

立法會
Legislative Council

LC Paper No. CB(1)613/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/12

Bills Committee on Stamp Duty (Amendment) Bill 2012

**Minutes of ninth meeting on
Monday, 20 May 2013, at 2:30 pm
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 Abraham SHEK Lai-him, SBS, JP
 - Hon Tommy CHEUNG Yu-yan, SBS, JP
 - Hon WONG Kwok-hing, MH
 - 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 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 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 CHAN Kam-lam, SBS, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon Jeffrey LAM Kin-fung, GBS, JP

Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
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)

Mr Kasper NG
Senior Administrative Officer (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)925/12-13(03) -- List of follow-up actions arising from the discussion at the meeting on 22 April 2013
- LC Paper No. CB(1)973/12-13(01) -- Administration's response to issues raised at the meeting on 22 April 2013
- 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)925/12-13(02) -- Administration's letter dated 25 April 2013 regarding the submission from The Law Society of Hong Kong

- 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)973/12-13(02) -- Administration's response to the submission from The Hong Kong Institute of Estate Agents dated 5 April 2013 as set out in LC Paper No. CB(1)823/12-13(01)
- 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)925/12-13(01) -- Administration's response to Hon James TO Kun-sun's letter dated 22 April 2013 as set out in LC Paper No. CB(1)906/12-13(01)
- 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)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)

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))

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.

3. The Chairman, Mr Abraham SHEK, Miss CHAN Yuen-han, Mr WONG Ting-kwong, Dr CHIANG Lai-wan, Mr YIU Si-wing, Mr WU Chi-wai, Mr Andrew LEUNG, Mr POON Siu-ping, Mr James TO made declaration of interests respectively.

4. Members continued their deliberation on the Administration's responses to the submission from the Hong Kong Association of Banks as detailed in items 31 to 38 in LC Paper No. CB(1)893/12-13(02). The Administration was requested to:

- (a) advise the Administration's stance and further elaborate the Administration's response in respect of items 32, 34 and 38 in LC Paper No. CB(1)893/12-13(02) - the Administration's response to the submission from The Hong Kong Association of Banks;

- (b) provide a written response to address the concerns raised by Hon James TO and Hon Abraham SHEK in respect of items 36 and 38 in LC Paper No. CB(1)893/12-13(02);
- (c) report to the Bills Committee the outcome of the Administration's follow up with The Law Society of Hong Kong and The Hong Kong Association of Banks in relation to the legal and technical issues and concerns raised by the two organizations; and
- (d) provide concrete examples to illustrate the extent of the potential risks, possible loopholes and operation difficulties arising from abuse of the declaration mechanism for the purpose of exempting companies whose shareholders were all Hong Kong permanent residents from the Buyers' Stamp Duty.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1288/12-13(01) on 14 June 2013.)

II. Any other business

5. There being no other business, the meeting ended at 3:54 pm.

**Proceedings of the ninth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2012
on Monday, 20 May 2013, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex**

| Time marker | Speaker | Subject(s) | Action required |
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| 000445 – 000631 | Chairman Administration | Opening remarks | |
| 000632 – 000849 | Chairman Administration | <p>Briefing by the Administration on its response to the issues raised at the meeting of the Bills Committee held on 22 April 2013 (LC Paper No. CB(1)973/12-13(01)).</p> <p>In respect of the outstanding issues raised in LC Paper No. CB(1)893/12-13(02), the Administration would provide a separate written response to items 16 & 27 (regarding the additional scenarios under which exemption from BSD for replacement purchases should be offered for non-Hong Kong Permanent Residents (HKPRs) who might have been made to sell his/her residential property not out of his/her volition) and item 19 (regarding the admissibility of an instrument that was chargeable with the BSD but had not been duly stamped in certain court proceedings).</p> <p>(Post-meeting note: The Administration's response to the above issues was issued to members vide LC Paper No. CB(1)1288/12-13(01) on 14 June 2013.)</p> | |
| 000850 – 001616 | Chairman Mr Abraham SHEK Miss CHAN Yuen-han Dr CHIANG Lai-wan Mr WONG Ting-kwong Administration | <p>Mr Abraham SHEK's view that BSD would dampen private property developers' interest in property redevelopment, having the effect that redevelopment projects might be dominated by the Urban Renewal Authority (URA). The possibility of private developers not participating in urban renewal activities would adversely affect the progress of urban redevelopment.</p> <p>The Administration responded that the policy intent was that the BSD should not block redevelopment. The Administration would consider members' suggestion of further enhancing the BSD refund mechanism for redevelopment.</p> <p>Members requested the Secretary for Transport</p> | |

