

立法會
Legislative Council

LC Paper No. CB(1)1680/12-13
(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**

**Sixth meeting on
Tuesday, 4 June 2013, at 10:45 am
in Conference Room 2B 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 Kenneth LEUNG
Hon Christopher CHEUNG Wah-fung, JP
Hon SIN Chung-kai, SBS, JP

Member absent : Hon Starry LEE Wai-king, 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)1215/12-13(01) — List of follow-up actions arising from the discussion at the meeting on 27 May 2013

LC Paper No. CB(1)1215/12-13(02) — Administration's response to the issues arising from the meeting held on 27 May 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)

Committee Stage amendments proposed by the Administration

(LC Paper No. CB(1)1215/12-13(03) — Administration's proposed Committee Stage amendments)

Discussion

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

2. The Bills Committee examined and supported the Committee Stage amendments ("CSAs") proposed by the Administration to the Bill.

Admin Follow-up actions to be taken by the Administration

3. The Administration was requested to:

(a) provide a paper explaining –

(i) the way forward in introducing amendments to the Stamp Duty Ordinance (Cap. 117) for providing alternative bond schemes with exemption from the proposed enhanced special stamp

duty ("SSD"), the new buyer's stamp duty ("BSD"), and the enhanced ad valorem stamp duty ("ad valorem SD") upon passage of the Stamp Duty (Amendment) Bill 2012 and the Stamp Duty (Amendment) Bill 2013 by the Legislative Council; and

- (ii) the stamp duty treatment for alternative bond schemes in relation to the enhanced SSD, BSD and the enhanced ad valorem SD before passage of the Stamp Duty (Amendment) Bill 2012 and the Stamp Duty (Amendment) Bill 2013;
- (b) clarify the scope of "corporation or any other entity" in the definition of "special purpose vehicle" in the proposed CSAs to section 1 of the new Schedule 17A to the Inland Revenue Ordinance (Cap. 112), including whether it will cover partnership; and
- (c) provide the Chinese version of its proposed CSAs.

II Any other business

Legislative timetable

4. Members supported the resumption of the Second Reading debate on the Bill at the Council meeting of 10 July 2013 as proposed by the Administration. The Chairman informed members that the Bills Committee would report its deliberations to the House Committee on 21 June 2013, and the deadline for giving notice of amendment(s) to the Bill would be 29 June 2013.

Date of next meeting

5. The Chairman suggested and members agreed that the meeting scheduled for 7 June 2013 at 8:30 am would be cancelled and the next meeting would be held on 13 June 2013 at 10:45 am.

