

立法會
Legislative Council

LC Paper No. CB(1)1366/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/5/12

Bills Committee on Stamp Duty (Amendment) Bill 2013

**Minutes of eighth meeting on
Wednesday, 29 January 2014, at 2:30 pm
in Conference Room 2B 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

Member attending : Hon LEE Cheuk-yan

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)

Transport and Housing Bureau

Mrs Vicki KWOK
Principal Assistant Secretary for Transport and Housing (Housing) (Private Housing)

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 : Mr KAU Kin-wah
Senior Assistant Legal Adviser 3

Mr Ken WOO
Senior Council Secretary (1)5

Action

I. Meeting with the Administration

(LC Paper No. CB(1)779/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 13 December 2013

LC Paper No. CB(1)779/13-14(02) -- Administration's response to issues raised at the meeting on 13 December 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)584/13-14(01) -- Draft Committee stage amendments proposed by Hon Tommy CHEUNG Yu-yan

LC Paper No. CB(1)779/13-14(03) -- Administration's response to draft Committee stage amendments proposed by Hon Tommy CHEUNG Yu-yan as set out in LC Paper No. CB(1)584/13-14(01)

Relevant papers issued previously

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 Kenneth LEUNG, Mr Andrew LEUNG, Mr Abraham SHEK and Mr Tony TSE disclosed their respective interests.

Follow-up actions required of the Administration

3. The Administration was requested to:

- (a) in the light of the provisions of the Stamp Duty (Amendment) Bill 2012 which would become law after being enacted by the Legislative Council, outline the required consequential amendments to the Stamp Duty (Amendment) Bill 2013;

- (b) in relation to the percentage changes in the prices of retail, office and flatted factory space as set out in Table 4 of Annex C to LC Paper No. CB(1)779/13-14(02), explain how the percentage changes were worked out and the information on which the figures were based;
- (c) provide a table to compare the price level of land sale, price level of residential property, and home purchase affordability on a yearly basis since 2008; and
- (d) provide the number of transactions and the transacted prices for non-residential properties (retail, office, flatted factory space and car parking space) before and after the announcement of the proposed demand-side management measures to illustrate the exuberant state of the property market that justified the application of the proposed increase of the ad valorem stamp duty rates to non-residential properties.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)943/13-14(02) on 21 February 2014.)

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on Monday, 24 February 2014 at 2:30 pm to meet with the Administration.

II. Any other business

5. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
5 May 2014

**Proceedings of the eighth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2013
on Wednesday, 29 January 2014, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Meeting with the Administration			
000110 – 000205	Chairman Mr Kenneth LEUNG Mr Andrew LEUNG	Disclosure of interests by members	
000206 – 001115	Chairman Administration	<p>The Administration's response to members' views and concerns raised at the meeting of the Bills Committee on 13 December 2013 (LC Paper No. CB(1)779/13-14(02)).</p> <p>The Administration advised that it would, in the light of the proposed Committee stage amendments ("CSAs") to the Stamp Duty (Amendment) Bill 2012, outline the required consequential amendments to the Stamp Duty (Amendment) Bill 2013 ("the Bill").</p>	The Administration to follow up as stated in paragraph 3(a) of the minutes.
001116 – 001832	Chairman Administration	<p>In response to the Chairman's questions on the percentage changes in the prices of retail, office and flatted factory space as set out in Table 4 of Annex C to LC Paper No. CB(1)779/13-14(02), the Administration advised that:</p> <p>(a) the cumulative price changes of retail, office and flatted factory space were calculated based on the monthly changes of the period concerned;</p> <p>(b) it had not looked into the reason for the relatively lower percentage increase in the price of office compared with those of retail and flatted factory space;</p> <p>(c) there were views from the public that prices of non-residential properties were pushed up by a shift of speculative activities from residential to non-residential properties following the announcement of the introduction of the enhanced Special Stamp Duty ("SSD") and Buyer's Stamp Duty ("BSD") in October 2012; and</p> <p>(d) since the announcement of the enhanced ad valorem stamp duty ("AVD") measure at the end of February 2013, prices of retail, office</p>	

