

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1936/13-14  
(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-second meeting on  
Tuesday, 18 February 2014, at 4:30 pm  
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 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 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 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

**Member attending** : Hon Cyd HO Sau-lan

**Members absent** : Hon CHAN Kam-lam, SBS, JP  
Hon Jeffrey LAM Kin-fung, 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)

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

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Action

- 1. Meeting with the Administration**  
(LC Paper No. CB(1)922/13-14(01) -- Hon James TO Kun-sun's  
(*Chinese version only*) letter dated 15 February 2014  
  
LC Paper No. CB(1)923/13-14(01) -- Administration's paper on its  
proposed approach to the  
future adjustments to the  
rates of the Special Stamp  
Duty and the Buyer's Stamp  
Duty  
  
LC Paper No. LS27/13-14 -- Legal Service Division's  
Note on the Administration's  
paper: "Future adjustments to  
the rates of the Special Stamp  
Duty and the Buyer's Stamp  
Duty")

The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

- 2. The Chairman** advised that at the request of Mr James TO, the meeting was convened to discuss the Administration's proposed arrangement announced on 14 February 2014 to adopt different legislative approaches for future upward or downward adjustments to the rates of the Special Stamp Duty and the Buyer's Stamp Duty and related issues.

3. 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.

4. The Chairman, Mr Kenneth LEUNG, Mr Andrew LEUNG, Mr WONG Ting-kwong, Ms Emily LAU, Mr POON Siu-ping, Mr Alan LEONG, Mr LEUNG Che-cheung, Miss CHAN Yuen-han, Mr WONG Kwok-kin, Mr James TO, Mr Abraham SHEK, Mr James TIEN, Mr Paul TSE, Dr LAM Tai-fai, Ms Cyd HO, Mr Tommy CHEUNG, and Mrs Regina IP disclosed their respective interests.

Motion proposed by Mr Kenneth LEUNG

5. Mr Kenneth LEUNG moved the following motion:

(Translation)

"That, the Transport and Housing Bureau has indicated that the Government is willing to give an undertaking in relation to the Stamp Duty (Amendment) Bill 2012, under which the Government will amend the Stamp Duty Ordinance by way of a bill for any upward adjustment, if necessary, of the rates of Special Stamp Duty or Buyer's Stamp Duty in future, and the Government will only use the "negative vetting" approach to amend the Stamp Duty Ordinance in situations where there is a need to reduce or withdraw the relevant rates; given that the legal effect of determining the legislative approach of the Ordinance concerned by means of an undertaking is doubtful and the proposal has far-reaching implications, but this Bills Committee has not undergone any detailed discussions on it, this Bills Committee urges the Government to postpone the resumption of the Second Reading debate on the Stamp Duty (Amendment) Bill 2012, so that the Bills Committee will have adequate time to examine the latest proposal put forward by the Administration and the relevant legislative procedure."

6. Senior Assistant Legal Adviser 3 advised that the motion, if passed, would be an expression of views by the Bills Committee on the Bill, and would not have legislative effect.

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

*For*

Mr James TO  
Ms Emily LAU  
Mr Tommy CHEUNG  
Dr LAM Tai-fai  
Mr WU Chi-wai  
(10 members)

Mr LEE Cheuk-yan  
Mr Abraham SHEK  
Mr Ronny TONG  
Mr Alan LEONG  
Mr Kenneth LEUNG

*Against*

Mr WONG Ting-kwong  
Mrs Regina IP  
Dr CHIANG Lai-wan  
(5 members)

Mr WONG Kwok-kin  
Mr LEUNG Che-cheung

8. The Chairman declared that the motion was carried.

*(Post-meeting note: The wording of the motion was circulated to members vide LC Paper No. CB(1)944/13-14(01) on 19 February 2014.)*

**II. Any other business**

9. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 1  
Legislative Council Secretariat  
19 August 2014