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| | | <p>and Housing (STH) to attend the meeting of the Bills Committee as soon as possible to explain the Administration's policy stance and exchange views with members. On behalf of the Bills Committee, the Chairman would personally invite STH to attend the Bills Committee meeting as early as possible and before the Bills Committee proceeded to clause-by-clause examination of the Bill.</p> <p>(Post-meeting note : STH would attend the next meeting of the Bills Committee to be held on 7 June 2013)</p> | |
| 001617 – 001749 | Chairman Mr Abraham SHEK Miss CHAN Yuen-han Mr WONG Ting-kwong Dr CHIANG Lai-wan Mr YIU Si-wing Mr WU Chi-wai Mr Andrew LEUNG Mr POON Siu-ping Mr James TO | Disclosure of direct or indirect pecuniary interest by members. | |
| 001750 – 001846 | Chairman Administration | <p>Members continued their deliberations on the Administration's responses in respect of items 31 to 38 in LC Paper No. CB(1)893/12-13(02) regarding the issues raised in the submission from the Hong Kong Association of Banks (HKABs).</p> <p><u>Item 31</u></p> <p>Members did not raise any questions.</p> | |
| 001847 – 002428 | Chairman Mr James TO Mr Abraham SHEK Administration | <p><u>Item 32</u></p> <p>In response to Mr James TO's query on whether appropriate provision could be included in the Bill to clarify that the liability to pay any additional Special Stamp Duty (SSD) should not create any encumbrance on the residential property or affect the title to the property, or alternatively, to provide for protection to bona fide purchasers (including mortgagees) for valuable consideration dealing with the residential property, the Administration explained that:</p> <p>(a) the seller and the buyer involved in a</p> | |

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| | | <p>property transaction were jointly and severally liable for paying SSD, if any;</p> <p>(b) since the introduction of SSD in November 2010, the Inland Revenue Department (IRD) had, in response to the concern of the industry, put in place a mechanism to ascertain with the Rating and Valuation Department, within 40 days after the submission of the application for stamping, the market value of the property and accordingly, the amount of stamp duty to be paid. Therefore, the possibility of having an instrument under stamped and thus necessitating the recovery of underpaid SSD was very low; and</p> <p>(c) the concern of HKABs was noted and the relevant suggestions would be considered by the Administration.</p> <p>Mr Abraham SHEK urged the Administration to provide a clear and definite response to address HKABs' concern in this respect.</p> | |
| 002429 – 002817 | Chairman Mr Abraham SHEK Assistant Legal Adviser 5 (ALA5) Administration | <p><u>Items 33 & 34</u></p> <p>Members did not raise any questions.</p> <p>In response to the enquiry of ALA5 and as requested by Mr Abraham SHEK, the Administration undertook to confirm whether Committee Stage amendments (CSAs) would be proposed to the Bill in the light of the views expressed by HKABs in items 32, 34 and 38 before the Bills Committee proceeded to clause-by-clause examination of the Bill.</p> | The Administration to follow up as stated in paragraph 4(a) of the minutes. |
| 002818 – 002926 | Chairman Administration | <p><u>Item 35</u></p> <p>Members did not raise any questions.</p> | |
| 002927 – 004358 | Chairman Mr James TO Mr Abraham SHEK Administration | <p><u>Item 36</u></p> <p>Mr James TO's enquiry on whether, as requested by HKABs, a provision equivalent to the proposed section 29DB(8)(c) would be added to the proposed section 29CB of the Bill to exempt an agreement for sale from the BSD if under that</p> | |

