

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1845/13-14  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/1/12

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

**Minutes of the seventeenth meeting on  
Monday, 18 November 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 LEE Cheuk-yan  
Hon CHAN Kam-lam, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Abraham SHEK Lai-him, GBS, 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 Mrs Regina IP LAU Suk-yeet, 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 TANG Ka-piu  
Dr Hon CHIANG Lai-wan, JP  
Hon Tony TSE Wai-chuen

**Members absent** : Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon WONG Kwok-kin, BBS  
Hon POON Siu-ping, BBS, MH

**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)291/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 28 October 2013

LC Paper No. CB(1)291/13-14(02) -- Administration's response to issues raised at the meeting on 28 October 2013

Clause-by-clause examination of the Bill

*Starting from clause 9 - section 29CB(5)*

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 response 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)
- LC Paper No. CB(1)291/13-14(03) -- Draft Committee Stage amendment proposed by Hon Kenneth LEUNG
- LC Paper No. CB(1)337/13-14(01) -- Administration's response to draft Committee Stage amendments proposed by Hon Kenneth LEUNG as set out in LC Paper No. CB(1)291/13-14(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  
(*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)
- 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 Andrew LEUNG, Mr CHAN Kam-lam, Mr Kenneth LEUNG, Mr Alan LEONG, Mr Ronny TONG, Mr Tony TSE, Mr YIU Si-wing, Mr Abraham SHEK, Mr Jeffrey LAM, Miss CHAN Yuen-han, Mr WONG Ting-kwong, Mr Paul TSE, and Mr James TO disclosed their respective interests.

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

Issues in relation to "guardians" and "trustees"

- (a) to explain whether exemption from the Buyer's Stamp Duty (BSD) would be granted in the following scenarios of acquisition of residential property involving trust arrangements for minors as the beneficiaries –

- (i) the trustee was entitled to the right to enjoyment of the residential property acquired (including the income derived from the direct use, letting or use in any other form of such right to enjoyment) before the beneficiary became 18 or 21 years of age;
  - (ii) there were more than one beneficiaries, including Hong Kong permanent residents (HKPRs) and non-HKPRs;
  - (iii) the beneficiary was a HKPR, and the trustee was a non-HKPR or a company;
  - (iv) the beneficiary was a non-HKPR, and the trustee was a HKPR; and
  - (v) there were more than one beneficiaries and trustees, both including HKPRs and non-HKPRs.
- (b) to consider Mr WONG Ting-kwong's suggestion that only the natural parent or legal guardian of a HKPR minor or mentally incapacitated person would be granted BSD exemption; and
- (c) to consider Mr Kenneth LEUNG's suggestion that only a HKPR could claim BSD exemption in the capacity as the trustee of a HKPR minor or mentally incapacitated person.

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

- (d) to advise whether there was any anti-tax avoidance provisions in the local and overseas taxation or stamp duty regime similar to the proposed section 29CB(10) and section 29DB(11) of the Bill.

Exempting certain acquisitions of a replacement property by non-HKPRs from the BSD

- (e) to consider Mr James TO Kun-sun's suggestion of restricting the size of the replacement property (such as to a maximum of two or three times of the size of the property replaced) for the replacement purchase by a non-HKPR property owner who was made to sell a residential property under the specified legislation;

- (f) to provide the legal justifications for its response in relation to the resumption of underground strata as set out in paragraph 10 in LC Paper No. CB(1)291/13-14(02); and
- (g) to provide the legal justifications for the inconsistency between granting BSD exemption for replacement property to a company which was made to sell a residential property under the proposed section 29CB(4) of the Bill, while refusing to exempt HKPR companies from BSD on the rationale that "a company was an entity independent of its shareholders" under the company law.

*(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)416/13-14(02) on 2 December 2013.)*

## **II. Any other business**

- 5. There being no other business, the meeting ended at 12:49 pm.

