

立法會
Legislative Council

LC Paper No. CB(1)1879/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/5/12

Bills Committee on Stamp Duty (Amendment) Bill 2013

**Minutes of ninth meeting on
Monday, 24 February 2014, at 2:30 pm
in Conference Room 2A 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 Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Charles Peter MOK
Hon Kenneth LEUNG
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Hon Tony TSE Wai-chuen

Member attending : Hon WU Chi-wai, MH

Members absent : Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Che-cheung, BBS, MH, 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

Mr Allen LAI
Senior Government Counsel

Mr Manuel NG
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)943/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 29 January 2014

LC Paper No. CB(1)943/13-14(02) -- Administration's response to issues raised at the meeting on 29 January 2014

LC Paper No. CB(1)971/13-14(01) -- Hon James TO Kun-sun's letter dated 24 February 2014
(*Chinese version only*)

Clause-by-clause examination of the Bill

Starting from clause 9 - section 29AG

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)

Committee stage amendments

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 Andrew LEUNG, Mr WONG Ting-kwong, Mr James TO, Mr Kenneth LEUNG and Mr Abraham SHEK made declaration of interests respectively.

Follow-up actions required of the Administration

3. The Administration was requested to:
- (a) provide details of the Inland Revenue Department's operational guidelines, such as the procedures involved, the documentary evidence required and the conditions to be satisfied, etc., for handling cases where a party claiming to act in the capacity of a trustee or guardian on behalf of a Hong Kong Permanent

Resident who was a minor or mentally incapacitated person in the acquisition of a residential property did not possess a declaration of trust or guardianship order;

- (b) provide the number of transactions involving minors or mentally incapacitated persons acquiring residential properties through trustees or guardians since the announcement of the enhanced Special Stamp Duty, Buyer's Stamp Duty and the enhanced ad valorem stamp duty ("AVD") measures;
- (c) set out the different scenarios where exemption from the enhanced AVD rate would be granted in respect of acquisition or transfer of a residential property between close relatives, acquisition of a replacement property (residential or non-residential) by a person affected by certain ordinances under specified situations, and exchange of a residential property for residential or non-residential property, etc., including the following situations:
 - (i) in the case of two adjacent properties which were structurally combined into one (the enquiry raised by a member of the public in LC Paper No. CB(1)817/13-14(01)); and
 - (ii) in the case of a transaction involving residential and non-residential units (such as parking space);
- (d) provide the basis and the guiding principles in determining whether a subject property was a residential or non-residential property;
- (e) in relation to the definition of "closely related persons" in proposed section 29AD of the Bill, address members' concern that conveyances on sale of residential property involving in-laws, such as a couple and their parent(s), would not be exempted from the enhanced AVD rate; and
- (f) consider members' suggestion of imposing reasonable restrictions, such as on the size and value of the replacement property, to address the possible abuse of the exemption.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1060/13-14(02) on 13 March 2014.)

Date of next meeting

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

(Post-meeting note: On the instruction of the Chairman, the next meeting of the Bills Committee would be held on Friday, 14 March 2014, at 11:00 am. The meeting originally scheduled for 24 March 2014 had been re-scheduled for Friday, 28 March 2014, at 10:45 am. Members were informed of the above meeting arrangements vide LC Paper No. CB(1)986/13-14 on 25 February 2014.)

II. Any other business

5. There being no other business, the meeting ended at 4:28 pm.

Council Business Division 1
Legislative Council Secretariat
30 July 2014

**Proceedings of the ninth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2013
on Monday, 24 February 2014, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