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		<p>and flatted factory space increased by an average of 0.04%, 0.3% and 0.2% respectively per month from March to November 2013, a notable deceleration from the monthly average increases of 1.9%, 2.6% and 4.1% respectively in the first two months of 2013.</p>	
001833 – 002545	Chairman Mr WONG Ting-kwong Administration	<p>Mr WONG Ting-kwong said that the Administration had remained vague in its response (LC Paper No. CB(1)779/13-14(03)) on whether it would consider members' proposal 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 Hong Kong Permanent Resident ("HKPR") buyers to dispose of their original property should commence on the issue date of the occupation permit in respect of the newly acquired uncompleted residential flat. He urged the Administration to consider the above proposal.</p> <p>The Administration's response:</p> <p>(a) it was proceeding in full swing a study in collaboration with the Transport and Housing Bureau and the Department of Justice on matters relating to the sale of first-hand residential property and the above proposal; and</p> <p>(b) in considering the proposal to relax the timeframe for disposing of the original residential property for HKPR buyers acquiring an uncompleted residential flat, the Administration would need to ensure that:</p> <p>(i) the proposal would not undermine the policy intent and affect the effectiveness of the proposed demand-side management measures or the reception of the message by the market;</p> <p>(ii) there were ways to handle similar requests for relaxing the timeframe for other HKPR buyers who acquired existing housing stocks because of unforeseeable reasons; and</p>	

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		<p>(iii) any targeted arrangement would come with clear definition and objective criteria.</p> <p>The Administration would thus need to study the implication of the operational differences between the Consent Scheme and the Non-consent Scheme on the proposal.</p>	
002546 – 003012	Chairman Mr Kenneth LEUNG Administration	<p>Mr Kenneth LEUNG's views and concerns:</p> <p>(a) enquired about the details of the CSAs to be proposed to the Bill to ensure consistency with the Stamp Duty (Amendment) Bill 2012; and</p> <p>(b) it was grossly inappropriate for the Administration to have proposed amendment to the Stamp Duty (Amendment) Bill 2012 to withdraw exemption for acquisitions made on behalf of HKPR minors from the Buyer's Stamp Duty ("BSD").</p> <p>The Administration's response:</p> <p>(a) to address the concerns expressed by members and some deputations, the Administration had proposed some technical amendments and CSAs to the Stamp Duty (Amendment) Bill 2012. For example, CSAs to refine the refund mechanism for redevelopment projects, and to improve the admissibility of an instrument not properly stamped so that any failure to pay BSD by the buyer would not affect the innocent parties' ability to present the relevant document in civil proceedings before a court. In the light of the scrutiny of the Legislative Council ("LegCo") on the proposed amendments to the Stamp Duty (Amendment) Bill 2012, corresponding amendments to the Bill, where appropriate, would be made for consistency in handling similar situations; and</p> <p>(b) in view of the different legislative intent of the BSD and the enhanced AVD measures, the applicability of the non-exemption arrangements in respect of acquisition of residential property by HKPR minors under</p>	