Council Business Division 1  
Legislative Council Secretariat  
21 July 2014

**Proceedings of the seventeenth meeting of  
the Bills Committee on Stamp Duty (Amendment) Bill 2012  
on Monday, 18 November 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 - Meeting with the Administration</b>			
000244 – 000317	Chairman	Opening remarks	
000318 – 000413	Chairman Mr Andrew LEUNG Mr CHAN Kam-lam Mr Kenneth LEUNG Mr Alan LEONG Mr Ronny TONG Mr Tony TSE Mr YIU Si-wing	Disclosure of interests by members	
000414 – 001220	Chairman Mr WONG Kwok-hing Administration	The Administration's explanation on its response to the issues raised at the meeting of the Bills Committee held on 28 October 2013 (LC Paper No. CB(1)291/13-14(02)).	
001221 – 001319	Chairman Mr WONG Ting-kwong Administration	In response to Mr WONG Ting-kwong's enquiry about the acquisition of a replacement commercial property by a non-Hong Kong permanent resident (non-HKPR) who had been made to sell his/her commercial property not of his/her own volition under specified situations, the Administration advised that the Buyer's Stamp Duty (BSD) was only applicable to acquisition of residential property, therefore the BSD exemption for acquisition of a replacement property by non-HKPR proposed in the Bill was not applicable to commercial property.	
001320 – 002332	Chairman Mr James TO Dr CHIANG Lai-wan Administration	Mr James TO's views and concerns –  (a) HKPR minors lacked the capacity to enter into legally binding trust instruments;  (b) the BSD exemption arrangement in respect of HKPR minor would be vulnerable to abuse, in particular in the case of a non-HKPR evading the payment of the BSD in the acquisition of a residential property by acting as the trustee of a HKPR minor; and  (c) questioned whether the administrative	



Time marker	Speaker	Subject(s)	Action required
		<p>measures proposed by the Administration to guard against the above-mentioned abuse were compatible with the provisions of the Bill and would be ultra vires under the principles of administrative law.</p> <p>Dr CHIANG Lai-wan's enquiries –</p> <p>(a) whether the BSD exemption in respect of a HKPR minor would only be granted if the trustee or guardian acting on the minor's behalf was a HKPR or HKPR-owned company; and</p> <p>(b) whether the trustee or guardian would be entitled to dispose of the proceeds if the residential property acquired on behalf of a HKPR minor was subsequently sold.</p> <p>The Administration's response –</p> <p>(a) under the Administration's intended mechanism, anyone who claimed exemption from the BSD in the capacity as the trustee of a HKPR minor had to produce documentary evidence to the Inland Revenue Department (IRD) to substantiate the claim. It was the claimant's duty to satisfy the IRD that he/she was acting on behalf of the minor concerned. Depending on the actual circumstances, the IRD could request the claimant to produce further evidence, such as documents to certify the relationship between the trustee and the minor, to guard against abuse of the BSD exemption;</p> <p>(b) whether acquisition of a residential property made on behalf of a minor or mentally incapacitated person would be exempted from the BSD depended on the HKPR status of the beneficial owner of the residential property concerned. The HKPR status of the trustee or guardian was irrelevant; and</p> <p>(c) generally speaking, a trustee had legal title of the property, held it on trust for the benefit of another and owed a fiduciary duty to the beneficiary, and a guardian had the legal authority and duty to care for another person or property, especially because of the other's</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>infancy, incapacity, or disability. The Administration was in no position to monitor the disposal of proceeds if the residential property acquired on behalf of a HKPR minor was subsequently sold.</p>	
002333 – 003024	<p>Chairman Mr Ronny TONG Administration</p>	<p>Mr Ronny TONG's views and concerns –</p> <ul style="list-style-type: none"> <li>(a) questioned the home ownership needs of HKPR minors, in particular children born in Hong Kong to Mainland parents, both of whom were not HKPRs ("雙非兒童");</li> <li>(b) was concerned that the BSD exemption for acquisitions of residential property made on behalf of a HKPR minor would be vulnerable to abuse; and</li> <li>(c) considered that removing the BSD exemption in respect of minor was acceptable from legal perspectives.</li> </ul> <p>The Administration's response –</p> <ul style="list-style-type: none"> <li>(a) according to the IRD's records, there were only three cases of acquisition of residential property involving trust arrangements for minors as the beneficiaries since January 2010;</li> <li>(b) according to legal advice, granting BSD exemption only to HKPR parent/trustee/guardian acting on behalf of a HKPR minor would likely be discriminatory and would have human rights implications; and</li> <li>(c) not allowing BSD exemption for HKPRs under 18 years of age across the board might be controversial and would require further examination.</li> </ul>	
003025 – 004154	<p>Chairman Mr Andrew LEUNG Mr Abraham SHEK Administration</p>	<p>Disclosure of interests by Mr Abraham SHEK</p> <p>Mr Andrew LEUNG and 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 in acquiring a residential</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>property, while not considering exempting HKPR-owned companies from the BSD, and playing up the high risk of the BSD evasion by these 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> <p>(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;</p> <p>(b) 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 loopholes, rendering such declaration mechanism vulnerable to abuse; and</p> <p>(c) the Administration took note of members' concerns about the potential abuse of the BSD exemption arrangement in respect of HKPR minors. According to legal advice, any proposal to impose arbitrary restriction on the BSD exemption for those HKPR minors whose parents were not HKPRs was likely to be discriminatory.</p>	
004155 – 004435	Chairman Mr Kenneth LEUNG Administration	<p>Mr Kenneth LEUNG's views –</p> <p>(a) to address members' concerns about the possible loopholes of the BSD evasion by a non-HKPR acting as the guardian or trustee of a HKPR minor in acquiring a residential property, he had proposed draft Committee Stage amendment (CSA) to the Bill, introducing the domicile concept to ensure that only those HKPRs with real nexus with Hong Kong would be exempted from the BSD when purchasing the first residential property in Hong Kong;</p>	

