

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1407/16-17  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/1/16

**Bills Committee on Stamp Duty (Amendment) Bill 2017**

**Minutes of third meeting  
on Friday, 21 April 2017, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon WONG Ting-kwong, SBS, JP (Chairman)  
Hon James TO Kun-sun  
Hon Abraham SHEK Lai-him, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon WU Chi-wai, MH  
Hon Alice MAK Mei-kuen, BBS, JP  
Hon KWOK Wai-keung  
Dr Hon YIU Chung-yim

**Members absent** : Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon Kenneth LEUNG  
Hon CHUNG Kwok-pan  
Hon Alvin YEUNG  
Hon Holden CHOW Ho-ding  
Hon Wilson OR Chong-shing, MH

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

**Public officers attending** : Agenda Item II

Transport and Housing Bureau

Miss Agnes WONG  
Deputy Secretary for Transport and Housing  
(Housing)

Miss Joyce KOK  
Principal Assistant Secretary for Transport and  
Housing (Housing)(Private Housing)

Mr Andrew FAN  
Senior Administrative Officer (Private Housing) 1

Inland Revenue Department

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

Ms TSE Yuk-yip  
Assistant Commissioner of Inland Revenue

Mr WONG Kai-cheong  
Chief Assessor (Stamp Office)

Department of Justice

Ms Françoise LAM  
Senior Assistant Law Draftsman

Miss Wendy HO  
Government Counsel

**Clerk in attendance:** Mr Desmond LAM  
Chief Council Secretary (1)3

**Staff in attendance:** Miss Winnie LO  
Assistant Legal Adviser 7

Ms Connie HO  
Senior Council Secretary (1)3

Ms May LEUNG  
Legislative Assistant (1)3

Miss Zoe YIP  
Clerical Assistant (1)3

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Action

**I. Confirmation of minutes of meeting**

LC Paper No. CB(1)836/16-17 -- Minutes of meeting held on  
28 February 2017

The minutes of the meeting held on 28 February 2017 were confirmed.

**II. Meeting with the Administration**

Matters arising from previous meeting

(LC Paper No. CB(1)706/16-17(01) -- List of follow-up actions arising  
from the discussion at the meeting  
on 28 February 2017

LC Paper No. CB(1)706/16-17(02) -- Administration's responses to  
issues raised at the meeting on  
28 February 2017

LC Paper No. CB(1)823/16-17(01) -- Administration's letter dated  
12 April 2017 on "Tightening up of  
exemption arrangement under the  
New Residential Stamp Duty  
regime"

Clause-by-clause examination of the Bill

LC Paper No. CB(3)295/16-17 -- The Bill

LC Paper No. CB(1)603/16-17(01) -- Mark-up copy of the Bill prepared  
by the Legal Service Division  
(Restricted to members only)

File Ref: HDCR4-3/PH/1-10/0-1 -- Legislative Council Brief issued by  
the Transport and Housing Bureau

Action

- LC Paper No. LS31/16-17 -- Legal Service Division Report
- LC Paper No. CB(1)603/16-17(02) -- Paper on Stamp Duty (Amendment) Bill 2017 prepared by the Legislative Council Secretariat (background brief)
- LC Paper No. CB(1)603/16-17(03) -- Assistant Legal Adviser's letter dated 8 February 2017 to the Administration
- LC Paper No. CB(1)603/16-17(04) -- Administration's reply to Assistant Legal Adviser's letter dated 8 February 2017
- LC Paper No. CB(1)620/16-17(01) -- Assistant Legal Adviser's letter dated 27 February 2017 to the Administration
- LC Paper No. CB(1)706/16-17(03) -- Administration's reply to Assistant Legal Adviser's letter dated 27 February 2017)

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

3. The Chairman reminded members that under Rule 83A of the Rules of Procedure, they should disclose the nature of any direct or indirect pecuniary interest before they spoke. Members who had disclosed the nature of their pecuniary interest relating to the subject of the Bill at the previous Bills Committee meetings should disclose the same interest at each of the subsequent meetings before they spoke.

