

立法會
Legislative Council

LC Paper No. CB(1)1978/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/5/12

Bills Committee on Stamp Duty (Amendment) Bill 2013

**Minutes of fourteenth meeting on
Monday, 5 May 2014, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Starry LEE Wai-king, JP (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
Hon James TIEN Pei-chun, GBS, 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 absent : Hon James TO Kun-sun (Deputy Chairman)
Dr Hon LAM Tai-fai, SBS, JP
Hon Paul TSE Wai-chun, 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 (Operations)

Ms TSE Yuk-yip, JP
Assistant Commissioner 3

Mr HONG Wai-kuen
Acting Chief Assessor (Stamp Office)

Department of Justice

Mr Allen LAI
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

- I. Meeting with the Administration**
(LC Paper No. CB(1)971/13-14(01) -- Hon James TO Kun-sun's
(*Chinese version only*) letter dated 24 February
2014
- LC Paper No. CB(1)1219/13-14(03) -- Administration's response
to Hon James TO
Kun-sun's letter dated 24
February 2014
- LC Paper No. CB(1)1280/13-14(02) -- Hon James TO Kun-sun's
(*Chinese version only*) letter dated 16 April 2014
- LC Paper No. CB(1)1338/13-14(01) -- Administration's response
to Hon James TO
Kun-sun's letter dated 16
April 2014
- LC Paper No. CB(1)1280/13-14(01) -- List of follow-up actions
arising from the discussion
at the meeting on 14 April
2014
- LC Paper No. CB(1)1338/13-14(02) -- List of follow-up actions
arising from the discussion
at the meeting on 25 April
2014

Clause-by-clause examination of the Bill

Starting from clause 18 - section 29DH

- 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)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)

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)

- LC Paper No. CB(1)1201/13-14(01) -- Draft Committee stage amendments proposed by Hon Tony TSE Wai-chuen
- LC Paper No. CB(1)1280/13-14(03) -- Administration's response to draft Committee stage amendments proposed by Hon Tony TSE Wai-chuen as set out in LC Paper No. CB(1)1201/13-14(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 Abraham SHEK, Mr Andrew LEUNG, Mr Tony TSE, Mr LEUNG Che-cheung, Mr WONG Ting-kwong, Mr Charles MOK and Mr Kenneth LEUNG disclosed their respective interests.

3. The Bills Committee completed the clause-by-clause examination of the Chinese version of the Stamp Duty (Amendment) Bill 2013 ("the Bill"). The Chairman 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.

Follow-up action required of the Administration

4. The Administration was requested to provide information on the application of sunset clause in the legislation in Hong Kong and in other jurisdictions.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1401/13-14(01) on 12 May 2014.)

Date of next meeting

5. The Chairman reminded members that the next meeting would be held on Tuesday, 13 May 2014 at 4:30 pm to meet with the Administration.

(Post-meeting note: Members were informed of the attendance of the Secretary for Financial Services and the Treasury at the next meeting to be held on 13 May 2014 vide LC Paper No. CB(1)1399/13-14 on 9 May 2014.)

II. Any other business

6. There being no other business, the meeting ended at 6:26 pm.

Council Business Division 1
Legislative Council Secretariat
5 September 2014

**Proceedings of the fourteenth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2013
on Monday, 5 May 2014, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Meeting with the Administration			
000028 – 000159	Chairman Mr Abraham SHEK Mr Andrew LEUNG Mr Tony TSE Mr LEUNG Che-cheung Mr WONG Ting-kwong Mr Charles MOK Mr Kenneth LEUNG	Opening remarks Disclosure of interests by members	
000200 – 000850	Chairman Administration	The Administration's response to Mr James TO's letter dated 24 February 2014 (LC Paper No. CB(1)1219/13-14(03)). In reply to the Chairman, the Administration affirmed its stance on the exemption arrangements in respect of Hong Kong Permanent Resident ("HKPR") minors, mentally incapacitated persons and charitable bodies under the Stamp Duty (Amendment) Bill 2013 ("the 2013 Bill") as detailed in the above paper. The Chairman urged the Secretary for Financial Services and the Treasury to take into account the relevant views expressed by Members of the Legislative Council ("LegCo") on the Stamp Duty (Amendment) Bill 2012 ("the 2012 Bill") when addressing the Bills Committee's concern on the proposed negative vetting mechanism in adjusting future ad valorem stamp duty ("AVD") rate.	
000851 – 003447	Chairman Mr Tony TSE Administration Senior Assistant Legal Adviser 3 ("SALA3")	<u>Discussion on the Committee stage amendments ("CSAs") proposed by Mr Tony TSE in respect of the six-month timeframe for owners having acquired a new residential property to dispose their original one</u> Mr Tony TSE explained his proposed CSAs (LC Paper No. CB(1)1201/13-14(01)). In gist, he was concerned that given the pre-sale period of individual developments under the Consent Scheme could be up to 30 months before the	

