

The Stamp Duty (Amendment) (No. 2) Bill 2010
Revised and Consolidated Draft Committee Stage Amendments

Purpose

This paper summarises the amendments which the Administration is proposing to make to the Stamp Duty (Amendment) (No.2) Bill 2010 (the Bill) as set out in the revised and consolidated Committee Stage Amendments (Consolidated Draft CSAs) at **Annex A**.

Background

2. At the Bills Committee meeting on 1 April 2011, the Administration informed Members vide paper CB(1)1784/10-11(01) that, having taken into account Members' views, the Administration would submit further CSAs on the following:

- (a) exemption be granted to all compulsory sale of residential properties under a Compulsory Sale Order granted under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545);
- (b) SSD not to apply in the case of addition / deletion of name in a chargeable agreement for sale or an Assignment if the person is a brother or sister of the original purchaser; and
- (c) exemption be granted to the nomination of brothers and sisters to take up assignment of a property and to the resale or transfer of the property to brothers and sisters.

3. Members requested the Administration to further consider that all involuntary sale or transfer of properties made by the courts or pursuant to court orders be exempted with no exclusions. Members also requested the Administration to explore with the Development Bureau whether only minority owners who unknowingly purchased a property which is subsequently put to compulsory sale within 24 months of the purchase should be exempted from SSD.

4. The Administration has carefully considered Members' views and has prepared the Consolidated Draft CSAs for Members' consideration.

Consolidated Draft CSAs

5. The Administration proposes a number of amendments to the Bill as set out in the following paragraphs.

CSAs on Definition of "Acquisition" and "Disposal" of Properties

6. Premised on the principle as set out in the Bill that a person "acquires" or "disposes of" a property when equitable ownership or legal ownership of the property is passed, under the proposed CSAs, the acquisition and disposal dates of a property will be based on the signing date of the chargeable agreement for sale, or if no such chargeable agreement exists, the signing date of conveyance (i.e. Assignment). Also, for the purpose of the determination of the date of acquisition or disposal, chargeable agreements include those "agreements for sale" as defined in section 29A of the existing Stamp Duty Ordinance (SDO), except "an option to purchase immovable property" and "a right of pre-emption in respect of immovable property" as referred to in paragraph (b) of the definition of "agreement for sale" in section 29A(1) of the SDO.

7. In gist, under the CSAs, when there is a signed Preliminary Agreement for Sale and Purchase (PASP), the signing date of the PASP, other than an instrument which confers an option to purchase or a right of pre-emption, will be the date of acquisition or disposal of the property for the purpose of calculating the holding period of the residential property. For an instrument which confers an option to purchase or a right of pre-emption, the date of signing the Agreement of Sale and Purchase (ASP), or if there is no ASP, the signing date of the Assignment will be the date of acquisition or disposal of the property.

CSAs on exemptions

8. The Bill has already proposed various exemptions from SSD. As we have repeatedly emphasized, we consider that it is very important that the law should be clear and without ambiguity, and that any exemptions to be considered should not affect the effectiveness of SSD, and have to be fair and measurable in an objective manner, and the types of exemptions should be clearly set out in the Bill. Based on these principles, the Administration has carefully listened to and assessed Members' proposals for additional exemptions, and proposes further exemptions to be granted under the following circumstances:

- (a) involuntary sale or transfer of properties made by the courts or pursuant to court orders;
- (b) addition / deletion of name in a chargeable agreement for sale or an Assignment if the person is a brother or sister of the original purchaser; and
- (c) nomination of brothers and sisters to take up assignment of a property and the resale or transfer of the property to brothers and sisters.

9. In respect of the exemption granted to involuntary sale of mortgaged properties by a mortgagee, Members raised questions as to the need to define the mortgagee as a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (IRO) (Cap 112). As we have explained in CB(1)1689/10-11(03), financial institutions within the meaning of section 2 of IRO are Authorized Institutions under the Banking Ordinance (Cap.155), or associated corporations of such authorized institutions, and all of them are subject to a high level of regulation and monitoring under the Hong Kong Monetary Authority (HKMA) on financial prudence and professionalism in business practices. Mortgagees which do not fall under this definition are principally holders of money lenders' licences not subject to the regulation by HKMA. We consider that such a restriction is necessary to safeguard against abuse. That said, having carefully listened to Members' views, we have agreed to delete the exclusion of a foreclosure order obtained by a mortgagee

which falls outside the definition of a financial institution within the meaning of section 2 of IRO from the exemption to be granted to involuntary sale or transfer of properties made by the courts or pursuant to court orders, having regard that the risk of abusing court proceedings should be low.

