

立法會
Legislative Council

LC Paper No. CB(1)1886/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/12

Bills Committee on Stamp Duty (Amendment) Bill 2012

**Minutes of the twenty-first meeting on
Friday, 10 January 2014, at 10:45 am
in Conference Room 3 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 WONG Ting-kwong, SBS, JP
 - Hon Ronny TONG Ka-wah, SC
 - Dr Hon LAM Tai-fai, SBS, JP
 - Hon Paul TSE Wai-chun, JP
 - Hon James TIEN Pei-chun, GBS, JP
 - Hon YIU Si-wing
 - Hon Charles Peter MOK
 - Hon CHAN Yuen-han, SBS, JP
 - Hon Kenneth LEUNG
 - Hon TANG Ka-piu
 - Dr Hon CHIANG Lai-wan, JP
 - Hon Tony TSE Wai-chuen
- Member attending** : Hon Martin LIAO Cheung-kong, JP

- Members absent** : Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Kwok-kin, BBS
Hon Mrs Regina IP LAU Suk-yea, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon WU Chi-wai, MH
Hon LEUNG Che-cheung, BBS, MH, JP
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)
Mrs Vicki KWOK
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 : 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)698/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 6 January 2014

LC Paper No. CB(1)698/13-14(02) -- Administration's response to issues raised at the meeting on 6 January 2014

LC Paper No. CB(1)698/13-14(03) -- Government's Committee Stage amendments ("CSAs") to the Stamp Duty (Amendment) Bill 2012

Relevant papers issued previously

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)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)623/13-14(04) -- Administration's response to draft CSA proposed by Hon Mrs Regina IP LAU Suk-yea as set out in LC Paper No. CB(1)594/13-14(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 CHAN Kam-lam, Mr Kenneth LEUNG, Mr Abraham SHEK, Mr WONG Ting-kwong, Mr Tony TSE, and Mr Ronny TONG disclosed their respective interests.

Scrutiny of the Bill

4. The Bills Committee completed the scrutiny of the Stamp Duty (Amendment) Bill 2012 (the Bill).

Committee stage amendments (CSAs) to be moved by the Bills Committee

5. The Bills Committee agreed that notices of amendments to the Bill in respect of the Buyer's Stamp Duty (BSD) exemption for companies owned by

Hong Kong permanent residents (HKPRs) be served in the following order:

- (i) draft CSAs proposed by Mr Tommy CHEUNG seeking to allow total BSD exemption for HKPR companies meeting certain conditions (LC Paper No. CB(1)474/13-14(01)); and
- (ii) draft CSAs proposed by Mr Abraham SHEK to the effect that the BSD paid by a HKPR company 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)).

6. The Bills Committee agreed that notices of amendments to the Bill relating to the sunset clause for the Special Stamp Duty (SSD) and BSD be served in the following order:

- (i) draft CSAs proposed by Mr Tommy CHEUNG to the effect that the SSD and BSD would lapse by the midnight of 31 December 2014 (LC Paper No. CB(1)474/13-14(01)); and
- (ii) draft CSAs proposed by Mr Andrew LEUNG that the SSD and BSD would expire by midnight on 26 October 2015 (LC Paper No. CB(1)1826/12-13(02) and (03)).

Legislative timetable

7. The Bills Committee did not object to the resumption of the Second Reading Debate on the Bill at the Council meeting on 19 February 2014. The Chairman informed members that the Bills Committee would submit a written report to the House Committee at its meeting on 7 February 2014. She also reminded members that the deadline for giving notice to move CSAs to the Bill would be 10 February 2014.