Follow-up actions to be taken by the Administration

4. The Administration was requested to provide –
- (a) the respective number of residential property transactions per month, from December 2016 to April 2017 (after the introduction of the New Residential Stamp Duty ("NRSD")), involving buyers who were Hong Kong Permanent Resident ("HKPR") acting on their own behalf and were not the beneficial owners of any other residential property in Hong Kong at the time of acquisition, with a breakdown by age group (in particular the age group of below 18 and over 65);

Action

- (b) a written response to members' suggestion that in order to assist HKPR-buyers who were to acquire a residential property to replace their only other residential property in Hong Kong in easing their financial burden under the NRSD regime, the Administration should consider allowing the Inland Revenue Department to accept bank guarantee submitted by the HKPR-buyers for the amount equivalent to the difference between the new flat rate of 15% for NRSD and the lower ad valorem stamp duty ("AVD") rate set out at Scale 2 in the Stamp Duty Ordinance (Cap. 117), to the effect that the HKPR-buyers concerned were not required to make payment of NRSD upfront;
- (c) a written response to members' suggestion that the six-month specified period provided for under the existing AVD refund mechanism of the doubled ad valorem stamp duty regime be extended to, say nine or 12 months, so as to allow more time for HKPR-buyers to proceed with property replacement, which in turn would help increase the supply of smaller size properties in the second-hand residential property market, on the assumption that it was likely that those HKPR-buyers would acquire a residential property of a relatively larger size to replace their only other property which was of a smaller size; and
- (d) a written reply to Hon James TO's questions raised in his letter dated 21 April 2017 tabled at the meeting (LC Paper No. CB(1)865/16-17(01)) (Chinese version only).

*(Post-meeting note: The Chinese and English versions of the Administration's response were issued to members vide LC Paper No. CB(1)930/16-17(02) on 12 and 31 May 2017 respectively.)*

Date of next meeting

5. The Chairman reminded members that the next meeting would be held on Monday, 15 May 2017 at 10:45 am.

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**III. Any other business**

6. There being no other business, the meeting ended at 12:31 pm.

Council Business Division 1  
Legislative Council Secretariat  
5 September 2017

**Proceedings of the third meeting of  
the Bills Committee on Stamp Duty (Amendment) Bill 2017  
on Tuesday, 21 April 2017, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 – 000333	Chairman	<p>Opening remarks</p> <p>The Chairman's reminder to members on the requirements of disclosure of pecuniary interest under Rule 83A of the Rules of Procedure.</p>	
000334 – 000649	Chairman Administration	Briefing by the Administration on its response to the list of follow-up actions arising from discussion at the meeting on 28 February 2017 (LC Paper No. CB(1)706/16-17(02)).	
000650 – 002820	Chairman Mr James TO Administration	<p>Mr James TO was concerned that there might be buyers acquiring residential properties in the name of their elderly and minor family members with a view to evading the payment of the new flat rate of 15% for the ad valorem stamp duty ("AVD") (i.e. "New Residential Stamp Duty (NRSD)").</p> <p>The Administration responded that –</p> <p>(a) no transaction during the period from January 2016 to March 2017 involved acquisition of residential property on behalf of minors who were Hong Kong Permanent Residents ("HKPRs"); and</p> <p>(b) as the database of the Inland Revenue Department ("IRD") did not collect information on age of purchasers, IRD was not able to advise the Bills Committee whether any of the residential property transactions before and after the introduction of NRSD involved purchasers who were aged 65 or above.</p> <p>Mr James TO had requested the Administration to provide the respective number of residential property transactions per month, from December 2016 to April 2017 (after the introduction of NRSD) involving buyers who were HKPRs acting on their own behalf and were not the beneficial owners of any other residential property in Hong Kong at the time of acquisition, with a breakdown by age group (in particular the age group of below 18 and over 65).</p>	See LC Paper No. CB(1)930/16-17(02)

