

立法會
Legislative Council

LC Paper No. CB(1)1846/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/12

Bills Committee on Stamp Duty (Amendment) Bill 2012

**Minutes of the eighteenth meeting on
Tuesday, 3 December 2013, at 4:30 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 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 Alan LEONG Kah-kit, SC
 - Hon James TIEN Pei-chun, GBS, JP
 - Hon YIU Si-wing
 - Hon Charles Peter MOK
 - Hon POON Siu-ping, BBS, MH
 - Hon Tony TSE Wai-chuen
- Members absent** :
- Hon Tommy CHEUNG Yu-yan, SBS, JP
 - Hon Paul TSE Wai-chun, JP
 - Hon WU Chi-wai, MH
 - 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

**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)416/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 18 November 2013

LC Paper No. CB(1)416/13-14(02) -- Administration's response to issues raised at the meeting on 18 November 2013

Clause-by-clause examination of the Bill

Starting from clause 9 - section 29CB(6)

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)
- 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 the draft Committee Stage amendment 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))

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 WONG Ting-kwong, Mr Ronny TONG, Mr POON Siu-ping, Mr CHAN Kam-lam, Mr YIU Si-wing, Mr WONG Kwok-kin, and Mr Abraham SHEK disclosed their respective interests.

Clause-by-clause examination of the Bill

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

Clause 9 - Proposed section 29CB(13)(b)

- (a) In respect of a joint acquisition of a residential property by more than 2 persons, to consider Mr James TO's suggestion that each of the persons who was a parent, spouse, child, brother or sister of any one of the other persons be regarded as closely related to the other persons for the purpose of the Buyer's Stamp duty (BSD) exemption, such as in the case of a joint purchase by husband, wife and a parent of the husband/wife.

Clause 12 - Proposed section 29DB(6)

- (b) To reconsider Mr James TO's suggestion of imposing reasonable restrictions on the size and value of the replacement property to address the possible abuse of the BSD exemption such as the case of several non-Hong Kong permanent residents (non-HKPRs) jointly acquired a residential property which was anticipated to be acquired or resumed under the specified statutory provisions and upon the occurrence of such eventuality each of those non-HKPRs could purchase a replacement property of significantly larger size and higher value than the property to be replaced free from BSD.

Clause 12 - Proposed section 29DB(8)

- (c) To clarify whether BSD would be chargeable in the case of adverse possession of a residential property.

Clause 12 - Proposed section 29DB(10)

- (d) To clarify, citing the relevant provisions in the Bill, whether BSD would be payable in the case of an acquisition of a residential property by a trustee acting on behalf of a HKPR minor and his/her non-HKPR parent(s).

Clause 12 - Proposed section 29DD

- (e) To clarify whether the following redevelopment projects would be eligible for refund of BSD for redevelopment –
 - (i) the redevelopment of a part of a building, e.g. only the top three storeys of a building, and
 - (ii) the redevelopment of New Territories Exempted Houses (commonly known as "small houses") which were exempted from certain provisions of the Buildings Ordinance and its subsidiary regulations (including the need for obtaining Buildings Department's approval and consent to the commencement of works).

Clause 14 - To amend section 44

- (f) To provide information on precedent court cases, if any, in which an exempted institution appealed against the Inland Revenue Department's decision of not granting stamp duty relief in respect of a gift of a residential property to it.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)623/13-14(01) on 27 December 2013.)

II. Any other business

- 5. There being no other business, the meeting ended at 6:33 pm.

Council Business Division 1
Legislative Council Secretariat
21 July 2014

**Proceedings of the eighteenth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2012
on Tuesday, 3 December 2013, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I - Meeting with the Administration			
000703 – 000716	Chairman	Opening remarks	
000717 – 000811	Chairman Mr Andrew LEUNG Mr WONG Ting-kwong Mr Ronny TONG Mr POON Siu-ping Mr CHAN Kam-lam Mr YIU Si-wing Mr WONG Kwok-kin	Disclosure of interests by members	
Clause-by-clause examination of the Bill			
000812 – 001415	Chairman Administration	<u>Clause 9 - to add sections 29CB and 29CC</u> <i>Proposed section 29CB(6), 29CB(7), 29CB(8) and 29CB(9)</i> Members raised no question.	
001416 – 001647	Chairman Mr Andrew LEUNG Administration	<i>Proposed section 29CB(10)</i> As regards an acquisition of a residential property involving trust arrangements for minors who were Hong Kong permanent residents (HKPRs) as the beneficiaries, Mr Andrew LEUNG enquired whether there would be any implications on the exemption from the Buyer's Stamp Duty (BSD) if the trust arrangements were subsequently terminated. The Administration responded that the major consideration of the BSD exemption was the HKPR status of the beneficial owner of the residential property acquired.	
001648 – 001819	Administration	<i>Proposed section 29CB(11)</i> Members raised no question.	

