

立法會
Legislative Council

LC Paper No. CB(1)471/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/12

Bills Committee on Stamp Duty (Amendment) Bill 2012

**Minutes of seventh meeting on
Monday, 8 April 2013, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon Starry LEE Wai-king, JP (Chairman)
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
Hon Cyd HO Sau-lan
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 James TIEN Pei-chun, GBS, JP
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 POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Hon Tony TSE Wai-chuen

Members absent : Hon James TO Kun-sun (Deputy Chairman)
Hon LEE Cheuk-yan
Hon Ronny TONG Ka-wah, SC
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon TANG Ka-piu

Public officers attending : Agenda item II

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

Miss Rita YUNG
Council Secretary (1)3

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)784/12-13 -- Minutes of meeting held on
25 January 2013)

The minutes of the meeting held on 25 January 2013 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)793/12-13(01) -- List of follow-up actions
arising from the discussion at
the meeting on 18 March 2013

LC Paper No. CB(1)793/12-13(02) -- Administration's response to
issues raised at the meeting on
18 March 2013

LC Paper No. CB(1)793/12-13(03) -- Administration's response to
Hon James TO Kun-sun's
letter dated 11 March 2013 as
set out in LC Paper No.
CB(1)692/12-13(04)

LC Paper No. CB(1)770/12-13(01) -- Administration's response to
Hon Tony TSE Wai-chuen's
letter dated 4 March 2013 as
set out in LC Paper No.
CB(1)674/12-13(01)

- 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(02) -- Administration's response to issues raised at the meeting on 4 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)554/12-13(01) -- Administration's response to Hon Tony TSE Wai-chuen's letter dated 25 January 2013 as set out in LC Paper No. CB(1)511/12-13(03)
- LC Paper No. CB(1)562/12-13(01) -- Administration's response to Hon James TO Kun-sun's letter dated 30 January 2013 as set out in LC Paper No. CB(1)511/12-13(04)
- 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)724/12-13(01) -- Submission from Hong Kong Institute of Estate Agents dated 15 March 2013 in response to the Administration's reply to its submission
(English version only)
- LC Paper No. CB(1)770/12-13(02) -- Administration's response to the submission from the Hong Kong Institute of Estate Agents dated 15 March 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)805/12-13(01) -- Letter from Assistant Legal Adviser to the Administration dated 3 April 2013
- 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

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)

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

3. 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.

4. The Chairman, Mr CHAN Kam-lam, Mr Tony TSE, Mr Abraham SHEK, Mr YIU Si-wing, Mr James TIEN, Mr WONG Ting-kwong and Mr Paul TSE made declaration of interests respectively.

5. In the course of deliberation, members had discussed issues relating to the refund mechanism of the Buyer's Stamp Duty (BSD) for redevelopment activities, the suggestions of exempting companies owned by Hong Kong permanent residents (HKPRs), as well as charitable organizations which were exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112) from the BSD.

6. The Administration was requested to:

- (a) reconsider enhancing the refund mechanism of the BSD for redevelopments, including refunding the BSD when an investor or developer had acquired not less than 80% of the total interest in a residential building, or when the original property had been demolished and the building plan of the redevelopment had been approved;
- (b) in respect of private redevelopment, consider exempting companies from paying the BSD upfront as and when individual units were acquired on the condition that the shareholders of the companies undertake (with bank guarantee or other collateral) that the BSD chargeable would be payable with interest if subsequently the redevelopment was not completed within the "six-year period";
- (c) provide the legal justifications given by the Department of Justice that the Special Stamp Duty and the BSD were constitutional and were legitimate taxation measures under the Basic Law, and to elaborate the application of Article 25 of the Basic Law in this respect;
- (d) in response to Mr Paul TSE's concerns, explain the reasons and justifications for not exempting companies whose shareholders were all HKPRs from the BSD despite a declaration made by individual shareholders of their HKPR status;
- (e) consider exempting companies whose shareholders were all HKPRs from the BSD by expressly setting out the conditions under which exemption would be given, aided with a declaration mechanism; and

- (f) reconsider that charitable organizations which were qualified for tax exemption under section 88 of the Inland Revenue Ordinance (Cap. 112) be exempted from the BSD.

