

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1410/13-14  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/1/12

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

**Minutes of the sixteenth meeting on  
Monday, 28 October 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 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 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  
Dr Hon CHIANG Lai-wan, JP  
Hon Tony TSE Wai-chuen

**Members absent** : Hon WONG Ting-kwong, SBS, JP  
Hon POON Siu-ping, BBS, MH  
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)

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

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Action

**I. Meeting with the Administration**

(LC Paper No. CB(1)133/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 15 October 2013

LC Paper No. CB(1)133/13-14(02) -- Administration's response to issues raised at the meeting on 15 October 2013

Clause-by-clause examination of the Bill

*Starting from clause 8*

LC Paper No. CB(3)263/12-13 -- The Bill

LC Paper No. CB(1)454/12-13(02) -- Mark-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)

LC Paper No. CB(1)15/13-14(02) -- Mark-up copy of the Administration's proposed Committee Stage amendments to the Bill prepared by the Legal Service Division

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

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

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 Andrew LEUNG, Mr Abraham SHEK, Mr Kenneth LEUNG, Mr James TIEN, Mr Jeffrey LAM, Mr Tony TSE, Mr LEUNG Che-cheung, Mr CHAN Kam-lam, and Mr James TO made declaration of interests respectively.

4. The Administration was requested to provide written response on the following issues:

Follow-up to the Administration's response to issues raised at the meeting on 15 October 2013 (LC Paper No. CB(1)133/13-14(02))

- (a) in respect of the administrative measures to guard against potential abuse of the exemption from the Buyer's Stamp Duty (BSD) for Hong Kong permanent residents (HKPRs) in the case of a non-HKPR acquiring a residential property as the guardian or trustee of a HKPR minor or mentally incapacitated person –
  - (i) to advise how the Administration would ascertain the exact nature and details of the trust and whether the trust or guardianship was bona fide;

- (ii) to consider members' suggestion of providing that only certain types of trust (e.g. irrevocable trust) would be accepted to avoid potential abuse of the exemption;
- (iii) to advise whether a company, a de facto guardian (e.g. siblings, grandparents or other relatives), a court order or guardianship order issued by other jurisdictions would be acceptable for the purpose of BSD exemption under the Bill; and
- (iv) to seek legal advice from the Department of Justice and explain how, with respect to trust and guardianship arrangements, the administrative measures proposed by the Administration were compatible with the provisions of the Bill and would not be ultra vires under the principles of administrative law.

"Acting on his or her own behalf"

- (b) to address the practical difficulties in ascertaining whether a HKPR was acting on his or her own behalf in the case of an acquisition of a residential property involving provision of funds by persons other than the purchaser who took the legal title of the property in his name, which might create resulting or constructive trusts.

Acquisition of a residential property jointly by HKPR and non-HKPR as tenants in common

- (c) to explain the reasons and justifications for charging the BSD on the total value of the consideration, instead of on the proportion of the share of the non-HKPR where a residential property was acquired jointly by a HKPR and a non-HKPR as tenants in common.

Exempting certain acquisitions of a replacement property by non-HKPRs from the BSD (Proposed section 29CB(4))

- (d) to clarify the restrictions, if any, on the size and value of the replacement property or timeframe for the replacement purchase by a non-HKPR property owner who was made to sell a residential property under the specified legislation;

- (e) to address members' concern about the appropriateness of the use of the terms "replace", "replacement property";
- (f) in the case of acquisitions by the Urban Renewal Authority (URA), to consider members' suggestion of allowing the affected non-HKPR property owner to acquire a replacement property before the acquisition by the URA was completed (e.g. after the commencement of the URA project was gazetted);
- (g) to address members' concerns that additional demand for residential properties would be created when a residential property to be replaced was jointly owned by two or more persons, each of them might make one replacement purchase which would be exempted from the BSD; and
- (h) to advise whether the BSD exemption for a replacement property would be granted in the case of a resumption of the underground strata of a residential property.

*(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)291/13-14(02) on 15 November 2013.)*

## **II. Any other business**

5. The Chairman reminded members that the next meeting would be held on Monday, 18 November 2013 at 10:45 am.
6. There being no other business, the meeting ended at 4:30 pm.

