

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1672/12-13  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/2/12

**Bills Committee on Inland Revenue and Stamp Duty Legislation  
(Alternative Bond Schemes) (Amendment) Bill 2012**

**Fifth meeting on  
Monday, 27 May 2013, at 2:30 pm  
in Conference Room 2 of the Legislative Council Complex**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Starry LEE Wai-king, JP  
Hon Kenneth LEUNG  
Hon Christopher CHEUNG Wah-fung, JP
- Member absent** : Hon SIN Chung-kai, SBS, JP
- Public officers attending** : Mr Jackie LIU  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services) 5
- Mr Herbert LAM  
Assistant Secretary for Financial Services and the  
Treasury (Financial Services)(5)3
- Ms Carrie CHAN  
Senior Manager (Market Development)  
Hong Kong Monetary Authority

Ms Doris LEE, JP  
Assistant Commissioner 1  
Inland Revenue Department

Ms TSE Yuk-yip, JP  
Assistant Commissioner 3  
Inland Revenue Department

Mr Allen NG  
Senior Assessor (Research)  
Inland Revenue Department

Mr Raymond HONG  
Senior Superintendent of Stamp Office  
Inland Revenue Department

Ms Betty CHEUNG  
Senior Assistant Law Draftsman  
Department of Justice

Mr Manuel NG  
Government Counsel  
Department of Justice

**Clerk in attendance** : Ms Connie SZETO  
Chief Council Secretary (1)4

**Staff in attendance** : Mr KAU Kin-wah  
Senior Assistant Legal Adviser 3

Mr Hugo CHIU  
Council Secretary (1)4

## **I Meeting with the Administration**

### Follow-up to issues arising from previous meetings

(LC Paper No. CB(1)1098/12-13(01) — List of follow-up actions arising from the discussion at the meeting on 15 April 2013

LC Paper No. CB(1)1098/12-13(02) — Administration's response to the issues arising from the meeting held on 15 April 2013)

Clause-by-clause examination of the Bill

(LC Paper No. CB(3)264/12-13	— The Bill
LC Paper No. CB(1)480/12-13(01)	— Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)
File Ref: B9/33/2C	— Legislative Council Brief
LC Paper No. LS16/12-13	— Legal Service Division Report
LC Paper No. CB(1)480/12-13(02)	— Background brief on the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Bill 2012 prepared by the Legislative Council Secretariat)

Discussion

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

Admin Follow-up actions to be taken by the Administration

2. The Administration was requested to provide the following information:
  - (a) In respect of clause 6 of the Bill, to review the drafting to see whether the clause is effective to have retrospective effect, so that the original intended effect of the relevant provision would apply to an assessment that:
    - (i) is made after the commencement of the 2011 amendment but before the commencement of the proposed amendment under the Bill; and
    - (ii) involves the question whether an instrument issued on or after 24 May 1996 but before 14 November 2003 is a debt instrument under section 14A of the Inland Revenue Ordinance (Cap. 112); and
  - (b) In respect of the new section 47I of the Stamp Duty Ordinance (Cap. 117) under clause 21 of the Bill:

- (i) to explain the implications on subsequent transfer of underlying assets if some parties involved in a previous transfer of such assets have failed to apply for stamp duty exemption for an instrument concerned in the previous transfer; and
- (ii) to review whether late adjudication may be allowed for a previous transaction.

## **II Any other business**

### Date of next meeting

- 3. The Chairman suggested and members agreed that the meeting scheduled for 30 May 2013 at 4:30 pm would be cancelled and the next meeting would be held on 4 June 2013 at 10:45 am.
- 4. There being no other business, the meeting ended at 4:32 pm.

