

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1881/13-14  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/5/12

**Bills Committee on Stamp Duty (Amendment) Bill 2013**

**Minutes of eleventh meeting on  
Friday, 28 March 2014, at 10:45 am  
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 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 Dennis KWOK  
Hon SIN Chung-kai, SBS, JP  
Hon Tony TSE Wai-chuen

**Members absent** : Hon Abraham SHEK Lai-him, GBS, JP  
Hon James TIEN Pei-chun, GBS, JP  
Hon Kenneth LEUNG

**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 (Operations)

Ms TSE Yuk-yip, JP  
Assistant Commissioner 3

Mr HONG Wai-kuen  
Senior Superintendent of Stamp Office

Department of Justice

Mr Allen LAI  
Acting 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

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Action

**I. Meeting with the Administration**

(LC Paper No. CB(1)1150/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 14 March 2014

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

LC Paper No. CB(1)1096/13-14(02) -- Administration's response to Senior Assistant Legal Adviser's letter dated 14 January 2014 as set out in LC Paper No. CB(1)1096/13-14(01)

Clause-by-clause examination of the Bill

*Starting from clause 10 - section 29AN*

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 Tony TSE and Mr Dennis KWOK disclosed their respective interests.

Follow-up actions required of the Administration

3. The Administration was requested to:

- (a) in the case of an acquisition of a public rental housing flat under the "Tenants Purchase Scheme" by a non-Hong Kong Permanent Resident ("HKPR") parent jointly with his/her child who was a HKPR minor, consider exempting the non-HKPR parent from the payment of the enhanced ad valorem stamp duty ("AVD") on the consideration for his/her share in the flat;
- (b) address members' concern that the transferee of a non-residential property in an exchange between a residential property and a non-residential property under the proposed section 29AN who had paid the equality money would be charged less AVD than a transferee of a non-residential property who had made full payment of the price for it under an agreement for sale or conveyance on sale as in the latter's case the instrument would be chargeable with the enhanced AVD;
- (c) in the case of persons became joint owners of a residential property by succession as beneficiaries under a will, each of whom would be the beneficial owner of the property, and hence would not satisfy the condition under the proposed section 29AJ(2)(b) for exemption from the enhanced AVD if s/he subsequently purchased a residential property in Hong Kong:
  - (i) explain what legal procedures were required to be completed for the property to be vested in these beneficiaries and at what point of time or juncture each of them would, for the purposes of stamp duty, be regarded as beneficial owner of the property; and
  - (ii) advise whether the beneficiary concerned could be exempted from the enhanced AVD if when s/he made the purchase, s/he bona fide declared that s/he was not the beneficial owner of any other residential property in Hong Kong but later s/he came to the knowledge that s/he was a beneficial owner by succession pursuant to a will;

- (d) provide information on the existing practice on handling cases where a transferee was unable to provide the usual official documents to prove that s/he was closely related to the transferor(s) and to other transferee(s) under an instrument, and consider accepting a statutory declaration as proof of one's relationships to the other transferee(s) as a closely related person;
- (e) as the addition of the name of the same transferee by different closely related persons, irrespective of their number, to separate agreements for sale or conveyances on sale in respect of residential properties would not subject the relevant instruments to additional AVD under the Stamp duty Ordinance (Cap. 117) ("SDO"), address members' concern that such instruments from the second onwards should be chargeable at the enhanced AVD rate under the Stamp Duty (Amendment) Bill 2013 ("the 2013 Bill"), as the transferee would be beneficial owner of a residential property in Hong Kong after the first instrument;
- (f) address members' concern that the payment of the enhanced AVD could be evaded by addition of the name of a spouse who was the beneficial owner of any other residential property in Hong Kong (in which case the relevant instrument would only be chargeable on 50% of the consideration at the old AVD rate) as opposed to a joint acquisition from the start (in which case the whole consideration stated in the relevant instrument would be chargeable at the enhanced AVD rate);
- (g) advise the applicable provisions of the 2013 Bill and AVD rate chargeable in respect of the following scenarios:
  - (i) a person who was not the beneficial owner of any other residential property in Hong Kong nominated his/her spouse who owned other residential property in Hong Kong to take up the assignment of the subject property; and
  - (ii) a person who was not the beneficial owner of any other residential property in Hong Kong added as purchaser/transferee the name of his/her spouse who was the beneficial owner of other residential property in Hong Kong before the assignment of the subject property;