**Proceedings of the sixteenth meeting of  
the Bills Committee on Stamp Duty (Amendment) Bill 2012  
on Monday, 28 October 2013, at 2:30 pm  
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda Item I - Meeting with the Administration</b>			
000252 – 000311	Chairman	Opening remarks	
000312 – 000425	Chairman Mr Andrew LEUNG Mr Abraham SHEK Mr Kenneth LEUNG Mr James TIEN Mr Jeffrey LAM Mr Tony TSE Mr LEUNG Che-cheung,	Disclosure of direct or indirect pecuniary interest by members	
000426 – 000933	Chairman Administration	The Administration's explanation on its response to the issues raised at the meeting of the Bills Committee held on 15 October 2013 (LC Paper No. CB(1)133/13-14(02)).	
000934 – 002829	Chairman Mr Kenneth LEUNG Mr LEUNG Che-cheung Mr Abraham SHEK Mr Andrew LEUNG Mr CHAN Kam-lam Administration	Disclosure of direct or indirect pecuniary interest by Mr CHAN Kam-lam  Members reiterated their grave concerns about the potential abuse of the exemption from the BSD for HKPRs in the case of a non-HKPR acquiring a residential property 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.  Mr Kenneth LEUNG's and Mr Andrew LEUNG's concerns –  (a) how a HKPR minor could decide to acquire a residential property out of his or her own free will; and  (b) whether a HKPR minor born of "doubly non-permanent resident pregnant women" ("雙非兒童") living in the Mainland would have practical home ownership needs in Hong Kong.	



Time marker	Speaker	Subject(s)	Action required
		<p>Mr Abraham SHEK questioned the Administration's justifications for disregarding the possible loopholes of the 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 the BSD evasion by HKPR-owned 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>The Administration's response –</p> <ul style="list-style-type: none"> <li>(a) the policy intent of the BSD was that the home ownership needs of all HKPRs should be accorded priority. As such, all HKPRs who could satisfy the relevant requirements as set out in the Bill, regardless of whether they were minors or mentally incapacitated persons, should be entitled to the same BSD exemption;</li> <li>(b) under the Administration's intended mechanism, there would be administrative measures to guard against potential abuse of the BSD exemption for HKPR minors or mentally incapacitated persons identified by members above. The Inland Revenue Department (IRD) would require documentary evidence to substantiate any claim for exemption from people acting on behalf of HKPR minors or mentally incapacitated persons;</li> <li>(c) the Administration took note of members' suggestions on tightening up the administrative measures to guard against potential abuse of the BSD exemption for HKPR minors or mentally incapacitated persons. The Administration was examining the suggestions in detail; and</li> <li>(d) the Administration had explained in previous meetings of the Bills Committee the possible loopholes which might arise from a declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD and the difficulties to plug these</li> </ul>	

Time marker	Speaker	Subject(s)	Action required
		loopholes, rendering such declaration mechanism vulnerable to abuse.	
002830 – 003919	Chairman Mr James TO Mr Jeffrey LAM Mr Abraham SHEK Administration	In the case of a non-HKPR claiming to be the guardian or trustee of a HKPR minor or mentally incapacitated person in the acquisition of a residential property, Mr James TO and Mr Jeffrey LAM requested the Administration to provide a written response detailing how the Administration would ascertain the exact nature and details of the trust and whether the trust or guardianship was bona fide.	The Administration to follow up as stated in paragraph 4(a)(i) of the minutes.
003920 – 004959	Chairman Dr CHIANG Lai-wan Mr James TO Miss CHAN Yuen-han Administration	The Administration was requested to provide written response on the following issues –  (a) to consider Mr James TO's suggestion of providing that only certain types of trust (e.g. irrevocable trust) would be accepted to avoid potential abuse of the BSD exemption for HKPR minors or mentally incapacitated persons; and  (b) to advise whether a company, or a de facto guardian (e.g. siblings, grandparents or other relatives) would be acceptable for the purpose of the BSD exemption for HKPR minors or mentally incapacitated persons under the Bill.	The Administration to follow up as stated in paragraphs 4(a)(ii) and 4(a)(iii) of the minutes.
005000 – 005528	Chairman Mr Andrew LEUNG Assistant Legal Adviser 5 (ALA5) Administration	With respect to trust and guardianship arrangements, Mr Andrew LEUNG and ALA5 raised the question on how the administrative measures proposed by the Administration were compatible with the provisions of the Bill and would not be ultra vires under the principles of administrative law.	The Administration to follow up as stated in paragraph 4(a)(iv) of the minutes.
005529 – 005842	Chairman Mr James TO Administration	Mr James TO enquired whether a court order or guardianship order issued by other jurisdictions would be acceptable for the purpose of the BSD exemption for HKPR minors or mentally incapacitated persons under the Bill. He expressed concern about the risk of accepting, for the purpose of BSD exemption, court orders or guardianship orders issued by places where the legal system was less well-established.	The Administration to follow up as stated in paragraph 4(a)(iii) of the minutes.

