

立法會
Legislative Council

LC Paper No. CB(1)955/19-20
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/19

Bills Committee on Rating (Amendment) Bill 2019

**Minutes of second meeting held on
Tuesday, 23 June 2020, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon Jeffrey LAM Kin-fung, GBS, JP (Chairman)
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, SBS, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Jimmy NG Wing-ka, BBS, JP
Hon SHIU Ka-fai, JP
Hon CHAN Chun-ying, JP
Hon LUK Chung-hung, JP
Hon LAU Kwok-fan, MH
Hon Tony TSE Wai-chuen, BBS
- Member absent** : Hon CHAN Hak-kan, BBS, JP

**Public Officers
attending**

: Agenda item I

Transport & Housing Bureau

Dr Raymond SO, BBS, JP
Under Secretary for Transport & Housing

Mrs Alice CHEUNG, JP
Deputy Secretary for Transport & Housing
(Housing)/Deputy Director of Housing (Strategy)
Housing Department

Miss Joyce KOK
Principal Assistant Secretary (Housing) (Private
Housing)/Assistant Director (Private Housing)
Housing Department

Miss Tracey LI
Senior Administrative Officer (Private Housing)1
Housing Department

Rating and Valuation Department

Mr IP Pak-keung, JP
Assistant Commissioner (Rating and Valuation)

Ms Kelly LAM
Principal Valuer (Rating Division)

Department of Justice

Ms Rayne CHAI
Senior Assistant Law Draftsman

Mr Gary LI
Senior Government Counsel (Acting)

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Ms Vanessa CHENG
Assistant Legal Adviser 5

Ms Anki NG
Council Secretary (1)5

Ms Michelle NIEN
Legislative Assistant (1)5

Action

I. Meeting with the Administration

(LC Paper No. CB(1)790/19-20(01) — List of follow-up actions arising from the meeting on 15 June 2020

LC Paper No. CB(1)790/19-20(02) — Administration's response to the list of follow-up actions arising from the meeting on 15 June 2020)

Relevant papers issued previously

(LC Paper No. CB(3)811/18-19 — The Bill

File Ref: HDCR4-3/PH/10-5/30 — Legislative Council Brief issued by the Transport and Housing Bureau

LC Paper No. LS4/19-20 — Legal Service Division Report

LC Paper No. CB(1)751/19-20(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)

LC Paper No. CB(1)751/19-20(02) — Assistant Legal Adviser's letter dated 8 November 2019 to the Administration

- LC Paper No. CB(1)751/19-20(03) — Assistant Legal Adviser's letter dated 13 May 2020 to the Administration
- LC Paper No. CB(1)751/19-20(04) — Letter from the Administration dated 9 June 2020 responding to the letters from Assistant Legal Adviser dated 8 November 2019 and 13 May 2020
- LC Paper No. CB(1)751/19-20(05) — Paper on Rating (Amendment) Bill 2019 prepared by the Legislative Council Secretariat (background brief)

The Chairman advised that the Administration had provided information requested by members at the meeting on 15 June 2020 (LC paper No. CB(1)790/19-20(02)).

2. The Bills Committee deliberated (index of proceedings in the **Appendix**).

II. Way forward of the Bills Committee

3. Members noted that if the Second Reading debate on the Bill was to resume at the last Council meeting of 15 July 2020 before the prorogation of the Sixth Legislative Council, the Bills Committee should complete its work by the end of June 2020. While some members considered that the Bills Committee should endeavour to complete the scrutiny of the Bill by expediting its work as far as possible, the majority of members present at the meeting had reservation on the feasibility of completing scrutiny of the Bill within such a short period of time. After deliberation, the Bills Committee agreed to discontinue its scrutiny work on the Bill and report the decision to the House Committee as soon as possible.

(Post-meeting note: The notice on discontinuation of scrutiny work on the Bill was issued to members vide LC Paper No. CB(1)813/19-20 on 24 June 2020 and the decision to discontinue scrutiny work on the Bill was reported to the House Committee on 10 July 2020.)

