

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1017/13-14  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/1/12

**Bills Committee on Stamp Duty (Amendment) Bill 2012**

**Minutes of the fourteenth meeting on  
Thursday, 3 October 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 CHAN Kam-lam, SBS, JP
  - Hon Emily LAU Wai-hing, JP
  - Hon Tommy CHEUNG Yu-yan, SBS, JP
  - Hon WONG Kwok-hing, BBS, MH
  - Hon Jeffrey LAM Kin-fung, GBS, JP
  - Hon Andrew LEUNG Kwan-yuen, 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 Paul TSE Wai-chun, JP
  - Hon Alan LEONG Kah-kit, SC
  - Hon James TIEN Pei-chun, GBS, JP
  - Hon WU Chi-wai, MH
  - Hon Charles Peter MOK
  - Hon LEUNG Che-cheung, BBS, MH, JP
  - Hon Kenneth LEUNG
  - Hon POON Siu-ping, BBS, MH
  - Hon TANG Ka-piu
  - Dr Hon CHIANG Lai-wan, JP
  - Hon Tony TSE Wai-chuen
- Members absent** :
- Hon LEE Cheuk-yan
  - Hon Abraham SHEK Lai-him, GBS, JP
  - Hon Mrs Regina IP LAU Suk-yeet, GBS, JP

Hon YIU Si-wing  
Hon CHAN Yuen-han, SBS, JP

**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 Derrick CHOW  
Acting 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 TAM Tai-pang, 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)1815/12-13 -- Minutes of meeting held on  
4 February 2013)

The minutes of the meeting held on 4 February 2013 were confirmed.

**II. Meeting with the Administration**

(LC Paper No. CB(1)1843/12-13(01) -- List of follow-up actions  
arising from the discussion at  
the meeting on 16 September  
2013

LC Paper No. CB(1)1843/12-13(02) -- Administration's response to  
issues raised at the meeting  
on 16 September 2013

LC Paper No. CB(1)1784/12-13(01) -- Hon Abraham SHEK  
(*English version only*) Lai-him's letter dated 12  
September 2013

LC Paper No. CB(1)1843/12-13(03) -- Administration's response to  
Hon Abraham SHEK  
Lai-him's letter dated 12  
September 2013 as set out in  
LC Paper No.  
CB(1)1784/12-13(01)

Clause-by-clause examination of the Bill

LC Paper No. CB(1)1719/12-13(01) -- Draft Committee Stage  
amendments to be moved by  
the Administration

- LC Paper No. CB(1)1806/12-13(01) -- Hon Abraham SHEK  
(*Chinese version only*) Lai-him's letter dated 16  
September 2013
- LC Paper No. CB(1)1826/12-13(01) -- Draft Committee Stage  
amendment proposed by  
Hon Abraham SHEK  
Lai-him
- LC Paper Nos. -- Draft Committee Stage  
CB(1)1826/12-13(02) and (03) amendments proposed by  
Hon Andrew LEUNG  
Kwan-yuen
- 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)

Relevant papers issued previously

- 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)

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 Ronny TONG, Mr James TIEN, Ms Emily LAU, Mr Andrew LEUNG, Mr Alan LEONG, Mr WONG Ting-kwong, Mr CHAN Kam-lam, Mr POON Siu-ping, Mr LEUNG Che-cheung, Dr CHIANG Lai-wan, Dr LAM Tai-fai, Mr Jeffrey LAM, Mr James TO and Mr Tony TSE made declaration of interests respectively.

5. The Administration was requested to:

(a) provide information on –

(i) the number of local companies incorporated in Hong Kong before and after the introduction of the Buyer's Stamp Duty (BSD) in October 2012;

(ii) the number of residential property transactions involving company buyers, and the percentage share of the total number of residential property transactions before and after the introduction of the BSD; and

(iii) the Administration's assessment of the impact of the demand-side management measures on the operating environment and employment situation of the estate agency trade.