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		<p>(b) domicile was an established common law concept commonly used in the legislative domain concerning taxation and other areas of law; and</p> <p>(c) the proposed CSA plugged certain avoidance loopholes in the Bill without creating any discriminatory effect.</p>	
004436 – 004718	Chairman Miss CHAN Yuen-han	While supporting in principle the introduction of the BSD to mitigate further exuberance in the private residential property market, and to accord priority to the home ownership needs of all HKPRs, Miss CHAN Yuen-han urged the Administration to address members' concerns about the possible loopholes of the BSD evasion by a non-HKPR acting as the guardian or trustee of a HKPR minor in acquiring a residential property, in particular the cases involving children born in Hong Kong to Mainland parents, both of whom were not HKPRs ("雙非兒童").	
004719 – 005330	Chairman Mr Jeffrey LAM Miss CHAN Yuen-han Administration	<p>Disclosure of interests by Mr Jeffrey LAM and Miss CHAN Yuen-han</p> <p>Mr Jeffrey LAM's views and concerns –</p> <p>(a) 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 in acquiring a residential property, while not considering exempting HKPR-owned companies from the BSD, and playing up the high risk of the BSD evasion by these companies through secret transfer of ownership and control of assets (including residential properties) by HKPR shareholders to non-HKPRs in a concealed way; and</p> <p>(b) the Administration should take appropriate and adequate administrative measures to guard against potential abuse of the BSD exemption for HKPR minors highlighted by members in recent meetings.</p> <p>The Administration's response –</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(a) under the Administration's intended mechanism, any claim for exemption from persons acting on behalf of HKPR minors should be supported by documentary evidence, and each case would be examined carefully by the IRD; and</p> <p>(b) any proposal to impose arbitrary restriction on the BSD exemption for those HKPR minors whose parents were not HKPRs was likely to be discriminatory and might infringe the right to equality of the relevant HKPRs.</p>	
005331 – 005532	Chairman Administration	The Chairman pointed out that the Bills Committee had discussed in several meetings the potential abuse of the BSD exemption for HKPR minors. She called on the Administration to consider thoroughly and advise its final stance on members' concerns.	
005533 – 005905	Chairman Mr YIU Si-wing Administration	<p>Mr YIU Si-wing's views –</p> <p>(a) expressed concerns about the potential abuse of the BSD exemption arrangement in respect of HKPR minors, in particular children born in Hong Kong to Mainland parents, both of whom were not HKPRs ("雙非兒童"); and</p> <p>(b) as such, suggested that only the acquisition of a residential property by a HKPR over 18 or 21 years age acting on his/her own behalf could be exempted from the BSD.</p> <p>The Administration reiterated that not allowing BSD exemption for HKPRs under 18 or 21 years of age across the board might be controversial and would require further examination.</p>	
005906 – 010449	Chairman Mr WU Chi-wai Administration	<p>Mr WU Chi-wai's views –</p> <p>(a) trust law was complicated and might enable non-HKPRs to make use of a trust set up to circumvent the BSD by acting as the guardian or trustee of a HKPR minor in acquiring a residential property; and</p> <p>(b) questioned the home ownership needs of HKPR minors as minors were generally expected to be taken care of and stay with</p>	