6. There being no other business, the meeting ended at 12:07 pm.

**Proceedings of the
Bills Committee on Inland Revenue and Stamp Duty Legislation
(Alternative Bond Schemes) (Amendment) Bill 2012
Sixth meeting on Tuesday, 4 June 2013, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000057 – 000120	Chairman	Introductory remarks	
000121 – 000911	Administration	Briefing by the Administration on its response to the issues arising from the meeting held on 27 May 2013 (LC Paper No. CB(1)1215/12-13(02))	
Clause by Clause Examination of the Bill			
000912 – 001742	Administration Mr Kenneth LEUNG Chairman	<p><u>Clause 23 – Schedule 6 added</u> (Stamp Duty Ordinance ("SDO"))</p> <p><i>Schedule 6 – Sections 29CA and 29DA of this Ordinance Modified in relation to Property Held, or Formerly Held, under Qualified Investment Arrangement</i></p> <p>Briefing by the Administration</p> <p>Mr LEUNG enquired whether the new Schedule 6 would apply to the existing Special Stamp Duty ("SSD"); and the proposed enhanced ad valorem stamp duty ("ad valorem SD"), enhanced SSD and new Buyer's Stamp Duty ("BSD"); and if not, how these stamp duties would be handled.</p> <p>The Administration replied that:</p> <p>(a) the new Schedule 6 covered SSD; and</p> <p>(b) the legislative intent of the Bill was to provide qualified alternative bond schemes ("ABSs") with stamp duty relief for the proposed enhanced ad valorem SD, enhanced SSD and BSD. As the relevant Bills (i.e. the Stamp Duty (Amendment) Bill 2012 and the Stamp Duty (Amendment) Bill 2013 were currently under scrutiny by the Legislative Council ("LegCo"), the Administration would, subject to discussion by the two relevant</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Bills Committees, either propose Committee Stage amendments ("CSAs") to this Bill or introduce consequential amendments to the two relevant bills to provide relief for the above stamp duties for qualified ABSs.</p> <p>As the existing SDO was already very complex, Mr LEUNG remarked that in considering proposed amendments for providing relief for the above stamp duties for qualified ABSs, the Administration should simplify the provisions to avoid further complicating SDO.</p> <p>The Chairman concurred with Mr LEUNG's views.</p> <p>The Administration took note of Mr LEUNG's views.</p>	
001743 – 002534	Administration Mr Kenneth LEUNG	In response to Mr LEUNG's enquiry regarding the Table in the new Schedule 6, the Administration explained that Schedule 6 presented the modifications to sections 29CA and 29DA in table form to facilitate readers' understanding.	
002535 – 002826	Administration Mr Kenneth LEUNG	<p><u>Clause 24 –Section 2 amended (interpretation) (SDO)</u></p> <p>In response to Mr LEUNG's enquiry about the reason for adding the new section 2(5) in SDO, the Administration advised that the new provision was to give greater certainty to readers, and confirmed that the level of penalties referred to in the provision was based on the level shown in Schedule 8 to the Criminal Procedure Ordinance (Cap. 221).</p>	
002827 – 003046	Administration Mr Kenneth LEUNG	<p><u>Clause 25 – Section 4 amended (charging of, liability for, and recovery of stamp duty)</u></p> <p>In response to Mr LEUNG's enquiry, the Administration responded that the term "material arrangement" in new section 4(5B) of SDO was related to the "IA disqualifying event" referred to in the new section 4(5A)(b) of SDO, and the term only applied in relation to section 4(5A).</p>	

Time Marker	Speaker	Subject(s)	Action Required
003047 – 003335	Administration	<p><u>Clause 26 – Section 13 amended (adjudication of stamp duty by Collector)</u></p> <p><u>Clause 27 – Section 14 amended (appeal against assessment)</u></p> <p><u>Clause 28 – Section 18J amended (power of Collector to cancel stamp certificates)</u></p> <p><u>Clause 29 – Section 19 amended (contract notes, etc. in respect of sale and purchase of Hong Kong stock)</u></p> <p>Members raised no question on clauses 26-29.</p>	
003336 – 003645	Mr Kenneth LEUNG Administration	<p><u>Clause 30 – Section 45 amended (relief in case of conveyance from one associated body corporate to another)</u></p> <p>Mr LEUNG enquired about the purposes of the revised section 45(5A)(d) and the new subsection (5A)(e) of SDO, and whether it was necessary to make reference to section 9 of SDO in the new section 45(5A)(e).</p> <p>The Administration clarified that the revised section 45(5A)(d) and the new subsection (5A)(e) of SDO would not change the effect of the original provision. The amendments aimed to better reflect the policy intent. It further elaborated that all remission of penalty for stamp duty would follow the procedures set out in section 9 of SDO, and in general provisions of SDO on remission of penalty would not make cross reference to section 9 of SDO.</p>	
003646 – 003839	Administration	<p><u>Clause 31 – Section 58A amended (representations may be made to Collector before certain penalties are imposed)</u></p> <p><u>Clause 32 – Section 58B amended (remission of certain penalties)</u></p> <p><u>Clause 33 – Section 69 added</u></p> <p><u>Clause 34 – First Schedule amended</u></p> <p>Members raised no question on clauses 31-34.</p>	