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		the age of 18 to the Bill would require detailed study.	
003013 – 003421	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai referred to the Administration's paper which stated that the home purchase affordability worsened to 54% in the third quarter of 2013, which was higher than the long-term average of 48% over 1993-2012. He asked whether the Administration would withdraw the proposed enhanced AVD measure if the above percentage was lowered to below 48%, and if not, whether a quantifiable target would be set for withdrawal of the proposed measure.</p> <p>The Administration's response:</p> <p>(a) the development of the property market involved the interplay of various indicators that had to be considered in totality. As no single indicator could serve to reflect the whole picture of the property market, it would be inappropriate to set out a quantifiable target for the indicators;</p> <p>(b) despite there were signs of cooling down in the property market since the introduction of the proposed enhanced AVD measure at the end of February 2013, home purchase affordability would worsen greatly if interest rates went up by only one percentage point; and</p> <p>(c) the Government had undertaken to review and report to LegCo in a year's time after the passage of the Stamp Duty (Amendment) Bill 2012.</p>	
003422 – 003855	Chairman Mr Andrew LEUNG Administration	<p>Mr Andrew LEUNG's views and concerns:</p> <p>(a) in relation to the percentage changes in the prices of retail, office and flatted factory space as set out in Table 4 of Annex C to LC Paper No. CB(1)779/13-14(02), the Administration should explain how the percentage changes were worked out and the information on which the figures were based; and</p> <p>(b) whether the Administration had estimated the</p>	The Administration to follow up as stated in paragraph 3(b) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>accumulated demand for non-residential properties in view of the stagnancy of the property market following the introduction of the latest round of demand-side management measures.</p> <p>The Administration's response:</p> <p>(a) the figures as set out in Table 4 were compiled by the Rating and Valuation Department having analyzed the transacted price of individual properties on a yearly basis; and</p> <p>(b) the Administration had made an effort to release lots in prime commercial districts to meet the increasing demand for commercial properties.</p>	
003856 – 004500	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK's disclosure of interests and expression of views and concerns:</p> <p>(a) high land premium had resulted in high property prices. The proposed demand-side management measures had only suppressed transaction volume but not lowered property prices; and</p> <p>(b) the Administration should study the impact of high land premium policy by providing a table to compare the price level of land sale, price level of residential property, and home purchase affordability on a yearly basis since 2008.</p> <p>The Administration responded that a fundamental solution to the tight supply in the residential property market lay in the increase in housing land supply. Construction programmes were in the pipeline to increase the supply of housing units in coming years. While there were signs of cooling down in the property market since the announcement of the proposed enhanced AVD measure, it was essential to maintain the proposed demand-side management measures introduced so far, taking account of tight housing supply and the external environment where prevailing interest rates were relatively low.</p>	The Administration to follow up as stated in paragraph 3(c) of the minutes.

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004501 – 004907	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai urged the Administration to, in relation to the "basket of indicators" that the Administration would consider in monitoring the property market, consider setting quantitative targets for these indicators for withdrawal of the proposed demand-side management measures.</p> <p>The Administration responded that Hong Kong, being an open economy, was subject to external influences. It was impractical to set out quantitative targets for the indicators which reflected only domestic environment.</p> <p>Mr SIN was unconvinced. He opined that as Hong Kong was an external-oriented economy vulnerable to fluctuations in the external economic environment, the impact of external influences would in fact be reflected through the indicators.</p>	
004908 – 005502	Chairman Mr Tony TSE Administration	<p>Mr Tony TSE's disclosure of interests and expression of views and concerns:</p> <p>(a) urged the Administration to consider extending the six-month period for HKPR purchasers/transferees who acquired a new residential property to dispose of their only other residential property, as the current six-month arrangement would discourage the replacement of original properties by uncompleted residential flats; and</p> <p>(b) whether it was becoming increasingly common for property-holding companies to evade tax payment through transfer of company shares.</p> <p>The Administration's response:</p> <p>(a) reiterated the factors to be taken into account in considering the proposal to extend the period for disposal transactions; and</p> <p>(b) the monthly average for acquisition of residential property by companies had dropped from 10% prior to the announcement of the enhanced Special Stamp Duty ("SSD") and BSD measures in 2012 to 3% after the announcement of the enhanced AVD measure in 2013. The Inland Revenue Department</p>	