Council Business Division 1  
Legislative Council Secretariat  
7 August 2013

**Proceedings of the  
Bills Committee on Inland Revenue and Stamp Duty Legislation  
(Alternative Bond Schemes) (Amendment) Bill 2012  
Fifth meeting on Monday, 27 May 2013, at 2:30 pm  
in Conference Room 2 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000429 – 000507	Chairman	Introductory remarks	
000508 – 001330	Administration Mr Kenneth LEUNG Chairman	<p>Briefing by the Administration on its response to the issues arising from the meeting held on 15 April 2013 (LC Paper No. CB(1)1098/12-13(02)) ("the response paper")</p> <p>Mr LEUNG enquired whether Islamic bonds ("sukuk") marketed overseas yet mainly sold to Hong Kong residents would fulfill the qualifying condition of "Hong Kong connection condition".</p> <p>The Administration responded that consideration of the term "marketed" would include whether the selling activities of sukuk were conducted in Hong Kong and geared towards Hong Kong residents. If so, the "Hong Kong connection condition" would be fulfilled. The Administration also pointed out that a bond-issuer could fulfill the "Hong Kong connection condition" by meeting any of the four alternative criteria set out in section 15 of the proposed Schedule 17A.</p> <p>In response to Mr LEUNG's enquiry, Administration responded that if a bond-issuer was uncertain about whether a proposed sukuk product could meet the criteria set out in section 15 of the proposed Schedule 17A, it could apply for advance ruling from the Inland Revenue Department ("IRD") on the tax position of the instrument.</p> <p>Mr LEUNG enquired whether it would be a requirement for a party to carry on a business in Hong Kong or be a taxpayer in Hong Kong in order to apply for the advance ruling.</p> <p>The Administration advised that a party could apply for the advance ruling as long as its activities might have tax implications in Hong Kong.</p>	

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		<p>In response to the Chairman, the Administration said that the Commissioner of Inland Revenue ("CIR") would in the Departmental Interpretation and Practice Notes (DIPNs) explain details of the "Hong Kong connection condition", including how "marketed in Hong Kong" would be interpreted.</p>	
<b>Clause by Clause Examination of the Bill</b>			
001331 – 002152	Administration Mr Kenneth LEUNG	<p><u>Clause 4 – Schedule 17A added to the Inland Revenue Ordinance ("IRO") (Schedule 17A – Specified Alternative Bond Scheme and its Tax Treatment)</u></p> <p><i>Section 25 – Obligation to inform Commissioner of disqualifying event</i></p> <p>Mr LEUNG enquired whether a party had to notify CIR of a disqualifying event if the event was reversed within 30 days after its occurrence.</p> <p>The Administration responded that it had considered the matter but opined that it was highly unlikely for the scenario to happen. If this happened, the taxpayer concerned should notify CIR of the relevant development.</p> <p>Mr LEUNG suggested that the Administration should set out the details in the DIPNs, including the reporting requirement on taxpayers to facilitate compliance.</p> <p>Mr LEUNG referred to section 25(3)(b) of the proposed Schedule 17A and enquired about the notification requirement if there were more than one disqualifying event.</p> <p>The Administration responded that a party had to inform CIR of all disqualifying events until a final and conclusive assessment was made by IRD, and thereafter the party need not inform CIR of any subsequent disqualifying events.</p>	
002153 – 002851	Administration Mr Kenneth LEUNG	<p><i>Section 26 – Additional assessments; tax paid in excess to be refunded</i></p> <p>In response to Mr LEUNG's enquiry, the Administration said that there would be no surcharges on any tax payable as a result of</p>	

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		<p>additional assessments made in accordance with section 26 of the proposed Schedule 17A and section 60 of IRO.</p>	
002852 – 003401	SALA3 Administration	<p>SALA3 enquired how IRD could recover tax payable under the scenario where a bond-issuer concealed the disqualifying events and liquidated its business entity immediately after the maturity of the sukuk.</p> <p>The Administration advised that there were a number of measures guarding against tax evasion, including the following:</p> <ul style="list-style-type: none"> <li>(a) Sections 24 and 25 of the proposed Schedule 17A set out the record-keeping requirements on bond-issuers and originators and their statutory obligation to inform CIR of disqualifying events respectively;</li> <li>(b) IRD would conduct annual assessment on an entity for profits tax. Under the existing liquidation arrangement, IRD would be alerted when a bond-issuer became liquidated so that IRD could take prompt action to recover outstanding taxes from the bond-issuer. IRD would accord high priority to make tax assessment to the business entity liquidated;</li> <li>(c) The bond-issuer was required to provide a security to the Collector of Stamp Revenue ("CSR") for a stamp duty relief; and</li> <li>(d) When the sukuk matured or were redeemed, the Stamp Office would assess whether the bond-issuer concerned was still eligible for the stamp duty relief, and would recover stamp duty and enforce the security if the bond-issuer was found ineligible for the relief.</li> </ul>	
003402 – 004102	Administration Mr Kenneth LEUNG	<p><i>Section 27 – Delay in disposing of specified asset may be disregarded in certain circumstances</i></p> <p>Mr LEUNG asked whether the phrase "reasonable excuse for the delay" in section 27(2)(b) would be defined to prevent abuse by bond-issuers delaying the disposal of specified asset.</p>	

