

立法會
Legislative Council

LC Paper No. CB(1)573/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/12

Bills Committee on Stamp Duty (Amendment) Bill 2012

**Minutes of eighth meeting on
Monday, 22 April 2013, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Starry LEE Wai-king, JP (Chairman)
Hon James TO Kun-sun (Deputy 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 WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon LAM Tai-fai, SBS, JP
Hon WONG Kwok-kin, BBS
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
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 LEE Cheuk-yan
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan
Hon TANG Ka-piu

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)

Financial Services and the Treasury Bureau

Ms Fiona CHAU
Principal Assistant Secretary for Financial Services
and the Treasury (Treasury) (Special Duties)

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. Meeting with the Administration

(LC Paper No. CB(1)873/12-13(01) -- List of follow-up actions arising from the discussion at the meeting on 8 April 2013

LC Paper No. CB(1)893/12-13(01) -- Administration's response to issues raised at the meeting on 8 April 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)893/12-13(02) -- Administration's response to submissions from The Law Society of Hong Kong, The Hong Kong Conveyancing & Property Law Association Limited and The Hong Kong Association of Banks

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 as set out in LC Paper No. CB(1)724/12-13(01)

- LC Paper No. CB(1)823/12-13(01) -- Submission from The Hong Kong Institute of Estate Agents dated 5 April 2013 in response to the Administration's reply as set out in LC Paper No. CB(1)770/12-13(02)
(English version only)
- LC Paper No. CB(1)893/12-13(03) -- Administration's response to submissions from Mr CHENG Chun-ting, Registered Professional Surveyor and BSD Concern Group as set out in LC Paper Nos. CB(1)808/12-13(01) and (02)
- 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)561/12-13(01) -- Administration's response to Assistant Legal Adviser's letter dated 1 February 2013 as set out in LC Paper No. CB(1)521/12-13(02)
- 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)873/12-13(02) -- Administration's response to Assistant Legal Adviser's letter dated 3 April 2013 as set out in LC Paper No. CB(1)805/12-13(01)
- LC Paper No. CB(1)692/12-13(02) -- Administration's response to Assistant Legal Adviser's letter dated 20 February 2013 as set out in LC Paper No. CB(1)598/12-13(04)

LC Paper No. CB(1)906/12-13(01) -- Hon James TO Kun-sun's
(*tabled at the meeting and letter dated 22 April 2013*
subsequently issued via e-mail on
23 April 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))

1. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).
2. The Chairman reminded members that under rule 83A of the Rules of Procedure of the Legislative Council, they should disclose the nature of any direct or indirect pecuniary interest before they spoke.
3. The Chairman, Mr James TO, Mr Tommy CHEUNG and Mr Abraham SHEK made declaration of interests respectively.
4. The Administration was requested to:
 - (a) consider informing/consulting interested parties on the implications of BSD on the customary Chinese trusts under "Tso" or "Tong";
 - (b) set out in clear terms in the Stamp Office Interpretation and Practice Notes that a "usual mortgage" in respect of a residential property was not considered to be "agreement for sale" and was not chargeable with BSD;
 - (c) provide response on the Administration's stance in respect of items 16, 19 and 27 in LC Paper No. CB(1)893/12-13(02) - the Administration's response to the submissions from The Law Society of Hong Kong and The Hong Kong Conveyancing & Property Law Association Limited ; and

- (d) in respect of the proposed section 29DD of the Bill, elaborate and clarify the eligibility for refund of BSD for redevelopment in respect of a residential property which was acquired by a body corporate (first body corporate) and subsequently transferred to another body corporate, in light of the common market practice that the first body corporate might be an independent property agent which was not associated with the ultimate re-developer under section 45 of the Stamp Duty Ordinance (Cap. 117).

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)973/12-13(01) on 3 May 2013.)

