

立法會
Legislative Council

LC Paper No. CB(1)1848/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/12

Bills Committee on Stamp Duty (Amendment) Bill 2012

**Minutes of the twentieth meeting on
Monday, 6 January 2014, 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 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
Dr Hon LAM Tai-fai, SBS, JP
Hon WONG Kwok-kin, BBS
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

Members absent : Hon Ronny TONG Ka-wah, SC
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Tony TSE Wai-chuen

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 : Mr KAU Kin-wah
Senior Assistant Legal Adviser 3

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

LC Paper No. CB(1)623/13-14(01) -- Administration's response to issues raised at the meeting on 3 December 2013

LC Paper No. CB(1)623/13-14(02) -- List of follow-up actions arising from the discussion at the meeting on 20 December 2013

LC Paper No. CB(1)623/13-14(03) -- Administration's response to issues raised at the meeting on 20 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
- LC Paper No. CB(1)594/13-14(04) -- Draft Committee Stage amendment (CSA) proposed by Hon Mrs Regina IP LAU Suk-ye
- LC Paper No. CB(1)623/13-14(04) -- Administration's response to draft CSA proposed by Hon Mrs Regina IP LAU Suk-ye as set out in LC Paper No. CB(1)594/13-14(04)

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)

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| LC Paper No. CB(1)1826/12-13(01) | No. -- | 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)
(<i>Chinese version only</i>) | -- | Supplementary information on draft CSA proposed by Hon James TO Kun-sun |

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))

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 POON Siu-ping, Mr Tommy CHEUNG, Mr Kenneth LEUNG, Mr YIU Si-wing, Mr James TO, Mr Abraham SHEK, Mr CHAN Kam-lam, Mr WONG Kwok-hing, Mr Alan LEONG, Mr Jeffrey LAM, Dr CHIANG Lai-wan, Mr WONG Ting-kwong, and Mr James TIEN disclosed their respective interests.

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

- (a) while the Administration had advised in previous meetings of the Bills Committee that not allowing exemption from the Buyer's Stamp Duty (BSD) for Hong Kong permanent residents (HKPRs) under 18 years of age was likely to be discriminatory, to elaborate on the legal justifications for adopting the Committee Stage amendments proposed by Mrs Regina IP to remove the BSD exemption for acquisitions of residential property made on behalf of a HKPR minor by his/her trustee or guardian; and
- (b) in light of the Court of Final Appeal (CFA) judgment that the requirement of seven-year residence in Hong Kong stipulated by the Government for the Comprehensive Social Security Assistance Scheme had contravened Article 25 of the Basic Law, assess the implication of the CFA judgment on the constitutionality of the BSD, including the removal of the BSD exemption for purchase of residential property on behalf of a HKPR minor.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)698/13-14(02) on 9 January 2014.)

5. The Bills Committee had completed clause-by-clause examination of the Chinese version of the Bill. The Chairman requested Senior Assistant Legal Adviser 3 to report to the Bills Committee if he had any comments on the legal and drafting aspects of the English version of the Bill.