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		<p>The Administration responded that while the Bill did not specify a time limit on the delay in the disposal of specified asset, IRD would consider whether the party concerned had provided a reasonable excuse for the delay. IRD would explain the details in the DIPNs.</p> <p>In response to Mr LEUNG's enquiry on the purpose of section 27, the Administration said that under the Bill and subject to the agreement between the bond-issuer and bond-holders, the specified term of an alternative bond scheme ("ABS") could be lengthened if the bond-issuer had financial difficulties in paying interest to the bond-holders. Section 27 would also cater for the delayed transfer of legal titles to the originator.</p>	
004103 – 004552	Administration	<p><i>Section 28 – Commissioner may apportion acquisition cost</i></p> <p>Members raised no question on section 28 of the proposed Schedule 17A.</p> <p><b>Other amendments to IRO</b></p> <p><u>Clause 5 – Section 5B amended (ascertainment of assessable value on or after 1 April 1983)</u></p> <p><u>Clause 6 – Section 14A amended (qualifying debt instruments)</u></p> <p><u>Clause 7 – Section 15 amended (certain amounts deemed trading receipts)</u></p> <p><u>Clause 8 – Section 16 amended (ascertainment of chargeable profits)</u></p> <p><u>Clause 9 – Section 20AC amended (certain profits of non-resident persons exempt from tax)</u></p> <p><u>Clause 10 – Section 26A amended (exclusion of certain profits from tax)</u></p> <p><u>Clause 11 – Section 51C amended (business records to be kept)</u></p> <p><u>Clause 12 – Section 60 amended (additional assessments)</u></p> <p><u>Clause 13 – Section 64 amended (objections)</u></p>	



Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 14 – Section 79 amended (tax paid in excess to be refunded)</u></p> <p><u>Clause 15 – Section 80 amended (penalties for failure to make returns, making incorrect returns, etc.)</u></p> <p><u>Clause 16 – Section 82A amended (additional tax in certain cases)</u></p> <p><u>Clause 17 – Section 89 amended (transitional provisions)</u></p> <p><u>Clause 18 – Schedule 6 amended</u></p> <p><u>Clause 19 – Schedule 16 amended (specified transactions)</u></p>	
004553 – 005313	SALA3 Administration Chairman	<p>SALA3 enquired about the purpose of amending section 14A of IRO and whether the amendment would have retrospective effect.</p> <p>The Administration explained that clause 6 sought to rectify an anomaly in the definition of debt instrument in section 14A(4) of IRO. During the enactment of the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011) ("IR(A)O 2011"), the date referred to in paragraph (g) of the definition of debt instrument was wrongly stipulated as "on or after 14 November 2003" while the original intention was "on or after 24 May 1996". Clause 6 was introduced to rectify this misstatement. IRD had accepted taxpayer's claim in the gap period on the basis that an instrument issued in the gap period was a debt instrument under section 14A of IRO.</p> <p>SALA3 was concerned about the operation of clause 6, and how it would achieve the purpose.</p> <p>The Administration stressed that tax assessments had continued to be made after the enactment of IR(A)O 2011 on the basis that an instrument issued in the the gap period was a debt instrument under section 14A of IRO and pointed out that only one to two debt instruments issued between 24 May 1996 and 14 November 2003 had not yet matured when IR(A)O 2011 came into force.</p>	

