

立法會
Legislative Council

LC Paper No. CB(1)1216/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/12

Bills Committee on Stamp Duty (Amendment) Bill 2012

**Minutes of the fifteenth meeting on
Tuesday, 15 October 2013, at 4:30 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 LEE Cheuk-yan
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, GBS, 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 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 YIU Si-wing
Hon Charles Peter MOK
Hon CHAN Yuen-han, SBS, 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 WU Chi-wai, MH
Hon LEUNG Che-cheung, BBS, MH, JP

Public officers attending : Agenda item I

Transport and Housing Bureau

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

Mr Kasper NG
Acting Principal Assistant Secretary for Transport
and Housing (Housing) (Private Housing)

Financial Services and the Treasury Bureau

Mr LAU Wai-ming
Assistant Secretary for Financial Services and the
Treasury (Treasury) (R) 2

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. Meeting with the Administration

(LC Paper No. CB(1)15/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 3 October 2013

LC Paper No. CB(1)50/13-14(01) -- Administration's response to issues raised at the meeting on 3 October 2013

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)15/13-14(02) -- Marked-up copy of the Administration's proposed Committee Stage amendments to the Bill prepared by the Legal Service Division

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)

- LC Paper No. CB(1)1826/12-13(01) -- Draft Committee Stage amendment proposed by Hon Abraham SHEK Lai-him
- LC Paper Nos. CB(1)1826/12-13(02) and (03) -- Draft Committee Stage amendments proposed by Hon Andrew LEUNG Kwan-yuen
- LC Paper No. CB(1)62/13-14(01) -- Administration's responses to draft Committee Stage amendments proposed by Hon Abraham SHEK Lai-him and Hon Andrew LEUNG Kwan-yuen as set out in LC Paper Nos. CB(1)1826/12-13(01), (02) and (03)

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

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)

LC Paper No. CB(1)1806/12-13(01) -- Hon Abraham SHEK (*Chinese version only*) Lai-him's letter dated 16 September 2013)

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 James TIEN, Dr CHIANG Lai-wan, Mrs Regina IP, Mr Tony TSE, Mr Kenneth LEUNG, Mr Ronny TONG, Mr Alan LEONG, Mr POON Siu-ping, Mr YIU Si-wing, Mr Abraham SHEK, Mr Jeffrey LAM and Mr CHAN Kam-lam made declaration of interests respectively.

4. The Administration was requested to:

(a) In respect of clause 5 of the Bill –

(i) address members' concern about the possible abuse of the exemption from the Buyer's Stamp Duty (BSD) for Hong Kong permanent residents (HKPRs) in the case of a non-HKPR evading the payment of the BSD in the acquisition of a residential property by acting as the guardian or trustee of a HKPR minor (including children born of "doubly non-permanent resident pregnant women" ("雙非兒童")) or mentally incapacitated person; and

(ii) for the purpose of addressing the possible loopholes of the BSD evasion in (i) above, consider members' suggestions as follows –

(A) only a HKPR could act as a guardian or trustee;

- (B) each guardian or trustee could only act for one other person;
 - (C) only parent(s) of a minor (including children born of "doubly non-permanent resident pregnant women" ("雙非兒童")) could act as the minor's guardian or trustee; and/or
 - (D) BSD exemption would only be granted to acquisition of a residential property by a HKPR over 18 years of age acting on his or her own behalf.
- (b) In respect of clause 5(1)(b) of the Bill, consider Mr Ronny TONG's suggestion to improve textual clarity for avoidance of doubt; and
- (c) In respect of clause 6 of the Bill, clarify whether a buyer was liable to pay the BSD where an agreement for sale was cancelled, annulled or rescinded or was otherwise not performed.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)133/13-14(02) on 25 October 2013.)

II. Any other business

5. The Chairman reminded members that the next meeting would be held on Monday, 28 October 2013 at 2:30 pm.
6. There being no other business, the meeting ended at 6:23 pm.