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| | | <p>agreement the mortgaged property was sold to a mortgagee (a financial institution within the meaning of section 2 of the IRO) or a receiver appointed by such a mortgagee.</p> <p>The Administration's response that in accordance with usual practice, a mortgaged property could only be acquired by or transferred to the mortgagee by way of conveyance. Therefore, the proposed provision should not be necessary.</p> <p>Mr Abraham SHEK commented that the response given by the Administration had simplified the situation put forward by HKABs. He urged the Administration to provide a clear response to address the concern of HKABs.</p> <p>As requested by the Chairman, the Administration would follow up with HKABs and the Law Society of Hong Kong regarding the legal and technical issues raised by the two organizations and report to the Bills' Committee the outcome in due course.</p> | <p>The Administration to follow up as stated in paragraphs 4(b) and (c) of the minutes.</p> |
| <p>004359 – 005630</p> | <p>Chairman Mr James TO Mr Abraham SHEK Mr Tony TSE Administration</p> | <p><u>Items 37 & 38</u></p> <p>Mr Abraham SHEK queried the Administration's justifications for not accepting declaration by shareholders of companies owned by HKPRs for the purpose of exemption from BSD. He proposed extending the applicability of the declaration mechanism by individual HKPR buyers to shareholders of companies owned by HKPRs.</p> <p>Mr James TO opined that for consistency, the declaration mechanism should be applicable to both individual HKPR buyers and company buyers (companies owned by HKPR shareholders) for the purpose of exemption from BSD in the acquisition of residential properties. The Administration could verify the shareholders' information provided in the declaration against the Companies Registry's records.</p> <p>The Administration responded that:</p> <p>(a) where residential property was held by a</p> | |

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| | | <p>company, the ownership in the residential property might indirectly be transferred by a transfer of the shares of the company owning such residential property to a non-HKPR by way of nomination, declaration of trust or power of attorney. These transactions of company's shares were not legally required to be registered at the Companies Registry and the parties involved might conceal such transfer of company's shares by not notifying IRD of such transfer; and</p> <p>(b) unlike the declarations by individual buyers which concerned ownership of the residential property and could easily be verified by checking against the property ownership records at the Land Registry, the declarations by the company's shareholders concerned facts regarding the ownership of the company for which the ultimate controlling party(ies) could be concealed by way of share transfers not subject to the statutory registration requirement administered by the Companies Registry.</p> <p>In response to Mr James TO's enquiry on whether the Administration would recover the unpaid BSD from the buyer and seller of a property transaction in which the buyer's declaration of his/her HKPR status for exemption from BSD on acquisition of the property was subsequently found untrue by the Government, the Administration advised that:</p> <p>(a) IRD would recover the unpaid BSD from the buyer if the case in question involved a false declaration on the status of HKPR by the buyer;</p> <p>(b) the responsibility for payment of BSD laid on the buyer. Seller of the property was not liable to the payment of BSD; and</p> <p>(c) provisions stipulating admissibility of instruments not duly stamped with the BSD in case of false declaration were being drafted for incorporation into the Bill.</p> <p>In replying Mr Abraham SHEK's query on the</p> | <p>The</p> |