(b) explain the reasons for the two alternative conditions for application for a refund of the BSD paid under the proposed revised BSD refund mechanism for redevelopment as set out in paragraphs 2(a) and 2(b) in LC Paper No. CB(1)1719/12-13(01);

(c) clarify whether under the BSD refund mechanism for redevelopment, the buyer of a lot for redevelopment purpose should be entitled to any exemption from or refund of the BSD if the previous owner-developer has been refunded the BSD paid for the same lot;

(d) advise whether the purchase of a bare site in the secondary market, after the seller had demolished the original buildings existing on the lot, would be subject to the BSD; and

- (e) explain the reasons for the owner of a lot for redevelopment to be eligible to apply for a refund of the BSD paid either alone or jointly with an associated body corporate within the meaning of section 45(2) 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)50/13-14(01) on 11 October 2013.)*

### **III. Any other business**

6. The Chairman reminded members that the next meeting would be held on Tuesday, 15 October 2013 at 4:30 pm.

7. There being no other business, the meeting ended at 12:42 pm.

Council Business Division 1  
Legislative Council Secretariat  
24 March 2013

**Proceedings of the fourteenth meeting of  
the Bills Committee on Stamp Duty (Amendment) Bill 2012  
on Thursday, 3 October 2013, at 10:45 am  
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda Item I - Confirmation of minutes of meeting</b>			
000008 – 000040	Chairman	Opening remarks  Confirmation of minutes of meeting held on 4 February 2013 (LC Paper No. CB(1)1815/12-13)	
<b>Agenda Item II - Meeting with the Administration</b>			
000041 – 000207	Chairman Mr Ronny TONG Mr James TIEN Ms Emily LAU Mr Andrew LEUNG Mr Alan LEONG Mr WONG Ting-kwong Mr CHAN Kam-lam Mr POON Siu-ping Mr LEUNG Che-cheung Dr CHIANG Lai-wan Dr LAM Tai-fai	Disclosure of direct or indirect pecuniary interest by members	
000208 – 000403	Chairman Administration	Members noted that the Administration had provided written responses to the issues raised at the meeting on 16 September 2013, as well as Mr Abraham SHEK's letter of 12 September 2013. (LC Paper Nos. CB(1)1843/12-13(02) and (03))	
000404 – 001316	Chairman Mr Andrew LEUNG Administration	Mr Andrew LEUNG questioned the justifications for accepting declarations made by individual Hong Kong permanent resident (HKPR) buyers under the Buyer's Stamp Duty (BSD) regime on one hand but not considering the declaration mechanism for refunding the BSD paid by HKPR-owned companies on specific conditions proposed by Mr Abraham SHEK.  The Administration's response –  (a) it had examined members' suggestions on a declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD or refunding the BSD paid on specific conditions thoroughly;	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) it considered that the statutory declaration made by a HKPR as a company shareholder would create loopholes that were difficult to plug; and</p> <p>(c) the difference between declarations made by a HKPR as an individual and as a company shareholder had been explained in detail in the Administration's response to the issues raised at the meeting on 16 September 2013 (LC Paper No. CB(1)1843/12-13(02)).</p>	
001317 – 001828	Chairman Mr LEUNG Che-cheung Administration	<p>Mr LEUNG Che-cheung's views and enquiry –</p> <p>(a) after the introduction of the BSD and the enhanced Special Stamp Duty (SSD) in October 2012, the residential property market had been frozen with a plunge in the number of transactions. However, there was no apparent fall in residential property prices;</p> <p>(b) the Administration's estimation of the time at which the residential property market would return to a normal state, and the residential property prices return to a level affordable to the general public; and</p> <p>(c) whether the Administration would consider setting a time limit for the BSD and the SSD.</p> <p>The Administration's response –</p> <p>(a) apart from the overall demand and supply, the residential property prices were affected by various external factors including the influx of capital, the ultra-low interest rate environment etc., which were beyond the Administration's control;</p> <p>(b) the supply of private residential properties would depend on property developers' willingness to acquire land from the Government, as well as their schedule of sale of the completed residential units. These were commercial decisions of the developers which were beyond the Administration's control; and</p> <p>(c) it was impossible for the Administration to</p>	