II. Any other business

6. The Chairman reminded members that the next meeting would be held on Friday, 10 January 2014 at 10:45 am.

7. There being no other business, the meeting ended at 6:25 pm.

Council Business Division 1
Legislative Council Secretariat
21 July 2014

**Proceedings of the twentieth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2012
on Monday, 6 January 2014, 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			
000528 – 000547	Chairman	Opening remarks	
000548 – 000635	Chairman Mr Andrew LEUNG Mr POON Siu-ping Mr Tommy CHEUNG Mr Kenneth LEUNG Mr YIU Si-wing Mr James TO	Disclosure of interests by members	
Clause-by-clause examination of the Bill			
000636 – 001156	Chairman Administration	Proposed Committee Stage amendment (CSA) on consequential amendment to the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013 (LC Paper No. CB(1)1719/12-13(01)) <u>New Clause 15A – to amend Section 47F (relief on transactions under qualified investment arrangement)</u> Members raised no question.	
001157 – 002408	Chairman Mr James TO Mr Abraham SHEK Mr Tommy CHEUNG Administration	Disclosure of interests by Mr Abraham SHEK <u>Clause 16 – to add section 63A</u> Mr James TO, Mr Abraham SHEK and Mr Tommy CHEUNG considered the Administration's proposed adjustment mechanism for the rates of Special Stamp Duty (SSD) and Buyer's Stamp Duty (BSD) highly undesirable as it might seriously undermine the scrutiny power of the Legislative Council (LegCo) and its gate-keeping role in monitoring the Government. Mr James TO indicated that the Democratic Party objected to the proposed negative vetting procedures, and strongly urged that adjustments to the SSD and BSD rates should be subject to "positive vetting" of the LegCo, or by resolution of the LegCo.	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's response –</p> <p>(a) SSD and BSD were demand-side management measures which were extraordinary measures introduced under the current exceptional circumstances. It was important that such measures could be reversed as and when it was appropriate;</p> <p>(b) adjusting the SSD and BSD rates by way of subsidiary legislation was therefore proposed to provide the necessary flexibility to adjust the applicable rates (to zero if necessary) in a timely manner with reference to the latest property market situation and change in the external economic environment; and</p> <p>(c) any adjustments to the SSD and BSD rates in the future would be subject to the LegCo's scrutiny under the negative vetting procedure.</p>	
002409 – 003141	Chairman Mr CHAN Kam-lam Mr Abraham SHEK Administration	<p>Disclosure of interests by Mr CHAN Kam-lam</p> <p>Mr CHAN Kam-lam was of the view that adjustments to the SSD and BSD rates by way of negative vetting was no cause for concern as such an arrangement was common in effecting tax and revenue related measures.</p> <p>Mr Abraham SHEK questioned whether SSD and BSD were tax and revenue measures.</p> <p>The Administration's response –</p> <p>(a) the introduction of SSD and BSD was not for revenue purpose but to address the irrational exuberance in the residential property market in recent years, and to accord priority to the home ownership needs of Hong Kong permanent residents (HKPRs); and</p> <p>(b) the demand-side management measures were extraordinary measures introduced under the current exceptional circumstances. It was important that such measures could be reversed in a timely manner as and when it was appropriate.</p>	

Time marker	Speaker	Subject(s)	Action required
003142 – 003902	Chairman Mr James TO Senior Assistant Legal Adviser 3 (SALA3) Administration	Mr James TO reiterated his objection to the negative vetting procedures proposed under Clause 16. SALA3 suggested the Administration to consider some technical amendments to Clause 16 to enhance textual clarity of the provision.	
003903 – 004821	Chairman Mr Alan LEONG Administration	Mr Alan LEONG said that the Civic Party had reservation over the Administration's proposed mechanism for adjusting the SSD and BSD rates as it might seriously undermine the scrutiny power of the LegCo and its gate-keeping role in monitoring the Government. The Administration's response – (a) given that the residential property market was extremely sensitive to any change in external factors, such as interest rates and the state of the global economy, the proposed adjustment mechanism was necessary to ensure the healthy and stable development of the market; and (b) the proposed arrangement also addressed the concerns of stakeholders from the financial and property-related sectors that the demand-side management measures should be adjusted (or even withdrawn) promptly in light of the market situation.	
004822 – 004937	Chairman Mr WONG Kwok-hing Mr Alan LEONG Mr Jeffrey LAM Dr CHIANG Lai-wan Mr WONG Ting-kwong	Disclosure of interests by members	
004938 – 005814	Chairman Administration	<u>Clause 17 – to add section 70</u> <u>Clause 18 – to amend First Schedule</u> Proposed CSAs on minor and technical amendments to improve the clarity of the provisions (LC Paper No. CB(1)1719/12-13(01)) Members raised no question.	