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		<p>("IRD") had been conducting random audit checks on company accounts, and would recover profits tax payment for cases involving "trading" activities on transfer of company shares.</p>	
005503 – 010716	<p>Chairman Mr Abraham SHEK Administration</p>	<p>Mr Abraham SHEK's views and concerns:</p> <ul style="list-style-type: none"> (a) queried the effectiveness of the proposed demand-side management measures as the total number of conveyances on sale for non-residential properties in 2013 was broadly similar to that of 2011; (b) pointed out that the measures had only increased the cost of acquisition and hence the burden to enterprises in their business operations; and (c) following the introduction of the various demand-side management measures in recent years, much of the 244 798 agreements for sale and purchase that were entered into between 2011 and 2013 were subject to additional stamp duties. The measures had thus allowed only the well-off to acquire properties. The fact that the drop in the total number of agreements for sale and purchase for residential property from 155 723 in 2010 to 57 500 in 2013 had also spoken for itself the failure of the measures to achieve the Government's policy objective to accord priority to the home ownership needs of HKPRs. <p>The Administration's response:</p> <ul style="list-style-type: none"> (a) there were signs of cooling down in the property market since the announcement of the proposed AVD measure at the end of February 2013. The total number of conveyances on sale for non-residential properties was 31 619 in 2013 and was 7% lower than that in 2010. The monthly average from January to March 2013 was about 4 000 cases, and the figure had further dropped to about 2 000 cases from April to December 2013; and 	

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		<p>(b) the percentage of residential property transactions where buyers were holders of Hong Kong Identity Cards ("HKIC") out of total transactions had risen to about 95% in 2013 and these buyers were, prima facie, not subject to BSD. These buyers were also not subject to SSD if they did not engage in short-term resale transactions. The percentage of transactions where buyers were HKIC holders who did not own any other properties in Hong Kong at the time of acquiring their residential properties had risen from around 50% in the past few years to some 70% in 2013, and these buyers were, prima facie, not subject to the enhanced AVD.</p>	
010717 – 011343	Chairman Mr Tony TSE Administration	<p>Mr Tony TSE's request that the Administration should:</p> <p>(a) seriously consider members' proposal on extending the six-month period for disposal transaction as this could minimize the inconvenience to home buyers and help enliven the property market that had remained stagnant since the announcement of the enhanced AVD measure; and</p> <p>(b) watch out for cases of tax evasion in property acquisitions through transfer of company shares, and keep an eye on the cases reported in the press.</p> <p>The Administration reiterated its response given above.</p>	
011344 – 011743	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai reiterated his request for the Administration to set out quantitative targets for the "basket of indicators" as in his view this would increase transparency and enable investors to predict market movements and make informed choices.</p> <p>The Administration reiterated its response given above.</p>	

