 – 013143	Chairman Mr Tommy CHEUNG Administration	<p>Mr Tommy CHEUNG's views –</p> <p>(a) the residential property prices could be naturally adjusted by market forces; and</p> <p>(b) BSD, which in effect deprived HKPRs of their existing option to purchase residential properties in the name of companies owned by them, would undermine the reputation and status of Hong Kong as a free-market economy.</p> <p>The Administration's response –</p> <p>(a) the current exuberant state of the residential property was due to a combination of various factors in the market, including the overall demand and supply imbalance, the influx of capital, the ultra-low interest rate environment, etc;</p> <p>(b) the SSD and BSD, being demand-side management measures, were therefore introduced to prevent further exuberance in the housing market; to ensure the healthy and stable development of the residential property market; and to accord priority to HKPR buyers under the tight supply situation in the property market;</p> <p>(c) the SSD and BSD were extraordinary measures introduced under the current</p>	

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		<p>exceptional circumstances. The Administration would consider withdrawing these measures after the demand-supply situation of the property market had regained its balance; and</p> <p>(d) the Chief Executive had announced in his 2013 Policy Address a number of short to medium term housing and land supply measures to address the demand and supply imbalance.</p>	
013144 – 014410	Chairman Mr James TO Administration	<p>Disclosure of direct or indirect pecuniary interest by Mr James TO</p> <p>Mr James TO's views and enquiries –</p> <p>(a) supported in general the objective of the BSD to accord priority to meeting the housing and home ownership needs of HKPRs;</p> <p>(b) whether the Administration would try to explore ways to plug the possible loopholes so as to avoid abuse of the declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD; and</p> <p>(c) suggested the Administration to consider refunding the BSD paid by HKPR-owned companies if the shareholders remained the same as declared and the properties acquired had not been sold within a specified period of time.</p> <p>The Administration's response –</p> <p>(a) the suggested declaration mechanism failed to tackle the problem that HKPR shareholders could circumvent the BSD through transferring company shares and thereby the ownership of the residential property indirectly to non-HKPR shareholders by various means. Such ways included nomination, declaration of trust or authorization, allotment of new shares, or issue of new class of shares, etc. Upon the completion of company shares transfer, the original shareholders might appear to remain as shareholders of the company. In reality, however, the control of the company had been</p>	

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		<p>transferred to someone else;</p> <p>(b) there was no way for IRD to be informed of such transfer of entitlement, even if the declaration mechanism as proposed by members and deputations was in place. Practically, IRD would not be able to carry out effective investigations to safeguard the mechanism from being abused;</p> <p>(c) as a responsible Government, the obvious loopholes that might be created by exempting HKPR-owned companies from the BSD should not be ignored. Such loopholes would undermine the effectiveness of the BSD in cooling down the property market and according priority to HKPRs in addressing their home ownership needs; and</p> <p>(d) the Administration had considered but yet to identify proper ways to plug the possible loopholes so as to avoid abuse of the declaration mechanism. The Administration would carefully consider any suggestions from members.</p>	
014411 – 014609	Chairman Mr WONG Ting-kwong	Mr WONG Ting-kwong's views that Hong Kong was in general a law-abiding community, and that the possibility of abuse of the declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD would be limited since making false declaration would attract criminal liability.	
014610 – 015415	Chairman Mr Alan LEONG Assistant Legal Adviser 5 (ALA5) Administration	<p>Mr Alan LEONG questioned the Administration's rationale for not exempting HKPR-owned companies from the BSD by way of a declaration mechanism.</p> <p>The Administration reiterated –</p> <p>(a) the fundamental legal principle that "a company was an entity independent of its shareholders";</p> <p>(b) the suggested declaration mechanism failed to tackle the problem that HKPR shareholders could circumvent the BSD through transferring company shares and thereby the ownership of the residential property</p>	

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		<p>indirectly to non-HKPR shareholders by various means; and</p> <p>(c) there was no way for IRD to be informed of such transfer of shares, even if the declaration mechanism as proposed by members and deputations was in-place. Practically, IRD would not be able to carry out effective investigations to safeguard the mechanism from being abused.</p> <p>ALA5 referred to section 45 of the Stamp Duty Ordinance (Cap. 117) which provided for stamp duty relief in case of conveyance between associated bodies corporate as well as the restriction against cessation of association within a specified period after the date of execution of the conveyance.</p> <p>Mr Alan LEONG suggested that the Administration should consider refunding the BSD paid by HKPR-owned companies if the shareholders remained the same as declared and the properties acquired had not been sold within a specified period of time, taking reference from the arrangements for the relief from stamp duty in case of conveyance between associated bodies corporate.</p>	
015416 – 015540	Chairman Mr Abraham SHEK	<p>Mr Abraham SHEK's views –</p> <p>(a) a number of deputations, including The Real Estate Developers Association of Hong Kong, had suggested that companies whose shareholder were all HKPRs should be exempted from the BSD by way of a declaration mechanism. The deputations had also suggested different ways to minimize abuse of the declaration mechanism. However, the Administration disapproved of the suggestions; and</p> <p>(b) the BSD might not be effective in reducing Mainland buyers' demand for residential properties, given the depreciation of Hong Kong dollar against Renminbi. However, HKPR-owned companies would be greatly affected since their cost of acquiring residential properties would be increased.</p>	

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015541 – 015647	Chairman Mr Paul TSE	Mr Paul TSE reiterated his views that it was not uncommon for HKPRs to purchase residential properties in the name of companies owned by them. The BSD would, in effect, deprive HKPRs of their existing option. He questioned whether there were satisfactory justifications for introducing the BSD which would undermine the reputation and status of Hong Kong as a free-market economy.	
015648 – 020005	Chairman Mr Abraham SHEK	<p>The Chairman concluded that members agreed in general that HKPR-owned companies should be exempted from the BSD.</p> <p>The Chairman requested the Administration to reconsider exempting HKPR-owned companies from the BSD, and to consider ways, such as declaration made by company directors/shareholders, to minimize abuse. The Bills Committee would invite STH to attend the meeting of the Bills Committee to exchange views with members on the Bill.</p> <p>Meeting arrangements</p>	The Administration to follow up as stated in paragraph 5 of the minutes.