Time marker	Speaker	Subject(s)	Action required
002821 – 003658	Chairman Dr YIU Chung-yim Administration	<p>Dr YIU Chung-yim was of the view that –</p> <p>(a) the various demand-side management measures implemented since 2010 played a vital catalytic role in attracting buyers to acquire first-hand residential properties instead of second-hand residential properties. Such a phenomenon was illustrated by the increasing proportion of primary sales to the annual total residential property transactions from 10% in 2010 to 31% in 2016, while that of secondary sale had decreased from 90% to 69% during the same period (Annex D to LC Paper No. CB(1)706/16-17(02)); and</p> <p>(b) the supply of first-hand residential properties in the market (less than 20 000 units per year) was much lower than the potential supply of second-hand residential properties (more than one million units). As such, the increasing trend of primary sale, which had accounted for 31% of the total residential property transactions in 2016 and 29% in the first two months of 2017, was unusual.</p> <p>The Administration responded that –</p> <p>(a) changes in the number of second-hand residential property transactions were subject to various factors, including the asking prices put forward by property owners and their expectation on the future residential property market. The relevant statistics illustrated that the number of second-hand residential property transactions remained stable after the introduction of the various demand-side management measures; and</p> <p>(b) the Administration had strived to increase the supply of residential properties to address the issue of the housing demand-supply imbalance and to tackle the problem of soaring flat prices at root.</p>	
003659 – 004450	Chairman Ms Alice MAK Administration	<p>Ms Alice MAK enquired whether the Administration would consider –</p> <p>(a) extending the six-month specified period provided for under the existing AVD refund mechanism of the doubled ad valorem stamp duty ("DSD") regime to allow more time for HKPR-buyers to proceed with property replacement; and</p>	



Time marker	Speaker	Subject(s)	Action required
		<p>(b) allowing deferred payment of NRSD by HKPR-buyers who acquired a residential property to replace his/her only other residential property to ease their cash flow problem.</p> <p>The Administration responded that –</p> <p>(a) in view of the suggestions made by members of the Bills Committee on Stamp Duty (Amendment) Bill 2013, the six-month specified period was adjusted to commence from the date on which the conveyance on sale, instead of the agreement for sale, of the newly acquired property was executed. Meanwhile, refund application could be made within two years after the execution of the agreement for sale of the newly acquired property, or two months from the execution of conveyance of sale of the only original property, whichever was the later. The Administration also noted that the repayment period of bridging loans provided by local banks for owners in replacing their residential properties was six months in general. In view of the above, the six-month specified period was considered practicable and appropriate; and</p> <p>(b) pursuant to the Stamp Duty Ordinance (Cap.117) ("SDO"), stamp duty should be paid within 30 days upon execution of the chargeable instruments. Late payment of stamp duty would be subject to penalty. Allowing deferred payment of partial stamp duty would have a fundamental impact on the levying system of stamp duty.</p> <p>Ms Alice MAK's comments that –</p> <p>(a) she concurred with Dr YIU Chung-yim's view that buyers were more keen to acquire first-hand residential properties than second-hand residential properties in recent years. It was probably due to the fact that the demand-side management measures had increased the transaction costs and reduced the number of second-hand residential properties put on sale in the market, rendering the second-hand residential properties less attractive to buyers; and</p> <p>(b) genuine users who wished to buy a second-hand residential property were affected by NRSD</p>	

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		<p>which had increased their cost burden. Moreover, the AVD refund mechanism had posed time restriction on the sale of the their original properties, rendering it difficult for them to proceed with property replacement.</p> <p>The Chairman suggested that the Administration should consider accepting bank guarantee on NRSD to ease the cash flow problem of HKPR-buyers who acquired a property to replace his/her only other residential property in Hong Kong.</p>	
004451 – 005214	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK's views that –</p> <p>(a) the various demand-side management measures were ineffective in curbing the increases in residential property prices. As a matter of fact, such measures merely benefitted property developers but not general home buyers;</p> <p>(b) referring to Annex D to the Administration's paper (LC Paper No. CB(1)706/16-17(02)), the decreasing number of secondary sales from 2010 (122 132) to 2016 (37 908) indicated that fewer and fewer people were able to acquire second-hand residential properties after the implementation of various demand-side management measures since 2010, whereas the increasing number of primary sales (2010: 13 646, 2016: 16 793) indicated a booming first-hand residential property market during the same period;</p> <p>(c) the introduction of DSD and NRSD, coupled with the lowering of the loan-to-value ratios of property mortgages, had rendered it difficult for the middle class to acquire second-hand residential properties in view of the substantial amount of cash required for making down payment and payment of heavy stamp duty. In some cases, buyers had to seek financial assistance from their elderly family members in acquiring residential properties; and</p> <p>(d) the Administration should review its high land premium policy and consider giving up introducing a new round of demand-side management measure (i.e. NRSD) because the relevant measures rolled out previously were proven to be ineffective in addressing the issue of soaring residential property prices.</p>	

