

立法會
Legislative Council

LC Paper No. CB(1)1847/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/12

Bills Committee on Stamp Duty (Amendment) Bill 2012

**Minutes of the nineteenth meeting on
Friday, 20 December 2013, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon Starry LEE Wai-king, JP (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 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 POON Siu-ping, BBS, MH
Hon TANG Ka-piu
Dr Hon CHIANG Lai-wan, JP
Hon Tony TSE Wai-chuen

Members absent : Hon James TO Kun-sun (Deputy Chairman)
Hon WONG Kwok-kin, BBS

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 Kasper NG
Senior Administrative Officer (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)554/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 3 December 2013

Clause-by-clause examination of the Bill

Starting from clause 16

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

Draft Committee Stage amendments ("CSAs") to be proposed by individual members

LC Paper No. CB(1)1826/12-13(01) -- Draft CSA proposed by Hon Abraham SHEK Lai-him

LC Paper Nos. CB(1)1826/12-13(02) and (03) -- Draft CSAs proposed by Hon Andrew LEUNG Kwan-yuen

- LC Paper No. CB(1)62/13-14(01) -- Administration's responses to draft CSAs 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 CSA proposed by Hon Kenneth LEUNG
- LC Paper No. CB(1)337/13-14(01) -- Administration's response to draft CSA proposed by Hon Kenneth LEUNG as set out in LC Paper No. CB(1)291/13-14(03)
- LC Paper No. CB(1)474/13-14(01) -- Draft CSAs proposed by Hon Tommy CHEUNG Yu-yan
- LC Paper No. CB(1)594/13-14(01) -- Administration's response to draft CSA proposed by Hon Tommy CHEUNG Yu-yan as set out in LC Paper No. CB(1)474/13-14(01)
- LC Paper No. CB(1)517/13-14(01) -- Draft CSA proposed by Hon James TO Kun-sun
- LC Paper No. CB(1)594/13-14(02) -- Supplementary information on draft CSA proposed by Hon James TO Kun-sun
(*Chinese version only*)
- LC Paper No. CB(1)594/13-14(03) -- Administration's response to draft CSA proposed by Hon James TO Kun-sun as set out in LC Paper No. CB(1)517/13-14(01)
- LC Paper No. CB(1)594/13-14(04) -- Draft CSA proposed by Hon Mrs Regina IP LAU Suk-ye

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 Abraham SHEK, Mr Ronny TONG, Mr Alan LEONG, Mr Jeffrey LAM, Mr Kenneth LEUNG, Mrs Regina IP, Ms Emily LAU, Mr Tommy CHEUNG, Mr James TIEN, and Miss CHAN Yuen-han disclosed their respective interests.

Follow-up actions

4. The Administration was requested to clarify whether children born outside Hong Kong of a parent/parents who was/were Hong Kong permanent resident(s) were entitled to be issued with a permanent identity card upon application to the Immigration Department, and whether residential properties purchased on behalf of these children were exempted from the Buyer's Stamp Duty.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)623/13-14(03) on 6 January 2014.)

Motions proposed by Mr Abraham SHEK, Mr Andrew LEUNG, Mr Kenneth LEUNG and Mr Tommy CHEUNG respectively

5. Mr Abraham SHEK moved a motion requesting the Bills Committee to accept and move the Committee Stage amendment (CSA) proposed by him. The wording of the motion was as follows:

(Translation)

"That this Bills Committee be requested to accept and move the proposed Committee Stage amendment proposed by me (Hon Abraham SHEK Lai-him)."

6. The Chairman clarified that the vote did not represent the Bills Committee's stance towards the relevant CSAs, but was an indication as to whether the CSAs should be moved in the name of the Bills Committee.

7. The motion was put to vote. Mr Tommy CHEUNG requested a division. Eight members voted for and five members voted against the motion. The voting results were as follows:

For

Mr Abraham SHEK

Mr Andrew LEUNG

Mr James TIEN

Mr Charles MOK

(8 members)

Mr Tommy CHEUNG

Mr Paul TSE

Mr YIU Si-wing

Mr Kenneth LEUNG

Against

Mr WONG Kwok-hing

Mr LEUNG Che-cheung

Dr CHIANG Lai-wan

(5 members)

Miss CHAN Yuen-han

Mr TANG Ka-piu

Abstention

Ms Emily LAU

Mr POON Siu-ping

(3 members)

Mr WU Chi-wai

8. The Chairman declared that the motion was carried.

9. Mr Andrew LEUNG moved a motion requesting the Bills Committee to accept and move the CSAs proposed by him. The wording of the motion was as follows:

(Translation)

"That this Bills Committee be requested to accept and move the proposed Committee Stage amendments proposed by me (Hon Andrew LEUNG Kwan-yuen)."