**Proceedings of the twenty-second meeting of  
the Bills Committee on Stamp Duty (Amendment) Bill 2012  
on Tuesday, 18 February 2014, at 4:30 pm  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000340 – 000417	Chairman	Opening remarks	
000418 – 000647	Chairman Mr Kenneth LEUNG Mr Andrew LEUNG Mr WONG Ting-kwong Ms Emily LAU Mr POON Siu-ping Mr Alan LEONG Mr LEUNG Che-cheung Miss CHAN Yuen-han Mr WONG Kwok-kin Mr James TO Mr Abraham SHEK	Disclosure of interests by members	
000648 – 001428	Chairman Administration	The Administration's explanation on its proposed approach to amend the rates of the Special Stamp Duty (SSD) and the Buyer's Stamp Duty (BSD) in future (LC Paper No. CB(1)923/13-14(01)).	
001429 – 001552	Chairman Senior Assistant Legal Adviser 3 (SALA3)	SALA3's views as set out in LC Paper No. LS27/13-14 on the Administration's paper on "Future adjustments to the rates of the Special Stamp Duty and the Buyer's Stamp Duty".	
001553 – 002152	Chairman Mr James TO Administration	Mr James TO's views and concerns –  (a) expressed dissatisfaction about the Administration's last-minute announcement of the different legislative approaches for future adjustments of the SSD and BSD rates, which had not yet been deliberated by the Bills Committee;  (b) members were deprived of their right to move Committee Stage amendments (CSAs) to the Bill to rectify the present situation as the deadline for moving amendments to the Bill had expired;  (c) questioned the legality and enforceability of	

Time marker	Speaker	Subject(s)	Action required
		<p>the Administration's undertaking as such an undertaking had no legal effect, and was binding on the current term of Government only, the definition of which was unclear;</p> <p>(d) in the event of a deviation from such an undertaking, the matter would unlikely be justiciable in a court of law; and</p> <p>(e) the future adjustments to the SSD and BSD rates were matters of taxation, therefore should be subject to positive vetting by the Legislative Council (LegCo), or approval by a resolution of the LegCo.</p> <p>The Administration's response –</p> <p>(a) there were precedent cases in which the Administration, instead of making amendments by subsidiary legislation as provided for in the relevant ordinance, sought to effect changes by way of an amendment bill. One example was the Motor Vehicles (First Registration Tax) (Amendment) Bill 2011; and</p> <p>(b) the Secretary for Transport and Housing (STH) would give a formal undertaking during resumption of the Second Reading debate on the Bill. Given this open and formal undertaking, it was very unlikely that the Administration would deviate from the undertaking in future.</p>	
002153 – 002615	Chairman Mr Kenneth LEUNG Administration	<p>Mr Kenneth LEUNG's views and concerns –</p> <p>(a) the Administration's proposed arrangement of adopting different legislative approaches for future upward or downward adjustments to the SSD and BSD rates was undesirable. It would cause confusion to the existing Stamp Duty regime if different mechanisms were used for adjusting different types of stamp duty under the Stamp Duty Ordinance (Cap. 117);</p> <p>(b) questioned the legality and enforceability of the Administration's undertaking; and</p> <p>(c) the Bills Committee did not have sufficient</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>time to examine the latest proposal put forward by the Administration and the relevant legislative procedures.</p> <p>The Administration's response –</p> <p>(a) SSD and BSD measures were not revenue measures, but were tools to manage demand and to accord priority to the home ownership needs of Hong Kong permanent residents amidst the current tight housing supply situation; and</p> <p>(b) other types of stamp duty were outside the scope of the Bill and the purview of the Transport and Housing Bureau.</p>	
002616 – 003037	Chairman Mr Andrew LEUNG Administration	<p>Mr Andrew LEUNG's views –</p> <p>(a) it was improper for administrative measures or a designated official's undertaking to take the place of legislation;</p> <p>(b) the Administration's proposed arrangement was disrespectful of the well-established legislative procedures and would undermine the scrutiny power of the LegCo; and</p> <p>(c) the Administration should adjust the SSD and BSD rates by way of an amendment bill.</p> <p>The Administration's response –</p> <p>(a) in view of the market-sensitive and time-critical nature of the property market, the negative vetting mechanism proposed in the Bill was in the best interest of the community as it enabled prompt adjustments to the applicable rates of SSD and BSD (to zero if necessary) in the light of the market situation to ensure the healthy and stable development of the property market;</p> <p>(b) a piece of subsidiary legislation to adjust certain rates under the negative vetting procedure was a well-established procedure in processing subsidiary legislation and was widely adopted in the laws of Hong Kong; and</p>	