10. Regarding whether only the minority owner but not the majority owner involved in Cap. 545 applications should be exempted from SSD (on grounds that there is the possibility of a minority owner having purchased a flat within an old building only to find out later on that the lot on which the building stands will be put to compulsory sale under Cap.545 within 24 months of the purchase and hence being forced to sell his flat involuntarily), we have sought further views from the Development Bureau (DevB) which has reservation over this. Under Cap.545, the majority owner is the applicant for compulsory sale of the lot for redevelopment but he may not necessarily be the purchaser of the lot at the auction ordered by the Lands Tribunal. If the majority owner participates in the auction but is out-bidden, he would be forced to sell the undivided shares that he had already acquired when making a Cap.545 application. Therefore, if the reason for exempting the minority owner is involuntary sale, the majority owner in such cases should also be exempted from SSD.

11. We have listed out at **Annex B** the full list of proposed exemptions as set out in the Bill and the Consolidated Draft CSAs for Members' easy reference.

Transport and Housing Bureau
Financial Services and the Treasury Bureau
Inland Revenue Department
Department of Justice
April 2011

The revised and consolidated set of Committee Stage Amendments

Stamp Duty (Amendment) (No. 2) Bill 2010

Committee Stage

Amendments to be moved by the Secretary for Transport and Housing

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	In the English text, by deleting “with” and substituting “on”.
1(3)	By adding “14(2A), (2B), (2C), (2D) and (2E),” after “and (11),”.
4	By deleting the clause.
5(2)	In the proposed section 15(5), by deleting “(<i>amending section</i>) does not apply in respect of a chargeable agreement for sale within the meaning of section 29A(1) that was entered into before the date of commencement of the amending section” and substituting “does not apply in respect of a chargeable agreement for sale that was entered into before the date of commencement of that section”.
New	By adding— “ 6A. Section 29A amended (Interpretation and

application of Part IIIA)

(1) Section 29A(3A), after “and head 1(1A)”—

Add

“and (1B)”.

(2) Section 29A(4), after “head 1(1A)”—

Add

“and (1B)”.

(3) Section 29A(5), after “Head 1(1A)”—

Add

“and (1B)”.

(4) Section 29A(6), after “head 1(1A)”—

Add

“and (1B)”.

6B. Section 29B amended (Duty to execute agreement for sale)

After section 29B(5)(g)—

Add

“(ga) if the first such agreement referred to in paragraph (g) is an instrument conferring an option or a right of pre-emption referred to in paragraph (b) of the definition of *agreement for sale* in section 29A(1), a statement to that effect;”.

7

By adding—

“(3A) Section 29C(5)(c)(i), Chinese text—

Repeal

“購買人等”

Substitute

“眾購買人的”.

- 7 By deleting subclause (4).
- 7(6) By deleting “and” and substituting “or”.
- 7(7) In the proposed section 29C(5AA), by deleting “any residential” and substituting “immovable”.
- 7(7) In the proposed section 29C(5AA)(a)—
- (a) by adding “(or, only in so far as it relates to special stamp duty, a person who is a parent, spouse, child, brother or sister of the purchaser)” after “child of the purchaser”;
 - (b) in the Chinese text, by deleting “該物業” (wherever appearing) and substituting “該不動產”.
- 7(7) In the proposed section 29C(5AA)(b), by deleting “for the sale” and substituting “in respect”.
- 7 By deleting subclause (9).
- 8 In the proposed section 29CA, in the heading, by deleting “**Special stamp duty chargeable with**” and substituting “**Further provisions on special stamp duty chargeable on**”.
- 8 In the proposed section 29CA(2), in the Chinese text, by adding “有關” after “取得”.
- 8 In the proposed section 29CA(3), by deleting “acquired” and substituting “disposed of”.

8 In the proposed section 29CA(4), by deleting everything after “First Schedule,” and substituting—

“the vendor acquired the residential property on—

(a) subject to subsections (4A) and (6B)—

- (i) the date on which the vendor made a chargeable agreement for sale (other than an instrument conferring an option or a right of pre-emption referred to in paragraph (b) of the definition of *agreement for sale* in section 29A(1)) that provided for the conveyance of the property to the vendor; or
- (ii) (if the chargeable agreement for sale consisted of 2 or more instruments) the date on which the first of those instruments was made; or

(b) in any other case—

- (i) the date of the conveyance under which the property was transferred to or vested in the vendor; or
- (ii) (if the conveyance consisted of 2 or more instruments) the date on which the first of those instruments was made.”.