10. The motion was put to vote. Mr TANG Ka-piu requested a division. Eight members voted for and five members voted against the motion. The voting results were as follows:

For

Mr Abraham SHEK
Mr Andrew LEUNG
Mr James TIEN
Mr Charles MOK
(8 members)

Mr Tommy CHEUNG
Mr Paul TSE
Mr YIU Si-wing
Mr Kenneth LEUNG

Against

Mr WONG Kwok-hing
Mr LEUNG Che-cheung
Dr CHIANG Lai-wan
(5 members)

Miss CHAN Yuen-han
Mr TANG Ka-piu

Abstention

Ms Emily LAU
(2 members)

Mr POON Siu-ping

11. The Chairman declared that the motion was carried.

12. Mr Kenneth LEUNG moved a motion requesting the Bills Committee to accept and move the CSA proposed by him. The wording of the motion was as follows:

(Translation)

"That this Bills Committee be requested to accept and move the proposed Committee Stage amendment proposed by me (Hon Kenneth LEUNG)."

13. The motion was put to vote. Mr WONG Kwok-hing requested a division. Seven members voted for and three members voted against the motion. The voting results were as follows:

For

Mr Abraham SHEK
Mr Andrew LEUNG
Mr James TIEN
Mr Kenneth LEUNG
(7 members)

Mr Tommy CHEUNG
Mr Paul TSE
Mr Charles MOK

Against

Mr WONG Kwok-hing
Dr CHIANG Lai-wan
(3 members)

Mr LEUNG Che-cheung

Abstention

Ms Emily LAU
Miss CHAN Yuen-han
(3 members)

Mr YIU Si-wing
Mr POON Siu-ping

14. The Chairman declared that the motion was carried.

15. Mr Tommy CHEUNG moved a motion requesting the Bills Committee to accept and move the CSAs proposed by him. The wording of the motion was as follows:

(Translation)

"That this Bills Committee be requested to accept and move the proposed Committee Stage amendments proposed by me (Hon Tommy CHEUNG Yu-yan)."

16. The motion was put to vote. Mr WONG Kwok-hing requested a division. Seven members voted for and four members voted against the motion. The voting results were as follows:

For

Mr Abraham SHEK
Mr Andrew LEUNG
Mr James TIEN
Mr Kenneth LEUNG
(7 members)

Mr Tommy CHEUNG
Mr Paul TSE
Mr Charles MOK

Against

Mr WONG Kwok-hing
Mr LEUNG Che-cheung
(4 members)

Miss CHAN Yuen-han
Dr CHIANG Lai-wan

Abstention

Ms Emily LAU
Mr POON Siu-ping
(3 members)

Mr YIU Si-wing

17. The Chairman declared that the motion was carried.

II. Any other business

18. The Chairman reminded members that the next meeting would be held on Monday, 6 January 2014 at 4:30 pm.

19. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 1
Legislative Council Secretariat
21 July 2014

**Proceedings of the nineteenth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2012
on Friday, 20 December 2013, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I - Meeting with the Administration			
000307 – 000416	Chairman Mr Andrew LEUNG Mr Abraham SHEK Mr Ronny TONG Mr Alan LEONG Mr Jeffrey LAM Mr Kenneth LEUNG Mrs Regina IP Ms Emily LAU Mr Tommy CHEUNG	Opening remarks by the Chairman Disclosure of interests by members	
000417 – 000601	Chairman	The Chairman suggested the Bills Committee to discuss the draft Committee Stage amendments (CSAs) proposed by individual members at this meeting first. Members agreed.	
000602 – 002143	Chairman Mr Abraham SHEK Administration	Mr Abraham SHEK's explanation of his proposed CSA to the effect that the Buyer's Stamp Duty (BSD) paid by a company of which all shareholders or directors were Hong Kong permanent residents (HKPRs) (HKPR companies) in acquiring a residential property be refunded three years after the acquisition at the earliest, subject to meeting certain conditions (LC Paper No. CB(1)1826/12-13(01)). The Administration's response that the proposed CSA would have adverse impact on the policy objective of the BSD and undermine the effectiveness of the BSD (LC Paper No. CB(1)62/13-14(01)).	
002144 – 002843	Chairman Mr Andrew LEUNG Administration	Mr Andrew LEUNG's explanation of his proposed CSAs to introduce a sunset clause to the effect that the Special Stamp Duty (SSD) and the BSD would expire by midnight on 26 October 2015 (LC Paper No. CB(1)1826/12-13(02) and (03)). The Administration's explanation of its views against the introduction of a sunset clause, and that the proposed CSAs were beyond the scope of the Bill (LC Paper No. CB(1)62/13-14(01)).	