Time marker	Speaker	Subject(s)	Action required
		<p>predict future market changes and various external factors, and come up with a date as to when the demand-side management measures would no longer be applicable. Therefore, any prescribed sunset clause might only disseminate erroneous messages to the market and fuel demand, and undermine the effectiveness of the measures. The Administration would continue to monitor the private residential property market closely, and consider withdrawing the demand-side management measures after the demand-supply situation of the property market had regained its balance.</p>	
001829 – 002636	Chairman Mr WONG Kwok-hing Administration	<p>Mr WONG Kwok-hing's views and enquiries –</p> <ul style="list-style-type: none"> <li>(a) supported the introduction of extraordinary measures to combat short-term speculative activities and cool off the exuberant residential property market;</li> <li>(b) urged the Administration to consider exempting charitable organizations from the BSD if they declared that the residential property acquired was solely used for charitable purposes; and</li> <li>(c) questioned the justifications for the Administration's concern that granting BSD exemption to charitable organizations might stimulate the overall demand for residential properties.</li> </ul> <p>The Administration's response –</p> <ul style="list-style-type: none"> <li>(a) under the present stamp duty regimes, acquisitions of residential property by charitable organizations that were exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112) (IRO) (except for residential properties donated to these charitable organizations by way of gifts) were subject to ad valorem stamp duty;</li> <li>(b) charitable organizations existed in different legal forms including companies, trusts or societies. At present, over 70% of the tax-exempt charitable organizations were corporations registered under the Companies</li> </ul>	