Time marker	Speaker	Subject(s)	Action required
		The Administration took note of Mr SHEK's views.	
005215 – 010521	Chairman Mr James TO Administration	<p>Mr James TO supported the Chairman's suggestion that to assist HKPR-buyers who were to acquire a residential property to replace their only other residential property in Hong Kong in easing their financial burden under the NRSD regime, the Administration should consider allowing IRD to accept bank guarantee submitted by the HKPR-buyers for the amount equivalent to the difference between the new flat rate of 15% for NRSD and the lower AVD rate set out at Scale 2 in SDO, to the effect that the HKPR-buyers concerned were not required to make payment of NRSD upfront. At Mr TO's request, the Administration would provide a written response to the aforesaid suggestion.</p> <p>Mr James TO was of the view that the Administration should enhance the existing measures to facilitate property replacement, which would in turn increase the supply of smaller size residential units in the second-hand residential property market. In this connection, the Administration was requested to consider members' suggestion on extending the six-month specified period provided for under the existing AVD refund mechanism of the DSD regime to, say nine or 12 months, so as to allow more time for HKPR-buyers to proceed with property replacement.</p>	See LC Paper No. CB(1)930/16-17(02)
010522 – 011150	Chairman Administration	The Administration briefed members on the Government's announcement on the tightening up of exemption arrangement for HKPRs under the NRSD regime with effect from 12 April 2017 in respect of acquisition of multiple residential properties under a single instrument. (LC Paper No. CB(1)823/16-17(01)).	
011151– 012036	Chairman Mr James TO Administration	<p>Regarding the proposed definition of a "single" residential property set out in the Administration's paper (LC Paper No. CB(1)823/16-17(01)), Mr James TO suggested that the Administration should consider relaxing the said proposed definition to include the following scenarios given the low chances of the definition being abused –</p> <p>(a) a residential property acquired together with two car parking spaces as long as they were located within the same residential estate; and</p> <p>(b) a residential property acquired together with a</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>roof which was not situated immediately above the unit as long as the roof and the residential unit in question were located within the same residential estate.</p> <p>The Administration responded that –</p> <p>(a) a common sense approach was adopted in considering the scenarios which would be regarded as a "single" residential property pursuant to the tightened exemption arrangement under the NRSR regime. It was questionable in common sense whether a residential property acquired together with a roof which was not situated immediately above the unit should be regarded as a "single" residential property, and the inclusion of which might render the scope of exemption too wide and subject to abuse; and</p> <p>(b) in determining whether a residential property with more than one car parking space should be taken as a "single" residential property, IRD would consider individual circumstances and take into account all relevant documents, including the building plan, deed of mutual covenant, occupation permit, etc.</p>	
012037 – 012455	Chairman Ms Alice MAK Administration	<p>Ms Alice MAK advised that in introducing the relevant legislative amendments to implement the tightened exemption arrangement under the NRSR regime, the Administration should ensure that genuine users would not be affected by the relevant measures and the definition of a "single" residential property should be carefully defined to avoid possible abuse of the exemption arrangement.</p> <p>The Administration responded that –</p> <p>(a) in general, IRD would consider individual circumstances and take into account all relevant documents, including the building plan, deed of mutual covenant, occupation permit, etc. in determining whether the property concerned should be regarded as a "single" residential property. IRD would also provide some more examples in its Interpretation and Practice Note for duty payers' reference; and</p> <p>(b) to cater for the genuine self-use needs of HKPR-buyers, the proposed legislative amendments would set out the common examples</p>	