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		<p>anticipated completion date, the Administration's present proposal would make it necessary for those who sought to replace their original property by an uncompleted flat to seek temporary accommodation before the uncompleted flat was ready for accommodation. To minimize the inconvenience brought about by the six-month requirement to owners for disposing the original residential property and for ease of implementation by the Inland Revenue Department ("IRD"), his amendments proposed that the date of issuance of the relevant letter or permit by the relevant authorities in respect of different types of uncompleted flats according to the relevant provisions of the Residential Properties (First-hand Sales) Ordinance (Cap. 621) be taken as the starting point of the six-month timeframe for divesting the original properties.</p> <p>The Administration responded that it had to examine members' CSAs on the six-months timeframe for divesting properties from different angles with a view to assessing whether the amendments were necessary, clear, fair and easy for the public to understand, and could be effectively implemented by the IRD. Its preliminary analysis was as follow:</p> <ul style="list-style-type: none"> (a) in 2012 and 2013, property transactions involving the pre-sale of uncompleted flats were less than 20%, among which over 90% were development projects under the Consent Scheme; (b) under the Residential Properties (First-hand Sales) Ordinance, the vendor of projects under the Consent Scheme shall notify the purchasers in writing of the completion of the sale and purchase within one month after the issuance of the Certificate of Compliance or the Consent to Assign, whichever was the earlier, and both parties shall complete the sale and purchase within 14 days of the issuance of such notice. As for non-Consent Scheme projects (for projects other than specified New Territories developments) and non-Consent Scheme projects (for specified New Territories developments), the vendor shall notify the 	

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		<p>purchasers in writing of the completion of the sale and purchase within six months after the issuance of the Occupation Permit and no-objection letter respectively, and both parties shall complete the sale and purchase within 14 days of the issuance of such notice. In other words, when the purchasers of non-Consent Scheme projects and specified New Territories developments were notified by the vendor, the six-month timeframe for changing property might almost be over. Since Mr Tony TSE's CSAs proposed using different types of instruments signifying compliance or consent as the basis for calculating the six-month timeframe for uncompleted flats of different development projects, the time available for divesting property would appear to be inconsistent from the perspective of those changing their property;</p> <p>(c) the Residential Properties (First-hand Sales) Ordinance came into effect on 29 April 2013, before which there was no legislation requiring the vendor to notify the purchasers in writing of the completion of the sale and purchase within a specified timeframe. In this connection, Mr Tony TSE's CSAs could not deal with the uncompleted flats acquired between 23 February 2013 (when the enhanced AVD measures were introduced) and 28 April 2013; and</p> <p>(d) Mr Tony TSE's proposal to allow those who changed property through acquiring an uncompleted flat to file AVD refund applications to IRD within two years from the date of the conveyance on sale as opposed to agreement for sale proposed in the 2013 Bill would give rise to an in-between lead time of over 36 months. This was inconsistent with the requirements of the Stamp Duty Ordinance (Cap. 117) ("SDO") under which applicants were required to file any requests for refund within two years from the date of the instrument when the stamp duty was paid.</p> <p>Mr Tony TSE responded to the Administration's standpoints by pointing out that:</p>	

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		<p>(a) the transaction volume for uncompleted flats, although stood at less than 20%, should not be considered a small number, especially at this moment of time when the secondary property market was rather stagnant; and</p> <p>(b) he did not subscribe to the Administration's viewpoint that when purchasers of non-Consent Scheme projects and specified New Territories developments were notified by the vendor, the six-month timeframe for changing properties might almost be over, because there was no reason for the vendor to delay completion of the transactions which would mean a delay of receiving their revenue.</p> <p>In response to Mr Tony TSE's question on whether the limitations arising from the enactment of the Residential Properties (First-hand Sales) Ordinance as pointed out by the Administration could be resolved through technical amendments, SALA3 advised that the requirement to notify purchasers in writing of the completion of the sale and purchase within a specified timeframe for development projects under the Consent Scheme had been the same before the implementation of the Residential Properties (First-hand Sales) Ordinance. The relevant proforma agreement currently provided by The Law Society of Hong Kong ("the Law Society") to its members did not appear to specify such a requirement for development projects under the Non-Consent Scheme. As these projects accounted for only a few percent of the overall supply, and the period in question (i.e. between 23 February and 28 April 2013) was too short to have many transactions of units in Non-Consent Scheme development projects, the problem as identified by the Administration would be insignificant.</p>	
003448 – 004435	Chairman Mr Andrew LEUNG Mr WONG Ting-kwong Administration	Mr Andrew LEUNG pointed out that since an uncompleted flat did not provide immediate accommodation, purchasers of such a flat for the purpose of changing property did face real difficulties meeting the six-month requirement. He criticized the Administration for finding	