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		<p>their parents or guardians.</p> <p>The Administration pointed out that it could not disregard the home ownership needs of children born in Hong Kong to Mainland parents, both of whom were not HKPRs ("雙非兒童"), taking into account their likelihood of returning to Hong Kong for, say, education.</p>	
010450 – 010953	Chairman Dr LAM Tai-fai Administration	<p>While agreeing that children born in Hong Kong to Mainland parents, both of whom were not HKPRs ("雙非兒童") might have home ownership needs as they might return to Hong Kong for education, Dr LAM Tai-fai asked whether the Administration would consider imposing restrictions on the location of the residential properties acquired by these children (taking into account the location of the schools they were attending), with a view to ensuring that the purpose of acquisition was for self-use, but not for speculation and/or not as a means for evasion of the BSD by non-HKPRs.</p> <p>The Administration's response –</p> <p>(a) the Government was in no position to examine the purpose of the acquisition of a residential property by a HKPR (including children born in Hong Kong to Mainland parents, both of whom were not HKPRs ("雙非兒童")) which was exempted from the BSD; and</p> <p>(b) it was not advisable if certain restrictions were to be imposed on children born in Hong Kong to Mainland parents, both of whom were not HKPRs ("雙非兒童"), but not other HKPRs, when the BSD exemption in respect of HKPR minors was granted.</p>	
010954 – 011452	Chairman Mr James TO Administration	<p>Mr James TO's views –</p> <p>(a) trust law was complicated and might enable non-HKPRs to make use of a trust set up for a HKPR minor to circumvent the BSD. It would be practically impossible to verify and to ensure that a trustee was truly acting on behalf of the HKPR minor; and</p> <p>(b) suggested the Administration to explore the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>feasibility of removing the BSD exemption for HKPR minors as an anti-tax avoidance measure.</p> <p>The Administration responded that there was no apparent evidence or precedent case to support the claim that non-HKPR would likely evade payment of the BSD in the acquisition of a residential property by acting as the guardian or trustee of a HKPR minor. The suggestion to remove the relevant BSD exemption for HKPR minors had to be further examined.</p>	
011453 – 012051	Chairman Mr Ronny TONG Administration	<p>Mr Ronny TONG enquired whether exemption from the BSD would be granted in the following scenarios of acquisition of residential property involving trust arrangements for minors as the beneficiaries –</p> <p>(a) the trustee was entitled to the right to enjoyment of the residential property acquired (including the income derived from the direct use, letting or use in any other form of such right to enjoyment) before the beneficiary became 18 or 21 years of age;</p> <p>(b) there were more than one beneficiaries, including HKPRs and non-HKPRs;</p> <p>(c) the beneficiary was a HKPR, and the trustee was a non-HKPR or a company;</p> <p>(d) the beneficiary was a non-HKPR, and the trustee was a HKPR; and</p> <p>(e) there were more than one beneficiaries and trustees, both including HKPRs and non-HKPRs.</p>	The Administration to follow up as stated in paragraph 4(a) of the minutes.
012052 – 012429	Chairman Mr WONG Ting-kwong Administration	<p>Disclosure of interests by Mr WONG Ting-kwong</p> <p>Mr WONG Ting-kwong's views –</p> <p>(a) expressed concern about the possible abuse of the BSD exemption 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 who was a minor or mentally incapacitated person; and</p>	The Administration to follow up as stated in paragraph 4(b) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		(b) suggested the Administration to consider that only the natural parent or legal guardian of a HKPR minor or mentally incapacitated person would be granted BSD exemption.	
012430 – 012550	Chairman Dr CHIANG Lai-wan	Dr CHIANG Lai-wan pointed out that there were provisions in certain ordinances which imposed restrictions on the rights of persons under 18 years of age, such as voting right, or access to bars.	
012551 – 012847	Chairman Mr Kenneth LEUNG Mr James TO Administration	Mr Kenneth LEUNG suggested the Administration to consider that only a HKPR could claim BSD exemption in the capacity as the trustee of a HKPR minor or mentally incapacitated person. Mr James TO concurred with Mr LEUNG's suggestion.	The Administration to follow up as stated in paragraph 4(c) of the minutes.
012848 – 013330	Chairman Mr Paul TSE Administration	<p>Disclosure of interests by Mr Paul TSE</p> <p>Mr Paul TSE views and concerns –</p> <p>(a) trust law was complicated and might enable non-HKPRs to make use of a trust set up for a HKPR minor to circumvent the BSD; and</p> <p>(b) it would be practically impossible to verify and to ensure that a trustee was truly acting on behalf of the HKPR minor.</p> <p>The Administration's response –</p> <p>(a) it had considered members' suggestion that the BSD exemption in respect of minors should only be granted if the trustee or guardian acting on the minor's behalf was himself/herself a HKPR; and</p> <p>(b) according to legal advice, such an arrangement was not advisable from the human rights perspective since it would discriminate against certain HKPR minors based on the HKPR status of their parents or guardians.</p>	