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		<p>that would be considered as a "single" residential property, as mentioned in the Administration's paper.</p>	
<p>012456 – 012813</p>	<p>Chairman Dr YIU Chung-yim Administration</p>	<p>Dr YIU Chung-yim's views and suggestion that –</p> <ul style="list-style-type: none"> <li>(a) pursuant to the relevant land-related ordinances of Hong Kong, the subjects of the sale and purchase in residential property transactions were "undivided shares" and "right of exclusive possession" of the properties concerned;</li> <li>(b) as the relevant ordinances did not provide for the definition of a "single" residential property, the Administration's approach of setting out common examples of being defined as "single" residential property in the proposed legislative amendments might not be an effective way to address the issue of acquisition of multiple residential properties under a single instrument, and it might create other loopholes; and</li> <li>(c) the Administration should set up a committee comprising relevant professionals and scholars to advise on the technical aspect of the proposed legislative amendments.</li> </ul> <p>The Administration responded that some common examples which IRD had encountered and hitherto considered to be a "single" residential property would be set out in the proposed legislative amendments. In general, IRD would consider individual circumstances and take into account all relevant documents, including building plan, deed of mutual covenant, occupation permit, etc.</p>	
<p>012814 – 013341</p>	<p>Chairman Mr WU Chi-wai Administration</p>	<p>Mr WU Chi-wai enquired whether the Administration would consider Mr James TO's proposal of relaxing the exemption arrangement to include the scenarios where a residential unit was acquired together with a roof not immediately above it or with no more than two car parking spaces, taking into consideration that these scenarios were commonly found in the sale of first-hand residential property projects.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none"> <li>(a) taking into consideration that the policy objective of the proposed legislative amendments was to tighten the exemption arrangement under the NRSD regime to tackle the issue of acquisition of</li> </ul>	

Time marker	Speaker	Subject(s)	Action required
		<p>multiple residential properties under a single instrument, the Administration considered it prudent to set a narrower scope of exemption at the outset under the proposed amendments; and</p> <p>(b) car parking spaces could be the subject of speculation. As such, the exemption arrangement concerning car parking spaces should be handled with prudence. Under the current practice, if a residential property was acquired together with two car parking spaces, the car parking spaces concerned were charged at the applicable AVD rates for "non-residential property".</p>	
013342 – 013500	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK's views and concerns that –</p> <p>(a) as some flats under old lease conditions were provided with three car parking spaces, whether grandfathering arrangement would be provided for old lease residential properties which were provided with more than one car parking space under the proposed legislative amendment;</p> <p>(b) to provide for the handling of special cases in the Interpretation and Practice Note of IRD would give IRD's officers discretionary power in dealing with individual cases, which might give rise to disputes; and</p> <p>(c) the Administration should consult the Law Society of Hong Kong and the industries concerned on the proposed legislative amendments given the complexity of the issue.</p> <p>The Administration took note of Mr SHEK's views.</p>	
013501 – 013604	Chairman Administration	<p>In response to the Chairman's enquiry, the Administration advised that it was consulting the Department of Justice on whether the relevant legislative amendments should be proposed by way of Committee Stage amendments ("CSAs") to the Bill or a new amendment bill to be introduced into LegCo.</p>	
013605 – 014757	Chairman Mr James TO Dr YIU Chung-yim Administration	<p>Dr YIU Chung-yim said that some members considered that whether the proposed legislative amendments could effectively plug the loophole of acquisition of multiple residential properties under a single instrument would be one of the considerations for them to decide if they were supportive of the Bill.</p>	See LC Paper No. CB(1)930/16-17(02)

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		<p>Mr James TO initially considered that it would be more appropriate for the Administration to propose CSAs to the Bill to implement the tightened exemption arrangement under the NRSD regime.</p> <p>The Chairman would decide at the next meeting whether the Bills Committee would proceed to clause-by-clause examination of the Bill having regard to the Administration's decision on how the legislative amendments would be proposed.</p> <p>The Administration was requested to provide a written reply to Mr James TO's questions raised in his letter dated 21 April 2017 tabled at the meeting (LC Paper No. CB(1)865/16-17(01)) (Chinese version only).</p>	

Council Business Division 1  
Legislative Council Secretariat  
5 September 2017