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		<p>excuses for not accepting members' CSAs, and considered that the problems as identified could be resolved through technical amendments.</p> <p>Mr WONG Ting-kwong said that the transaction volume for uncompleted flats at less than 20% was not a small figure under the current market situation. He envisaged that more uncompleted flats would be put on sale with the Government's sustained efforts to increase housing supply. He urged the Administration to accept members' proposed CSAs with appropriate modifications.</p> <p>The Chairman shared the view that more uncompleted flats would be put on sale in the near future. She said that it would be unfair to those who acquired an uncompleted flat for the purpose of changing property if the Administration did not accept members' CSAs.</p> <p>In reply to the Chairman, the Administration reiterated its stance that the six-month timeframe for changing property should be maintained for both completed and uncompleted flats to ensure policy consistency.</p>	
004436 – 005200	Chairman Mr Tommy CHEUNG Administration	<p><u>Discussion on the CSAs proposed by Mr Tommy CHEUNG and Mr Abraham SHEK on disposing the original property within 12 months (as opposed to 6 months proposed in the 2013 Bill) upon acquiring a new residential property</u></p> <p>Mr Tommy CHEUNG explained his proposed CSAs (LC Paper No. CB(1)584/13-14(01)). In gist, he considered that the Administration should relax the six-month period for HKPRs who had acquired a new residential property to dispose of their only other residential property in Hong Kong in view of the stagnant property market following the announcement of the various demand-side management measures.</p>	
005201 – 011045	Chairman Mr Tony TSE Mr LEUNG Che-cheung Administration	<p>Mr Tony TSE expressed support for Mr Tommy CHEUNG's CSAs which in his view would also facilitate those seeking to change a property by an uncompleted flat.</p> <p>Mr LEUNG Che-cheung opined that the commencement of the six-month timeframe from the completion date of the new flats instead of the</p>	

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		<p>date of the agreements for acquiring the new flats would better cater for the needs of those who changed a property by an uncompleted flat. He also urged the Administration to consider extending the proposed timeframe to 9 or 12 months to address members' concerns on the issue.</p> <p>The Chairman asked whether the Administration would consider extending the six-month period for the acquisition of both completed and uncompleted flats as requested by members, and whether it had received complaints from members of the public who was unable to meet the six-month timeframe.</p> <p>The Administration responded that:</p> <ul style="list-style-type: none">(a) it needed to ensure fairness and policy consistency for the acquisition of a completed and an uncompleted flat as a changing property; and(b) between 2011 and 2012, roughly half of the purchasers holding a Hong Kong Identify Card who sold their other residential properties after acquiring residential properties had their disposal transactions done within six months from the acquisition. The six-month period proposed under the 2013 Bill was made with reference to the repayment period for bridging loans provided by local banks for customers replacing their properties which was usually six months. The Administration had not received any complaint about one being unable to dispose of the original property within six months after acquiring a new one. <p>The Chairman remarked that as uncompleted flats did not provide immediate accommodation, the Administration should seriously reconsider members' CSAs in relation to the changing of property through acquisition of an uncompleted flat. Equally there was a need to relax the six-month requirement for the acquisition of a completed flat in view of the grave concerns expressed by the Bills Committee and the trade.</p>	

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011046 – 011912	Chairman Mr Andrew LEUNG Administration	<p><u>Discussion on the CSAs proposed by Mr Andrew LEUNG and Mr Tommy CHEUNG on introducing a sunset clause specifying the lapse date of the enhanced AVD measures</u></p> <p>Mr Andrew LEUNG explained his proposed CSAs (LC Paper No. CB(1)1847/12-13(02)). In gist, he considered it justified to propose a sunset clause for the proposed measures which were introduced to tackle exceptional circumstances. The sunset clause would also drive the Administration to conduct a timely review on the further need of the proposed measures. The Administration should not have undue concern about the implications on the timing of the proposed measures brought about by the sunset clause, as it could propose to have it extended before its expiration.</p> <p>The Administration responded that:</p> <p>(a) it did not agree to the proposed sunset clause as it could not willfully predict future market changes and various external factors and come up with a date as to when the demand-side management measures would no longer be required. Any prescribed sunset clause, and any amendments to it upon introduction, would only disseminate erroneous messages to the market, and enable early planning for speculations and fuel the demand, thus affecting the effectiveness of the measures. It would also not be able to respond swiftly to the latest market situations if it had to seek the approval of the LegCo to amend the sunset clause; and</p> <p>(b) it would review the proposed measures and report to the LegCo in a year's time after the passage of the 2013 Bill.</p>	
011913 – 012854	Chairman Mr Tommy CHEUNG Mr Tony TSE Administration	<p>Mr Tommy CHEUNG was unconvinced of the Administration's viewpoint that any amendments made to the sunset clause upon its introduction might fuel the demand, because the demand-side management measures would still be in force. He criticized the Administration for turning a deaf ear to members' views once it had secured enough votes in the LegCo for the passage of the</p>	