- (h) provide a copy of all the materials prepared by the Administration in briefing estate agents on the stamp duty requirements under the 2013 Bill;
- (i) consider exempting the acquisition or transfer of non-residential properties between closely related persons from the enhanced AVD; and
- (j) in respect of an acquisition of a replacement property after the original property being resumed or acquired under any of the ordinances specified in the proposed section 29AL, address members' concern on the possible liabilities for stamp duty in different scenarios (e.g. the different user of the original property) arising from the replacement of a commercial-residential property by a residential or commercial property in the light of the definitions of "non-residential property" and "residential property" in section 29A(1) of the SDO.

*(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1219/13-14(02) on 11 April 2014.)*

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on Monday, 14 April 2014 at 10:45 am to meet with the Administration.

**II. Any other business**

5. There being no other business, the meeting ended at 12:44 pm.

Council Business Division 1  
Legislative Council Secretariat  
30 July 2014

**Proceedings of the eleventh meeting of  
the Bills Committee on Stamp Duty (Amendment) Bill 2013  
on Friday, 28 March 2014, at 10:45 am  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda Item I – Meeting with the Administration</b>			
000046 – 000230	Chairman Mr Andrew LEUNG Mr WONG Ting-kwong Mr James TO Mr Tony TSE Mr Dennis KWOK	Disclosure of interests by members	
000231 – 000601	Chairman Administration Mr James TO	The Administration advised that its responses to members' views and concerns raised at the meeting of the Bills Committee on 14 March 2014 as well as the letter from Mr James TO (LC Paper No. CB(1)971/13-14(01)) were being prepared.	
<b><i>Clause-by-clause examination of the Bill</i></b>			
000602 – 001706	Chairman Administration Mr James TO	<p data-bbox="603 1059 1145 1093"><u>Clause 10 – to add Division 2 in Part IIIA</u></p> <p data-bbox="603 1133 911 1167"><i>Proposed section 29AN</i></p> <p data-bbox="603 1207 1254 1420">In reply to the Chairman, the Administration advised that for an instrument effecting an exchange between a residential property and a non-residential property, the ad valorem stamp duty ("AVD") would only be chargeable on the equality money.</p> <p data-bbox="603 1460 1254 2045">In reply to Mr James TO, the Administration advised that the proposed section 29AN for allowing the equality money to be chargeable with the existing AVD rates applied to an instrument if, on the date of the instrument, (i) the transferee, or each of the transferees under the instrument, was a Hong Kong Permanent Resident ("HKPR") acting on his or her own behalf, and was not a beneficial owner of any other residential property in Hong Kong; and (ii) the transferee, or each of the transferees was closely related to the transferor or each of the transferors and the transferee(s) is acting on his/her own behalf. An instrument would be chargeable with AVD at the enhanced rate if any of the above was not satisfied.</p>	