II. Any other business

5. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
17 December 2013

**Proceedings of the eighth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2012
on Monday, 22 April 2013, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000515 – 000833	Chairman Administration	<p>Opening remark</p> <p>The Chairman reminded members that under rule 83A of the Rules of Procedure of the Legislative Council, they should disclose the nature of any direct or indirect pecuniary interest before they spoke.</p>	
000834 – 001511	Chairman Mr James TO Administration	<p>Briefing by the Administration on its responses to the issues raised at the meeting of the Bills Committee held on 8 April 2013 (LC Paper No. CB(1)893/12-13(01)).</p> <p>Disclosure of direct or indirect pecuniary interest by the Chairman and Mr James TO.</p> <p><u>BSD refund mechanism for redevelopment activities</u></p> <p>Mr James TO's view that in line with the policy intent that the Buyer's Stamp Duty (BSD) should not hinder redevelopments and taking into account the lengthy process involved in property redevelopments, the "six-year" requirement for completion of redevelopment should be extended by requiring the developers concerned to present documentary proofs to support that the properties acquired were for redevelopment purposes.</p>	
001512 – 002209	Chairman Mr James TO Administration	<p><u>Exempting charitable bodies which were exempted from tax under section 88 of Inland Revenue Ordinance (IRO) from BSD</u></p> <p>In response to Mr James TO's enquiry on the justifications for not exempting properties acquired by charitable organizations for charitable purposes from BSD, the Administration advised that :</p> <p>(a) under the existing taxation regime, charitable organizations did not enjoy general tax exemption across-the-board. Only profits generated from activities which fulfilled the organization's charitable objects would be exempted from tax as stipulated under IRO;</p> <p>(b) as section 88 of IRO did not prohibit charitable</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>organizations from engaging in activities other than those carried out in pursuit of their charitable objects, these organizations might, as with any other companies, carry out trading activities in the property market, the profits of which was subject to tax; and</p> <p>(c) granting charitable organizations the exemption from BSD in the purchase of residential properties might increase the demand for residential properties, which in turn would go against the original policy intention of introducing BSD.</p> <p>Mr James TO questioned the rationale behind the differential treatment of a residential property presented to a charitable organization as a gift and that acquired by the organization in respect of BSD.</p>	
002210 – 002300	Chairman Mr Kenneth LEUNG Administration	<p>In response to Mr Kenneth LEUNG's enquiry on the rationale of not exempting charitable organizations from BSD, the Administration advised that :</p> <p>(a) under the Stamp Duty Ordinance, only instruments effecting transfers to a charity by way of gift were exempted from stamp duty; and</p> <p>(b) in respect of any other chargeable instruments to which a charity was a party, the charity would be liable for the stamp duty payable (which included the ad valorem stamp duty and special stamp duty (SSD), if applicable, in the case of a transfer of residential property).</p>	
002301 – 002609	Chairman Mr WU Chi-wai Administration	<p>Mr WU Chi-wai's views :</p> <p>(a) the Administration should foster the development of charities while addressing the home ownership needs of Hong Kong people. Exempting charitable organizations from BSD could help ease their financial burden in acquiring residential properties to enhance their charitable work; and</p> <p>(b) the applications for tax exemption status under section 88 of IRO were subject to stringent assessment of the Inland Revenue Department (IRD). Charitable organizations were unlikely to engage in activities not compatible with its charitable objects in the light of the requirements</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>of section 88 of IRO and the on-going monitoring of IRD.</p> <p>In response to Mr WU Chi-wai's enquiry about the number of property transactions involving charitable organizations in the past ten years, the Administration responded that IRD did not maintain such records or statistics.</p>	
002610-003404	Chairman Mr WONG Ting-kwong Administration	Mr WONG Ting-kwong's view that consideration should be given to exempting charitable organizations which were exempted from tax under section 88 of IRO from BSD with a view to promoting the culture of giving in the society.	
003405-003953	Chairman Miss CHAN Yuen-han Administration	<p>Miss CHAN Yuen-han's views :</p> <p>(a) a majority of charitable organizations had been engaging in activities in pursuit of their charitable objects with a view to maintaining their tax exemption status under section 88 of IRO; and</p> <p>(b) undertaking of other activities by charitable organizations which were incompatible with their charitable objects was highly unlikely in the light of the requirements of section 88 of IRO and the on-going monitoring of IRD.</p> <p>The Administration's response:</p> <p>(a) the objective of introducing BSD was to accord priority to the home ownership needs of Hong Kong permanent residents (HKPRs) in the midst of the current exceptional situation where the property market was exuberant and supply remained tight by increasing the transaction costs of non-HKPRs in acquiring residential properties. Any exemption or refund would affect the effectiveness of the BSD in according priority to the home ownership needs of HKPRs. The Government had to carefully consider whether such an exemption was necessary, and the possible impact it might have on the effectiveness of BSD; and</p> <p>(b) as section 88 of IRO did not restrict charitable organizations from carrying out any activity, these charitable organizations might, as with any other companies, carry out trading activities in</p>	