Time marker	Speaker	Subject(s)	Action required
		<p>(c) positive vetting procedure, which could entail a protracted process, might not be able to provide the flexibility for introducing timely adjustments to the relevant rates when necessary. Since there was no time limit for completion of the scrutiny process, it would cause confusion to the market during the scrutiny period.</p>	
003038 – 003514	Chairman Mr Abraham SHEK	<p>Mr Abraham SHEK's views –</p> <p>(a) expressed dissatisfaction about the Administration's last-minute announcement of the different legislative approaches for future adjustments of the SSD and BSD rates, which had not yet been deliberated by the Bills Committee; and</p> <p>(b) expressed dissatisfaction that STH did not attend the meeting in person to explain the undertaking to be given during resumption of the Second Reading debate on the Bill.</p>	
003515 – 004128	Chairman Mr Alan LEONG Administration	<p>Mr Alan LEONG's views –</p> <p>(a) suggested the Administration to consider seeking the LegCo President's agreement to waive the notice requirement for the Administration to move CSAs to the Bill to provide expressly for the proposed legislative approaches for effecting upward and downward adjustments to the relevant rates; and</p> <p>(b) called on the Administration to postpone the resumption of the Second Reading debate on the Bill.</p> <p>The Administration reiterated that the negative vetting mechanism proposed in the Bill was in the best interest of the community as it enabled prompt adjustments to the SSD and BSD rates in the light of the market situation, and that the early passage of the Bill would eliminate the uncertainty to the property market. The use of different legislative approaches for adjusting the relevant rates was put forward so as to strike a balance between addressing members' general view that any proposed increase in the SSD and BSD rates should be subject to more deliberations by the</p>	

Time marker	Speaker	Subject(s)	Action required
		LegCo on the one hand and preserving the effectiveness of the demand-side management measures on the other.	
004129 – 004746	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU's views and concerns –</p> <ul style="list-style-type: none"> <li>(a) expressed dissatisfaction about the Administration's last-minute announcement of the different legislative approaches for future adjustments of the SSD and BSD rates, which had not yet been deliberated by the Bills Committee;</li> <li>(b) questioned the legality and enforceability of the Administration's undertaking as such an undertaking had no legal effect; and</li> <li>(c) expressed dissatisfaction that STH did not attend the meeting in person to explain the undertaking to be given during resumption of the Second Reading debate on the Bill.</li> </ul> <p>The Administration's response –</p> <ul style="list-style-type: none"> <li>(a) maintained that the negative vetting mechanism proposed in the Bill was in the best interest of the community as it enabled prompt adjustments to the SSD and BSD rates in the light of the market situation; and</li> <li>(b) although the Administration's undertaking was not law and had no legal effect, it was very unlikely that it would deviate from the undertaking in future.</li> </ul>	
004747 – 005310	Chairman Mr James TIEN Administration	<p>Disclosure of interests by Mr James TIEN</p> <p>Mr James TIEN's views –</p> <ul style="list-style-type: none"> <li>(a) it was undesirable that administrative measures or a designated official's undertaking should take the place of legislation; and</li> <li>(b) requested the Administration to undertake, subject to the passage of the Bill, to introduce an amendment bill to amend the proposed section 63A within a specified period, say three months, after the enactment of the Bill, to clearly set out in legislation the proposed</li> </ul>	