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		The Administration agreed to review the drafting of clause 6 in the light of SALA3's comments, and provide a paper to address the questions raised by SALA3.	The Administration to take action as per paragraph 2 of the minutes.
005314 – 005602	Mr Kenneth LEUNG Administration	In response to Mr LEUNG's enquiry about future amendments to the proposed Schedule 17A to IRO, the Administration remarked that it could only amend section 16 (i.e. the period in relation to the maximum term length condition) and the matters specified in section 22 (i.e. the types of sukuk covered by the Bill) of the proposed Schedule 17A through subsidiary legislation which would be subject to negative vetting of LegCo. Other legislative amendments to the proposed Schedule 17A would have to be made through introduction of bills.	
005603 – 010349	Administration	<p><u>Clause 20 – Schedule 27 added</u></p> <p><i>Schedule 27 – Transitional Provisions for Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2012</i></p> <p>Members raised no question on clause 20.</p> <p><b>Amendments to the Stamp Duty Ordinance ("SDO")</b></p> <p><u>Clause 21 – Part VA added</u></p> <p><i>47C. Interpretation</i></p> <p><i>47D. Qualified bond arrangement, and qualified investment arrangement, in specified alternative bond scheme</i></p>	
010350 – 010714	Mr Kenneth LEUNG Administration	<p><i>47I. Instrument to be duly stamped</i></p> <p>Mr LEUNG pointed out that under the existing SDO, instruments only had to be stamped as necessary. He opined that section 47I seemed to make stamping of instruments mandatory for bond-issuers of ABS. Mr LEUNG also enquired whether adjudication was required.</p> <p>The Administration's replies as follows:</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(a) Instruments that had no stamp duty implications would not need to be stamped;</p> <p>(b) Under certain scenarios (like transfer of assets between associated body corporate), a taxpayer might request CSR to make an informal ruling on stamp duty relief for instruments that might otherwise be chargeable to stamp duty; and</p> <p>(c) A bond-issuer could request CSR for an informal ruling on whether stamp duty relief relating to ABS could be granted to instruments (like those for properties transactions). Such ruling could provide certainty to the market.</p>	
010715 – 011000	SALA3 Administration	<p>SALA3 pointed out that properties might have undergone several transactions and the party concerned might not have the original instruments. He enquired whether the Stamp Office had records on stamp duty status of properties and other relevant assets.</p> <p>The Administration responded that stamp duty status was recorded by the following means: (a) stamping of instruments; and (b) electronic record for stamp duty paid by electronic means. In both cases, the Stamp Office could keep track of the stamp duty status. Taxpayers could seek such information from the Stamp Office as needed.</p>	
011001 – 011805	Mr Kenneth LEUNG Administration Chairman	<p>Mr LEUNG enquired about the stamping arrangements for instruments eligible for the proposed stamp duty relief. In particular, he asked if a bond-issuer forgot to apply for stamp duty relief for an instrument which was eligible for the relief under the Bill, whether the bond-issuer or the subsequent transferees of the instrument could apply for remission of the stamp duty concerned, whether there would be a deadline and charges for late application for stamp duty relief by the relevant parties.</p> <p>The Administrations' replies as follows:</p> <p>(a) The Stamp Office could recover the stamp duty for an instrument within six years after the date of stamping of the instrument or the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>occurrence of a disqualifying event. Penalties would be imposed on late stamping.</p> <p>(b) The deadline for refund of stamp duty paid in excess was within the two years after the date the instrument was stamped.</p> <p>(c) Instruments for properties must be properly stamped before they could be registered in the Lands Office.</p> <p>Mr LEUNG pointed out that some international companies might not be fully aware of the stamp duty requirements of Hong Kong.</p> <p>The Administration remarked that a sukuk-issuer would engage qualified professionals, including lawyers and accountants familiar with the taxation regime of Hong Kong, in the issuance exercise for sukuk involving Hong Kong properties. The Stamp Office would provide advice on matters relating to eligibility of stamp duty relief and the stamping requirements if necessary.</p> <p>In respect of the new section 47I of SDO, the Administration undertook to:</p> <p>(a) explain the implications on subsequent transfer of underlying assets if some parties involved in a previous transfer of such assets had failed to apply for stamp duty exemption for an instrument concerned in the previous transfer; and</p> <p>(b) review whether late adjudication might be allowed for a previous transaction.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
011806 – 012510	Administration Mr Kenneth LEUNG	<p><i>47E. Alternative bond under qualified bond arrangement regarded as bond</i></p> <p><i>47F. Relief on transactions under qualified investment arrangement</i></p> <p>Members raised no question on sections 47E and section 47F.</p> <p><i>47G. Sections 29CA and 29DA modified in relation to property held, or formerly held, under qualified investment arrangement</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>In response to Mr LEUNG's enquiry, the Administration advised that section 47G dealt with the existing Special Stamp Duty (SSD). The Administration would consider consequential amendments to SDO to provide relief for qualified ABSs from the enhanced SSD, the new Buyer's Stamp Duty, and the enhanced ad valorem stamp duty ("ad valorem SD") in relation to the proposals in the Stamp Duty (Amendment) Bill 2012 and the Stamp Duty (Amendment) Bill 2013). The two relevant bills were under scrutiny by two separate bills committee in LegCo.</p>	
012511 – 013814	Administration SALA3	<p><i>47H. Relief granted under section 47F or 47G deemed withdrawn</i></p> <p>Members raised no question on section 47H of the proposed Part VA.</p> <p><i>47I. Instrument to be duly stamped</i></p> <p><i>47J. Records and returns</i></p> <p>SALA3 enquired how the Administration would prevent evasion from stamp duty if a body corporate went into liquidation immediately after maturity of the sukuk.</p> <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> <li>(a) A bond-issuer would be required to provide a security for each transaction and that security would be retained by the Stamp Office until the maturity of sukuk;</li> <li>(b) The stamp duty relief under the Bill was a conditional relief. If a disqualifying event occurred, the stamp duty relief would be revoked and the CSR would enforce the security if necessary;</li> <li>(c) The Stamp Office could recover stamp duty within six years after the occurrence of a disqualifying event; and</li> <li>(d) The Stamp Office would take action (like examining whether a disqualifying event had occurred) if the party concerned still did</li> </ul>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>not apply for a ruling on stamp duty relief at the maturity of sukuk. Before the security was returned to a party, the Stamp Office would carefully assess whether the party was genuinely eligible for the stamp duty relief under the Bill.</p>	
013815 – 014349	Mr Kenneth LEUNG Administration Chairman	<p>Mr LEUNG referred to proposed section 47J(4) of SDO and enquired the reasons requiring the party concerned to furnish returns on a regular basis, and whether there would be a specified form for the returns and whether IRO had similar requirements.</p> <p>The Administration's replies as follows:</p> <p>(a) There were similar arrangements for stamp duty relief for stock borrowing and lending transactions, under which the party concerned had to furnish returns every six months; and</p> <p>(b) The Administration's preliminary thinking was that the arrangement for returns of ABS would be similar to that for stock borrowing and lending transactions. Returns would have to be furnished every six months or annually and specified forms would be provided. Details of the arrangement would be set out in the Stamp Office Interpretation and Practice Note to be issued by CSR.</p>	
014350 – 014842	Administration Mr Kenneth LEUNG	<p><i>47K. Offence in respect of false or misleading information</i></p> <p>In response to Mr LEUNG's enquiries, the Administration responded that:</p> <p>(a) the proposed section 47K of SDO dealt with specific offences which were different from those stipulated in the existing sections 55 and 59; and</p> <p>(b) offences specified in the proposed section 47K, sections 55 and 59 of SDO were all subject to the penalty level stipulated in section 60 of SDO which was a general provision on penalties for offences under SDO.</p>	