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| | | <p>basis of determining the amount of BSD unpaid or underpaid, the Administration advised that stamp duty was charged on instruments. Hence, IRD would take value of the residential property as at the date of the chargeable agreement for sale as the basis to determine the amount of BSD unpaid or underpaid.</p> <p>In response to Mr Tony TSE's enquiry, the Administration advised that for BSD purpose, the chargeable agreement mentioned in the above paragraph referred to the formal agreements for sale and purchase of a residential property transaction.</p> | <p>Administration to follow up as stated in paragraphs 4(b) of the minutes.</p> |
| 005631 – 005820 | Chairman Mr WU Chi-wai Administration | <p>In response to Mr WU Chi-wai's enquiry, the Chairman requested the Administration to advise, before the Bills Committee proceeded to clause-by-clause examination of the Bill, whether CSAs would be proposed to the Bill in respect of items 32, 34 and 38, in the light of the views expressed by HKABs.</p> | |
| 005821 – 010517 | Chairman Mr James TO Mr Abraham SHEK Administration | <p>Mr James TO's commented that the "six-year" period of the proposed BSD refund mechanism for redevelopment project was too short as acquisition of property ownerships for the lot for redevelopment usually took more than a decade to complete. The Administration clarified that:</p> <p>(a) the "six-year period" would only start counting when the relevant developer had become the owner of the entire lot of the redevelopment concerned; and</p> <p>(b) the developer would be considered to have completed the construction if it had obtained, within six years thereafter, the Occupation Permit (OP) in respect of the redevelopment, or the first OP if there was more than one for the entire redevelopment.</p> <p>Mr Abraham SHEK reiterated his view that BSD would dampen private property developers' interest in property redevelopment, thereby delaying the progress of redevelopment.</p> | |

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| 010518 – 011745 | Chairman Mr James TO Mr WONG Ting-kwong Mr Abraham SHEK Administration | <p>Addressing Mr James TO's and Mr WONG Ting-kwong's concerns about the risk of tax evasion in exempting companies owned by HKPRs from BSD, the Administration was requested to provide concrete examples to illustrate the extent of the potential risks, possible loopholes and operation difficulties arising from abuse of the declaration mechanism for the proposed exemption.</p> <p>Mr Abraham SHEK requested the Administration to consider the proposal submitted by the Real Estate Developers Association of Hong Kong for plugging the loopholes that might arise from the proposed exemption, which included criminal sanction to provide greater deterrence.</p> <p>Members completed their deliberations on the Administration's responses to the submissions from the Law Society of Hong Kong, the Hong Kong Conveyancing & Property Law Association Limited and the HKABs in LC Paper No. CB(1)893/12-13(02).</p> | The Administration to follow up as stated in paragraphs 4(d) of the minutes. |
| 011746 – 011805 | Chairman Mr James TO | In response to the Chairman, Mr James TO said that he had no follow-up questions on the Administration's responses to the written questions raised in his letters dated 30 January 2013, 11 March 2013 and 22 April 2013 respectively for the time being. | |
| 011806 – 012034 | Chairman Mr Abraham SHEK | <p>The Chairman advised that STH would be invited to attend the next meeting of the Bills Committee to respond to members' concerns over the policy aspect of the Bill, in particular the policy considerations relating to the proposed exemption for companies owned by HKPRs from BSD and the proposed BSD refund mechanism for redevelopment activities.</p> <p>In response to Mr Abraham SHEK's request for the Administration to forward to the Bills Committee its written responses to the outstanding issues raised in The Law Society of Hong Kong's submission, the Chairman advised that the Administration had been requested to communicate with the concerned professional bodies, including the HKABs and The Law Society of Hong Kong, regarding the legal and</p> | The Administration to follow up as stated in paragraph 4(c) of the minutes. |

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| | | technical issues raised in their submissions and report to the Bills Committee on the outcome of its follow-up actions. | |
| 012035 – 012400 | Chairman Mr Abraham SHEK ALA5 | Mr Abraham SHEK suggested and members agreed that the Bills Committee would proceed to clause-by-clause examination of the Bill upon : (a) clarifications on the policy issues made by STH on the Bill at the next meeting of the Bills Committee; and (b) receipt of the CSAs to be proposed by the Administration. Members also agreed that the technical issues raised by ALA5 in her letters dated 1 February 2013, 20 February 2013 and 3 April 2013 to the Administration would be dealt with during clause-by-clause examination of the Bill. | |
| 012401– 012417 | Chairman | Meeting arrangements | |