

中華人民共和國香港特別行政區  
Hong Kong Special Administrative Region of the People's Republic of China

立法會 LEGISLATIVE COUNCIL  
石禮謙 議員 Hon Abraham Shek Lai-Him J.P.

8 July 2013

Ms Starry LEE  
Chairman of Bills Committee on Stamp Duty (Amendment) Bill 2012  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Hong Kong

Dear

*Starry,*

**Concrete examples in LC Paper No. CB(1)1288/12-13(01)  
to illustrate possible loopholes and operational difficulties  
arising from abuse of a self-declaration mechanism for the  
purpose of exempting companies owned by HKPRs from the BSD**

With reference to the Administration paper: LC Paper No. CB(1)1460/12-13(01), which serves to respond to the issues raised in my letter of 24 June 2013 (LC Paper No. CB(1)1373/12-13(01) about the captioned subject, I would like to express my disapproval of the Administration's arguments and clarify certain points as set out in my previous letter. I further regret that the Administration submitted the paper last Friday on 5 July, only one working day before the meeting of this Bills Committee is held.

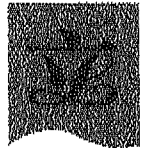
As time is running short, I would like to seek your kind approval to table this paper at the meeting today.

Yours sincerely,

Abraham Shek Lai Him



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### General observations

1. The Administration's response proceeded on the following basis :-
  - (a) Taxpayers, more likely than not, will take steps to evade BSD.
  - (b) In so doing, taxpayers are likely to adopt devious means.
  - (c) The following are insufficient deterrents :-
    - (i) That in case of dispute between Mr. A and Mr. B, Mr. B must pay up to 10 times the stamp duty as penalty before the Relevant Documents could be duly stamped in order to enforce his rights.
    - (ii) Criminal sanction of a fine at level 6 and imprisonment for 1 year.
  - (d) Conducting a search at the Companies Registry and inspecting the company's register of shares might be onerous.
2. The assumptions of the Administration are unjustified. I shall deal with the Administration's response as follows.

### Example 1 – Nomination / Declaration of Trust / Power of Attorney

3. The Administration suggests that there will not be too much risk involved for Mr. B to withhold the Relevant Documents from stamping. This cannot be further from the truth. A penalty at up to 10 times the stamp duty payable and criminal sanction of a fine at level 6 and imprisonment for 1 year are very strong deterrents.
4. The Administration says that to plug the above loopholes, it will inevitably require introducing fundamental changes to the registration requirements for company share transfers. This is grossly overstating the problem. Even without BSD, there is a risk of evasion of stamp duty by taxpayers not executing Contract Notes and relying on unstamped instruments similar to the Relevant Documents in effecting a transfer of beneficial interest in Hong Kong stock.



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**Example 2 – Premeditated transfer by Relevant Document**

5. Same as example 1.

**Example 3 – Allotment of new shares**

6. The Administration did not really provide an answer to my proposal.

7. The Administration says that the evasion of the BSD may take years to be uncovered, as disposal of the property by Company X may take place only years afterwards.

8. The Administration has failed to draw attention to the following :-

(a) the certainty of discovery of the evasion of stamp duty when the property is disposed of;

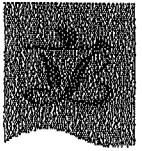
(b) the fact that the title of the property will be bad unless BSD is paid (with penalty, where applicable).

9. The Administration says that under the existing system, the solicitors acting for the parties in a transaction are not responsible for determining the amount of the stamp duty, and that to implement my proposal, amendments to the Conveyancing and Property Ordinance may be required.

10. The Administration's response is misleading. Although the solicitors are not responsible for determining the stamp duty payable, the solicitors acting for purchaser are under a duty to check that a good and marketable title to the property has been shown. In so doing, the solicitors would have to check whether the title deeds and documents are, on the face of it, duly stamped. Seeing that Company X did not pay BSD, it would be the duty of the solicitors to conduct a company search and perhaps inspect the register of shares of Company X to check whether there has been any allotment of shares. No amendments to the Conveyancing and Property Ordinance would be required.



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#### **Example 4 – Re-classification of shares and issue of shares**

11. The Administration suggests that the solicitors acting for the purchaser of the property have to carry out thorough examination to ascertain whether Company X has satisfied the conditions for BSD exemption.

12. This is not true. All that the solicitors need to do is to conduct a company search at the Companies Registry and if they are minded to take a further step, inspect the register of shares maintained by Company X.