

立法會
Legislative Council

LC Paper No. CB(1)178/17-18
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/16

**Bills Committee on Stamp Duty (Amendment) Bill 2017
and Stamp Duty (Amendment) (No. 2) Bill 2017**

**Minutes of meeting
on Tuesday, 20 June 2017, at 4:45 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon WONG Ting-kwong, SBS, JP (Chairman)
Hon James TO Kun-sun
Hon Alvin YEUNG
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung
Hon Holden CHOW Ho-ding
Dr Hon YIU Chung-yim

Members absent : Hon Abraham SHEK Lai-him, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon WU Chi-wai, MH
Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
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

Action

I. Confirmation of Chairmanship

The Chairman said that pursuant to the House Committee's decision at the meeting on 9 June 2017 that the Bills Committee should study the Stamp Duty (Amendment) (No. 2) Bill 2017 ("No. 2 Bill"), the membership of the Bills Committee was re-opened. Members noted that Mr CHU Hoi-dick and Dr Junius HO had joined the Bills Committee while Mr CHUNG Kwok-pan had withdrawn from the Bills Committee.

2. Members also agreed that the Bills Committee be renamed as the "Bills Committee on Stamp Duty (Amendment) Bill 2017 and Stamp Duty (Amendment) (No. 2) Bill 2017", and Mr WONG Ting-kwong be the Chairman of the Bills Committee.

Legislative timetable of the Stamp Duty (Amendment) Bill 2017

3. The Chairman reminded members that the Bills Committee had completed scrutiny of the Stamp Duty (Amendment) Bill 2017 at its last meeting. The Administration proposed that the Second Reading debate on the Bill be resumed at the Council meeting of 12 July 2017. A written report would be submitted to the House Committee at its meeting on 23 June 2017. The Chairman also reminded members that the deadline for giving notice to move Committee stage amendments to the Stamp Duty (Amendment) Bill 2017 was 3 July 2017.

II. Meeting with the Administration

Stamp Duty (Amendment) (No. 2) Bill 2017

(LC Paper No. CB(3)609/16-17 -- The Bill

- LC Paper No. CB(1)1162/16-17(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. LS73/16-17 -- Legal Service Division Report

Relevant paper

- 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")

4. The Bills Committee deliberated (Index of proceedings attached at **Annex**).
5. The Chairman reminded members that under Rule 83A of the Rules of Procedure of the Legislative Council, 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 Bills concerned 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

6. The Administration was requested to –
- (a) in relation to the court case of Chi Fu Fa Yuen Ltd v Cho Wai Man Raymond cited by a member, advised the Bills Committee on whether any mechanism would be in place under the New Residential Stamp Duty regime to deal with the situation where the Collector of Stamp Revenue's decision on the charging of the relevant ad valorem stamp duty ("AVD") for acquisition of a residential property was subsequently in contradiction with the judgment of the court case; and
- (b) clarify whether the following scenarios would be taken as a transaction involving a "single residential property" or "multiple residential properties" under a single instrument and would be subject to the AVD rates concerned –
- (i) the acquisition of two adjoining residential properties located on the same floor, which were referred to as one unit under the

relevant occupation permit ("OP"), with the internal wall between the two residential properties already demolished by the developer through variation of building plan;

- (ii) the acquisition of two adjoining residential properties, which were referred to as one unit under both the relevant OP and deed of mutual covenant ("DMC"), with the internal wall between the two residential properties demolished according to the conditions set out in the proposed amended section 29A(1) of the Stamp Duty Ordinance (Cap.117) under clause 3 of the No. 2 Bill;
- (iii) the acquisition of two adjoining residential properties, which were referred to as two separate units under both the relevant OP and DMC, with the internal wall between the two residential properties demolished according to the conditions set out in the proposed amended section 29A(1) under clause 3 of the No. 2 Bill; and
- (iv) a large-sized flat in an old residential building, which was referred to as one unit under the relevant OP, was converted into 4 sub-divided flats and sold to four different buyers under separate title deeds. A buyer subsequently acquired all of such four sub-divided flats under a single instrument and reinstated the four flats back to the one large-sized flat as originally stated in the relevant OP by demolishing the partition walls among these units.