Time marker	Speaker	Subject(s)	Action required
002844 – 003622	Chairman Mr Kenneth LEUNG Administration	<p>Mr Kenneth LEUNG's explanation of his proposed CSA introducing the "domicile" concept to the effect that only those HKPRs domiciled in Hong Kong would be exempted from the BSD, so as to safeguard the effectiveness of the BSD measure (LC Paper No. CB(1)291/13-14(03)).</p> <p>The Administration's response that introducing the domicile concept into the Bill would have implications for the BSD policy, and that the proposed CSA would result in significant complications and uncertainties to the actual application of the relevant provisions of the Bill (LC Paper No. CB(1)337/13-14(01)).</p>	
003623 – 005226	Chairman Mr Tommy CHEUNG Administration	<p>Mr Tommy CHEUNG's explanation of his proposed CSAs (LC Paper No. CB(1)474/13-14(01)) –</p> <p>(a) seeking to allow total BSD exemption for HKPR companies meeting certain conditions; and</p> <p>(b) introducing a sunset clause to the effect that the SSD and the BSD would lapse by the midnight of 31 December 2014.</p> <p>The Administration's response (LC Paper No. CB(1)594/13-14(01)) –</p> <p>(a) the proposed BSD exemption for HKPR companies would create loopholes which were practically impossible to plug, and would undermine the effectiveness of the BSD substantially, thereby undermining the effectiveness of the BSD in achieving its policy objective through managing demand; and</p> <p>(b) the proposed sunset clause was not acceptable from the BSD policy perspective and was beyond the scope of the Bill.</p>	
005227 – 010127	Chairman Ms Emily LAU Administration	<p>On Mr James TO's behalf, Ms Emily LAU explained his proposed CSA to provide BSD exemption for acquisitions of residential properties made by charitable institutions or trusts that were exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112) (LC Paper Nos. CB(1)517/13-14(01) and CB(1)594/13-14(02)).</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's response that the proposed CSA was inconsistent with the existing taxation and stamp duty regimes, and would undermine the effectiveness of the BSD (LC Paper No. CB(1)594/13-14(03)).</p>	
010128 – 010757	<p>Chairman Mrs Regina IP Administration</p>	<p>Mrs Regina IP's explanation on her proposed CSA to remove the BSD exemption for acquisitions of residential properties made on behalf of a minor who was a HKPR (LC Paper No. CB(1)594/13-14(04)).</p> <p>The Administration replied that it was considering Mrs IP's proposed CSA and would provide a written reply as soon as practicable.</p>	
010758 – 011101	<p>Chairman Dr CHIANG Lai-wan Administration</p>	<p>Dr CHIANG Lai-wan expressed concern that speculators or non-HKPRs could circumvent the SSD and BSD through transfer of shares in companies to effect property transactions, in which the stamp duty payable was only 0.2% of the value of the shares transferred, i.e. much lower than the rates of the SSD and BSD.</p>	
011102 – 011431	<p>Chairman Mr Kenneth LEUNG Mr Abraham SHEK Administration</p>	<p>Mr Kenneth LEUNG enquired whether children born outside Hong Kong of a parent/parents who was/were HKPRs were entitled to be issued with a permanent identity card upon application to the Immigration Department, and whether residential properties purchased on behalf of these children were exempted from the BSD.</p>	<p>The Administration to follow up as stated in paragraph 4 of the minutes.</p>
011432 – 011815	<p>Chairman Mr Abraham SHEK</p>	<p>Mr Abraham SHEK shared Dr CHIANG Lai-wan's concern that speculators or non-HKPRs could circumvent the SSD and BSD through transfer of shares of the property holding company to effect property transactions. He reiterated the justifications for his proposed CSA that HKPR companies should be refunded the BSD paid in respect of the residential property acquired three years after the acquisition at the earliest.</p> <p>Mr Abraham SHEK requested the Bills Committee to accept and move the CSA proposed by him.</p>	

