

立法會
Legislative Council

LC Paper No. CB(1)1311/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/5/12

Bills Committee on Stamp Duty (Amendment) Bill 2013

**Minutes of seventh meeting on
Friday, 13 December 2013, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon Starry LEE Wai-king, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Charles Peter MOK
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Kenneth LEUNG
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Hon Tony TSE Wai-chuen

Members attending : Hon LEE Cheuk-yan
Hon WU Chi-wai, MH

Member absent : Hon James TIEN Pei-chun, GBS, JP

Public officers attending : Agenda item I

Financial Services and the Treasury Bureau

Ms Mable CHAN, JP
Deputy Secretary for Financial Services and the Treasury (Treasury) 2

Ms Shirley KWAN
Principal Assistant Secretary for Financial Services and the Treasury (Treasury) (Revenue)

Inland Revenue Department

Mr TAM Tai-pang, JP
Deputy Commissioner of Inland Revenue (Operations)

Ms TSE Yuk-yip, JP
Assistant Commissioner 3

Mr HONG Wai-kuen
Senior Superintendent of Stamp Office

Department of Justice

Miss Shandy LIU Wing-man
Senior Assistant Law Draftsman

Mr Manuel NG Man-chun
Acting Senior Government Counsel

Clerk in attendance: Ms Annette LAM
Chief Council Secretary (1)3

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mr Ken WOO
Senior Council Secretary (1)5

Action

I. Meeting with the Administration

(Annex C to LC Paper No. CB(1)1503/12-13(02) -- Administration's response to views expressed by deputations on the Bill

LC Paper No. CB(1)491/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 22 November 2013

LC Paper No. CB(1)491/13-14(02) -- Administration's response to issues raised at the meeting on 22 November 2013

Clause-by-clause examination of the Bill

LC Paper No. CB(3)471/12-13 -- The Bill

LC Paper No. CB(1)1132/12-13(01) -- Mark-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)

LC Paper No. CB(1)1847/12-13(01) -- Draft Committee Stage amendments proposed by Hon Abraham SHEK Lai-him

LC Paper No. CB(1)1847/12-13(02) -- Draft Committee Stage amendment proposed by Hon Andrew LEUNG Kwan-yuen

LC Paper No. CB(1)88/13-14(01) -- Administration's responses to draft Committee Stage amendments proposed by Hon Abraham SHEK Lai-him and Hon Andrew LEUNG Kwan-yuen as set out in LC Paper Nos. CB(1)1847/12-13(01) and (02)

- LC Paper No. CB(1)105/13-14(01) -- Mark-up copy of Hon Abraham SHEK Lai-him's proposed Committee Stage amendments to the Bill prepared by the Legal Service Division
- LC Paper No. CB(1)105/13-14(02) -- Mark-up copy of Hon Andrew LEUNG Kwan-yuen's proposed Committee Stage amendment to the Bill prepared by the Legal Service Division)

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

2. The Chairman, Mr Andrew LEUNG, Mr Kenneth LEUNG, Mr Abraham SHEK and Dr LAM Tai-fai disclosed their respective interests.

Follow-up actions required of the Administration

3. The Administration was requested to:
- (a) provide the salient points of the trends of the property prices and transaction volumes and the effectiveness of the proposed demand-side management measures highlighted in the Administration's introductory remarks in writing;
 - (b) in relation to the statistics on residential and non-residential properties set out in paragraphs 4 and 5 of the Administration's paper (LC Paper No. CB(1)491/13-14(02)):
 - (i) provide the statistics since 2008;
 - (ii) provide the actual figures with corresponding percentage; and
 - (iii) provide the Bills Committee with monthly updates on the above information;
 - (c) copy to the Bills Committee the Administration's written response on specific cases and views raised by The Law Society of Hong Kong;

- (d) with reference to the statistics on the local unemployment rate of property-related sectors given in Annex B to the Administration's paper (LC Paper No. CB(1)1503/12-13(02)), provide updated statistics for the remaining quarters of 2013;
- (e) in relation to the "basket of indicators" that the Administration would make reference to in determining whether the exuberant state of the property market had been stabilized and returned to normal:
 - (i) advise whether quantifiable targets had been set for these indicators for withdrawal of the proposed demand-side management measures; and
 - (ii) provide information on the changes of these indicators in recent years that justified the introduction of the proposed measures; and
- (f) in relation to members' concern about the impact of the proposed measures on the rental burden of enterprises, especially small and medium enterprises, provide monthly statistics on rentals of retail, office (by grades) and flatted factory space from 2012 to 2013.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)779/13-14(02) on 27 January 2014.)

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on Wednesday, 29 January 2014 at 2:30 pm to meet with the Administration.