III. Any other business

4. There being no other business, the meeting ended at 6:29 pm.

Council Business Division 1
Legislative Council Secretariat
4 September 2020

**Proceedings of second meeting of the
Bills Committee on Rating (Amendment) Bill 2019
on Tuesday, 23 June 2020, 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			
000905 – 001018	Chairman	Opening remarks	
001019 – 001133	Chairman Administration	Briefing by the Administration on its response (as set out in LC paper No. CB(1)790/19-20(02)) to the enquiries raised by members at the meeting of the Bills Committee held on 15 June 2020.	
001134 – 002415	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK enquired about how the proposed Special Rates regime under the Rating (Amendment) Bill 2019 ("the Bill") could reconcile with the right of individuals and legal persons in private property under Article 6 of the Basic Law ("BL 6") and Article 105 of the Basic Law ("BL 105").</p> <p>The Administration advised that –</p> <p>(a) Special Rates was a kind of tax. Taxation was governed by Article 108 of the Basic Law ("BL 108"). BL 108 provided that the Hong Kong Special Administrative Region ("HKSAR") shall practise an independent taxation system; and HKSAR shall, taking the low tax policy previously pursued in Hong Kong as reference, enact laws on its own concerning types of taxes, tax rates, tax reductions, allowances and exemptions, and other matters of taxation. BL 6 had no application to tax legislation and the Government considered that the proposed Special Rates regime was consistent with BL 6; and</p> <p>(b) in <i>Weson Investment Ltd v Commissioner of Inland Revenue</i> [2007] 2 Hong Kong Law Reports & Digest 567 (CA), the Court of Appeal had clearly established that BL 105 had no application to tax legislation. As explained in the above court case, BL 105 and BL 108 were mutually exclusive. When the Government imposed tax on the individual, of necessity it deprived the individual of his property without any right to compensation. In a similar vein, the argument that tax legislation must satisfy a proportionality test under BL 105 was rejected. Unless the taxation scheme could not be regarded as genuine but was in fact a disguised expropriation of property, BL 105 had no application. In view of the above and the fact that</p>	

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		<p>Special Rates was a tax, the Administration considered that the proposed Special Rates regime would unlikely engage BL 105 and therefore would not trigger the proportionality test in this context.</p>	
002416– 002759	Chairman Mr CHUNG Kwok-pan	<p>Mr CHUNG Kwok-pan noted that the Bills Committee should complete its work by the end of June and report to the House Committee on or before 3 July 2020 if the Second Reading debate of the Bill was to resume at the last Council meeting of 15 July 2020 before the prorogation of the Sixth Legislative Council. He expressed concern about the way forward of the Bills Committee.</p> <p>The Chairman advised that members could discuss the way forward of the Bills Committee on the next Agenda item. He would first give members the opportunity to ask the Administration for an explanation on their response to members' enquiries.</p>	
002800 – 003424	Chairman Mr LAU Kwok-fan Administration	<p>Mr LAU Kwok-fan pointed out that residential units issued with Occupation Permits ("OPs") but not yet issued with the Certificates of Compliance ("CCs") and refurbished by developers were not yet ready for occupation by tenants and hence not ready to be rented out. He asked why the Administration did not adopt the issuing date of CC, instead of the issuing date of OP, as the reference point for determining when the developers should start submitting returns on the status of the units under the Special Rates regime.</p> <p>Referring to paragraphs 8 to 11 of LC Paper No. CB(1)790/19-20(02), the Administration advised that –</p> <p>(a) an OP was a document issued by the Building Authority ("BA") in accordance with section 21(2) of the Buildings Ordinance (Cap. 123). If the building satisfied relevant requirements under the Buildings Ordinance and was ready for occupation, BA would issue an OP for the building. In other words, if OP had been issued by BA in respect of a certain unit, it implied in principle that the unit could be occupied and put into effective use. A CC was issued by the Lands Department when the developer had complied with all positive obligations imposed under the lease conditions. Although developers could not transfer ownership of the units before obtaining CC, they could rent out the units after obtaining OP, or apply for pre-sale consent at a maximum of 30 months in advance of project completion in accordance with the Consent Scheme;</p> <p>(b) it was important to note that not all development projects were required to obtain CC. Some</p>	

