

立法會
Legislative Council

LC Paper No. CB(1)141/17-18
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/16

Bills Committee on Stamp Duty (Amendment) Bill 2017

Minutes of fifth meeting
on Monday, 5 June 2017, at 10:45 am
in Conference Room 2A 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 Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon Holden CHOW Ho-ding
Dr Hon YIU Chung-yim

Members absent : Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WU Chi-wai, MH
Hon KWOK Wai-keung
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

Miss Zoe YIP
Clerical Assistant (1)3

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)1041/16-17 -- Minutes of meeting held on 28 March 2017)

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

II. Meeting with the Administration

Matters arising from previous meeting

(LC Paper No. CB(1)976/16-17(01) -- Hon James TO Kun-sun's letter dated 18 May 2017

LC Paper No. CB(1)1050/16-17(01) -- Administration's responses to Hon James TO Kun-sun's letter dated 18 May 2017

LC Paper No. CB(1)1050/16-17(02) -- List of follow-up actions arising from the discussion at the meeting on 15 May 2017

LC Paper No. CB(1)1050/16-17(03) -- Administration's responses to issues raised at the meeting on 15 May 2017

Relevant papers issued previously

LC Paper No. CB(1)930/16-17(01) -- List of follow-up actions arising from the discussion at the meeting on 21 April 2017

LC Paper No. CB(1)865/16-17(01) -- Hon James TO Kun-sun's letter dated 21 April 2017

LC Paper No. CB(1)930/16-17(02) -- Administration's responses to issues raised at the meeting on 21 April 2017 and Hon James TO Kun-sun's letter dated 21 April 2017

- LC Paper No. CB(1)930/16-17(03) -- Administration's responses to comments expressed by and written submissions received from deputations/individuals
- 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
- 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 written response to the following views and enquiries raised at the meeting –
 - (a) how the Administration could plug the loopholes of evasion of New Residential Stamp Duty ("NRSD") payment by buyers who acquired a second residential property or onwards by way of transfer of shares of a property-holding company;
 - (b) the Administration was requested to reconsider the view of the Legal Adviser to the Bills Committee (LC Paper No. CB(1)603/16-17(03)) that the drafting of the proposed amended sections 29AI(b) and 29BA(b) of the Stamp Duty Ordinance (Cap. 117) ("SDO") be revised by stating "if the property concerned is residential property" instead of "in any other case" to facilitate better comprehension of the said provisions;
 - (c) in respect of using a single instrument to effect exchange between two parties of a number of properties comprising both residential and non-residential properties owned respectively by the parties concerned which was taken as an exchange of residential properties in accordance with the relevant Practice Note of the Inland Revenue Department ("IRD"), the Administration was requested to explain whether there would be any implication for underpaid stamp duty in such cases and the legal basis for taking such cases as an exchange of residential properties in IRD's Practice Note;
 - (d) the Administration should consider deleting the phrase "and all other persons executing" (以及所有其他簽立人) from the proposed amended Part 1(C) of Scale 1 of head 1(1) in the First Schedule to SDO, to the effect that parties other than buyers and sellers of the residential property concerned, e.g. estate agents, would not be liable for payment of NRSD given that under the IRD's practice note, estate agents might be regarded as "all other persons executing" the relevant

instrument if he/she had presented the instrument to the court in law suits, and thus be liable to payment of stamp duty;

- (e) whether a purchaser would be liable to payment of NRSD pursuant to the proposed amended Part 1 (C) of Scale 1 of head 1(1A) in the First Schedule to SDO under the following circumstance –

a purchaser who signed a provisional agreement for sales and purchase ("Provisional Agreement") on a property transaction in advance unilaterally before 5 November 2016 (i.e. the effective date of NRSD) but the relevant Provisional Agreement was subsequently signed by the vendor on or after 5 November 2016 where the purchaser had not been notified of the vendor's signing date of the Provisional Agreement by the estate agent concerned.

(Post-meeting note: The Administration's response was issued to members vide LC Paper Nos. CB(1)1117/16-17(01) and CB(1)1119/16-17(02) on 9 and 12 June 2017 respectively.)