(Post-meeting note : The Administration's response was issued to members vide LC Paper No. CB(1)135/17-18(02) on 31 October 2017.)

Invitation of views

7. Members agreed that a meeting would be held to receive deputations' views on the No. 2 Bill.

III. Any other business

8. There being no other business, the meeting ended at 6:28 pm.

**Proceedings of the meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2017
and Stamp Duty (Amendment) (No. 2) Bill 2017
on Tuesday 20 June 2017, at 4:45 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 – 001017	Chairman Mr James TO	<p>Opening remarks.</p> <p>Confirmation of the name of the Bills Committee and its chairmanship.</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>	
001018 – 001436	Chairman Administration	Briefing by the Administration on the Stamp Duty (Amendment) (No. 2) Bill 2017 ("No. 2 Bill").	
001437 – 002117	Chairman Mr James TO Administration	<p>Mr James TO made the following suggestion and enquiries –</p> <p>(a) a meeting should be held to receive deputations' views on the No. 2 Bill;</p> <p>(b) apart from the New Residential Stamp Duty ("NRSD"), whether the Administration would consider putting in place other measures, such as including certain conditions in the newly approved land title deeds to impose a restriction that the developers concerned were not allowed to sell more than one residential property to each buyer under the relevant development projects in the future; and</p> <p>(c) according to the Administration's observation, whether the preferential terms, such as discounts and cash rebates, offered by property developers to buyers who procured more than one new residential property under their development projects in response to the introduction of NRSD had undermined the effectiveness of the new demand-side management measure.</p> <p>The Administration advised that –</p> <p>(a) the provision of discounts or cash rebates was subject to commercial decision of individual developers made in the light of the market</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>situation. Generally, such rebates were offered with additional conditions, say only for a certain type or number of flats, or for buyers who had joined a specified payment plan (e.g. cash payment plan). As such preferential terms were not offered to all buyers, the Administration could not ascertain whether such specified measures had undermined the effectiveness of NRSD in general; and</p> <p>(b) the use of financial disincentive by way of NRSD to address the issue of acquisition of multiple residential properties under one instrument was considered appropriate at the moment. Nevertheless, the Administration would keep in view the market situation from time to time.</p>	
002118 – 010526	<p>Chairman Mr James TO Ms Alice MAK Mr Holden CHOW Clerk to Bills Committee Administration</p>	<p>Discussion on whether a meeting should be held to receive deputations' views on the No. 2 Bill.</p> <p>Mr Holden CHOW enquired whether there was any standard practice as to the timing for receiving public views by a Bills Committee during the scrutiny of a bill.</p> <p>The Chairman advised that according to paragraph 2.3 of the Handbook for Chairmen of Bills Committee, it was for the Bills Committee to decide whether public views on the bill under its study should be invited. Paragraph 2.4 of the Handbook also stated that there was no standard practice as to whether views should be obtained first before the Bills Committee proceeded to scrutinize the bill, or whether obtaining views and scrutinizing the bill should proceed in parallel. It was also for individual Bills Committees to decide.</p> <p>The Chairman said that he would invite the Bills Committee to decide whether to hold a meeting to receive public views on the No. 2 Bill towards the end of the meeting.</p> <p>The Committee proceeded to discuss the policy aspect of the Bill.</p>	