II. Any other business

5. There being no other business, the meeting ended at 12:40 pm.

**Proceedings of the seventh meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2013
on Friday, 13 December 2013, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Meeting with the Administration			
000317 – 000444	Chairman Mr Andrew LEUNG Mr Kenneth LEUNG Mr Abraham SHEK Dr LAM Tai-fai	Disclosure of interests by members	
000445 – 001821	Chairman Administration	<p>The Administration's response to:</p> <p>(a) views expressed by deputations on the Stamp Duty (Amendment) Bill 2013 ("the Bill") at the meeting of the Bills Committee on 13 June 2013 (LC Paper No. CB(1)1503/12-13(02)); and</p> <p>(b) members' views and concerns raised at the meeting of the Bills Committee on 22 November 2013 (LC Paper No. CB(1)491/13-14(02)).</p> <p>The Administration advised that, following discussion with The Law Society of Hong Kong ("the Law Society"), it would consider proposing Committee Stage amendments ("CSAs") to the Bill to ensure consistency with the Stamp Duty (Amendment) Bill 2012 on the following:</p> <p>(a) refined mechanism to refund the difference between the enhanced and the existing ad valorem stamp duty ("AVD") for redevelopment projects;</p> <p>(b) exempting certain acquisitions of replacement property by non-Hong Kong Permanent Residents ("HKPRs") from the doubled AVD; and</p> <p>(c) admissibility of instruments not duly stamped with the doubled AVD.</p>	
001822 – 002603	Chairman Mr Abraham SHEK Administration	Mr Abraham SHEK was opposed to introducing the Bill by way of negative vetting. Pointing out that property buyers had since 23 February 2013, the date when the Bill was deemed to have taken	

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		<p>effect, been requested by legal practitioners to temporarily deposit the difference between the enhanced and the existing AVD rate when they entered into agreements for sale, he was concerned that these buyers might incur great loss in case any of these law firms closed down business before the passage of the Bill.</p> <p>In response to Mr SHEK's advice, the Administration undertook to:</p> <ul style="list-style-type: none"> (a) provide the salient points of the trends of the property prices and transaction volumes and the effectiveness of the proposed demand-side management measures highlighted in its introductory remarks; (b) in relation to the statistics on residential and non-residential properties set out in paragraphs 4 and 5 of the Administration's paper (LC Paper No. CB(1)491/13-14(02)), provide the actual figures with corresponding percentage since 2008; (c) provide the Bills Committee monthly updates on such information; and (d) copy to the Bills Committee the Administration's written response on specific cases and views raised by the Law Society. 	<p>The Administration to follow up as stated in paragraphs 3(a) to 3(c) of the minutes.</p>
002604 – 003323	Chairman Mr Andrew LEUNG Administration	<p>Mr Andrew LEUNG's views and concerns:</p> <ul style="list-style-type: none"> (a) due to the increase in acquisition cost arising from the proposed measures, many small and medium enterprises ("SMEs") might refrain from acquiring properties for self-use and thereby had to bear high rentals; and (b) the Administration had not seriously considered members' suggestion that in the case of the purchase of an uncompleted residential flat to replace the only other residential property, the counting of the six-month period for HKPR buyers to dispose of their original property should commence on the issue date of the occupation permit in respect of the newly 	

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		<p>acquired uncompleted residential flat.</p> <p>The Administration's response:</p> <p>(a) the Government was committed to increasing land supply for commercial development. There would be nine lots with a total floor area of 330 000 square metres for commercial and hotel development under the 2013-2014 Land Sale Programme. The Administration was also proceeding in full swing the development of the core business district in Kowloon East and the relocation of the offices in the three government buildings at Wan Chai waterfront with a view to releasing sites in the prime commercial districts for commercial development; and</p> <p>(b) the Administration's preliminary views on members' suggestion about the refund mechanism for the purchase of uncompleted residential flats was set out in paragraphs 8 to 14 of the Administration's paper (LC Paper No. CB(1)491/13-14(02)). Specifically, the Administration would need to give careful consideration to how to clearly define "the issue date of occupation permit for the uncompleted flat" as under the Consent Scheme, developers had to comply with the requirements of different government departments and get their approvals before the completion of transactions of the relevant residential properties. Given the many procedures involved, there was considerable complexity in setting out objective criteria for the purpose of defining the transaction of uncompleted residential flats and drawing up a specified timeframe for disposing of the original residential property for buyers acquiring uncompleted residential flats.</p>	
003324 – 003751	Chairman Mr Dennis KWOK Administration	<p>Mr Dennis KWOK's views and concerns:</p> <p>(a) the Law Society was concerned about the progress of scrutiny of the Bill and would like to see early completion of the scrutiny; and</p>	