Time marker	Speaker	Subject(s)	Action required
		<p>Mr James TO referred to the case of acquisition of a public rental housing ("PRH") flat under the "Tenants Purchase Scheme" of the Hong Kong Housing Authority by a non-HKPR parent, being a sitting tenant, jointly with his/her child who was a HKPR minor, at a consideration of \$210,000 and was charged with the Buyer's Stamp Duty ("BSD") of some \$70,000. He requested the Administration to consider exempting the non-HKPR parent from the payment of the enhanced AVD on the consideration for his/her share in the flat, as such an acquisition by a sitting tenant of PRH involved no speculation at all.</p>	<p>The Administration to follow up as stated in paragraph 3(a) of the minutes.</p>
<p>001707 – 002916</p>	<p>Chairman Senior Assistant Legal Adviser 3 ("SALA3") Administration Mr James TO</p>	<p>SALA3 expressed concern that a transferee of a non-residential property in an exchange between a residential property and a non-residential property under the proposed section 29AN who had paid the equality money would be charged less AVD than a transferee of a non-residential property who had made full payment of the price for it under an agreement for sale or conveyance on sale as in the latter's case the instrument would be chargeable with the enhanced AVD. To ensure consistency with the policy intent of not providing exemption for non-residential properties, the Stamp Duty (Amendment) Bill 2013 ("the 2013 Bill") could provide that the old AVD rate was applicable to an instrument effecting an exchange between a residential and a non-residential property only if the equality money was paid by the transferee of the residential property.</p> <p>The Administration advised that the proposed section 29AN was in line with the policy intent of the 2013 Bill in that the HKPR transferee of a residential property under an instrument who acted on his or her own behalf and was not a beneficial owner of any other residential property in Hong Kong would be exempted from the enhanced AVD. Specifying a particular party to an instrument to be responsible for the stamp duty on the equality money would need careful consideration.</p>	<p>The Administration to follow up as stated in paragraph 3(b) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
002917 – 003336	Chairman Mr James TO Administration	<p>In reply to Mr James TO, the Administration advised that in the case of persons becoming joint owners of a residential property by succession as beneficiaries under a will, each of whom would be the beneficial owner of the property, and hence would not satisfy the condition under the proposed section 29AJ(2)(b) for exemption from the enhanced AVD if s/he subsequently purchased a residential property in Hong Kong. In view of the above, Mr James TO requested the Administration to:</p> <p>(a) explain what legal procedures were required to be completed for the property to be vested in these beneficiaries and at what point of time or juncture each of them would, for the purposes of stamp duty, be regarded as beneficial owner of the property; and</p> <p>(b) advise whether the beneficiary concerned could be exempted from the enhanced AVD if when s/he made the purchase, s/he bona fide declared that s/he was not the beneficial owner of any other residential property in Hong Kong but later s/he came to the knowledge that s/he was a beneficial owner by succession pursuant to a will.</p>	The Administration to follow up as stated in paragraph 3(c) of the minutes.
003337 – 003409	Chairman Mr SIN Chung-kai Administration	In reply to Mr SIN Chung-kai, the Administration advised that the meaning of "closely related persons", which followed the existing Special Stamp Duty and BSD regimes, was given under the proposed section 29AD.	
003410 – 004559	Chairman Mr James TO Administration	<p>In reply to Mr James TO, the Administration advised that it was an administrative arrangement that a transferee would be required to declare that s/he was a HKPR and acted on his or her own behalf in relation to an instrument. Official documents, such as a birth certificate and a certificate for marriage, would be required as the proof of the transferor(s) and the transferee(s) being closely related person(s).</p> <p>Mr James TO noted that subsequent to the passage of the Stamp Duty (Amendment) Bill 2012, people who purchased or acquired residential properties after the announcement of the BSD measure had been requested by their</p>	The Administration to follow up as stated in paragraph 3(d)