Time Marker	Speaker	Subject(s)	Action Required
014843 – 020039	Administration Mr Kenneth LEUNG	<p><u>Clause 22 – Part VB added</u></p> <p><i>47L. Assessment after deemed withdrawal of relief under section 45 or 47H</i></p> <p>Mr LEUNG enquired about the existing arrangement for late stamping arising from withdrawal of stamp duty relief under section 45 of SDO, and whether section 47L(7) or section 9 of SDO would apply to late stamping in other scenarios.</p> <p>The Administration's replies as follows:</p> <p>(a) Under the existing arrangement, a party not eligible for the stamp duty relief set out in section 45 of SDO had to pay the additional stamp duty concerned within 30 days after an assessment was made. Section 45(5A)(d) imposed a penalty on late payment of the additional stamp duty to be calculated under section 9 of SDO;</p> <p>(b) The penalty level of section 47L(7) had set out the calculation of penalty for late stamping which was in line with that provided in section 13 of SDO; and</p> <p>(c) There was no objection from respondents to the market consultation conducted in 2012 on the proposed calculation of late charge for the additional stamp duty payable by sukuk-issuers upon withdrawal of the stamp duty relief.</p> <p>Pointing out that there had been concerns from the industry on the penalty for late stamping under section 9 of SDO (which might stand at ten times the amount of the stamp duty), Mr LEUNG suggested that the Administration should consider setting out clear guidelines for the application of section 9 of SDO in future.</p> <p>The Administration took note of Mr LEUNG's views.</p>	
020040 – 020240	Chairman Administration	Date of next meeting	