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		<p>(b) when would the Administration reply to the Law Society on issues and concerns raised at the meeting between the Law Society and the Administration on 6 December 2013.</p> <p>The Administration responded that its reply to the Law Society would be made available on the following week. The reply would cover the following aspects:</p> <p>(a) applicability of the enhanced AVD rate for instruments involving the acquisition of both residential and non-residential properties;</p> <p>(b) applicability of the enhanced AVD rate for cases involving the transfer of beneficial interest in a co-owned residential property;</p> <p>(c) arrangement for the acquisition of properties by a mortgagee that was a financial institution or bank; and</p> <p>(d) admissibility of instruments in court which were not duly stamped due to false declarations made by the purchasers.</p>	
003752 – 004328	Chairman Mr Kenneth LEUNG Administration	<p>Mr Kenneth LEUNG urged the Administration to consider exempting SMEs who made statutory declarations that the non-residential properties acquired were for business and self-use only from the enhanced AVD rate.</p> <p>The Administration responded that as prices for non-residential properties in 2012 in respect of retail, office and flatted factory space had risen by a range of 25% to 46%, the proposed demand-side management measures were necessary to cool down the property market immediately. The fact that the monthly increase in the price of non-residential properties was less than 0.5% on average during March to October 2013 had spoken for itself the effectiveness of the enhanced AVD measure in addressing the irrational property market exuberance. The introduction of the enhanced AVD measure would be conducive to maintaining a healthy property market for business investments.</p>	

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004329 – 005221	Chairman Mr WONG Ting-kwong Administration	<p>Mr WONG Ting-kwong's views and concerns:</p> <p>(a) there was no question of ambiguity on defining "the issue date of occupation permit for the uncompleted flat" as occupation permit was issued by the Government. Also, as the enhanced AVD rate was charged on agreement for sale and refunds were made upon applications, the Government had the full control of the application vetting time and process; and</p> <p>(b) the enhanced AVD measure would add to the burden of those in financial distress seeking to size down by replacing the existing property with a smaller one.</p> <p>The Administration responded that in considering the refund mechanism suggested by members in respect of replacing the original property with uncompleted residential flats, it had to assess whether any exemption or change was consistent with the principle of proportionality in handling the problem concerned. In fact, the Government's database on stamping applications revealed that over 80% of transactions on residential properties conducted in 2012 and 2013 (from January to October) involved the sales and purchases of existing stocks in the secondary market.</p>	
005222 – 010115	Chairman Dr LAM Tai-fai Administration	<p>Dr LAM Tai-fai expressed concerns about the absence of a sunset clause for the proposed measures and the negative impact of such measures on Hong Kong's overall economy and reputation as one of the world's freest economies.</p> <p>The Administration's response:</p> <p>(a) the Government had been monitoring the residential property market closely with reference to a basket of different indicators. It was note-worthy that the mortgage payment to income ratio had risen to 56% in the second quarter of 2013, which was higher than the long-term average from 1993 to 2012; and</p>	

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		<p>(b) a sunset clause for the proposed measures was impracticable. The Government had undertaken to conduct a review and report to the Legislative Council one year after the enactment of the Stamp Duty (Amendment) Bill 2012 introducing the enhanced Special Stamp Duty and the Buyer's Stamp Duty.</p> <p>With reference to the statistics on the local unemployment rate of property-related sectors given in Annex B to the Administration's paper (LC Paper No. CB(1)1503/12-13(02)), Dr LAM Tai-fai requested the Administration to provide updated statistics for the remaining quarters of 2013.</p>	<p>The Administration to follow up as stated in paragraph 3(d) of the minutes.</p>
010116 – 010628	Chairman Mr Tommy CHEUNG Administration	<p>Mr Tommy CHEUNG's views and concerns:</p> <p>(a) relevant statistics for the past five years should be given to enable members to make meaningful interpretations on the trend of the property market; and</p> <p>(b) external factors such as the United States Federal Reserve's tapering of asset purchase and adjusting the size of the quantitative easing measures would pose high risks to the local property market. The introduction of a sunset clause would help alleviate the relevant impact.</p> <p>The Administration reiterated its undertaking to provide the Bills Committee updated statistics.</p>	
010629 – 011443	Chairman Mr SIN Chung-kai Administration	<p>On the assumption that property prices might rise following the withdrawal of the proposed measures, Mr SIN Chung-kai was concerned about the possibility for Government decision makers to engage in insider dealing by acquiring properties at low prices prior to the withdrawal of the proposed measures. He stressed the importance of setting quantifiable targets for the relevant indicators to enhance the transparency of the Government's decisions on the withdrawal of the proposed measures. He also requested the Administration to:</p>	