Date of next meeting

5. The Chairman reminded members that the next meeting would be held on Tuesday, 13 June 2017 at 2:45 pm.

III. Any other business

6. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 1
Legislative Council Secretariat
30 October 2017

**Proceedings of the fifth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2017
on Monday, 5 June 2017, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 – 000907	Chairman	<p>Opening remarks.</p> <p>Confirmation of minutes of the meeting held on 28 March 2017 (LC Paper No. CB(1)1041/16-17).</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>	
000908 – 001544	Chairman Administration	<p>The Administration briefed members on its responses [LC Paper No. CB(1)1050/16-17(01)] to the written questions raised by Mr James TO as set out in his letter dated 18 May 2017 [LC Paper No. CB(1)976/16-17(01)].</p> <p>The Administration briefed members on its responses [LC Paper No. CB(1)1050/16-17(03)] to the issues raised at the meeting on 15 May 2017 [LC Paper No. CB(1)1050/16-17(02)].</p>	
001545 – 002137	Chairman Mr James TO Administration	<p>Mr James TO held the view that practically it would be difficult for property owners to dispose of their only other original property at a reasonable price within the six-month specified period under the existing ad valorem stamp duty ("AVD") refund mechanism of the doubled AVD ("DSD") regime under the Stamp Duty Ordinance (Cap. 117) ("SDO").</p> <p>Mr James TO informed the Bills Committee that he would submit to the Bills Committee for consideration at the next meeting his proposed draft Committee stage amendments ("CSAs") to the Bill, to the effect that the six-month specified period under the existing AVD refund mechanism be extended to nine or 12 months so as to allow more time for Hong Kong permanent resident ("HKPR") buyers to proceed with property replacement. Mr TO also suggested that his proposed CSAs be moved by the Chairman on behalf of the Bills Committee.</p> <p>In response to Mr James TO's enquiry, the Chairman advised that whether he would move Mr TO's proposed CSAs on behalf of the Bills Committee would be subject to members' views.</p>	

Time marker	Speaker	Subject(s)	Action required
002138 – 004129	Chairman Mr James TO Dr YIU Chung-yim Administration	<p>Discussion on a number of scenarios raised by Dr YIU Chung-yim where the investors concerned could evade payment of the New Residential Stamp Duty ("NRSD") in acquiring residential properties.</p> <p>The Administration was requested to provide information on how the Government could plug the loopholes of evasion of NRSD payment by buyers who acquired a second residential property or onwards by way of transfer of shares of a property-holding company.</p>	See LC Paper No. CB(1)1119/16-17(02)
004130 – 004207	Chairman Administration	The Chairman informed members that the Stamp Duty (Amendment) (No. 2) Bill 2017 would be tabled at the Council meeting of 7 June 2017. The Bill would seek to give effect to the tightened exemption arrangement for HKPRs under the NRSD regime.	
004208 – 004339	Chairman Mr James TO Administration	<p>In response to Mr James TO's enquiry, the Administration reiterated its considerations for not accepting the following proposals made by members –</p> <p>(a) 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 NRSD regime, the Inland Revenue Department ("IRD") would accept bank guarantee submitted by the concerned HKPR buyers for the amount equivalent to the difference between the new flat rate of 15% of AVD and the lower AVD rate set out at Scale 2 in SDO, to the effect that HKPR buyers seeking property replacement were not required to make payment of NRSD upfront; and</p> <p>(b) the six-month specified period under the existing AVD refund mechanism be extended to, say nine or 12 months, so as to allow more time for HKPR buyers to proceed with property replacement.</p> <p>Mr James TO indicated that he would also propose CSAs to the Bill in respect of payment of stamp duty by way of bank guarantee for members' consideration at the next meeting.</p>	