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		<p>development and redevelopment projects covered by old leases were not subject to the Consent Scheme, and developers did not have to obtain pre-sale consent or CC before selling the units. Even if the development projects were subject to the Consent Scheme, the relevant lease conditions did not specify a time limit for developers to obtain CC. The Administration was concerned that adopting the issuing date of CC as the reference point might induce circumvention, e.g. delay in applying for CC, or even not applying for CC with the Lands Department on the grounds that the relevant units were for rental only; and</p> <p>(c) considering that under the existing mechanism, developers might apply for pre-sale consent at a maximum of 30 months in advance of project completion, or might rent out the unit after OP had been issued for the project (regardless of whether CC had been issued for the project), the Government considered that developers should have enough time to sell or rent out their first-hand private residential units under the Bill.</p>	
003425 – 004409	Chairman Mr Steven HO Administration	<p>Mr Steven HO expressed great reservation on the feasibility of completing scrutiny of the Bill within the remainder of the current legislative session, but agreed that the Administration should take the opportunity to consider members' views and concerns with a view to improving the provisions in the Bill should the Bill be re-introduced in the next legislative session. He queried whether the solution to the shortage of housing supply should be solely targeted on increasing the supply of first-hand private residential units. Citing the housing development projects in the southern parts of Yuen Long and Kam Tin as examples, he criticized the Government's delay for years in implementing the development of the land it had reserved for development preventing owners of such land from building residential units for their own use. The pulling down of squatter huts with unauthorized structures had also pushed the squatters into the housing market. He enquired about –</p> <p>(a) whether the Government had conducted studies on land development in the relevant areas of Kam Tin and Yuen Long;</p> <p>(b) whether the Government would review the policies on reserving land for development and squatters with a view to identifying and solving problems in housing supply; and</p>	

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		<p>(c) whether the passing of the Bill alone could help solve the problem in housing supply and whether the introduction of the Special Rates regime could lower the price of private residential units.</p> <p>The Administration advised that –</p> <p>(a) issues concerning land development were under the purview of the Development Bureau. Members' views on the development of private land and squatters policy would be relayed to the Development Bureau for consideration and reference; and</p> <p>(b) the housing supply problem was a complicated issue requiring a multi-pronged approach to resolve. The Bill, the policy intent of which was to encourage developers to expedite the supply of first-hand private residential units in completed projects, was one of the many measures that the Government took to address the issue of inadequate housing supply. The Transport and Housing Bureau would consider Mr HO's concerns on housing supply.</p>	
004410 – 005214	Chairman Mr SHIU Ka-fai Administration	<p>Mr SHIU Ka-fai expressed reservation on the feasibility of completing scrutiny of the Bill within the remainder of the current legislative session and expressed the following views:</p> <p>(a) the Administration should take note of members' views and concerns on the Bill and focus on solving the land and housing supply problem instead of introducing the Bill, as only a few thousand first-hand private residential units would be subject to the Special Rates regime, far falling short of the market demand for private residential units; and</p> <p>(b) the housing supply problem was the root of all the social activities in the past few months which had to be solved by effective Government measures other than the Bill.</p> <p>The Administration advised that the policy objective of the Bill was to encourage more timely supply of first-hand private residential units, rather than combating or curbing property prices of first-hand private residential units. The Administration had taken note of members' views and concerns on the Bill, and was working on the transitional housing projects and embarking on a study on tenancy control of subdivided units ("SDUs"), with a view to</p>	

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		<p>providing some relief on applicants of public rental housing and tenants of SDUs. The Administration believed that concerted efforts in identifying land for housing development were necessary.</p>	
005215 – 010102	<p>Chairman Mr Christopher CHEUNG Mr Abraham SHEK Administration</p>	<p>Noting from paragraph 5 of the Administration's paper (LC paper No. CB(1)790/19-20(02)) that the purported 10 000 units of "unsold first-hand private residential units" as at the end of March 2020 might include vacant units and units rented out by developers (e.g. as serviced apartments), Mr Christopher CHEUNG enquired about –</p> <ul style="list-style-type: none"> (a) the percentage of vacant units therein as this could shed light on the vacancy situation of first-hand private residential units; (b) whether on completion of short-term tenancies (such as three to six months) of unsold first-hand private residential units, the units would be regarded as vacant; and (c) whether developers would need to pay Special Rates if they rent out their unsold first-hand private residential units for a short period of time within the reporting period. <p>Mr Abraham SHEK requested an explanation on the absence of figures on units rented out or for self-use in the number of "unsold first-hand private residential units" as set out in paragraph 5 of the Administration's paper (LC paper No. CB(1)790/19-20(02)) and the application of BL 105.</p> <p>The Administration advised that –</p> <ul style="list-style-type: none"> (a) as developers were currently not required to declare the status of the "unsold first-hand private residential units", including whether they were rented out or were for self-use purpose. There was, however, apparently an upward trend of the number of "unsold first-hand private residential units". The number of "unsold first-hand private residential units" increased from around 4 000 units at end 2012 to 6 000 units at end 2014, and further increased to 9 000 units at end 2017. The latest figure as at end-March 2020 was around 10 000 units; and 	