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		<p>(a) advise whether quantifiable targets had been set for the indicators to which the Administration would make reference in deciding when to withdraw the proposed measures; and</p> <p>(b) provide information on the changes of the above indicators in recent years that justified the introduction of the proposed measures.</p> <p>The Administration responded that the Government had been monitoring the residential property market closely with reference to a basket of different indicators, such as property prices, home purchase affordability, property transactions, demand-supply balance, and mortgage loan growth. Given the complexity of the property market, no single indicator could fully reflect the underlying situation of the property market, and these indicators should be taken into consideration in totality.</p>	<p>The Administration to follow up as stated in paragraph 3(e) of the minutes.</p>
<p>011444 – 012320</p>	<p>Chairman Mr Paul TSE Administration</p>	<p>Mr Paul TSE's views and concerns:</p> <p>(a) although the total number of regional headquarters and regional offices in Hong Kong representing their parent companies outside Hong Kong had continued to increase, the rate of increase had in fact reduced in recent years. The number of regional headquarters in Hong Kong at 1 379 in 2013 was also far less than Singapore at over 7 000; and</p> <p>(b) the proposed measures had pushed up the rentals and resulted in a reduction in the number of overseas law firms seeking to set up business in Hong Kong.</p> <p>The Administration responded that international investors would consider various factors before deciding whether to run their business in Hong Kong. The rate of increase in rentals for retail, office and flatted factory space had in fact reduced from about 8% to 13% in 2012 to about 1% in 2013.</p>	

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		Mr Paul TSE requested the Administration to provide monthly statistics on rentals of retail, office (by grades) and flatted factory space from 2012 to 2013.	The Administration to follow up as stated in paragraph 3(f) of the minutes.
012321 – 012810	Chairman Deputy Chairman Administration	The Deputy Chairman stressed the importance of setting quantifiable targets for the said indicators to enable business investors and home buyers to make informed acquisition decisions. The Administration took note of the view.	
012811 – 013156	Chairman Mr Tony TSE	Mr Tony TSE did not subscribe to the Administration's reasons for not considering members' proposal to count the six-month period from the issue date of the occupation permit of uncompleted residential flats. He pointed out the following: (a) even if members' proposal might result in a buyer holding more than one residential property for a long period of time, one of the properties, being an uncompleted residential flat, could not be resided in. A buyer seeking to engage in speculative activities would have no way of getting the refund on the difference between the enhanced and the existing AVD rate; (b) as regards the principle of proportionality, since the transactions in the primary market accounted for less than 20% of the total transactions, members' proposal would have little impact on the overall stamp duty policies; and (c) being the authority that issued the occupation permit and the Certificate of Compliance, the Government would be in the best position to define the issue date of such documents. The Chairman urged the Administration to consider members' views.	

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013157 – 013942	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK's views and concerns:</p> <ul style="list-style-type: none"> (a) the provision of incomprehensive statistics by the Administration would mislead the Bills Committee and the public; and (b) the proposed measures had infringed Articles 105, 108, 109 and 115 of The Basic Law in relation to rights to properties, low tax policy, maintenance of Hong Kong as an international financial centre, and the pursuit of the policy of free trade respectively. <p>The Administration advised that the Government attached great importance to safeguarding the operation of the free market economy. It would continue to assist the Bills Committee to scrutinize the Bill by providing updated information on the trend of the property market.</p>	
013943 – 014925	Chairman Deputy Chairman Administration	<p>The Deputy Chairman was unconvinced of the Administration's viewpoint on members' proposal to count the six-month period from the issue date of the occupation permit of uncompleted residential flats. He pointed out the following:</p> <ul style="list-style-type: none"> (a) it was impossible for developers to deliberately delay the completion of the construction of the residential flats which had already been put on sale in order to allow buyers of such flats to hold more than one residential property for a long time; (b) being the issuing authority of the occupation permit and the Certificate of Compliance, the Government was in the best position to provide a clear definition and objective criteria for issuing such documents; and (c) the impact of extending the period for disposal transaction from six months to twelve months would be little and manageable. <p>The Administration responded that if the timeframe for buyers who acquired an uncompleted residential flat to dispose of their original residential property was to be relaxed, the Administration would need to consider how to</p>	

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		<p>handle similar requests for relaxing the timeframe from other buyers who acquired existing stocks due to unforeseeable reasons. That said, the Administration would further study members' views in this regard.</p> <p>The Chairman and Deputy Chairman urged the Administration to consider relaxing the six-month refund period for HKPRs who acquired a new residential property, be it an uncompleted residential flat or existing flat, to dispose of their only other residential property.</p>	
014926 – 015240	Chairman Mr Abraham SHEK Administration	In response to Mr Abraham SHEK, the Administration advised that it would further address members' concerns and the CSAs proposed during the clause-by-clause examination of the Bill.	
015241 – 015426	Chairman	Meeting arrangements	