Time Marker	Speaker	Subject(s)	Action Required
003840 – 003953	Mr Kenneth LEUNG Administration	<p><u>Clause 35 – Schedule 7 added</u></p> <p><i>Schedule 7 – Transitional Provisions for Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2012</i></p> <p>The Administration confirmed Mr LEUNG's understanding that before the enactment of the Bill, market players could use the existing administrative mechanisms available under section 87 of the Inland Revenue Ordinance (Cap. 112) ("IRO") as well as section 52 of the SDO to apply for profits tax, property tax and stamp duty exemption in relation to the issuance and transactions of sukuk.</p>	
003954 – 004704	SALA3 Administration	<p>SALA3 said that his comments on the legal and drafting aspects of the Bill had been conveyed to the Administration. Where appropriate, these comments had been reflected in the relevant CSAs proposed by the Administration.</p> <p>SALA3 enquired about the Administration's stance regarding providing relief of the enhanced SSD, BSD and the enhanced ad valorem SD to qualified arrangements in specified ABSs, and the interim arrangement for such relief before the passage of the Stamp Duty (Amendment) Bill 2012 and the Stamp Duty (Amendment) Bill 21013.</p> <p>The Administration responded that:</p> <p>(a) it was the Administration's intent to provide qualified arrangements in specified ABSs with relief from the enhanced SSD, BSD and the enhanced ad valorem SD; and</p> <p>(b) it would provide a paper to explain the way forward in introducing amendments to SDO for providing qualified ABSs with exemption from the proposed enhanced SSD, BSD, and the enhanced ad valorem SD upon passage of the Stamp Duty (Amendment) Bill 2012 and the Stamp Duty (Amendment) Bill 2013, and other relevant arrangements.</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
004705 – 005311	Mr Kenneth LEUNG Administration	<p>Pointing out that the Inland Revenue (Amendment) Bill 2013 and the Inland Revenue (Amendment) (No. 2) Bill 2013 might have implications on the drafting and technical aspects of the Bill, Mr LEUNG suggested that the Administration should co-ordinate among the relevant bureaux and departments to ensure the proposed CSAs for these bills would be handled in a smooth manner.</p> <p>The Administration noted Mr LEUNG's views.</p>	
005312 – 005543	Chairman Administration	<p>Members agreed that the Bills Committee should first scrutinize the English version of the Administration's proposed CSAs.</p> <p>Briefing by the Administration on its proposed CSAs (LC Paper No. CB(1)1225/12-13(03)) ("paper on CSAs")</p>	
005544 – 010242	Mr Kenneth LEUNG Administration DoJ	<p><u>CSAs to section 1 of the new Schedule 17A to IRO</u></p> <p>Mr LEUNG referred to the proposed CSA adding a definition of "special purpose vehicle" ("SPV") (i.e. page 2 of the paper on CSAs) and enquired whether partnership would be covered, and whether the terms "bond-issuer" and "special purpose vehicle" would be used interchangeably in the Bill.</p> <p>The Administration's replies as follows:</p> <p>(a) While most SPVs would be created in the form of corporation, the phrase "corporation or any other entity" was used to provide flexibility in the business form of the SPV;</p> <p>(b) The Administration noted that a SPV was usually created for the issuance of a single ABS. However, there were cases where a SPV was used for the issuance of a series of bonds, hence the phrase "or schemes" was used to provide flexibility for such scenario;</p> <p>(c) The term "corporation or any other entity" would in a broad sense cover partnership; and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(d) The Bill would use the term "bond-issuer" and "special purpose vehicle" as appropriate having regard to the context concerned.</p> <p>The Administration added that the scope of the term "corporation or any other entity" had to be determined having regard to the policy objective of the Bill and the particular circumstances.</p> <p>At Mr LEUNG's request, the Administration undertook to provide a paper clarifying the scope of "corporation or any other entity" in the definition of "special purpose vehicle" in the proposed CSAs, including whether it would cover partnership.</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p>
010243 – 011419	Administration Mr Kenneth LEUNG	<p>Briefing by the Administration on proposed CSAs (p. 3 to 36 of the paper on CSAs)</p> <p><u>CSAs to the new section 47G of SDO</u></p> <p>Mr LEUNG enquired about the purpose of the proposed CSAs to section 47G of SDO.</p> <p>The Administration responded that under the new section 47F of SDO, which dealt with the ordinary stamp duty, a taxpayer applying for stamp duty relief for qualified arrangements in specified ABSs had to provide a security. The new section 47G of SDO dealt with the relief for SSD. The proposed CSAs was to provide for the same security arrangement (as in the new section 47F(3) of SDO) for relief of SSD.</p>	
011420 – 011833	Administration	<p>Briefing by the Administration on proposed CSAs (p. 37 to 43 of the paper on CSAs)</p>	
011834 – 012249	Chairman Administration	<p><u>Legislative timetable and date of next meeting</u></p> <p>The Administration undertook to provide other proposed CSAs (if any) and the Chinese version of its proposed CSAs at the next meeting.</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p>