| Time marker | Speaker | Subject(s) | Action required |
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| Agenda Item I – Meeting with the Administration | | | |
| 000033 – 000145 | Chairman Mr Andrew LEUNG Mr WONG Ting-kwong Mr James TO Mr Kenneth LEUNG | Disclosure of interests by members | |
| 000146 – 001046 | Chairman Mr James TO Administration Mr SIN Chung-kai Mr Abraham SHEK | <p>The Chairman drew members' attention to a letter from Mr James TO dated 24 February 2014 which was tabled at the meeting. The Administration was requested to provide a written response after the meeting.</p> <p>The Chairman urged the Administration to consider the corresponding amendments required for the Stamp Duty (Amendment) Bill 2013 ("the 2013 Bill") in the light of Members' views expressed on the Stamp Duty (Amendment) Bill 2012 ("the 2012 Bill") at the Committee stage and the provisions of the 2012 Bill enacted by the Legislative Council. Mr James TO requested the Administration to bring up the required corresponding amendments to the 2013 Bill during the clause-by-clause examination of the Bill.</p> <p>The Administration responded that it would work with the legal adviser to the Bills Committee to provide a mark-up copy that highlighted the proposed Committee stage amendments ("CSAs") to the 2013 Bill for ease of deliberations by the Bills Committee.</p> <p>Mr Abraham SHEK disclosed interests.</p> <p>The Chairman suggested and members agreed that the Bills Committee would proceed on the clause-by-clause examination of the Bill and would discuss the Administration's response to issues raised at the meeting on 29 January 2014 (LC Paper No. CB(1)943/13-14(02)) at a later stage.</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| <i>Clause-by-clause examination of the Bill</i> | | | |
| 001047 – 004931 | Chairman Mr James TO Administration Mr Abraham SHEK Mr WONG Ting-kwong Senior Assistant Legal Adviser 3 ("SALA3") | <p><u>Clause 9 – to add sections 29AB to 29AH</u></p> <p><i>Proposed section 29AH</i></p> <p>Mr James TO suggested that anyone who claimed exemption from the enhanced ad valorem stamp duty ("AVD") rate in the capacity as the guardian or trustee of a Hong Kong Permanent Resident ("HKPR") minor or mentally incapacitated person should be required to produce documentary evidence pursuant to the Guardianship of Minors Ordinance (Cap. 13) ("GMO"), the Mental Health Ordinance (Cap. 136) ("MHO"), or other legally binding instrument as required by the court.</p> <p>The Administration explained that anyone who claimed exemption from the enhanced AVD rate in the capacity as the guardian or trustee of a HKPR minor or mentally incapacitated person would be required to produce documentary evidence such as a guardianship order, a court order or a legally binding trust instrument to the satisfaction of the Inland Revenue Department ("IRD"). Other supporting document(s) and explanation would be required to prove one's capacity as a guardian/trustee in the transaction if such documentary evidence were unavailable.</p> <p>Mr James TO requested the Administration to provide details of IRD's operational guidelines, such as the procedures involved, the documentary evidence required and the conditions to be satisfied, etc., for handling cases where a party claiming to act in the capacity of a trustee or guardian on behalf of a HKPR who was a minor or mentally incapacitated person in the acquisition of a residential property did not possess a declaration of trust or guardianship order.</p> <p>The Chairman requested the Administration to provide the number of transactions involving minors or mentally incapacitated persons acquiring residential properties through trustees or guardians since the announcement of the enhanced Special Stamp Duty, Buyer's Stamp Duty ("BSD") and the enhanced AVD measures.</p> | <p>The Administration to follow up as stated in paragraph 3(a) of the minutes.</p> <p>The Administration to follow up as stated in paragraph 3(b) of the minutes.</p> |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>Mr James TO asked whether the Administration would consider removing the exemption arrangement for HKPR minors as in the case of the 2012 Bill or tightening up the exemption arrangement for HKPR minors and mentally incapacitated persons such that exemption from the enhanced AVD rate would only be granted for acquisitions of residential properties made by trustees or guardians who were appointed under GMO or MHO or otherwise by the court.</p> <p>The Administration responded that:</p> <ul style="list-style-type: none">(a) it had no intention to make corresponding amendment to remove the exemption arrangement for HKPR minors as in the case of the 2012 Bill;(b) any person claiming to act on behalf of a HKPR minor or mentally incapacitated person in the acquisition of a residential property had to produce documentary evidence to the satisfaction of the IRD;(c) in the case of a HKPR minor who did not own any other residential property in Hong Kong when acquiring a residential property through a trustee or guardian, the property transaction would be exempted from the enhanced AVD rate;(d) since a HKPR minor who acquired a residential property through a trustee or guardian had to pay BSD for the relevant transaction under the amendments made to the 2012 Bill, the possible abuse arising from trust or guardianship arrangement would have been addressed to a considerable extent; and(e) the introduction of the enhanced AVD measure was to reinforce demand management on those who had already acquired residential properties, and accord priority to the home ownership needs of HKPRs who had no residential properties under the tight housing supply situation. Withdrawing the exemption arrangement for acquisitions of residential properties on behalf of HKPR minors or mentally | |