Time marker	Speaker	Subject(s)	Action required
		<p>solicitors to declare their HKPR status and that they acted on their own behalf in relation to the relevant instruments in order to be exempted from the BSD. He referred to the provisions as set out in the proposed sections 29AN(4)(a) and (b) and pointed out that in some cases a transferee might not be able to produce documents to prove that s/he was closely related to the transferor(s) or to other transferee(s), such as in the case of the elderly who had lost or did not possess the relevant documents. He requested the Administration to provide information on its existing practice on handling cases where a transferee was unable to provide the usual official documents to prove that s/he was closely related to the transferor(s) and to other transferee(s) under an instrument. He urged the Administration to consider accepting a statutory declaration to prove that the transferee(s) was closely related to the transferor(s) and the other transferee(s). He said that he might propose Committee stage amendments ("CSAs") to this effect if the Administration did not accede to his request.</p>	<p>of the minutes.</p>
<p>004600 – 004735</p>	<p>Chairman Administration</p>	<p><i>Proposed section 29AO</i></p> <p>In reply to the Chairman, the Administration advised that if the parties to the exchange were HKPRs acting on their own behalf and were not beneficial owners of any other residential properties in Hong Kong at the time of the exchange, "any consideration paid for equality" could be exempted from the enhanced AVD rate. If the parties to the exchange were closely related and acting on their own behalf, any "consideration paid for equality" would be charged at the old AVD rate, irrespective of whether they were HKPRs and whether they were beneficial owners of any other residential properties in Hong Kong at the time of exchange.</p>	
<p>004736 – 005946</p>	<p>Chairman Mr James TO Administration SALA3 Mr LEUNG Che-cheung</p>	<p><i>Proposed sections 29AP and 29AQ</i></p> <p>Mr James TO noted that addition of the name of the same transferee by different closely related persons, irrespective of their number, to separate agreements for sale or conveyances on sale in respect of residential properties would not subject</p>	<p>The Administration to follow up as stated in paragraph 3(e)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>the relevant instruments to additional AVD under the Stamp duty Ordinance (Cap. 117) ("SDO"). He expressed concern that such instruments from the second onwards would be chargeable at the enhanced AVD rate under the 2013 Bill, as the transferee would be beneficial owner of a residential property in Hong Kong after the first instrument. He urged the Administration to provide exemptions for the addition of the name(s) of closely related persons in conveyances on sale or agreements for sale in respect of residential properties. He indicated that he might propose CSAs to this effect.</p> <p>The Chairman shared Mr James TO's view. She pointed out that it was common for couples to add the name of their spouse in respect of the properties they owned after marriage. The instruments involved only name-adding but not acquisition of any other residential property.</p> <p>The Administration responded that in line with the policy intent of the 2013 Bill, provisions were in place to deal with the acquisition of residential property through addition of names between closely related persons.</p> <p>In reply to Mr LEUNG Che-cheung, the Administration advised that for an instrument effecting the addition of the name of four sons in respect of a residential property in which two sons were beneficial owners of other residential property, these two sons would each be liable to one-fifth of the AVD derived from the consideration at the old AVD rate.</p>	<p>of the minutes.</p>
<p>005947 – 011359</p>	<p>Chairman SALA3 Administration Mr James TO</p>	<p>SALA3 expressed concern that the payment of the enhanced AVD could be evaded by addition of the name of a spouse who was the beneficial owner of any other residential property in Hong Kong (in which case the relevant instrument would only be chargeable on 50% of the consideration at the old AVD rate) as opposed to a joint acquisition from the start (in which case the whole consideration stated in the relevant instrument would be chargeable at the enhanced AVD rate).</p>	<p>The Administration to follow up as stated in paragraph 3(f) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>The Chairman pointed out that it was common for a couple to jointly acquire a residential property. Since each of the couple would own only half of the property concerned, it was unfair that in acquiring another residential property by either one of them, the whole consideration of the new property acquired would be chargeable at the enhanced AVD rate.</p> <p>Mr James TO requested the Administration to advise the applicable provisions of the 2013 Bill and AVD rate chargeable in respect of the following scenarios:</p> <ul style="list-style-type: none"> <li>(a) a person who was not the beneficial owner of any other residential property in Hong Kong nominated his/her spouse who owned other residential property in Hong Kong to take up the assignment of the subject property; and</li> <li>(b) a person who was not the beneficial owner of any other residential property in Hong Kong added as purchaser/transferee the name of his/her spouse who was the beneficial owner of other residential property in Hong Kong before the assignment of the subject property.</li> </ul> <p>Mr James TO stressed the importance of enhancing estate agents' understanding of the stamp duty requirements under the 2013 Bill, and requested the Administration to provide a copy of all the materials prepared in briefing estate agents.</p>	<p>The Administration to follow up as stated in paragraph 3(g) of the minutes.</p> <p>The Administration to follow up as stated in paragraph 3(h) of the minutes.</p>
011400 – 012209	Chairman Administration	<p><u>Clause 11 – to add heading Division 3 in Part IIIA</u></p> <p><u>Clause 12 – to amend Section 29B (duty to execute agreement for sale)</u></p> <p><u>Clause 13 – to add Sections 29BA to 29BI</u></p> <p><u>Clause 14 – to amend Section 29C (chargeable agreements for sale)</u></p> <p><u>Clause 15 – to add heading Division 4 in Part IIIA</u></p>	