Time marker	Speaker	Subject(s)	Action required
011816 – 012849	Chairman Mr Tommy CHEUNG Administration	Discussion on the implications of Mr Tommy CHEUNG's proposed CSA to allow total BSD exemption for HKPR companies on the policy objectives and the effectiveness of the BSD.	
012850 – 012917	Chairman Mr Kenneth LEUNG Mr Andrew LEUNG Mr Tommy CHEUNG	Mr Kenneth LEUNG, Mr Andrew LEUNG and Mr Tommy CHEUNG requested the Bills Committee to accept and move the CSAs proposed by them respectively.	
012918 – 014153	Chairman Dr CHIANG Lai-wan Mr James TIEN Administration	<p>Dr CHIANG Lai-wan reiterated her concern about speculators or non-HKPRs circumventing the SSD and BSD through transfer of shares of property holding company to effect property transactions. She called on the Administration to consider revising the existing stamp duty regime to plug the loopholes.</p> <p>Mr James TIEN pointed out that in the case of a Hong Kong company holding a residential property was wholly owned by another company incorporated overseas (e.g. a British Virgin Islands company), non-HKPRs could circumvent both the BSD and stamp duty in transfer of shares when the property transaction was effected by transfer of shares of the overseas company.</p> <p>The Administration took note of Dr CHIANG Lai-wan's and Mr James TIEN's concerns. The Administration advised that fundamental changes to the existing well-established taxation and company regulatory regimes would be required to plug all the possible loopholes. Such changes required careful deliberation involving various policy areas and were outside the scope of the Bill.</p>	
014154 – 014459	Chairman Mr Tony TSE	Mr Tony TSE expressed support for Mr Abraham SHEK's proposed CSA. He did not agree with the Administration's explanation that the risk of abuse of the declaration mechanism for shareholders/directors of a HKPR company would be higher than that for an individual HKPR buyer.	
014500 – 014700	Chairman Mr Abraham SHEK Administration	Mr Abraham SHEK questioned the Administration's justifications for the inconsistency between granting BSD exemption for a replacement property acquired by a company owner which was made to sell its residential property under specified ordinances, while not	

Time marker	Speaker	Subject(s)	Action required
		<p>exempting the acquisitions of residential properties made by HKPR companies from the BSD.</p> <p>The Administration responded that the BSD exemption for replacement purchases by company owners was in pursuance of the policy intention to provide flexibility for the replacement purchases made by the affected flat owners (including companies), and to facilitate the smooth implementation of the acquisitions under the specified ordinances which served public purposes. As such, this was different from the purchase of residential properties by companies generally and there was no inconsistency in terms of arrangements under the proposed BSD regime.</p>	
014701 – 014748	Chairman Mr James TIEN Miss CHAN Yuen-han	Disclosure of interests by Mr James TIEN and Miss CHAN Yuen-han	
014749 – 015837	Chairman Ms Emily LAU Mr James TIEN Mr Tommy CHEUNG Mr WONG Kwok-hing Mr Abraham SHEK	The Chairman ordered for the voting bell to be rung for five minutes.	
015838 – 020045	Chairman Mr Tommy CHEUNG	<p>The Bills Committee voted on the motion moved by Mr Abraham SHEK.</p> <p>The Chairman declared that the motion was carried.</p>	
020046 – 020220	Chairman Mr TANG Ka-piu	<p>The Bills Committee voted on the motion moved by Mr Andrew LEUNG.</p> <p>The Chairman declared that the motion was carried.</p>	
020221 – 020335	Chairman Mr WONG Kwok-hing	<p>The Bills Committee voted on the motion moved by Mr Kenneth LEUNG.</p> <p>The Chairman declared that the motion was carried.</p>	

Time marker	Speaker	Subject(s)	Action required
020336 – 020445	Chairman Mr WONG Kwok-hing	The Bills Committee voted on the motion moved by Mr Tommy CHEUNG. The Chairman declared that the motion was carried.	
020446 – 020630	Chairman Mr Abraham SHEK Administration	Discussion on the order of giving notices of amendment to the Bill in respect of the BSD exemption for HKPR companies proposed by Mr Abraham SHEK and Mr Tommy CHEUNG respectively.	
Agenda Item II – Any other business			
020631 – 020650	Chairman	Date of next meeting The Chairman advised that the Bills Committee would continue the clause-by-clause examination of the Bill at the next meeting.	