010527 – 011113	<p>Chairman Mr James TO Administration</p>	<p>Mr James TO was concerned that to provide the power to the Inland Revenue Department ("IRD") under the No. 2 Bill to take into account various</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>documents, including approved building plans, deed of mutual covenant, occupation permit and any other document that IRD considered relevant when determining what constituted a "single" residential property would give IRD too much discretionary power, which would ultimately lead to disputes. He was of the view that for the sake of legal certainty, it would be desirable to clearly set out some common scenarios in the No. 2 Bill to explain what would or would not be taken as a "single" residential property by IRD.</p> <p>The Administration advised that –</p> <p>(a) while it should not be too difficult to determine in most cases what constituted a "single" residential property, there would be cases which required further relevant information for consideration. Hence, it was proposed in the No. 2 Bill that in determining what constituted a single residential property, IRD would take into account various documents, including approved building plans, deed of mutual covenant, occupation permit and any other document that IRD considered relevant. The relevant provisions would provide IRD with the necessary flexibility to handle some unforeseeable cases; and</p> <p>(b) to minimize the impact on genuine end-users and for the avoidance of doubt, the No. 2 Bill had set out some common examples which IRD had encountered and hitherto considered to be a "single" residential property in administering the partial refund mechanism for Hong Kong Permanent Residents. These included a unit and a roof situated immediately above the unit; a unit and an adjacent garden; and a unit that became a single unit following the demolition of the walls, or any part of the walls, separating two adjoining units as shown by the documents set out in the Bill.</p>	
011114 – 011720	Chairman Dr YIU Chung-yim Administration	<p>Discussion on the court case of Chi Fu Fa Yuen Ltd v Cho Wai Man Raymond cited by Dr YIU Chung-yim.</p> <p>In relation to the above case cited by Dr YIU, the Administration was requested to advise the Bills Committee on whether any mechanism would be in</p>	The Administration to follow up as stated in paragraph 6(a) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>place under the NRSD regime to deal with the situation where the Collector of Stamp Revenue's decision on the charging of the relevant ad valorem stamp duty ("AVD") for acquisition of a residential property was in contradiction with the judgment of this court case.</p>	
011721 – 012340	Chairman Mr Holden CHOW Administration	Discussion on IRD's handling of two scenarios raised by Mr Holden CHOW in respect of the charging of AVD.	
012341 – 013925	Chairman Mr James TO Administration	<p>The Administration was requested to clarify whether the following scenarios would be taken as a transaction involving a "single residential property" or "multiple residential properties" under a single instrument and would be subject to the AVD rates concerned –</p> <ul style="list-style-type: none"> (a) the acquisition of two adjoining residential properties located on the same floor, which were referred to as one unit under the relevant occupation permit ("OP"), with the internal wall between the two residential properties already demolished by the developer through variation of building plan; (b) the acquisition of two adjoining residential properties, which were referred to as one unit under both the relevant OP and deed of mutual covenant ("DMC"), with the internal wall between the two residential properties demolished according to the conditions set out in the proposed amended section 29A(1) of the Stamp Duty Ordinance (Cap.117) under clause 3 of the No. 2 Bill; (c) the acquisition of two adjoining residential properties, which were referred to as two separate units under both the relevant OP and DMC, with the internal wall between the two residential properties demolished according to the conditions set out in the proposed amended section 29A(1) under clause 3 of the No. 2 Bill; and (d) a large-sized flat in an old residential building, which was referred to as one unit under the relevant OP, was converted into 4 sub-divided flats and sold to four different buyers under 	The Administration to follow up as stated in paragraph 6(b) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		separate title deeds. A buyer subsequently acquired all of such four sub-divided flats under a single instrument and reinstated the four flats to a one large-sized flat as originally stated in the relevant OP by demolishing the partition walls between the sub-divided units.	
013926 – 014427	Chairman Assistant Legal Adviser 7 Administration	Questions raised by the Legal Adviser to the Bills Committee in relation to the No. 2 Bill. (LC Paper No. CB(1)135/17-18(03))	
014428 – 014725	Chairman Mr James TO Mr Holden CHOW Administration	Members agreed that a meeting would be held to receive deputations' views on the No. 2 Bill. Meeting arrangements.	

Council Business Division 1
Legislative Council Secretariat
3 November 2017