II. Any other business

8. There being no other business, the meeting ended at 12:38 pm.

**Proceedings of the twenty-first meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2012
on Friday, 10 January 2014, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000540 – 000556	Chairman	Opening remarks	
000557 – 000656	Chairman Mr CHAN Kam-lam Mr Kenneth LEUNG Mr Abraham SHEK Mr WONG Ting-kwong Mr Tony TSE Mr Ronny TONG	Disclosure of interests by members	
<i>Finalized version of Government's Committee Stage amendments to the Bill (LC Paper No. CB(1)698/13-14(03))</i>			
000657 – 001441	Chairman Administration	The Administration's explanation on its Committee Stage amendments (CSAs) on the withdrawal of the exemption arrangement of the Buyer's Stamp Duty (BSD) in respect of minors who were Hong Kong permanent residents (HKPRs).	
001442 – 003743	Chairman Mr James TO Administration	<p><u>Clause 9 – Proposed section 29CB(8)(b) and (9)(b)</u></p> <p><u>Clause 12 – Proposed section 29DB(9)(b) and (10)(b)</u></p> <p>Mr James TO's enquiries and views –</p> <p>(a) questioned the rationale and legal justifications for withdrawing the BSD exemption for HKPR minors while retaining the exemption for mentally incapacitated persons (MIPs) who were HKPRs; and</p> <p>(b) warned about the danger of a judicial review of the BSD exemption for HKPR MIPs and the removal of the BSD exemption for HKPR minors; and</p> <p>(c) suggested tightening up the proposed BSD exemption arrangement for MIPs so that BSD exemption would only be granted for acquisitions of residential properties made by HKPR MIPs through trustees or guardians who were appointed under the Mental Health</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Ordinance (Cap. 136) or otherwise by the court.</p> <p>The Administration's response –</p> <p>(a) the decision to remove the BSD exemption for HKPR minors across the board was to address some members' grave concern over possible abuse of the BSD exemption by non-HKPR trustees or guardians, thus undermining the effectiveness of the BSD; and</p> <p>(b) unlike minors who were under the supervision of, and were more likely to live with, their parents or guardians, MIPs who were adults had a right to choose their place of residence and where and with whom they lived. Compared to minors, MIPs were less likely to live with their family members and therefore had greater need to acquire residential properties.</p>	
003744 – 004257	Chairman Administration	<p>The Administration's explanation on its CSA on the admissibility of instruments not duly stamped with the BSD (new clause 4A).</p> <p>The Administration advised that to address further concerns of the Law Society of Hong Kong (the Law Society) the Administration had introduced CSAs to the effect of allowing an instrument to be received in evidence in civil proceeding before a court, even if it was not duly stamped with the BSD. The amendment was in line with the policy intention that any failure to pay the BSD by the buyer should not affect an innocent party's right to present the relevant documentation in court proceedings.</p>	
004258 – 005547	Chairman Mr James TO Administration	<p>In response to the Chairman's enquiry, the Administration confirmed that the Law Society had no further comment on the relevant CSA.</p> <p>Discussion on the wording of proposed section 15(1B) in respect of the interpretation of "innocent party".</p>	

Time marker	Speaker	Subject(s)	Action required
005548 – 010749	Chairman Mr James TO Senior Assistant Legal Adviser 3 (SALA3) Administration	The Administration's explanation on the remaining additional CSAs which were minor and technical in nature, essentially to improve clarity of the provisions. Members raised no question. SALA3 confirmed that the Administration's amendment to Clause 16 had addressed his suggestion to enhance textual clarity of the provision in respect of the adjustments to the SSD and BSD rates by way of subsidiary legislation.	
010750 – 010918	Chairman SALA3 Administration	The Chairman requested SALA3 to scrutinize the English version of the Administration's CSAs and report to the Bills Committee if he had any comments on the legal and drafting aspects.	
010919 – 011610	Chairman Mr James TO Administration	<u>Clause 12 - to add sections 29DB, 29DC and 29DD</u> <i>Proposed section 29DD – Refund of buyer's stamp duty in case of redevelopment</i> Discussion on the revised BSD refund mechanism for redevelopment.	
<i>Follow-up to issues arising from previous meetings</i>			
011611 – 011830	Chairman Administration	The Administration's explanation on its response to the issues raised at the meeting of the Bills Committee held on 6 January 2014 (LC Paper No. CB(1)698/13-14(02)).	
011831 – 013116	Chairman Mr Abraham SHEK Mr James TO Mr Paul TSE Administration	Discussion on the justifications for withdrawing the BSD exemption for acquisitions of residential property made on behalf of a HKPR minor by his/her trustee or guardian.	
013117 – 013210	Chairman Mr James TO	Completion of scrutiny of the Bill	
<i>Follow-up arrangements</i>			
013211 – 014850	Chairman Mr James TO Mr Abraham SHEK Miss CHAN Yuen-han Mr Paul TSE SALA3	Discussion on the order for serving of notices of amendments to the Bill by the Chairman on behalf of the Bills Committee.	

Time marker	Speaker	Subject(s)	Action required
014851 – 015401	Chairman Mr James TO Mr Abraham SHEK SALA3	Legislative timetable	

Council Business Division 1
Legislative Council Secretariat
30 July 2014