Time marker	Speaker	Subject(s)	Action required
		<p>different legislative approaches for effecting upward and downward adjustments to the SSD and BSD rates.</p> <p>The Administration responded that it had no intention to introduce an amendment bill in future as suggested by Mr James TIEN.</p>	
005311 – 010026	Chairman Mr Paul TSE Administration	<p>Disclosure of interests by Mr Paul TSE</p> <p>Mr Paul TSE's views –</p> <p>(a) expressed dissatisfaction about the Administration's last-minute announcement of the proposed arrangement of adopting different legislative approaches for future upward and downward adjustments to the SSD and BSD rates, which had not yet been deliberated by the Bills Committee;</p> <p>(b) criticized the proposed arrangement as defying the rule of law, disrespectful of the well-established legislative procedures as well as undermining the scrutiny power of the LegCo; and</p> <p>(c) suggested the Administration to consider seeking the President's agreement to waive the notice requirement for moving a relevant CSA to the Bill to reflect the Administration's latest intent, or deferring the resumption of the Second Reading debate on the Bill.</p> <p>The Administration responded that the early passage of the Bill would eliminate the uncertainty to the property market, the inconvenience to the relevant sectors, as well as the possible greater risks to the macro-economy and the financial sector.</p>	
010027 – 010627	Chairman Dr LAM Tai-fai Administration	<p>Disclosure of interests by Dr LAM Tai-fai</p> <p>Dr LAM Tai-fai's views –</p> <p>(a) expressed dissatisfaction about the Administration's last-minute announcement of the different legislative approaches for future adjustments of the SSD and BSD rates, which had not yet been deliberated by the Bills Committee;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) it was improper for administrative measures or a designated official's undertaking to take the place of legislation; and</p> <p>(c) questioned the legality and enforceability of the Administration's undertaking as such an undertaking had no legal effect, and was binding on the current term of Government only, the definition of which was unclear.</p>	
010628 – 011245	Chairman Ms Cyd HO Administration	<p>Disclosure of interests by Ms Cyd HO</p> <p>Ms Cyd HO's views –</p> <p>(a) expressed dissatisfaction about the Administration's last-minute announcement of the different legislative approaches for future adjustments of the SSD and BSD rates, which had not yet been deliberated by the Bills Committee;</p> <p>(b) criticized the proposed arrangement as defying the rule of law, disrespectful of the well-established legislative procedures as well as undermining the scrutiny power of the LegCo; and</p> <p>(c) urged the Administration to postpone the Second Reading debate on the Bill so that the Bills Committee would have sufficient time to examine in detail the Administration's latest proposal and the relevant legislative procedures.</p> <p>The Administration responded that there were precedent cases in which the Administration, instead of making amendments by subsidiary legislation as provided for in the relevant ordinance, sought to effect changes by way of an amendment bill, such as the Dutiable Commodities (Amendment) Bill 2008 and the Motor Vehicles (First Registration Tax) (Amendment) Bill 2011.</p>	
011246 – 011516	Chairman Mr Tommy CHEUNG	<p>Disclosure of interests by Mr Tommy CHEUNG</p> <p>Mr Tommy CHEUNG's views –</p> <p>(a) expressed dissatisfaction about the Administration's last-minute announcement of</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>the different legislative approaches for future adjustments of the SSD and BSD rates, which had not yet been deliberated by the Bills Committee; and</p> <p>(b) expressed disappointment that the Administration did not accept Mr James TIEN's suggestion to introduce an amendment bill to amend the proposed section 63A within a specified period after the enactment of the Bill to clearly set out in legislation the proposed different legislative approaches for effecting upward and downward adjustments to the SSD and BSD rates.</p>	
011517 – 011821	Chairman Mrs Regina IP Administration	<p>Disclosure of interests by Mrs Regina IP</p> <p>Mrs Regina IP's views –</p> <p>(a) it might not always be necessary to rely solely on legislation for policy implementation. In some precedent cases, the use of administrative measures and the giving of Government undertaking could also achieve the same policy effect; and</p> <p>(b) supported the early passage of the Bill to eliminate the uncertainty to the property market.</p>	
011822 – 012336	Chairman Mr WU Chi-wai Administration	<p>Disclosure of interests by Mr WU Chi-wai</p> <p>Mr WU Chi-wai's views and concerns –</p> <p>(a) the negative vetting mechanism under the proposed section 63A of the Bill was highly undesirable as it would usurp the scrutiny power of the LegCo and undermine its gate-keeping role in monitoring the Government; and</p> <p>(b) supported the CSAs moved by Mr Martin LIAO which enabled the relevant adjustments to SSD and BSD rates to come into effect immediately. In his view, the proposed mechanism had the merits of retaining LegCo's scrutiny power while providing the necessary flexibility for the Administration to make timely response to any changes in the property market situation and the external</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>economic environment.</p> <p>The Administration's response –</p> <p>(a) under the adjustment mechanism proposed by Mr Martin LIAO, although the adjustment could take immediate effect upon the gazettal of the notice and the scrutiny period was limited to six months, such a mechanism would still create uncertainty for the market, as the new rates announced in the gazette notice would still be subject to change;</p> <p>(b) if the Administration's proposed adjustment was negated by the LegCo, or if LegCo's scrutiny was not completed within six months of the gazettal of the notice, the proposed new rates would cease to have effect. The original rates would then be restored retrospectively, affecting all transactions that had taken place during the interim period. Any excessive stamp duty collected would have to be refunded to the payer and any stamp duty underpaid would have to be paid to the Administration within the specified period, as the case may be; and</p> <p>(c) this would, as a result, cause confusion to the market and bring inconvenience to the relevant sectors.</p>	
012337 – 012750	Chairman	<p>The Chairman indicated the views of the Democratic Alliance for the Betterment and Progress of Hong Kong –</p> <p>(a) accepted the Administration's explanation that in view of the market-sensitive and time-critical nature of the property market, the negative vetting mechanism proposed in the Bill was in the best interest of the community as it enabled prompt adjustments to the SSD and BSD rates in the light of the market situation which was conducive to the healthy and stable development of the property market; and</p> <p>(b) supported the resumption of the Second Reading debate at the Council meeting of 19 February 2014.</p>	