(Post-meeting note: The information provided by the Administration was tabled at the meeting on 22 April 2013 and subsequently circulated to members vide LC Paper No. CB(1)893/12-13(01) on 23 April 2013.)

III. Any other business

- 7. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
4 December 2013

**Proceedings of the seventh meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2012
on Monday, 8 April 2013, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I - Confirmation of minutes of meeting			
000640 – 000709	Chairman	Confirmation of minutes of meeting held on 25 January 2013 (LC Paper No. CB(1)785/12-13)	
Agenda Item II - Meeting with the Administration			
000710 – 000934	Chairman	Opening remarks	
000935 – 003500	Chairman Mr CHAN Kam-lam Mr Tony TSE Mr Abraham SHEK Administration	<p>Disclosure of direct or indirect pecuniary interest by the Chairman, Mr CHAN Kam-lam, Mr Tony TSE and Mr Abraham SHEK</p> <p>Mr CHAN Kam-lam's, Mr Tony TSE's and Mr Abraham SHEK's views and concerns –</p> <p>(a) the Buyer's Stamp Duty (BSD) would have adverse impact on private property developers' interest in property redevelopment, as the BSD had to be paid upfront as and when individual residential units were acquired, and it might take years before the BSD paid could be refunded, creating huge financial burden on private property developers. Redevelopment projects might be dominated by the Urban Renewal Authority (URA) in the future; and</p> <p>(b) requested the Administration to consider enhancing the refund mechanism of the BSD for redevelopments, such as refunding the BSD when an investor or developer had acquired not less than 80% of the total interest in a residential building, or when the original property had been demolished and the building plan of the redevelopment had been approved.</p> <p>The Administration's response –</p> <p>(a) the policy intent was that the BSD should not hinder redevelopments;</p> <p>(b) it would be difficult to give any exemption from the BSD before the Inland Revenue</p>	The Administration to follow up as stated in paragraph 6(a) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>Department (IRD) could obtain solid proof that an acquisition was indeed for the purpose of redevelopment and that the developer could subsequently fulfill the various conditions for exemption. While the site or the property concerned might be acquired for redevelopment purposes, there was equal chance that it was acquired for trading;</p> <p>(c) it was considered that the proposed refund arrangement under the Bill had struck the right balance between maintaining the integrity of the BSD regime while not interfering with practical aspects of redevelopment projects; and</p> <p>(d) the Administration would continue to listen to the views of members on the BSD refund mechanism.</p> <p>In response to Mr CHAN Kam-lam's enquiry about a small scale redevelopment project involving the acquisition of one or two low-rise residential building(s) on a site for redevelopment into low-rise buildings, the Administration advised that the BSD refund mechanism would also be applicable to such redevelopment project, regardless of the scale of the project.</p>	
003501 – 003807	Chairman Mr YIU Si-wing Administration	<p>Disclosure of direct or indirect pecuniary interest by Mr YIU Si-wing</p> <p>In respect of redevelopment project, Mr YIU Si-wing suggested the Administration to consider exempting companies from paying the BSD upfront as and when individual units were acquired on the condition that the shareholders of the companies undertook (with bank guarantee or other collateral) that the BSD chargeable would be payable with interest if subsequently the redevelopment was not completed within the "six-year period".</p>	The Administration to follow up as stated in paragraph 6(b) of the minutes.
003808 – 004244	Chairman Mr WONG Ting-kwong Administration	In response to Mr WONG Ting-kwong's enquiry, the Administration advised that the BSD would not be chargeable if a person sold or transferred a residential property to his/her HKPR parent-in-law, and whether the Special Stamp Duty (SSD) would be chargeable would depend on the holding period applicable under the SSD or enhanced SSD	