Time marker	Speaker	Subject(s)	Action required
		Members raised no question.	
012210 – 012257	Chairman Administration	<p><u>Clause 16 – to amend Section 29D (conveyances on sale of residential property)</u></p> <p><i>Proposed sections 29D(1) to 29D(2)</i></p> <p>Members raised no question.</p>	
012258 – 013119	Chairman SALA3 Mr James TO Administration Mr Andrew LEUNG	<p>SALA3 brought to members' attention that under the 2013 Bill, the enhanced AVD rates would be applicable to all transactions in respect of non-residential properties. No exemption was provided under the 2013 Bill for acquisition or transfer of non-residential properties between closely related persons.</p> <p>Mr James TO noted with concern that an instrument effecting the addition of a son's name in respect of a factory building owned solely by a father would be chargeable at the enhanced AVD rate on the consideration of the son's share of the property. He considered such arrangement grossly inappropriate as it was natural for parents to pass on family business to their children, and the relevant transaction involved no speculative activities at all. He urged the Administration to consider exempting the acquisition or transfer of non-residential properties between closely related persons from the enhanced AVD, and said that he might propose CSAs to this effect.</p> <p>The Administration responded that in line with the policy intent of the 2013 Bill to cater to the home ownership needs of HKPRs who did not own any residential property, exemptions from the enhanced AVD would only be granted for instruments involving the transactions of residential properties.</p>	The Administration to follow up as stated in paragraph 3(i) of the minutes.
013120 – 014331	Chairman Administration SALA3 Mr James TO	<p><u>Clause 16 – to amend Section 29D (conveyances on sale of residential property)</u></p> <p><i>Proposed sections 29D(3) to 29D(7)</i></p> <p>Members raised no question.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p><i>Proposed section 29D(8)</i></p> <p>In reply to SALA3's enquiry on the purpose of the proposed section 29D(8), the Administration advised that the provision was to ensure that those agreements for sale signed before 23 February 2013, the date when the enhanced AVD measures were announced, were taken into consideration when applying section 29D(3). For instance, in the case of a conveyance on sale of two non-residential properties effected by two agreements for sale, if one of which was signed before 23 February 2013 and the other after, the provision would be applicable to the former.</p> <p>SALA3 opined that the proposed section 29D(8) was unnecessary as agreements for sale of non-residential properties signed before 23 February 2013 were not required to be stamped according to SDO.</p>	
014332 – 014405	Chairman Administration	<p><u>Clause 17 – to amend Section 29DA (further provisions on special stamp duty chargeable on certain conveyances on sale)</u></p> <p>Members raised no question.</p>	
014406 – 015905	Chairman Administration Mr James TO SALA3	<p><u>Clause 18 – to add Division 5 in Part IIIA</u></p> <p><i>Proposed section 29DE</i></p> <p>The Administration advised that it would propose CSAs in respect of the refund mechanism for redevelopment projects corresponding to the relevant provisions under the Stamp Duty (Amendment) Ordinance 2014.</p> <p>Mr James TO cited a case and expressed concern about the possible abuse where each of the owners (including companies) affected by any of the specified ordinances would be exempted from the enhanced AVD for purchase of a replacement property of significantly larger size and higher value compared with the property to be replaced. He reiterated his request for the Administration to address the possible abuse of the exemption by imposing reasonable restrictions, such as on the size and value of the replacement property.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>In respect of an acquisition of a replacement property after the original property being resumed or acquired under any of the ordinances specified in the proposed section 29AL, Mr James TO expressed concern on the possible liabilities for stamp duty in different scenarios (e.g. the different user of the original property) arising from the replacement of a commercial-residential property by a residential or commercial property in the light of the definitions of "non-residential property" and "residential property" in section 29A(1) of the SDO.</p> <p><i>Proposed section 29DF</i></p> <p>The Administration advised that various factors needed to be carefully balanced when considering different opinions. The refund arrangements should have clear scope that could be defined in the legislation, have objective basis for public understanding and could be effectively enforced by the Inland Revenue Department. It would, having regard to members' views and suggestions and the proposed CSAs on extending the six-month period for HKPR purchasers/transferees who had acquired a new residential property to dispose of their only other residential property, provide a consolidated response at an appropriate juncture.</p> <p>The Chairman concluded that the Bills Committee had completed the scrutiny of the proposed section 29DG.</p>	<p>The Administration to follow up as stated in paragraph 3(j) of the minutes.</p>
015906 – 015926	Chairman	Meeting arrangements	