Time marker	Speaker	Subject(s)	Action required
		<p>Ordinance (Cap. 32);</p> <p>(c) section 88 of the IRO did not prohibit charitable organizations from engaging in investment or trading activities not in the course of carrying out of their expressed charitable objects. The Inland Revenue Department (IRD) had not been involved in regulating the day-to-day activities of the charitable organizations; and</p> <p>(d) if tax-exempt charitable organizations were to be exempted from the BSD, there would be a serious risk of abuse of the exemption by setting up a new charitable organization in the form of company to claim the exemption and it would be very difficult for the IRD to verify if the residential property concerned had been used for charitable purpose.</p>	
002637 – 002919	Chairman Dr CHIANG Lai-wan Administration	<p>Dr CHIANG Lai-wan enquired about –</p> <p>(a) the number of local companies incorporated in Hong Kong before and after the introduction of the BSD in October 2012;</p> <p>(b) the number of residential property transactions involving company buyers, and the percentage share of the total number of residential property transactions before and after the introduction of the BSD; and</p> <p>(c) the Administration's assessment of the impact of the demand-side management measures on the operating environment and employment situation of the estate agency trade.</p>	The Administration to follow up as stated in paragraph 5(a) of the minutes.
002920 – 003514	Chairman Mr James TIEN Administration	<p>Referring to the labour shortage in the construction industry in recent years, Mr James TIEN enquired about the Administration's estimated/target time by which the increase in residential property supply would materialize and the residential property market return to a normal state.</p> <p>The Administration's response –</p> <p>(a) it was fully aware that there had been a tight supply of labour in the construction industry in recent years, and would continue to monitor the situation;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) the Chief Executive (CE) 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; and</p> <p>(c) the supply of private residential properties would depend on property developers' willingness to acquire land from the Government, as well as their schedule of sale of the completed residential units. These were commercial decisions of the developers which were beyond the Administration's control.</p>	
003515 – 003607	Chairman Mr WONG Ting-kwong Administration	In response to Mr WONG Ting-kwong's enquiry, the Administration confirmed that drawing reference from the present ad valorem stamp duty and the SSD regimes, it was proposed in the Bill that gifts of residential property to charitable organizations exempted from tax under section 88 of the IRO would be exempted from the BSD.	
003608 – 004829	Chairman Mr Alan LEONG Mr Ronny TONG Administration	<p>Mr Alan LEONG's and Mr Ronny TONG's views –</p> <p>(a) the Civic Party supported the objectives of the demand-side management measures to accord priority to HKPR buyers over non-HKPR buyers under the tight supply situation in the residential property market, combat short-term speculative activities, and cool off the exuberant residential property market;</p> <p>(b) nevertheless, HKPR-owned companies and charitable organizations should be exempted from the BSD if they acquired residential properties for self-use, long-term investment or charitable purposes.</p> <p>The Administration's response –</p> <p>(a) to provide exemptions that were more than necessary would affect the effectiveness of the BSD in according priority to the home ownership needs of HKPRs, and would send a wrong message to the public that the Administration was less than determined in cooling down the exuberance in the residential property market;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) the Administration had explained its concerns about the possible loopholes and the difficulties to plug these loopholes in exempting HKPR-owned companies or charitable organizations from the BSD; and</p> <p>(c) it was proposed in the Bill that gifts of residential property to charitable organizations would be exempted from the BSD. The Administration was of the view that the Bill had struck the right balance in preserving the policy objective of the BSD and addressing the needs of charitable organizations.</p>	
004830 – 005350	Chairman Mr Jeffrey LAM Administration	<p>Mr Jeffrey LAM questioned the justifications for accepting declarations made by individual HKPR buyers under the BSD regime on one hand but not considering the declaration mechanism for refunding the BSD paid by HKPR-owned companies on specific conditions proposed by Mr Abraham SHEK.</p> <p>The Administration's response –</p> <p>(a) it considered that the statutory declaration made by a HKPR as a company shareholder would create loopholes that were difficult to plug;</p> <p>(b) the difference between declarations made by a HKPR as an individual and as a company shareholder had been explained in detail in the Administration's response to the issues raised at the meeting on 16 September 2013 (LC Paper No. CB(1) 1843/12-13(02)); and</p> <p>(c) given the fact that the BSD was an extraordinary measure introduced under exceptional circumstances, the Administration considered that it would be against the principle of proportionality if substantial changes to the existing company and taxation regimes were to be adopted to plug these loopholes.</p>	
005351 – 005945	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU's views –</p> <p>(a) increasing land and residential property</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>supply was the ultimate solution to address the continued exuberant state of the residential property market. However, the Administration was unable to provide an estimation on when the increase of residential property supply would materialize; and</p> <p>(b) the Administration should, in collaboration and consultation with the Legislative Council and the District Councils, strive to increase land and residential property supply to tackle the housing problem at source as soon as practicable.</p> <p>The Administration's response –</p> <p>(a) the Long Term Housing Steering Committee recommended the Administration to enhance its role in the provision of housing in order to resolve the problem of supply-demand imbalance. The future housing strategy is recommended to be supply-led; and</p> <p>(b) the CE 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. It was estimated that about 71 000 first-hand flats should come on the private residential property market in the next three to four years. The Administration aimed to identify sites for developing 20 000 private housing units each year.</p>	
005946 – 010834	Chairman Mr James TO Administration	<p>Mr James TO questioned the justifications for accepting declarations made by individual HKPR buyers under the BSD regime on one hand but not considering the declaration mechanism for refunding the BSD paid by HKPR-owned companies on specific conditions proposed by Mr Abraham SHEK.</p> <p>Mr TO questioned why the risk of abuse of the declaration mechanism for shareholders/directors of a HKPR company to circumvent the BSD was, according to the Administration, higher than that for an individual HKPR buyer as common sense would tell that it would be far more difficult to control a number of different company shareholders than one individual person.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration reiterated that the statutory declaration made by a HKPR as a company shareholder would create loopholes that were difficult to plug. The statutory declaration made by an individual buyer was very different from that made by a company shareholder in terms of the content of the declaration, the verification work required and the risk of BSD evasion. The details had been explained in the Administration's response to the issues raised at the meeting on 16 September 2013 (LC Paper No. CB(1)1843/12-13(02)).</p>	
010835 – 010851	Chairman Mr Kenneth LEUNG Administration	<p>In response to Mr Kenneth LEUNG's enquiry, the Chairman advised that the Bills Committee would proceed to clause-by-clause examination of the Bill in the latter part of the meeting.</p>	
010852 – 011227	Chairman Mr Andrew LEUNG Administration	<p>Mr Andrew LEUNG was dissatisfied that while the Administration emphasized that the BSD and the SSD were extraordinary measures introduced under the current exceptional circumstances, the Administration was unable to advise when the demand-side management measures would no longer be necessary.</p> <p>The Administration reiterated that it was impossible to predict future market changes and various external factors, and come up with a date as to when the demand-side management measures would no longer be necessary. Therefore, any prescribed sunset clause might only disseminate wrong messages to the market and fuel demand, thus undermining the effectiveness of the measures. The Administration would continue to monitor the private residential property market closely, and to adjust the applicable rates of the BSD and the SSD (to zero if necessary) in a timely manner with reference to the market situation.</p>	
011228 – 011236	Chairman Mr Jeffrey LAM	<p>Disclosure of direct or indirect pecuniary interest by Mr Jeffrey LAM</p>	
011237 – 012214	Chairman Mr James TO Mr Andrew LEUNG Dr CHIANG Lai-wan Administration	<p>Disclosure of direct or indirect pecuniary interest by Mr James TO</p> <p>Discussion on the loopholes and the risks of abuse of the declaration mechanism for the purpose of</p>	