**Proceedings of the fifteenth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2012
on Tuesday, 15 October 2013, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I - Meeting with the Administration			
000255 – 000310	Chairman	Opening remarks	
000311 – 000500	Chairman Mr James TIEN Dr CHIANG Lai-wan Mrs Regina IP Mr Tony TSE Mr Kenneth LEUNG Mr Ronny TONG Mr Alan LEONG Mr POON Siu-ping Mr YIU Si-wing Mr Abraham SHEK Mr Jeffrey LAM Mr CHAN Kam-lam	Disclosure of direct or indirect pecuniary interest by members	
000501 – 000850	Chairman Administration	The Administration's explanation on its response to the issues raised at the meeting of the Bills Committee held on 3 October 2013 (LC Paper No. CB(1)50/13-14(01))	
000851 – 001347	Chairman Mr Tony TSE Administration	<p>To ensure that the developers would commence the redevelopment projects as soon as possible, Mr Tony TSE suggested the Administration to consider –</p> <p>(a) setting a time limit for the application for refund of the BSD paid after the developer had become the owner of the entire lot to be redeveloped; and/or</p> <p>(b) the buyer of a lot for redevelopment purpose should not be entitled to a refund of the BSD if the previous owner-developer had been refunded the BSD paid for the same lot.</p> <p>The Administration's response –</p> <p>(a) as the stated policy intention was that the BSD should not hinder redevelopment, the conditions for refund should therefore not be over stringent;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) the revised refund mechanism was meant to cater for different redevelopment scenarios and to provide developers with greater flexibility in applying for the refund of the BSD paid with reference to the actual situation of their redevelopment projects; and</p> <p>(c) given the substantial amount of investment made in the acquisition of the entire lot to be redeveloped, it was considered that developers generally would have no intention to delay the commencement of the redevelopment project.</p> <p>The Chairman concurred that the conditions for refund should not be over stringent so that the BSD would not hinder redevelopment.</p>	
001348 – 001528	Chairman Mr Abraham SHEK	Mr Abraham SHEK welcomed the Administration's revised BSD refund mechanism for redevelopment projects. However, he was dissatisfied with the differential treatment whereby companies engaging in redevelopment projects, having satisfied the relevant conditions, could receive refund of the BSD paid while companies owned by Hong Kong permanent residents (HKPRs) could not enjoy any exemption or refund in acquiring residential properties for long-term investment or self-use.	
001529 – 002103	Chairman Administration	<p>Briefing by the Administration on the Committee Stage amendments (CSAs) proposed by the Administration (LC Paper No. CB(1)1719/12-13(01))</p> <p>CSAs in respect of exempting certain acquisitions of a replacement property by non-HKPRs from the BSD.</p> <p>The Chairman sought clarification on the non-HKPR property owner's responsibility to apply for exemption from the BSD in respect of the acquisition of a replacement property.</p> <p>CSAs in respect of –</p> <p>(a) admissibility of instruments not duly stamped with the BSD;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) consequential amendment to the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013; and</p> <p>(c) others amendments to improve the clarity of the Bill.</p> <p>Members raised no question.</p>	
<i>Clause-by-clause examination of the Bill</i>			
002104 – 002509	Chairman Administration	<p><u>Clause 1 – Short title and commencement</u></p> <p><u>Clause 2 – Stamp Duty Ordinance amended</u></p> <p><u>Clause 3 – to amend Section 2 (interpretation)</u></p> <p>Members raised no question on clauses 1 to 3.</p>	
002510 – 003232	Administration Mrs Regina IP	<p><u>Clause 4 – to amend Section 4 (charging of, liability for , and recovery of stamp duty)</u></p> <p>The Chairman's enquiry on the recovery of the BSD in the case of the buyer went bankrupt.</p> <p>Mrs Regina IP's enquiry on the six-year time limit for the recovery of the BSD, as well as the time limit for appeal against stamp duty assessment.</p> <p>The Administration's response –</p> <p>(a) in the case of the buyer went bankrupt, a claim for the outstanding BSD would be filed to the buyer's receiver;</p> <p>(b) the existing section 4(5) of the Stamp Duty Ordinance (SDO) stipulated that no action should be brought for the recovery of any stamp duty including the ad valorem stamp duty and the special stamp duty with respect to any instrument more than six years from the expiration of the time for stamping such instrument; and</p> <p>(c) section 14 of SDO provided that any person who was dissatisfied with the assessment of the Collector may appeal to the District Court. The appeal should be made within one month from the date of assessment or within such</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>period as the District Court might allow by notice served on the Registrar of the District Court.</p>	