Time marker	Speaker	Subject(s)	Action required
012751 – 013234	Chairman Mr James TO Administration	Mr James TO indicated that the Democratic Party supported the CSAs moved by Mr Martin LIAO.  The Administration reiterated its views that the adjustment mechanism proposed by Mr Martin LIAO would still create uncertainty for the market, and bring inconvenience to relevant sectors.	
013235 – 013603	Chairman Mr Kenneth LEUNG	Mr Kenneth LEUNG's views –  (a) expressed dissatisfaction about the Administration's last-minute announcement of the different legislative approaches for future adjustments of the SSD and BSD rates, which had not yet been deliberated by the Bills Committee; and  (b) it was improper that administrative measures or a designated official's undertaking should take the place of legislation.	
013604 – 013900	Chairman Mr Alan LEONG	Mr Alan LEONG's views –  (a) expressed dissatisfaction that neither STH nor the Under Secretary for Transport and Housing attended the meeting in person to explain the undertaking to be given by the Administration during resumption of the Second Reading debate on the Bill;  (b) expressed concern that in the event of the Administration's deviation from its undertaking, the matter would unlikely be justiciable in a court of law, but would only be a matter for Members to pursue through the political process; and  (c) supported the adjustment mechanism proposed by Mr Martin LIAO.	
013901 – 014205	Chairman Dr LAM Tai-fai	Dr LAM Tai-fai reiterated his views –  (a) expressed dissatisfaction about the Administration's last-minute announcement of the different legislative approaches for future adjustments of the SSD and BSD rates, which had not yet been deliberated by the Bills Committee; and	

Time marker	Speaker	Subject(s)	Action required
		(b) it was improper for administrative measures or a designated official's undertaking to take the place of legislation.	
014206 – 014608	Chairman Ms Emily LAU Administration	Ms Emily LAU 's views –  (a) expressed dissatisfaction that STH did not attend the meeting in person to explain the proposed mechanism and the undertaking to be given by the Administration during resumption of the Second Reading debate on the Bill;  (b) a majority of members had great reservation over the Administration's last-minute announcement of the different legislative approaches for future adjustments of the SSD and BSD rates; and  (c) supported the adjustment mechanism proposed by Mr Martin LIAO.	
014609 – 014834	Chairman Mr Abraham SHEK	Mr Abraham SHEK reiterated that it was improper that administrative measures or a designated official's undertaking, which was not legally binding and subject only to moral and political sanctions, should take the place of legislation.	
014835 – 015116	Chairman Mr Kenneth LEUNG Administration	Mr Kenneth LEUNG's explanation on his motion urging the Administration to postpone the resumption of the Second Reading debate on the Bill so that the Bills Committee would have sufficient time to examine in detail the latest proposal put forward by the Administration and the relevant legislative procedures.  The Administration responded that it had no intention to defer the resumption of the Second Reading debate on the Bill as it was in the best interest of the community for the Bill to be enacted as soon as practicable.	
015117 – 015259	Chairman Mr WONG Ting-kwong Mr Ronny TONG SALA3	In response to members' enquiry, SALA3 advised that the motion, if passed, would be an expression of views by the Bills Committee on the Bill, and would not have legislative effect.	



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
015300 – 015817	Chairman	The Chairman ordered for the voting bell to be rung for five minutes.	
015818 – 020020	Chairman Mr Kenneth LEUNG	The Bills Committee voted on the motion moved by Mr Kenneth LEUNG.  The Chairman declared that the motion was carried.  Mr Kenneth LEUNG called on the Administration to relay to STH the views of the Bills Committee on postponing the resumption of the Second Reading debate on the Bill.	
020021 – 020025	Chairman	Concluding remarks	