Time marker	Speaker	Subject(s)	Action required
001820 – 001954	Chairman Mr James TO Administration	<p><i>Proposed section 29CB(12)</i></p> <p>Mr James TO sought clarification on the types of instruments which were not chargeable with stamp duty.</p> <p>The Administration responded that the Stamp Duty Ordinance (Cap. 117) had provided for exemptions from ad valorem stamp duty in specific cases, such as nomination of a close relative to take up the assignment, or grants by the Government. These instruments would also be exempted from the Special Stamp Duty (SSD) and the BSD.</p>	
001955 – 002730	Chairman Mr Andrew LEUNG Mr James TO Administration	<p><i>Proposed section 29CB(13)</i></p> <p>Mr Andrew LEUNG sought clarification on the definition of "close relative". The Administration advised that the proposed "close relative" exemption arrangement for the BSD followed the same principle of the established SSD regime, which exempted transactions involving persons who were full blood-related or half blood-related, or had adoptive or step relationship.</p> <p>In respect of a joint acquisition of a residential property where there were more than 2 persons, Mr James TO suggested that each of the persons who was a parent, spouse, child, brother or sister of any one of the other persons be regarded as closely related to the other persons for the purpose of the BSD exemption, such as in the case of a joint purchase by husband, wife and a parent of the husband/wife.</p>	The Administration to follow up as stated in paragraph 4(a) of the minutes.
002731 – 002852	Administration	<p><i>Proposed section 29CB(14)</i></p> <p>Members raised no question.</p>	
002853 – 004451	Chairman Mr James TO Mr Ronny TONG Dr LAM Tai-fai Administration	<p><i>Proposed section 29CC - Agreements for exchange of properties</i></p> <p>The Administration's proposed Committee Stage amendment (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>Discussion on the application of the BSD to</p>	

Time marker	Speaker	Subject(s)	Action required
		various scenarios in respect of the exchange of a residential property for any other residential property/non-residential property.	
004452 – 004807	Administration	<p><u>Clause 10 - to amend section 29D (conveyances on sale of residential property)</u></p> <p><u>Clause 11 - to amend section 29DA (further provisions on special stamp duty chargeable on certain conveyances on sale)</u></p> <p>Members raised no question.</p>	
004808 – 004959	Chairman Mr James TO Administration	<p><u>Clause 12 - to add sections 29DB, 29DC and 29DD</u></p> <p>Mr James TO sought clarification on the difference in the respective application of proposed sections 29CB and 29DB.</p> <p>The Administration advised that proposed section 29CB imposed BSD on chargeable agreements for sale of residential property, while proposed section 29DB imposed BSD on conveyances on sale of residential property.</p>	
005000 – 005051	Administration	<p><i>Proposed section 29DB(1) and 29DB(2)</i></p> <p>Members raised no question.</p>	
005052 – 005346	Chairman Mr James TO Administration	<p><i>Proposed section 29DB(3)</i></p> <p>The Administration's 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>In response to Mr James TO's enquiry, the Administration advised that proposed section 29CB(3) covered the addition of the name of a person as purchaser to a chargeable agreement for sale in respect of a residential property, while proposed section 29DB(3) covered the addition of the name of a person as transferee to a conveyance on sale.</p>	

Time marker	Speaker	Subject(s)	Action required
005347 – 005431	Administration	<i>Proposed section 29DB(4)</i> Members raised no question.	
005432 – 005738	Chairman Mr James TO Administration	<i>Proposed section 29DB(5)</i> CSA proposed by the Administration for specific cases in which a conveyance on sale for acquisition of a replacement property by non-HKPRs would be exempted from the BSD (LC Paper No. CB(1)1719/12-13(01)). Members raised no question.	
005739 – 010456	Chairman Mr James TO Administration	<i>Proposed section 29DB(6) and 29DB(7)</i> Mr James TO suggested that the Administration should consider imposing reasonable restrictions on the size and value of the replacement property to address the possible abuse of the BSD exemption such as the case of several non-HKPRs jointly acquired a residential property which was anticipated to be acquired or resumed under specified statutory provisions and upon the occurrence of such eventuality each of those non-HKPRs could purchase a replacement property of significantly larger size and higher value than the property to be replaced free from BSD.	The Administration to follow up as stated in paragraph 4(b) of the minutes.
010457 – 011053	Chairman Mr James TO Administration	<i>Proposed section 29DB(8)</i> Mr James TO enquired whether BSD would be chargeable in the case of adverse possession of a residential property. The Administration's proposed CSA on a minor and technical amendment to improve the clarity of the provision (LC Paper No. CB(1)1719/12-13(01)). The Administration advised that the amendment would not affect the substance of the Bill.	The Administration to follow up as stated in paragraph 4(c) of the minutes.
011054 – 011141	Administration	<i>Proposed section 29DB(9)</i> Members raised no question.	