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		<p>(b) as regards units for rent, under the Bill, developers did not have to pay Special Rates in respect of a specified tenement if such tenement was let to a person (other than a related party of the first-owner) under a stamped tenancy agreement at a rent not less than the market rent and for not less than 183 days in aggregate during the reporting period. As advised previously, in <i>Weson Investment Ltd v Commissioner of Inland Revenue</i> [2007] 2 Hong Kong Law Reports & Digest 567 (CA), the Court of Appeal had clearly established that BL 105 had no application to tax legislation.</p>	
010103 – 011644	Chairman Mr Tony TSE Administration	<p>Mr Tony TSE considered that the Administration should take the following actions:</p> <p>(a) assess the effectiveness of introducing the Bill in achieving the target of expediting the supply of first-hand private residential units, and substantiate the Bill's policy intent with relevant studies and analyses;</p> <p>(b) streamline the procedures for developers to sell their properties on completion as soon as possible, such as the Consent Scheme; and</p> <p>(c) get hold of information on the vacant first-hand private residential units more fully, i.e. how many of them were rented out or were for self-use purpose.</p> <p>Mr TSE enquired about –</p> <p>(a) the percentage of application for sale of first-hand private residential units during construction under the Consent Scheme;</p> <p>(b) the percentage of sale of these first-hand private residential units against the total number of completed units under the Consent Scheme; and</p> <p>(c) whether market analysis had been conducted for setting the threshold for exempting the payment of Special Rates by renting out a first-hand private residential unit at 183 days during the reporting period of 12 months.</p> <p>The Administration advised that –</p> <p>(a) developers were currently not required to declare the status of the "unsold first-hand private residential</p>	

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		<p>units" and the reason for such units to remain unsold/vacant;</p> <p>(b) the percentage of application for sale of first-hand private residential units under the Consent Scheme had been increasing from about 77% in 2015 to about 90% in end of March 2019, with an average of about 80% in recent years. Every application for the sale of first-hand private residential units under the Consent Scheme must not be less than 20% of the total number of residential units in the development or in the phase of the development (as the case might be); and</p> <p>(c) the Administration noted and would consider members' views and concerns on the threshold for exempting the payment of Special Rates by renting out a first-hand private residential unit at 183 days during a reporting period of 12 months.</p>	
011645 – 013016	Chairman Ir Dr LO Wai-kiwok Administration	<p>Ir Dr LO Wai-kiwok observed from the numbers of unsold first-hand private residential units in completed projects and agreements for sale and purchase of first-hand private residential units for the period from 2010 to 2020 as respectively provided in Annexes 2 and 3 of the Administration's paper (LC paper No. CB(1)790/19-20(02)) that the ratio of units unsold to the units sold was roughly 1:2 and had remained consistent in the 10-year period. Based on such data, he considered that there was insufficient information and evidence to prove that there had been hoarding of such units. Regarding the 4 200 unsold first-hand private residential units completed from 2013 to 2017 in Annex 4 of the paper, as the Administration did not have information on how many of such first-hand private residential units were rented out or were for self-use purpose, one could not tell that there had been hoarding of such units so as to justify the introduction of Special Rates.</p> <p>Ir Dr LO stressed that he could not see signs of hoarding of those units from the statistics provided and opined that the Administration should also take into account work-in-progress and inventories for the completed units. He called on the Administration to solve the housing supply problem by conducting analyses and studies to identify the causes, and propose and implement appropriate measures and policies. He enquired about the reasons for halting the studies about a year ago on public housing developments at the periphery of certain country parks near Shui Chuen O Estate and Tai Lam which covered over 40</p>	