8 In the proposed section 29CA, by adding—

“(4A) If more than one chargeable agreement for sale was made between the same parties and on the same terms in respect of a residential property, the vendor acquired the property on the date on which the first chargeable agreement for sale referred to in subsection (4)(a) was made.”.

8 By deleting the proposed section 29CA(5).

8 In the proposed section 29CA(6), by deleting everything after “First

Schedule,” and substituting—

“the vendor disposes of the residential property on, subject to subsections (6A) and (6B)—

- (a) the date on which the vendor makes a chargeable agreement for sale (other than an instrument conferring an option or a right of pre-emption referred to in paragraph (b) of the definition of *agreement for sale* in section 29A(1)) that provides for the conveyance of the property from the vendor; or
- (b) (if the chargeable agreement for sale consists of 2 or more instruments) the date on which the first of those instruments is made.”.

8

In the proposed section 29CA, by adding—

“(6A) If more than one chargeable agreement for sale is made between the same parties and on the same terms in respect of a residential property, the vendor disposes of the property on the date on which the first chargeable agreement for sale referred to in subsection (6)(a) is made.

(6B) If a chargeable agreement for sale is made in respect of a residential property, and another chargeable agreement for sale is made in respect of all or any part of the property which is, under section 29C(5), chargeable with stamp duty as if it were a conveyance on sale executed in pursuance of the first-mentioned agreement, the property or that part of the property was acquired, and is disposed of, on—

- (a) (if under that other agreement the purchasers are those referred to in section 29C(5)(c)(i)) the dates specified in section 29DA(9A) as if that other agreement were a conveyance on sale executed in pursuance of a chargeable agreement for sale as referred to in section 29D(4); or
- (b) (if under that other agreement the purchaser is that, or the purchasers are those, referred to in section 29C(5)(c)(ii)) the dates specified in

section 29DA(9B) as if that other agreement were a conveyance on sale executed in pursuance of a chargeable agreement for sale as referred to in section 29D(5).”.

8 In the proposed section 29CA(7), by deleting “or child” and substituting “, child, brother or sister”.

8 In the proposed section 29CA(8), by deleting everything after “chargeable agreement for sale” and substituting—

“if—

(a) the agreement is made pursuant to any decree or order of any court; or

(b) the residential property in respect of which the agreement is made—

(i) was transferred to or vested in the vendor by or pursuant to any decree or order of any court;

(ii) relates solely to the estate of a deceased person;

(iii) was devised by or otherwise passed on the death of the deceased person under a will, the law of intestacy or right of survivorship to the vendor;

(iv) relates solely to a bankrupt’s estate;

(v) relates solely to the property of a company being wound up under section 177(1)(d) of the Companies Ordinance (Cap. 32); or

(vi) is the subject of a sale by a mortgagee (being a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap. 112)) or a receiver appointed by such a mortgagee.”.

8 In the proposed section 29CA(9), in the English text, by deleting “with a” and substituting “on a”.

- 9 By adding before subclause (1)—
“(1A) Section 29D(1)—
Repeal
“or issue a stamp certificate in respect of the conveyance on sale”.”.
- 9 By adding—
“(3A) Section 29D(4)(a), after “head 1(1)”—
Add
“and (if applicable) (1AA)”.”.
- 9(4) In the proposed section 29D(4)(b)(i), by adding “on sale” after “conveyance”.
- 9 By adding—
“(4A) Section 29D(5)(a), after “head 1(1)”—
Add
“and (if applicable) (1AA)”.”.
- 9(5) In the proposed section 29D(5)(b)(i), by adding “on sale” after “conveyance”.
- 9 By adding—
“(6) Section 29D(6)(c)(ii), after “child of that person”—
Add
“(or, only in so far as it relates to special stamp duty, a parent, spouse, child, brother or sister of that person)”.”.

10 In the proposed section 29DA, in the heading, by deleting “**Special**
stamp duty chargeable with” and substituting “**Further provisions**
on special stamp duty chargeable on”.