Time marker	Speaker	Subject(s)	Action required
		regime.	
004245 – 004730	Chairman Mr James TIEN Administration	<p>Disclosure of direct or indirect pecuniary interest by Mr James TIEN</p> <p>Mr James TIEN's views –</p> <p>(a) residential redevelopment projects were an important source of supply of residential units in the market;</p> <p>(b) the BSD would have adverse impact on private property developers' interest in property redevelopment, as BSD had to be paid upfront as and when individual residential units were acquired, and it might take years before the BSD paid could be refunded, creating huge financial burden on private property developers; and</p> <p>(c) agreed with Mr YIU Si-wing's suggestion of exempting companies from paying the BSD upfront as and when individual units were acquired on the condition that the shareholders of the companies undertook that the BSD chargeable would be payable with interest if subsequently the redevelopment was not completed within the "six-year period".</p> <p>The Administration reiterated that it would be difficult to grant any exemption from the BSD before IRD could obtain solid proof that an acquisition was indeed for the purpose of redevelopment and that the developer could subsequently fulfill the various conditions for exemption.</p>	
004731 – 004754	Chairman Mr WONG Ting-kwong	Disclosure of direct or indirect pecuniary interest by Mr WONG Ting-kwong	
004755 – 005130	Chairman Mr Abraham SHEK	<p>Mr Abraham SHEK reiterated his views –</p> <p>(a) the BSD would have adverse impact on private property developers' interest in property redevelopment, having the effect that redevelopment projects might be dominated by URA in the future; and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) the Administration should consider enhancing the refund mechanism of the BSD for redevelopments, such as refunding the BSD when an investor or developer had accumulated an interest of not less than 80% in a residential building, which had attained the threshold of compulsory sale for redevelopment.</p>	
005131 – 005957	<p>Chairman Mr Abraham SHEK Mr Kenneth LEUNG Administration</p>	<p><u>Deliberations on the Administration's response to the issues raised at the meeting of the Bills Committee held on 18 February 2013 (LC Paper No. CB(1)692/12-13(01))</u></p> <p><u>Item 8</u></p> <p>In response to the Chairman's and Mr Abraham SHEK's enquiry, the Administration advised that the Department of Justice had been consulted and the Administration considered that the SSD and the BSD were constitutional and were legitimate taxations under Article 108 of the Basic Law.</p> <p>Mr Abraham SHEK and Mr Kenneth LEUNG requested the Administration to provide the legal justifications given by the Department of Justice that the SSD and the BSD were constitutional and were legitimate taxation measures under the Basic Law, and to elaborate the application of Article 25 of the Basic Law in this respect.</p>	<p>The Administration to follow up as stated in paragraph 6(c) of the minutes.</p>
005958 – 010357	<p>Chairman Mr Abraham SHEK Administration</p>	<p><u>Item 6</u></p> <p>Mr Abraham SHEK questioned the effectiveness of the SSD in addressing the overheated residential property market. He was concerned that there had been continued surge in residential property prices despite the introduction of the SSD, and that genuine home buyers were therefore affected.</p> <p>The Administration's response –</p> <p>(a) the current exuberant market situation was the combined result of various factors, including the overall demand and supply imbalance, the influx of capital, the ultra-low interest rate environment, etc;</p> <p>(b) the objectives of the SSD were to, through</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>combating short-term speculative activities, prevent even further exuberance in the residential property market, and to ensure its healthy and stable development; and</p> <p>(c) the SSD had been effective in curbing confirmor and short-term resale cases. As at end 2012 to early 2013, the average number of confirmor and short-term resale cases per month was 202, which was substantially lower than the monthly average of 1 570 cases between 1997 and 2010.</p>	
010358 – 010645	Chairman Mr James TIEN Administration	<p>Mr James TIEN's views –</p> <p>(a) the SSD would affect vendors' willingness to sell and reduce the supply of residential properties in the secondary market. The market had been frozen with the number of transactions decreased substantially; and</p> <p>(b) the Administration should aim at cooling down the residential property market and stabilizing the residential property prices at an affordable level for the society, instead of only combating short-term speculative activities.</p> <p>The Administration reiterated that the current exuberant market situation was the combined result of various factors. In addition to the demand-side management measures of the SSD and the BSD, the Administration was also working on a number of short to medium term housing and land supply measures to address the demand and supply imbalance.</p>	
010646 – 010834	Chairman Mr Abraham SHEK	Mr Abraham SHEK reiterated his views that the SSD would affect vendors' willingness to sell and reduce the supply of residential properties in the secondary market, thus driving property prices up and affecting genuine home buyers.	
010835 – 011517	Chairman Mr WONG Kwok-hing Mr Abraham SHEK Mr Tommy CHEUNG	Discussion on the effectiveness of the SSD and the BSD in addressing the overheated residential property market	
011518 – 011632	Chairman Administration	<u>Items 9-14</u>	