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011744 – 012311	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK queried the justifications for applying the proposed enhanced AVD measure to non-residential properties in view that there was only a slight increase in the total number of conveyances on sale from 33 772 in 2011 to 34 002 in 2012, and that the large number of transactions for car parking space might have contributed to the increase.</p> <p>The Administration pointed out that the cumulative price change of retail, office and flatted factory space recorded only a single digit increase between January and November 2013, a notable deceleration from the yearly average increases of 20% to 46% from 2010 to 2012. The above figures reflected the overheating in the non-residential property market in the past few years and that the various demand-side management measures had eased the irrational property market exuberance.</p> <p>Mr SHEK requested the Administration to provide the number of transactions and the transacted prices for non-residential properties (retail, office, flatted factory space and car parking space) before and after the announcement of the proposed demand-side management measures to illustrate the exuberant state of the property market that justified the application of the proposed increase of the AVD rates to non-residential properties.</p>	The Administration to follow up as stated in paragraph 3(d) of the minutes.
012312 – 012527	Chairman Administration	<p>In reply to the Chairman, the Administration advised that IRD would work in collaboration with The Law Society of Hong Kong ("the Law Society") to enhance its members' understanding of the measures after the passage of the Bill.</p> <p>The Chairman requested the Administration to update the Bills Committee on its future correspondences with the Law Society.</p>	
<i>Clause-by-clause examination of the Bill</i>			
012528 – 012911	Chairman Administration	The Chairman advised that the Bills Committee would examine the Chinese version of the Bill. She requested the legal adviser to the Bills Committee to examine the legal and drafting aspects of the English version of the Bill, and to report irregularities, if any, to the Bills Committee.	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration took members through the Bill (LC Paper No. CB(3)471/12-13) and the Chinese version of the marked-up copy of the Bill (LC Paper No. CB(1)1132/12-13(01)).</p> <p><u>Clause 1 – Short title and commencement</u></p> <p><u>Clause 2 – Stamp Duty Ordinance amended</u></p> <p>Members raised no question.</p>	
012912 – 013413	Chairman Senior Assistant Legal Adviser 3 (SALA3) Administration	<p><u>Clause 3 – to amend Section 15 (non-admissibility, etc. of instruments not duly stamped)</u></p> <p>At the request of SALA3, the Administration undertook to, in relation to the proposed CSAs to the Stamp Duty (Amendment) Bill 2012, bring up the required consequential amendments to the Bill during the clause-by-clause examination of the Bill.</p>	
013414 – 013508	Chairman Administration	<p><u>Clause 4 – to amend Section 25 (stamp duty chargeable in case of certain conveyances)</u></p> <p>Members raised no question.</p>	
013509 – 013913	Chairman Administration SALA3 Mr Abraham SHEK	<p><u>Clause 5 – to repeal Section 26 (stamp duty chargeable on contracts, etc. for sale of equitable estate or interest in immovable property)</u></p> <p>In response to SALA3's enquiry on the reason for repealing section 26 as there was no change to the definition of "immovable property" under the Bill, the Administration explained that since the Bill proposed to advance the charging of AVD on non-residential property transactions from the conveyance on sale to the agreement for sale, section 26, which provided for the charging of AVD on non-residential property transactions on certain agreements for sale, would no longer be applicable.</p> <p>In reply to Mr Abraham SHEK, the Administration advised that the Bill had specified clearly the application of the clauses to either residential or non-residential properties, or to both.</p>	

Time marker	Speaker	Subject(s)	Action required
013914 – 014229	Chairman Administration	<p><u>Clause 6 – to amend heading of Part IIIA (agreements to sell immovable property)</u></p> <p><u>Clause 7 – to add heading Division 1 in Part IIIA</u></p> <p><u>Clause 8 – to amend Section 29A (interpretation and application of Part IIIA)</u></p> <p>Members raised no question.</p>	
014230 – 015641	Chairman Administration Mr Abraham SHEK	<p><u>Clause 9 – to add Sections 29AB to 29AH</u></p> <p>In reply to the Chairman, the Administration advised that:</p> <p>(a) under the proposed section 29AC, a beneficial owner, in relation to a residential property, "includes a purchaser under an agreement for sale of the property that is subsisting". IRD would also verify the identity of a beneficial owner by making reference to the records held by The Land Registry; and</p> <p>(b) the meaning of "closely related persons" under the proposed section 29AD would be the same as that adopted for the Stamp Duty (Amendment) Bill 2012.</p> <p>In reply to Mr Abraham SHEK, the Administration advised that:</p> <p>(a) in respect of the proposed section 29AE, if a HKPR who was not the beneficial owner of any other residential property in Hong Kong executed several agreements to acquire several residential properties on the same date, the agreement which was executed first at a point in time on that date would be charged at the old rates, whereas all the other agreements would be charged at the enhanced AVD rates. With respect to each agreement for sale executed, the HKPR would have to declare whether s/he was the beneficial owner of any other residential property at that particular point in time for the purpose of seeking exemption from the new rates for the first of those residential properties acquired; and</p>	

Time marker	Speaker	Subject(s)	Action required
		(b) the Law Society raised no question to the proposed sections 29AE and 29AF.	
015642 – 015830	Chairman Administration	The Chairman urged the Administration to consider members' proposal for extending the period for disposal transaction and setting quantitative targets for the "basket of indicators" as basis for reference in withdrawing the proposed demand-side management measures, and to report to the Bills Committee its final decision on the above upon completion of the clause-by-clause examination of the Bill.	

Council Business Division 1
Legislative Council Secretariat
5 May 2014