Time marker	Speaker	Subject(s)	Action required
		the property market. Exempting charitable organizations from BSD was inconsistent with the policy objective of the BSD to accord priority to the home ownership needs of HKPRs.	
003954-004058	Chairman Administration	The Chairman's view that the Administration should reconsider the justifications for not exempting charitable organizations from BSD in the light of members' views.	
004059-004400	Chairman Mr WONG Ting-kwong Administration	In response to Mr WONG Ting-kwong's enquiry, the Administration confirmed that a charity exempted from tax under section 88 of IRO should state precisely in its governing instrument a clause prohibiting distribution of its incomes and properties amongst its members. The tax exemption status of a charitable body under section 88 of IRO would be removed should it violate the said clause in its governing instrument.	
004401 – 004703	Chairman Mr Kenneth LEUNG Administration	<p>In response to Mr Kenneth LEUNG's enquiry on whether the undertaking of commercial activities would affect the tax exemption status of a charitable organization under section 88 of IRO, the Administration advised that :</p> <ul style="list-style-type: none"> (a) section 88 of the IRO did not restrict charitable organizations from carrying out any activities; (b) under section 88 of IRO, only the profits from primary purpose trading carried out by a charity (i.e. trading in the course of the actual carrying out of its expressed charitable objects or trading that was mainly carried out by the beneficiaries of the charity) and not expended substantially outside Hong Kong were exempted from profits tax; and (c) profits from any trading activities other than primary purpose trading would be subject to profits tax. 	
004704 – 005740	Chairman Mr James TO Mr James TIEN Administration	Mr James TO's and Mr James TIEN's views that the proposed exemption of charitable organizations which were exempted under section 88 of IRO from BSD would not undermine the policy objective of BSD in addressing the home ownership needs of HKPRs in anticipation of the small number of properties to be acquired by charitable organizations.	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration responded that while section 88 of IRO did not restrict charitable organizations from carrying out any activity, these charitable organizations might, as with any other companies, carry out trading activities in the property market. Exempting charitable organizations from BSD might go against the policy intention of introducing BSD.</p> <p>The Chairman urged the Administration to consider members' views on exempting charitable organizations which were exempted from tax under section 88 of IRO from BSD.</p>	
005741 – 005812	Chairman Mr James TO Administration	Members noted that the issues raised in Mr James TO's letter dated 22 April 2013 would be discussed at a subsequent meeting upon receipt of the Administration's response.	
005813-005927	Chairman Mr James TO Administration	Mr James TO reiterated his views that the Administration should re-consider exempting charitable organizations which were exempted from tax under section 88 of IRO from BSD.	
005928 – 010055	Chairman Members Administration	<p>Members continued their deliberations on the Administration's responses in respect of items 22 to 36 in LC Paper No. CB(1)692/12-13(01) regarding the issues raised by deputations at the meeting of the Bills Committee held on 18 February 2013.</p> <p><u>Items 22 to 24</u></p> <p>Members did not raise any questions on the above items.</p>	
010056 – 010659	Chairman Mr James TIEN Administration	<p><u>Item 25</u></p> <p>In response to Mr James TIEN's enquiry on the refund arrangements of BSD for properties acquired by third party vendors which were subsequently sold to developers for redevelopment, the Administration advised that:</p> <p>(a) if the developer acquired residential properties for redevelopment from a third party vendor, the developer could not claim refund of BSD paid by the vendor in the acquisition of the residential properties concerned; and</p>	

Time marker	Speaker	Subject(s)	Action required
		(b) a body corporate was allowed to claim a refund of BSD paid by its associated body corporate after the latter had transferred the residential properties acquired to the former for redevelopment purpose by virtue of section 45 of the Stamp Duty Ordinance (Cap.117).	
010700 – 010840	Chairman Mr Abraham SHEK Administration	Mr Abraham SHEK expressed that he supported the Government's intention of curbing short-term speculative activities in the residential property market. However, he would not support the Bill as the proposed enhanced SSD and BSD were not effective in addressing the home ownership needs of HKPRs given the continued surge in properties prices despite implementation of these measures.	
010841 – 011210	Chairman Members Administration	<u>Items 26 to 36</u> Members did not raise any questions on the above items. Members completed their deliberations on the Administration's responses in LC Paper No. CB(1)692/12-13(01).	
011211 – 011604	Chairman Members Administration	Members commenced their deliberations on the Administration's responses in LC Paper No. CB(1)893/12-13(02) regarding the issues raised in the submissions from The Law Society of Hong Kong, The Hong Kong Conveyancing & Property Law Association Limited and The Hong Kong Association of Banks. <u>Items 1 to 3</u> Members did not raise any questions on the above items.	
011605 – 011916	Chairman Administration Assistant Legal Adviser 5 (ALA5)	<u>Item 4</u> The Administration was requested to consider informing/consulting interested parties on the implications of BSD on the customary Chinese trusts under "Tso" or "Tong".	The Administration to follow up as stated in paragraph 4(a) of the minutes.