Time marker	Speaker	Subject(s)	Action required
		refunding the BSD paid by HKPR-owned companies	
012215 – 012506	Chairman Administration	Briefing by the Administration on the proposed committee stage amendments in respect of the revised mechanism to refund the BSD for redevelopment projects (LC Paper No. CB(1)1719/12-13(01))	
012507 – 014537	Chairman Mr James TO Mr Tony TSE Administration	<p>Disclosure of direct or indirect pecuniary interest by Mr James TO and Mr Tony TSE</p> <p>Mr James TO enquired about the reasons for the two alternative conditions for application for a refund of the BSD paid under the proposed revised BSD refund mechanism for redevelopment as set out in paragraphs 2(a) and 2(b) in LC Paper No. CB(1)1719/12-13(01).</p> <p>Mr Tony TSE enquired whether under the BSD refund mechanism for redevelopment, the buyer of a lot for redevelopment purpose should be entitled to any exemption from or refund of the BSD if the previous owner-developer has been refunded the BSD paid for the same lot.</p>	The Administration to follow up as stated in paragraphs 5(b) and 5(c) of the minutes.
014538 – 014907	Chairman Mr Andrew LEUNG Administration	Mr Andrew LEUNG enquired whether the purchase of a bare site in the secondary market, after the seller had demolished the original buildings existing on the lot, would be subject to the BSD.	The Administration to follow up as stated in paragraph 5(d) of the minutes.
014908 – 015500	Chairman Mr James TO Administration	Mr James TO enquired about the reasons for the owner of a lot for redevelopment to be eligible to apply for a refund of the BSD paid either alone or jointly with an associated body corporate within the meaning of section 45(2) of the Stamp Duty Ordinance (Cap. 117).	The Administration to follow up as stated in paragraph 5(e) of the minutes.
015501 – 015607	Chairman	Meeting arrangements	
<b>Agenda Item III – Any other business</b>			
015608 – 015626	Chairman	Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
24 March 2014