003233 – 003940	Administration	<p>Proposed CSAs on admissibility of instruments not duly stamped with the BSD (LC Paper No. CB(1)1719/12-13(01))</p> <p><u>New Clause 4A – to amend Section 15 (non-admissibility, etc. of instruments not duly stamped)</u></p> <p>Members raised no question.</p>	
003941 – 013621	<p>Administration Mr Ronny TONG Mr Andrew LEUNG Mrs Regina IP Chairman Dr CHIANG Lai-wan Mr Tony TSE Mr Abraham SHEK Dr LAM Tai-fai Mr Jeffrey LAM Mr James TO Mr Paul TSE Mr WONG Ting-kwong Mr YIU Si-wing</p>	<p><u>Clause 5 – to amend Section 29A (interpretation and application of Part IIIA)</u></p> <p>In respect of the definition of "HKPR" in clause 5(1)(a) and (b) of the Bill, Mr Ronny Tong suggested the Administration to consider improving the textual clarity of clause 5(1)(b) by stipulating that HKPRs who possessed a certificate of exemption issued by the Immigration Department be regarded as HKPRs and hence are exempted from the BSD. Mr Tony TSE expressed concern about the definition of HKPR for the purpose of exemption from the BSD.</p> <p>Members expressed grave concern about the possible abuse of the exemption from the BSD for HKPRs in the case of a non-HKPR evading the payment of the BSD in the acquisition of a residential property by acting as the guardian or trustee of a HKPR minor (including children born of "doubly non-permanent resident pregnant women" ("雙非兒童")) or mentally incapacitated person.</p> <p>For the purpose of addressing the above possible loopholes of BSD evasion, members made the following suggestions for the Administration's consideration –</p> <p>(a) only a HKPR could act as a guardian or trustee;</p> <p>(b) each guardian or trustee could act for one other person;</p>	<p>The Administration to follow up as stated in paragraph 4(b) of the minutes.</p> <p>The Administration to follow up as stated in paragraph 4(a) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>(c) only parent(s) of a minor (including children born of "doubly non-permanent resident pregnant women" ("雙非兒童")) could act as the minor's guardian or trustee; and/or</p> <p>(d) BSD exemption would only be granted to acquisition of a residential property by a HKPR over 18 years of age acting on his or her own behalf.</p> <p>Referring to the examples of non-HKPRs adopting HKPR children, Dr LAM Tai-fai expressed reservation about the suggestion that only a HKPR could act as the guardian of a minor.</p> <p>Mr Abraham SHEK and Dr LAM Tai-fai questioned the Administration's justifications for disregarding the possible loopholes of BSD evasion by a non-HKPR acting as the guardian or trustee of a HKPR minor or mentally incapacitated person in acquiring a residential property, while not considering exempting HKPR companies from BSD, and playing up the high risk of BSD evasion by HKPR companies through secret transfer of ownership and control of assets (including residential properties) by HKPR shareholders to non-HKPRs in a concealed way.</p> <p>Mr Paul TSE was concerned whether the Administration would remove altogether the BSD exemption for HKPRs in view of members' concerns about the aforementioned loopholes of the BSD evasion.</p>	
013622 – 014547	Administration Mr Andrew LEUNG Assistant Legal Adviser 5 (ALA5) Mr Ronny TONG	<p><u>Clause 6 – to amend Section 29B (duty to execute agreement for sale)</u></p> <p>Mr Andrew LEUNG, Mr Ronny TONG and ALA5 sought clarification on whether a buyer was liable to pay the BSD where an agreement for sale was cancelled, annulled or rescinded or was otherwise not performed.</p>	The Administration to follow up as stated in paragraph 4(c) of the minutes.
014548 – 015042	Mr James TO Administration	Mr James TO enquired whether there was a statutory definition of "guardian". He requested the Administration to carefully consider the two different concepts of a de facto guardian and a legally appointed guardian.	

Time marker	Speaker	Subject(s)	Action required
		The Administration responded that there was no statutory definition of "guardian" in Hong Kong and the ordinary meaning would be taken. The Administration noted members' views and concerns about the possible abuse of the exemption from the BSD in the case of a non-HKPR acquiring a residential property on behalf of a HKPR minor/mentally incapacitated person in the capacity of a guardian/trustee.	
015043 – 015340	Administration Mr Abraham SHEK	<u>Clause 7 – to amend Section 29C (chargeable agreements for sale)</u> The Administration advised that section 29C was amended to take into account the introduction of the BSD. Members raised no objection.	
Agenda Item II – Any other business			
015341 – 015409	Chairman	Date of next meeting	