Time marker	Speaker	Subject(s)	Action required
011917 – 012529	Chairman Mr WONG Ting-kwong Mr Tommy CHEUNG Administration	<p><u>Item 5</u></p> <p>In response to Mr WONG Ting-kwong's enquiry, the Administration advised that BSD would not be chargeable where a residential property was transferred to a person from his/her parent-in-law if both of them were HKPRs. Whether SSD was chargeable would depend on the holding period applicable under the SSD or enhanced SSD regime.</p> <p>Disclosure of direct or indirect pecuniary interest by Mr Tommy CHEUNG.</p> <p>In response to Mr Tommy CHEUNG's suggestion on expanding the scope of "close relative" exemption from BSD to cover sons-in-law, the Administration advised that:</p> <p>(a) the proposed “close relative” exemption arrangement followed the same principle of the SSD regime; and</p> <p>(b) the proposed exemption arrangement could strike the right balance between addressing the genuine needs of the public for joint ownership of a residential property while safeguarding the effectiveness of the BSD by avoiding loopholes for circumvention.</p>	
012530 – 013240	Chairman Mr Abraham SHEK Mr Kenneth LEUNG Administration	<p><u>Item 6</u></p> <p>Disclosure of direct or indirect pecuniary interest by Mr Abraham SHEK.</p> <p>Mr Abraham SHEK's view that exemption should be provided for deed of family arrangement used for redistribution of assets on account that value of the assets remained unchanged under the redistribution arrangement.</p> <p>Mr Kenneth LEUNG's advice that since stamp duty was payable on chargeable document, whether BSD was payable would depend on whether a chargeable document was involved under the aforesaid assets redistribution arrangement.</p>	
013241 – 013726	Chairman Administration	<p><u>Items 7-11</u></p> <p>Members did not raise any question on the above items.</p>	

Time marker	Speaker	Subject(s)	Action required
013727 – 014116	Chairman Mr Abraham SHEK Administration	<p><u>Item 12</u></p> <p>Addressing Mr Abraham SHEK's concern, the Administration would set out in clear terms in the Stamp Office Interpretation and Practice Notes that a "usual mortgage" in respect of a residential property was not considered to be "agreement for sale" and was not chargeable with BSD.</p>	The Administration to follow up as stated in paragraph 4(b) of the minutes.
014117 – 015425	Chairman Mr Abraham SHEK Administration	<p><u>Items 13 to 30</u></p> <p>Members did not raise any question on the above items.</p> <p>The Administration was requested to provide response on its stance in respect of items 16, 19 and 27 before the Bills Committee proceeded to clause-by-clause examination of the Bill.</p> <p>The Chairman extended the meeting by 15 minutes and advised that the Administration's response to the rest of the items (31-38) in LC Paper No. CB(1)893/12-13(02) would be deliberated at the next meeting.</p>	The Administration to follow up as stated in paragraph 4(c) of the minutes.
015426 – 015952	Chairman Mr Abraham SHEK Administration ALA5	<p>In respect of the proposed section 29DD of the Bill, the Administration was requested to elaborate and clarify the eligibility for refund of BSD for redevelopment in respect of a residential property which was acquired by a body corporate (first body corporate) and subsequently transferred to another body corporate, in light of the common market practice that the first body corporate might be an independent property agent which was not associated with the ultimate re-developer under section 45 of the Stamp Duty Ordinance (Cap. 117).</p> <p>Mr Abraham SHEK advised that, in considering the proposed enhancements to BSD refund mechanism, the Administration should take into consideration the common market practice of property acquisitions by third party vendors which were not associated with the developers undertaking the redevelopments ultimately.</p>	The Administration to follow up as stated in paragraph 4(d) of the minutes.
015953 – 020126	Chairman Administration	Meeting arrangement.	

Council Business Division 1
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17 December 2013