Time marker	Speaker	Subject(s)	Action required
		Members did not raise any questions.	
011633 – 011817	Chairman Mr James TIEN Administration	<u>Item 15</u> In response to the Chairman's and Mr James TIEN's enquiries, the Administration advised that after the announcement of the introduction of the BSD, the Administration had held briefing sessions for chambers of commerce, associations of the small and medium enterprises, etc. Some attendees had expressed concerns about the BSD refund mechanism, and had requested the Administration to consider exempting HKPR-owned companies from the BSD.	
011818 – 011832	Chairman Administration	<u>Item 16</u> Members did not raise any questions.	
011833 – 012129	Chairman Mr Abraham SHEK Administration	<u>Items 17-18</u> Mr Abraham SHEK pointed out that a number of deputations, including The Real Estate Developers Association of Hong Kong, had suggested that HKPR-owned companies 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.	
012130 – 014750	Chairman Mr Paul TSE Mr James TIEN Assistant Legal Adviser 5 (ALA5) Administration	Disclosure of direct or indirect pecuniary interest by Mr Paul TSE Mr Paul TSE questioned the justifications for accepting declarations made by individual HKPR buyers under the BSD regime on one hand and rejecting members' and deputations' proposed declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD on the other. Discussion on the operation and the risks of abuse of the two declaration mechanisms for individual HKPR buyers and for shareholders of HKPR-owned companies for the purpose of exemption from BSD in respect of acquisition of residential properties.	The Administration to follow up as stated in paragraph 6(d) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<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 their responsibility to notify IRD if there was cessation of association within a specified period after the transaction.</p> <p>The Administration was requested to provide a written response to explain the reasons and justifications for not exempting HKPR-owned companies from the BSD despite a declaration made by individual shareholders of the companies.</p>	
014751 – 014817	Chairman Administration	<p><u>Item 19</u></p> <p>Members did not raise any questions.</p>	
014818 – 015054	Chairman Mr Abraham SHEK	Mr Abraham SHEK requested the Administration to consider exempting HKPR-owned companies from the BSD by expressly setting out conditions under which exemption would be given, aided with a declaration mechanism.	The Administration to follow up as stated in paragraph 6(e) of the minutes.
015055 – 015058	Chairman Administration	<p><u>Item 20</u></p> <p>Members did not raise any questions.</p>	
015059 – 015927	Chairman Mr Alan LEONG Administration	<p><u>Item 21</u></p> <p>Mr Alan LEONG pointed out that charitable organizations which were qualified for tax exemption under section 88 of the Inland Revenue Ordinance (Cap. 112) were subject to the restrictions of applying their profits solely for charitable purposes and expending their profits substantially in Hong Kong. He urged the Administration to exempt such bodies from the BSD.</p> <p>The Administration's response –</p> <p>(a) the objective of introducing the BSD was to accord priority to the home ownership needs of HKPRs in the midst of the current exceptional situation where the residential property market was exuberant and supply remained tight; and</p>	The Administration to follow up as stated in paragraph 6(f) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>(b) if charitable organizations exempted from tax under section 88 of the Inland Revenue Ordinance were to be exempted from the BSD, even with the conditions that the residential properties acquired should only be used for dormitory or other purposes consistent with the charitable organizations' expressed charitable objects, such an exemption would still increase the overall demand for residential properties, thereby reducing the residential properties available for HKPRs. This was contrary to the policy intention of the BSD.</p> <p>The Administration was requested to reconsider that charitable organizations which were qualified for tax exemption under section 88 of the Inland Revenue Ordinance be exempted from the BSD.</p>	
Agenda Item III – Any other business			
015928 – 020110	Chairman	Meeting arrangements	