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		<p>hectares of land.</p> <p>The Administration advised that the number of "unsold first-hand private residential units" specified in Annex 2 of the Administration's paper was a cumulative figure reflecting the number of unsold first-hand private residential units in projects completed in that year or in the previous seven years as at a specific date. The number of "unsold first-hand private residential units" kept changing as new first-hand private residential units were completed and sold from time to time. On the other hand, the number of agreements for sale and purchase of first-hand private residential units of each year as specified in Annex 3 of the Administration's paper reflected the number of transactions of first-hand private residential property in a specific year; and the residential units involved might be completed in the past few years or in the prevailing year, or had not yet been completed (i.e. offered for pre-sale). Since the statistical basis and concept of the two sets of data on "unsold first-hand private residential units" and agreement for sale and purchase of first-hand private residential units were different, a direct comparison would not serve much useful purpose. The Administration noted Ir Dr LO's views on land development.</p> <p>The Chairman remarked that the Administration had not collected and provided sufficient information on the status of the unsold first-hand private residential units in completed projects, such as whether they were rented out or for self-use and the relevant numbers.</p>	
013017 – 013924	Chairman Mr LUK Chung-hung Administration	Mr LUK Chung-hung opined that there was obvious hoarding of first-hand private residential units in completed projects as developers had a strong incentive to sell those units at a high price especially in a heated market. Imposing Special Rates at around 5% of the property value was a mild measure taking into account the rise in property value every year. Members of the public were unable to afford high-priced residential units and the hoarding of first-hand private residential units in completed projects by developers had contributed to the phenomenon. He opined that introduction of the Special Rates regime could assist in expediting the supply of such units, and called on the Administration to solve the land and housing supply problem by using a multi-pronged strategy. He enquired about whether the Administration would incorporate members' views and concerns raised on	

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		<p>the Bill, and re-draft and re-introduce the Bill in the next legislative session at the earliest opportunity.</p> <p>The Administration advised that it would consider the market situation and members' views and concerns in deciding the way forward of the Bill. Mr LUK considered that the Administration should first introduce Special Rates while market changes could be adapted to by changing the rates of Special Rates to be imposed.</p>	
013925 – 014233	Chairman Administration	Noting the several recent unsuccessful tendering exercises in Government land sale and the lowering of the market prices of land, the Chairman opined that the Administration should re-assess its pricing policy in the sale of land. It should also re-examine its policy of excluding over 75% of the land available in Hong Kong from housing development.	
014234 – 014835	Chairman Mr Abraham SHEK Administration	Mr Abraham SHEK agreed that unreasonable hoarding of first-hand private residential units in completed projects was undesirable. He considered that members of the public should purchase residential units which they could afford to avoid getting into situations of "negative equity" when property prices dropped. Mr SHEK reiterated his concern that residential units issued with OPs but not yet issued with CCs and refurbished by developers were not yet ready to be rented out. In this regard, it would be unfair to adopt the day of issue of OPs as the reference point for applying Special Rates.	
014836 – 015356	Chairman Ir Dr LO Wai-kwok Administration	<p>Ir Dr LO Wai-kwok expressed disappointment at the Administration's failure to address the enquiries, which he had raised at the previous meeting of the Bills Committee on 15 June 2020, about the number of unsold first-hand private residential units which would be regarded by the Administration as normal and reasonable, and the anticipated increase in the supply of first-hand private residential units that the Bill, if enacted, could bring about. In the absence of an analysis on the extent of hoarding of unsold first-hand private residential units, he remained unconvinced that introduction of the Special Rates regime could expedite the supply of first-hand private residential units to the market.</p> <p>The Administration noted Ir Dr LO's concerns and advised that the policy objective of the Bill was to encourage developers to expedite the supply of completed first-hand private residential units to the market. The</p>	

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		Administration did not set a hard target regarding the number of "unsold first-hand private residential units".	
Agenda item II –Way forward of the Bills Committee			
015357 – 020215	Chairman Mr Abraham SHEK Mr Steven HO Ir Dr LO Wai-kwok	Discussion on the legislative timetable, the time required for scrutinizing the Bill and the decision to discontinue scrutiny work on the Bill.	
Agenda item III – Any other business			
020216 – 020238	Chairman	Closing remarks	