Time marker	Speaker	Subject(s)	Action required
005815 – 005906	Chairman Administration	<p><u>Clause 19 – to amend Stamp Duty (Specification of Instruments) Notice</u></p> <p><u>Clause 20 – to amend Schedule (specification of instruments)</u></p> <p>Members raised no question.</p>	
005907 – 005922	Chairman	Clause-by-clause examination of the Bill completed	
005923 – 010249	Chairman Administration	The Administration's explanation on its response to the CSA proposed by Mrs Regina IP (LC Paper No. CB(1)623/13-14(04)).	
010250 – 010813	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK's views –</p> <p>(a) questioned the Administration's rationale for removing the BSD exemption for acquisitions of residential properties made on behalf of a HKPR minor; and</p> <p>(b) the removal of the BSD exemption for HKPR minors across the board would affect not only children born to Mainland parents (both of whom were not HKPRs) but also children born to HKPR parents.</p> <p>The Administration responded that the decision to take over Mrs Regina IP's CSA to remove the BSD exemption for HKPR minors was to address the grave concerns expressed by some members that the BSD exemption for acquisitions of residential properties by HKPR minors through their trustees or guardians might be vulnerable to abuse and would undermine the effectiveness of the BSD.</p>	
010814 – 011927	Chairman Mr Abraham SHEK Mr James TIEN Mr WONG Ting-kwong Mr Paul TSE SALA3	Arrangements for the Chairman to move the CSAs to the Bill proposed by Mr Abraham SHEK, Mr Andrew LEUNG, Mr Kenneth LEUNG and Mr Tommy CHEUNG	
011928 – 012135	Chairman Administration	The Administration's explanation on its response to the issues raised at the meeting of the Bills Committee held on 20 December 2013 (LC Paper No. CB(1)623/13-14(03)).	

Time marker	Speaker	Subject(s)	Action required
012136 – 013256	Chairman Mr James TIEN Mr Paul TSE Mr Abraham SHEK Administration	Discussion on the removal of the BSD exemption for HKPR minors In view of the Administration's earlier explanation in previous meetings of the Bills Committee that not allowing BSD exemption for HKPRs under 18 years of age was likely to be discriminatory, Mr Paul TSE and Mr Abraham SHEK questioned the legal justifications for adopting the CSA proposed by Mrs Regina IP to remove the BSD exemption for HKPR minors.	The Administration to follow up as stated in paragraph 4(a) of the minutes.
013257 – 013756	Chairman Mr James TIEN Mr Abraham SHEK Administration	Disclosure of interests by Mr James TIEN Mr James TIEN pointed out that in the case of a property-holding Hong Kong company wholly owned by another company incorporated overseas (e.g. a British Virgin Islands company), non-HKPRs could circumvent both the BSD and other stamp duty when the property transaction was effected by transfer of shares of the overseas company. The Administration took note of 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 address the concerns. Such changes required careful deliberation involving various policy areas and were outside the scope of the Bill.	
013757 – 014200	Chairman Administration	The Administration's explanation on its response to the issues raised at the meeting of the Bills Committee held on 3 December 2013 (LC Paper No. CB(1)623/13-14(01)).	
014201 – 015123	Chairman Mr Abraham SHEK Mr Paul TSE Administration	In light of the Court of Final Appeal (CFA) judgment that the requirement of seven-year residence in Hong Kong stipulated by the Government for the Comprehensive Social Security Assistance Scheme had contravened Article 25 of the Basic Law, Mr Abraham SHEK and Mr Paul TSE requested the Administration to assess the implication of the CFA judgment on the constitutionality of the BSD, including the removal of the BSD exemption for purchase of residential property on behalf of a HKPR minor.	The Administration to follow up as stated in paragraph 4(b) of the minutes.

Time marker	Speaker	Subject(s)	Action required
015124 – 015550	Chairman Mr James TIEN Administration	Meeting arrangements	
Agenda Item II – Any other business			
015551 – 015607	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
21 July 2014