10 In the proposed section 29DA(2), in the Chinese text, by adding “有
關” after “取得”.

10 In the proposed section 29DA(3), by deleting “acquired” and
substituting “disposed of”.

10 By deleting the proposed section 29DA(4), (5) and (6).

10 In the proposed section 29DA(7), by deleting everything after “First
Schedule,” and substituting—

“the transferor acquired the residential property on—

(a) subject to subsections (7A), (9A) and (9B)—

(i) the date on which the transferor made a chargeable
agreement for sale (other than an instrument
conferring an option or a right of pre-emption
referred to in paragraph (b) of the definition of
agreement for sale in section 29A(1)) that
provided for the conveyance of the property to the
transferor; or

(ii) (if the chargeable agreement for sale consisted of 2
or more instruments) the date on which the first of
those instruments was made; or

(b) in any other case—

(i) the date of the conveyance under which the
property was transferred to or vested in the
transferor; or

(ii) (if the conveyance consisted of 2 or more

instruments) the date on which the first of those instruments was made.”.

10 In the proposed section 29DA, by adding—

“(7A) If more than one chargeable agreement for sale was made between the same parties and on the same terms in respect of a residential property, the transferor acquired the property on the date on which the first chargeable agreement for sale referred to in subsection (7)(a) was made.”.

10 By deleting the proposed section 29DA(8).

10 In the proposed section 29DA(9), by deleting everything after “First Schedule,” and substituting—

“the transferor disposes of the residential property on, subject to subsections (9A) and (9B) and section 29CA(6), (6A) and (6B)—

- (a) the date of the conveyance on sale of the property under which the property is transferred or divested from the transferor; or
- (b) (if the conveyance on sale consists of 2 or more instruments) the date on which the first of those instruments is made.”.

10 In the proposed section 29DA, by adding—

“(9A) In the case of a conveyance on sale of residential property executed in pursuance of a chargeable agreement for sale as referred to in section 29D(4), the person named in the agreement as the purchaser (*that purchaser*)—

- (a) acquired the property on—
 - (i) the date on which that purchaser made a chargeable agreement for sale (other than an instrument conferring an option or a right of pre-emption referred to in

paragraph (b) of the definition of *agreement for sale* in section 29A(1)) that provided for the conveyance of the property to that purchaser; or

- (ii) (if the chargeable agreement for sale consisted of 2 or more instruments) the date on which the first of those instruments was made; and
- (b) disposes of the proportion of the property to be vested in the other person not named in the agreement as a purchaser as referred to in section 29D(4) on—
 - (i) the date on which the conveyance on sale is executed; or
 - (ii) (if the conveyance on sale consists of 2 or more instruments) the date on which the first of those instruments is made.
- (9B) In the case of a conveyance on sale of residential property executed in pursuance of a chargeable agreement for sale as referred to in section 29D(5), a person named in the agreement as one of the purchasers (*that person*), if the conveyance on sale is not executed in favour of that person—
 - (a) acquired that person's proportion of the property on—
 - (i) the date on which that person, together with the other person or persons named in the agreement as a purchaser or purchasers as referred to in that section, made a chargeable agreement for sale (other than an instrument conferring an option or a right of pre-emption referred to in paragraph (b) of the definition of *agreement for sale* in section 29A(1)) that provided for the conveyance of the property to that person and that other person or persons; or
 - (ii) (if the chargeable agreement for sale consisted of 2 or more instruments) the

date on which the first of those instruments was made; and

- (b) disposes of that person's proportion of the property on—
 - (i) the date on which the conveyance on sale is executed; or
 - (ii) (if the conveyance on sale consists of 2 or more instruments) the date on which the first of those instruments is made.”.

10 In the proposed section 29DA(10), by deleting everything after “transferred under the conveyance” and substituting “on sale is a parent, spouse, child, brother or sister of the transferor under the conveyance on sale.”.

10 In the proposed section 29DA(11), by deleting everything after “conveyance on sale” and substituting—

“of residential property if—

- (a) the conveyance on sale is any decree or order of any court; or
- (b) the property—
 - (i) was transferred to or vested in the transferor by or pursuant to any decree or order of any court;
 - (ii) relates solely to the estate of a deceased person;
 - (iii) was devised by or otherwise passed on the death of the deceased person under a will, the law of intestacy or right of survivorship to the transferor;
 - (iv) relates solely to a bankrupt's estate;
 - (v) relates solely to the property of a company being wound up under section 177(1)(d) of the Companies Ordinance (Cap. 32); or
 - (vi) is the subject of a sale by a mortgagee (being a financial institution within the meaning of section

2 of the Inland Revenue Ordinance (Cap. 112)) or a receiver appointed by such a mortgagee.”.