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| | | <p>incapacitated persons in the 2013 Bill would further strengthen the demand-side management measure, which would be inconsistent with its policy intent.</p> <p>Mr Abraham SHEK concurred with the Administration's standpoint above.</p> <p>In response to Mr James TO, the Administration explained that even if a trustee or guardian owned a residential property, a residential property transaction that was entered into on behalf of a HKPR minor or mentally incapacitated person would be exempted from the doubled AVD rate as long as the HKPR minor or mentally incapacitated person was not the beneficial owner of any other residential property in Hong Kong on the date of acquisition.</p> <p>Mr James TO held the view that the effectiveness of the enhanced AVD measure would be weakened if the exemption arrangement for HKPR minors and mentally incapacitated persons was not tightened.</p> <p>The Administration and SALA3 advised that, except the exemptions provided under the 2012 Bill, BSD would be charged on agreements for sale or conveyances of sale of residential properties executed by any person (including companies) who was not a HKPR. Under the enhanced AVD regime, whether an instrument was liable to the enhanced AVD depended on whether or not the purchaser/transferee acting on his/her own behalf (except a HKPR minor or mentally incapacitated person) in an acquisition was a beneficial owner of any other residential property in Hong Kong on the date of acquisition.</p> <p>In response to Mr WONG Ting-kwong, the Administration advised that the enhanced AVD rate would be charged on instruments involving HKPR minors and mentally incapacitated persons who were beneficial owners of any other residential property in Hong Kong on the date of acquisition.</p> | |

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| 004932 – 011154 | Chairman Mr James TO Mr Abraham SHEK Mr WONG Ting-kwong Mr Tony TSE Administration | <p>Members requested the Administration to set out the different scenarios where exemption from the enhanced AVD rate would be granted in respect of acquisition or transfer of a residential property between close relatives, acquisition of a replacement property (residential or non-residential) by a person affected by certain ordinances under specified situations, and the exchange of a residential property for residential or non-residential property, etc., including the following cases:</p> <ul style="list-style-type: none"> (i) transaction involving two adjacent properties which were structurally combined into one (submission from a member of the public in LC Paper No. CB(1)817/13-14(01)); and (ii) transactions involving both residential and non-residential units (such as parking space). <p>Having regard to the great variety of properties built over the years and possible discrepancies in the permitted use(s) of a property as specified in the land lease and occupation permit, members requested the Administration to provide the basis and the guiding principles in determining whether a subject property was a residential or non-residential property.</p> <p>Mr Tony TSE and Mr Abraham SHEK urged the Administration to consider extending the six-month period for HKPR purchasers/transferees who had acquired a new residential property to dispose of their only other residential property to cater for the replacement of original properties with uncompleted residential flats. Mr TSE said that he might propose CSAs to this effect if the Administration gave no positive response to his request in this regard.</p> | <p>The Administration to follow up as stated in paragraph 3(c) of the minutes.</p> <p>The Administration to follow up as stated in paragraph 3(d) of the minutes.</p> |
| 011155 – 013256 | Chairman Mr James TO Mr Abraham SHEK SALA3 Administration | <p><u>Clause 10 – to add Division 2 in Part IIIA</u></p> <p><i>Proposed section 29AJ</i></p> <p>The Administration advised that a purchaser/transferee who already owned a non-residential property would not be charged the doubled AVD when buying a residential property provided that s/he was not the beneficial owner of</p> | |