Time marker	Speaker	Subject(s)	Action required
013331 – 013418	Chairman Mr Abraham SHEK	Mr Abraham SHEK reiterated his dissatisfaction about the Administration 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. He urged that Administration to consider thoroughly and accept his proposed CSAs in respect of the BSD exemption for companies owned by HKPRs.	
013419 – 013512	Chairman	The Chairman concluded that the Bills Committee had discussed in several meetings the potential abuse of the BSD exemption for HKPR minors and mentally incapacitated persons. She called on the Administration to consider thoroughly and advise its final stance on members' concerns.	
013513 – 015248	Chairman Mr James TO Mr Paul TSE Mr Abraham SHEK Administration	<p>Mr James TO, Mr Paul TSE and Mr Abraham SHEK questioned the Administration's rationale and justification for, in the case of joint acquisition of a residential property by a HKPR and a non-HKPR, charging the BSD on the full value of the transactions under proposed sections 29CB(10) and 29DB(11) of the Bill instead of on the proportion of the share of the non-HKPR.</p> <p>The Administration's responded that the proposed sections 29CB(10) and 29DB(11) were essentially anti-tax avoidance provisions, which aimed to prevent situations where a non-HKPR acquired a residential property jointly with a HKPR with a view to reducing the amount of BSD payable while in fact the acquisition was funded by the non-HKPR.</p> <p>Mr James TO enquired whether there was any anti-tax avoidance provisions in the local and overseas taxation or stamp duty regime similar to the proposed sections 29CB(10) and 29DB(11) of the Bill.</p>	The Administration to follow up as stated in paragraph 4(d) of the minutes.

Time marker	Speaker	Subject(s)	Action required
015249 – 015759	Chairman Mr James TO Administration	<p>Disclosure of interests by Mr James TO</p> <p>In response to Mr James TO's enquiries, the Administration advised that –</p> <p>(a) BSD exemption for acquisition of a replacement property would be granted to a company which was made to sell its residential property under specified situations in the Bill, and</p> <p>(b) there was no restriction on the timeframe for the replacement purchase by non-HKPR property owners (including companies) who/which were made to sell a residential property under the specified situations.</p> <p>Mr James TO's further views and concerns –</p> <p>(a) there would be possible abuse of the BSD exemption for acquisition of a replacement property by a non-HKPR in the case of the non-HKPR acquiring a residential property which was anticipated to be acquired or resumed under the specified situations as a means to evade the BSD payable when he/she subsequently purchased a replacement property of significantly larger size and higher value compared with the property which was replaced; and</p> <p>(b) suggested the Administration to consider restricting the size of the replacement property (such as to a maximum of two or three times of the size of the property replaced) for the replacement purchase by a non-HKPR property owner who was made to sell a residential property under the specified situations.</p>	The Administration to follow up as stated in paragraph 4(e) of the minutes.
015800 – 020254	Chairman Mr James TO Administration	Mr James TO requested the Administration to provide the legal justifications for its response in relation to the resumption of underground strata as set out in paragraph 10 in LC Paper No. CB(1)291/13-14(02).	The Administration to follow up as stated in paragraph 4(f) of the minutes.

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
020255 – 020454	Chairman Mr Abraham SHEK Administration	Mr Abraham SHEK requested the Administration to provide the legal justifications for the inconsistency between granting BSD exemption for replacement property to a company which was made to sell a residential property under the proposed section 29CB(4) of the Bill, while refusing to exempt HKPR companies from BSD on the rationale that "a company was an entity independent of its shareholders" under the company law.	The Administration to follow up as stated in paragraph 4(g) of the minutes.
<b>Agenda Item II – Any other business</b>			
020455 – 020507	Chairman	Concluding remarks	

Council Business Division 1  
Legislative Council Secretariat  
21 July 2014