Time marker	Speaker	Subject(s)	Action required
005843 – 010145	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK's views and enquiries –</p> <p>(a) the BSD, which imposed an extra 15% tax on HKPRs acquiring residential properties in the name of companies constituted a breach of Article 25 of the Basic Law which stipulated that all Hong Kong residents should be equal before the law; and</p> <p>(b) in the case of a non-HKPR acquiring a residential property in the capacity as the trustee of a HKPR minor or mentally incapacitated person, whether the Administration would verify the source of fund for the acquisition.</p> <p>The Administration's response –</p> <p>(a) it had explained in previous meetings of the Bills Committee that the BSD and the Special Stamp Duty (SSD) were legitimate government taxation governed by Basic Law Article 108. Article 25 of the Basic Law did not invariably require exact equality amongst all Hong Kong residents, as far as the differences in legal treatment might be justified for good reason. The BSD and the SSD pursued legitimate objectives, and were proportionate and rationally connected to such objectives; and</p> <p>(b) for the purpose of claiming the BSD exemption for HKPR minors or mentally incapacitated persons by the trustees, proof of source of fund for the acquisition was generally not required. That said, the IRD would require documentary evidence to substantiate any claim for exemption from persons acting on behalf of HKPR minors or mentally incapacitated persons.</p>	
<b><i>Clause-by-clause examination of the Bill</i></b>			
010146 – 010527	Chairman Administration	<p><u>Clause 8 – to amend section 29CA (further provisions on special stamp duty chargeable on certain agreements for sale)</u></p> <p>Members raised no question.</p>	

Time marker	Speaker	Subject(s)	Action required
010528 – 010632	Administration	<p><u>Clause 9 – to add sections 29CB and 29CC</u></p> <p><i>Proposed section 29CB(1)</i></p> <p>Members raised no question.</p>	
010633 – 013640	Chairman Mr James TO ALA5 Administration	<p><i>Proposed section 29CB(2)</i></p> <p>Mr James TO's views and enquiries –</p> <p>(a) for the purpose of BSD exemption, whether the Administration would verify the source of fund for the acquisition in determining if a HKPR purchaser was acting on his or her own behalf;</p> <p>(b) there were practical difficulties in ascertaining whether a HKPR was acting on his or her own behalf in the case of an acquisition of a residential property involving provision of funds by persons other than the purchaser who took the legal title of the property in his or her name, which might create resulting or constructive trusts. The HKPR purchaser concerned might inadvertently breach the law by having wrongly declared that he or she was acting on his or her own behalf; and</p> <p>(c) questioned the reasons and justifications for charging the BSD on the whole value of the consideration, instead of on the proportion of the share of the non-HKPR where a residential property was acquired jointly by a HKPR and a non-HKPR as tenants in common.</p> <p>The Administration's response –</p> <p>(a) proof of source of fund for the acquisition was generally not required unless there was reasonable doubt that the HKPR purchaser concerned was not genuinely acting on his or her own behalf. Pursuant to section 54(4) of the Stamp Duty Ordinance (Cap. 117), the Collector of Stamp Revenue or any authorized person might, inter alia, inspect any books of account or other instruments; and</p> <p>(b) the Administration would provide written</p>	<p>The Administration to follow up as stated in paragraphs 4(b) and 4(c) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		response to address Mr James TO's enquiries and concerns.	
013641 – 014016	Administration	<p><i>Proposed section 29CB(3)</i></p> <p>Proposed CSA on a minor and technical amendment to improve the clarity of the provision (LC Paper No. CB(1)1719/12-13(01)).</p> <p>The Administration advised that the amendment would not affect the substance of the Bill.</p> <p>Members raised no question.</p>	
014017 – 015950	Chairman Mr James TO Mr Abraham SHEK Administration	<p><i>Proposed section 29CB(4)</i></p> <p>Proposed CSAs on exempting certain acquisitions of a replacement property by non-HKPRs from the BSD (LC Paper No. CB(1)1719/12-13(01)).</p> <p>Disclosure of direct or indirect pecuniary interest by Mr James TO</p> <p>The Administration was requested to provide written response on the following issues –</p> <ul style="list-style-type: none"> <li>(a) to clarify the restrictions, if any, on the size and value of the replacement property or timeframe for the replacement purchase by a non-HKPR property owner who was made to sell a residential property under the specified legislation;</li> <li>(b) to address members' concern about the appropriateness of the use of the terms "replace", "replacement property";</li> <li>(c) in the case of acquisitions by the Urban Renewal Authority (URA), to consider members' suggestion of allowing the affected non-HKPR property owner to acquire a replacement property before the acquisition by the URA was completed (e.g. after the commencement of the URA project was gazetted);</li> <li>(d) to address members' concerns that additional demand for residential properties would be created when a residential property to be replaced was jointly owned by two or more</li> </ul>	The Administration to follow up as stated in paragraphs 4(d) to 4(h) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		persons, each of them might make one replacement purchase which would be exempted from the BSD; and  (e) to advise whether the BSD exemption for a replacement property would be granted in the case of a resumption of the underground strata of a residential property.	
<b>Agenda Item II – Any other business</b>			
015951 – 020030	Chairman	Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
13 May 2014