- 10 In the proposed section 29DA(12)—
- (a) in the English text, by deleting “with a” and substituting “on a”;
 - (b) by adding “on sale” after “the conveyance”.

- 10 In the proposed section 29DA, by adding—
- “(13A) Paragraphs (a), (b), (c) and (d) of section 29D(6) also apply for the purposes of this section.”.

- 10 In the proposed section 29DA(14), by adding “on sale” after “the conveyance”.

- New By adding—
- “11A. Section 44 amended (Relief in case of gift to exempted institution)**
- Section 44(1)—
- Repeal**
- “or head”
- Substitute**
- “or (1AA) or”.”.

- 12 By deleting everything after “Section” and substituting—
- “45(1)—
- Repeal**
- “, 2(1) and 2(3)”
- Substitute**

“or (1AA) or 2(1) or (3)”.

- 14(2) In the proposed head 1(1AA), in Note 1, by deleting “section” and substituting “sections 29D and”.
- 14(2) In the proposed head 1(1AA), in paragraph (a) of Note 2, by adding “on sale” after “the conveyance”.
- 14(2) In the proposed head 1(1AA), in paragraph (b) of Note 2—
- (a) in the English text, by deleting “with” (wherever appearing) and substituting “in respect of”;
 - (b) by adding “on sale” after “the conveyance”.
- 14(2) In the proposed head 1(1AA), in Note 3, by adding “; but see section 29DA(11)” after “under head 1(1)”.
- 14 By adding—
- “(2A) First Schedule, head 1(1A), paragraph (B)—
Repeal
“section 29C(11) and”.
 - (2B) First Schedule, head 1(1A), Note 2, paragraph (a)—
Repeal
“but subject to section 29C(11)”.
 - (2C) First Schedule, head 1(1A), Note 2, paragraph (b)—
Repeal
“, or is endorsed under section 29C(13)(a)”.
 - (2D) First Schedule, head 1(1A), Note 3, paragraph (b)—
Repeal

“, or is endorsed under section 29C(13)(a)”.

(2E) First Schedule, head 1(1A), Note 3, paragraph (b)(ii)—

Repeal

“and section 29C(11)”.

14(3) In the proposed head 1(1B), in Note 1, by deleting “section” and substituting “sections 29C and”.

14(3) In the proposed head 1(1B), in the English text, in paragraph (b) of Note 2, by deleting “with” (wherever appearing) and substituting “in respect of”.

14(3) In the proposed head 1(1B), by adding—

“Note 2A

A nomination made, or a direction given, by a purchaser as referred to in paragraph (h) of the definition of *agreement for sale* in section 29A(1) in favour of one, or more than one, person who is a parent, spouse, child, brother or sister of the purchaser (whether or not also in favour of the purchaser) is not chargeable with special stamp duty”.

14(3) In the proposed head 1(1B), in Note 3, by adding “; but a person and a brother or sister of that person are also to be treated as the same person for the purposes of special stamp duty” after “under head 1(1A)”.

**Proposed exemptions from SSD as set out in the Bill and
the Revised and Consolidated Draft CSAs**

- (a) Nomination of the spouse, parents, children, brothers and sisters to take up the assignment of the property, and sale or transfer of the property to spouse, parents, children, brothers and sisters.
- (b) Addition/deletion of name(s) to/from a chargeable agreement for sale or Assignment if the person(s) is the spouse, parents, children, brothers and sisters of the original purchaser(s).
- (c) Involuntary sale or transfer of properties made by the courts or pursuant to court orders (including Compulsory Sale Orders granted under Cap 545 and foreclosure orders obtained by mortgagees whether or not they fall under the definition of a financial institution within the meaning of section 2 of the IRO).
- (d) Involuntary sale of mortgaged properties in various forms by a mortgagee which is a financial institution within the meaning of section 2 of IRO, or by a receiver appointed by such a mortgagee.
- (e) Sale or transfer of a residential property by a person whose property is inherited from a deceased person's estate or is passed to that person under the right of survivorship.
- (f) Transfer between associated companies.
- (g) Sale of property due to bankruptcy/involuntary winding up.
- (h) Sale of property to the Government.