Time marker	Speaker	Subject(s)	Action required
011142 – 011755	Chairman Mr James TO Administration	<p><i>Proposed section 29DB(10) and 29DB(11)</i></p> <p>Mr James TO enquired whether BSD exemption would be granted in the case of an acquisition of a residential property by a trustee acting on behalf of a HKPR minor and his/her non-HKPR parent(s).</p>	The Administration to follow up as stated in paragraph 4(d) of the minutes.
011756 – 012252	Administration	<p><i>Proposed section 29DB(12), 29DB(13), 29DB(14), 29DB(15), 29DB(16) and 29DB(17)</i></p> <p><i>Proposed section 29DC - Instruments effecting exchange of properties</i></p> <p>Members raised no question.</p>	
012253 – 014154	Chairman Mr James TO Mr Abraham SHEK Assistant Legal Adviser 5 (ALA5) Administration	<p><i>Proposed section 29DD(1)</i></p> <p>The Administration's proposed CSAs on revised mechanism to refund the BSD for redevelopment projects (LC Paper No. CB(1)1719/12-13(01)).</p> <p>Disclosure of interests by Mr Abraham SHEK</p> <p>Mr James TO enquired about the definition of "a lot" in proposed section 29DD(1)(a). The Administration advised that proposed section 29DD(6) provided that "lot had the meaning given by section 2(1) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545)."</p> <p>Mr James TO enquired whether the redevelopment of a part of a building, e.g. only the top three storeys of a building, would be eligible for BSD refund.</p> <p>Mr Abraham SHEK noted that when compared to the original refund mechanism, where a developer might apply for refund of the BSD upon issue of the first Occupation Permit, the refund could be advanced by four to five years under the proposed revised refund mechanism. The two alternative conditions under the revised refund mechanism also allowed developers greater flexibility in applying for refund of the BSD paid with reference to the actual situation of their redevelopment projects.</p>	The Administration to follow up as stated in paragraph 4(e)(i) of the minutes.

Time marker	Speaker	Subject(s)	Action required
014155 – 014616	Chairman Mr James TO Administration	<p><i>Proposed section 29DD(3)</i></p> <p>Mr James TO enquired whether the redevelopment of New Territories Exempted Houses (commonly known as "small houses") which were exempted from certain provisions of the Buildings Ordinance and its subsidiary regulations (including the need for obtaining Buildings Department's approval and consent to the commencement of works) would be eligible for refund of BSD for redevelopment.</p>	The Administration to follow up as stated in paragraph 4(e)(ii) of the minutes.
014617 – 014708	Administration	<p><i>Proposed section 29DD(4)</i></p> <p>The Administration's 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><i>Proposed section 29DD(6)</i></p> <p>Members raised no question.</p>	
014709 – 014915	Administration	<p><u>Clause 13 - to amend section 29H</u></p> <p>Members raised no question.</p>	
014916 – 015802	Chairman Mr James TO Administration	<p><u>Clause 14 - to amend section 44 (relief in case of gift to exempted institution)</u></p> <p>Discussion on the Inland Revenue Department's handling of cases involving stamp duty relief in case of gift to exempted institution.</p> <p>Mr James TO requested the Administration to provide information on precedent cases, if any, in which an exempted institution appealed against the Inland Revenue Department's decision of not granting stamp duty relief in respect of a gift of a residential property to it.</p>	The Administration to follow up as stated in paragraph 4(f) of the minutes.
015803 – 020147	Chairman Mr James TO Administration	<p><u>Clause 15 - to amend section 45 (relief in case of conveyance from one associated body corporate to another)</u></p> <p>Members raised no question.</p>	

Time marker	Speaker	Subject(s)	Action required
Agenda Item II – Any other business			
020148 – 020420	Chairman Mr James TO	Meeting arrangements The Chairman advised that the Bills Committee would proceed to consider the draft CSAs to be proposed by individual members after the completion of the clause-by-clause examination of the Bill at the next meeting.	

Council Business Division 1
Legislative Council Secretariat
21 July 2014