Time marker	Speaker	Subject(s)	Action required
<p><i>Clause-by-clause examination of the Bill</i> <i>[LC Paper No. CB(1)603/16-17(01)(Mark-up copy of the Bill)]</i></p>			
<p>004340 – 004819</p>	<p>Chairman Mr James TO Administration</p>	<p><u>Clause 1 – Short-title and commencement</u> <u>Clause 2 – Stamp Duty Ordinance amended</u></p> <p>Members raised no question.</p> <p><u>Clause 3 – Section 2 amended (Interpretation)</u></p> <p>The Administration's reply to Mr James TO's enquiry about the reason for adding interpretation of the term "agreement for sale" to the interpretation under Section 2(1) of SDO.</p>	
<p>004820 – 011751</p>	<p>Chairman Mr James TO Mr Abraham SHEK Mr Holden CHOW Assistant Legal Adviser 7 ("ALA7") Administration</p>	<p><u>Clause 4 – Section 29A amended (interpretation and application of Part IIIA)</u></p> <p>Members raised no question.</p> <p><u>Clause 5 – Section 29AI substituted: 29AI. Scales of rates applicable to conveyances on sale chargeable with ad valorem stamp duty</u></p> <p><u>Clause 6 – Section 29AIA added: 29AIA. Certain instruments effecting exchange between residential property and non-residential property chargeable with ad valorem stamp duty at Part 2 of Scale 1 rates</u></p> <p>Discussion on the drafting approach of clauses 5 and 6 of the Bill.</p> <p>The Administration was requested to reconsider the view of ALA7 (LC Paper No. CB(1)603/16-17(03)) that the drafting of the proposed amended sections 29AI(b) and 29BA(b) of SDO be revised by stating "if the property concerned is residential property" instead of "in any other case" to facilitate better comprehension of the said provisions.</p> <p>In respect of using a single instrument to effect exchange between two parties of a number of properties comprising both residential and non-residential properties owned respectively by the parties concerned which was taken as an exchange of residential properties in accordance with the relevant Practice Note of the IRD, Mr James TO requested the Administration to explain whether there would be any implication for underpaid stamp duty in such cases and</p>	<p>See LC Paper No. CB(1)1117/16-17(01)</p> <p>See LC Paper No. CB(1)1119/16-17(02)</p>

Time marker	Speaker	Subject(s)	Action required
		the legal basis for taking such cases as an exchange of residential properties in IRD's Practice Note.	
011752 – 012231	Chairman Administration	<p><u>Clause 7 – Section 29BA substituted: 29BA. Scales of rates applicable to agreements for sale chargeable with ad valorem stamp duty</u></p> <p><u>Clause 8 – Section 29BAB added: 29BAB. Certain agreements for exchange between residential property and non-residential property chargeable with ad valorem stamp duty at Part 2 of Scale 1 rates</u></p> <p><u>Clause 9 – Section 72 added: 72. Transitional provisions for Stamp Duty (Amendment) Ordinance 2017</u></p> <p>Members raised no question.</p>	
012232 – 013950	Chairman Mr James TO Administration	<p><u>Clause 10 – First Schedule amended</u> <u>Clause 10(4) – Proposed amended Part 1(C) of Scale 1 of Head 1(1) in the First Schedule to SDO</u></p> <p>Mr James TO requested the Administration to consider deleting the phrase "and all other persons executing" (以及所有其他簽立人) from the proposed amended Part 1(C) of Scale 1 of Head 1(1) in the First Schedule to SDO, to the effect that parties other than buyers and sellers of the residential property concerned, e.g. estate agents, would not be liable for payment of NRSD given that under the IRD's practice note, estate agents might be regarded as "all other persons executing" the relevant instrument if he/she had signed on a chargeable instrument, such as a provisional agreement for sale and purchase, and thus become liable to payment of NRSD.</p> <p><u>Clause 10(6) – Proposed amended Part 1 (C) of Scale 1 of Head 1(1A) in the First Schedule to SDO</u></p> <p>At the request of Mr James TO, the Administration would advise whether a purchaser would be liable to pay NRSD pursuant to the proposed amended Part 1 (C) of Scale 1 of Head 1(1A) in the First Schedule to SDO under the following circumstance –</p> <p>a purchaser who signed a provisional agreement for sales and purchase ("Provisional Agreement") on a property transaction in advance unilaterally before 5 November 2016 (i.e. the effective date of NRSD) but</p>	<p>See LC Paper No. CB(1)1119/16-17(02)</p> <p>See LC Paper No. CB(1)1119/16-17(02)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>had not been notified of the vendor's subsequent signing date of the Provisional Agreement on or after 5 November 2016 by the estate agent concerned.</p> <p>Members completed clause-by-clause examination of the Bill.</p>	
013951 014626	Chairman Mr James TO Administration	<p>Members raised no objection to the Administration's suggestion that the Stamp Duty (Amendment) (No. 2) Bill 2017 be studied by the Bills Committee.</p> <p>The Chairman advised that the Bills Committee would discuss Mr James TO's proposed CSAs to the Bill at the next meeting. The Chairman would consider members' view at the next meeting to see whether he would move Mr TO's proposed CSAs on behalf of the Bills Committee.</p> <p>Legislative timetable.</p> <p>Meeting arrangement.</p>	