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| | | <p>any other residential property in Hong Kong on the date of acquisition.</p> <p>In response to members' enquiry on the permitted use(s) of a property should there be discrepancies in the permitted use(s) specified on the land lease and the occupation permit, SALA3 and the Administration advised that according to section 29A(1) of the Stamp Duty Ordinance (Cap. 117), a property was regarded as a non-residential property if it could not be used wholly or partly for residential purpose under any of the following documents:</p> <ul style="list-style-type: none">(a) a Government lease or an agreement for a Government lease;(b) a deed of mutual covenant, within the meaning of section 2 of the Building Management Ordinance (Cap. 344);(c) an occupation permit issued under section 21 of the Buildings Ordinance (Cap. 123); or(d) any other instrument, such as new town planning legislation, which the Collector of Stamp Revenue was satisfied effectively restricted the permitted use of the property. <p><i>Proposed section 29AK</i></p> <p>Mr James TO urged the Administration to consider expanding the scope of exemption for conveyances on sale of residential properties to include in-laws such that a joint purchase by a couple together with their non-HKPR parent(s) should also be exempted.</p> <p>The Administration advised that:</p> <ul style="list-style-type: none">(a) the 2013 Bill would adopt the same meaning of "closely related persons" as defined in the 2012 Bill; and(b) the exemption arrangement in respect of joint acquisitions made by a HKPR with closely related persons was an exceptional arrangement to exempt certain non-HKPRs from the enhanced AVD rate with a view to facilitating HKPRs in acquiring residential | |

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| | | <p>properties. To further expand the exemption arrangement would result in exemption from the enhanced AVD rate being granted even if the purchasers consisted of non-HKPRs who were not closely related to all other HKPR purchasers/transferees in the purchase of a residential property.</p> <p>The Chairman urged the Administration to, in relation to the definition of "closely related persons" in the proposed section 29AD, address members' concern that conveyances on sale of residential property involving in-laws, such as a couple and their parent(s), would not be exempted from the enhanced AVD rate.</p> | <p>The Administration to follow up as stated in paragraph 3(e) of the minutes.</p> |
| 013257 – 013746 | Chairman Mr James TO Administration | <p>Mr James TO reiterated his request to expand the scope of exemption for closely related persons to include in-laws.</p> <p>The Administration explained that the existing AVD rates (Scale 2 rates) would continue to apply for conveyances involving transferor(s) and transferee(s) who were closely related, such as parent and child. There were provisions under the 2013 Bill to cater for the subsequent addition or withdrawal of name(s) of close relative(s) in an agreement for sale or a conveyance on sale for a residential property, in which case the existing AVD rates would continue to apply.</p> | |
| 013747 – 014935 | Chairman Mr James TO Mr Abraham SHEK Administration | <p><i>Proposed section 29AL</i></p> <p>The Administration advised that it would propose CSAs to amend the proposed sections 29AL(2) and 29BD(2) by adding the following ordinances to cover properties resumed or acquired:</p> <ul style="list-style-type: none"> (a) section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276); (b) section 13(1) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370); (c) sections 3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance (Cap. 130); | |

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| | | <p>(d) sections 16 or 28(1) of the Railways Ordinance (Cap. 519); and</p> <p>(e) section 37(2) of the Land Drainage Ordinance (Cap. 446).</p> <p>Mr James TO urged the Administration to consider imposing reasonable restrictions, such as the size and value of the replacement property, to address the possible abuse of the exemption such as in the case of a residential property which was anticipated to be acquired or resumed under specified situations where each of the affected owners (including companies) would be exempted from the enhanced AVD rate for purchase of a replacement property of significantly larger size and higher value compared with the property to be replaced.</p> <p>The Administration explained that the exemption was provided in pursuance of the policy intention to cater for the replacement purchases made by the affected property owners. Given the lack of an objective basis to determine the suggested restrictions with regard to the size, value or timeframe of the replacement purchase, the restrictions thus imposed would be arbitrary and may be subject to challenge. The proposed provisions under the 2013 Bill were consistent with those under the 2012 Bill which did not impose any such restrictions.</p> | <p>The Administration to follow up as stated in paragraph 3(f) of the minutes.</p> |
| 014936 – 015224 | <p>Chairman Mr James TO SALA3 Administration</p> | <p><i>Proposed section 29AM</i></p> <p>The Administration advised that it would propose CSAs to the proposed section 29AM(c) to amend the reference to mortgagee and receiver correspondingly in the light of the amendments to such reference in section 29DB(8)(c) of the 2012 Bill for the sake of enhancing clarity.</p> | |
| 015225 – 015802 | <p>Chairman Mr James TO Mr Abraham SHEK SALA3 Administration</p> | <p>Meeting arrangements</p> | |