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		<p>2013 Bill.</p> <p>Mr Tony TSE said that he did not see any reason for the Administration to refuse to take members' proposal for a sunset clause, as the proposed measures were only meant to be exceptional ones introduced for exceptional times. A sunset clause also provided an appropriate timeframe for the Administration to review the effectiveness and the further need of the measures.</p> <p>The Administration reiterated its stance on the issue.</p> <p>The Chairman relayed the concerns expressed by LegCo Members during the scrutiny of the 2012 Bill, and requested the Administration to provide information on the application of sunset clause in the legislation in Hong Kong and in other jurisdictions.</p>	<p>The Administration to follow up as stated in paragraph 4 of the minutes.</p>
<i>Clause-by-clause examination of the Bill</i>			
<p>012855 – 014441</p>	<p>Chairman Administration SALA3 Mr Andrew LEUNG</p>	<p><u>Clause 18 – to add Division 5 in Part IIIA</u></p> <p><i>Proposed section 29DH</i></p> <p>SALA3 noted that the proposed section was to make a transferee or purchaser under an instrument solely liable for the underpayment of the enhanced AVD in certain circumstances. He was concerned that while cases of deception involving the parties to an instrument might not be pursued through criminal proceedings given the stringent requirement of proof, no provision was made under the 2013 Bill to set out the arrangements for the transferee or purchaser concerned to make up the underpayment. He also considered it justified to provide that the parties to an instrument should made up the underpayment without having to resort first to criminal proceedings.</p> <p>The Administration responded that the civil liabilities for the underpayment of AVD had been provided under the SDO.</p> <p>Mr Andrew LEUNG queried why the AVD would be shouldered by all parties to a transaction, as it was common for the purchaser or transferee to be</p>	

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		<p>solely responsible for stamp duty payments.</p> <p>The Administration and SALA3 explained that:</p> <p>(a) the AVD regime did not specify the party to be responsible for the stamp duty payment. In the case of underpayment, both the transferor and transferee were jointly and severally liable to the stamp duty underpaid, actual payment would depend on the contractual agreements between them; and</p> <p>(b) in relation to the exchange of properties between persons who were not closely related, the transferor might not know whether the transferee was a HKPR acting on his/her own behalf and not a beneficial owner of any other residential property in Hong Kong which would render him/her qualified for the exemption from the enhanced AVD. In response to the above concern raised by the Law Society, it was proposed under section 29DH(3) that only the transferee was liable to pay the specified amount if the specified amount was payable solely because it was subsequently found that the transferee did not satisfy the two conditions mentioned above.</p>	
014442 – 014650	Chairman Administration	<p><u>Clause 19 – to add heading Division 6 in Part IIIA</u></p> <p><u>Clause 20 – to repeal Section 29E (section 26 inapplicable to certain agreements)</u></p> <p><u>Clause 21 – to amend Section 29H (exemptions and relief)</u></p> <p><u>Clause 22 – to add Section 63B</u></p> <p>Members raised no question.</p>	
014651 – 014751	Chairman Administration	<p><u>Clause 23 – to add Section 71</u></p> <p>In reply to the Chairman, the Administration advised that if the time for stamping an applicable instrument with any additional stamp duty payable on the instrument began before the date of publication of the Stamp Duty (Amendment) Ordinance 2013 in the Gazette, the time for</p>	

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		stamping was to be replaced by a period of 30 days commencing immediately after the gazettal date. Such an arrangement was in line with the 2012 Bill.	
014752 – 014915	Chairman Administration	<u>Clause 24 – to amend First Schedule</u> Members raised no question.	
014916 – 015037	Chairman Administration	<u>Clause 25 – to amend Land Titles Ordinance</u> <u>Clause 26 – to amend Schedule 3 (consequential amendments)</u> The Administration advised that it had accepted SALA3's advice as set out in LC Paper No. CB(1)1096/13-14(01) and would propose CSAs to amend sub-paragraph (ii) under the new section 15(3)(aa) by adding the words "is made before 23 February 2013 and" after "an agreement for sale that", and deleting the word "either".	
015038 – 015303	Chairman Mr Abraham SHEK Administration	The Chairman concluded that the Bills Committee had completed the clause-by-clause examination of the 2013 Bill. She urged the Administration to provide the Bills Committee its proposed CSAs. Mr Abraham SHEK urged the Administration to accept members' proposed CSAs.	
015304 – 015319	Chairman	Meeting arrangements	