

**The Administration's response to the issues
raised at the meetings of the Bills Committee on
the Stamp Duty (Amendment) Bill 2012 held on 15 October 2013**

This paper serves as a response to the issues set out in the letter dated 16 October 2013 from the Legislative Council Secretariat (LC Paper No. CB(1)133/13-14(01) refers).

Issues in relation to the definition of “Hong Kong Permanent Resident”

2. The Buyer's Stamp Duty (BSD) aims to accord priority to the home ownership needs of Hong Kong permanent residents (HKPRs) under the current tight housing supply situation. As all HKPRs are eligible to apply for a permanent identity card (PICs) under the Registration of Persons Ordinance (Cap. 177), Clause 5 of the Stamp Duty (Amendment) Bill 2012 (the Bill) proposes that, for the purpose of the Bill, HKPR means a person who holds a valid PIC. Furthermore, persons who enjoy the right of abode in Hong Kong and are entitled to be issued with a PIC if they make such an application but are exempted from applying for the issue or renewal of an identity card under regulation 25(e) of the Registration of Persons Regulations (Cap. 177A)¹ will also be exempted from the BSD.

3. The Hon Ronny Tong suggested that the Government can improve the textual clarity of Clause 5(1)(b) of the Bill by simply stipulating that HKPRs who possess a certificate of exemption (CoE) are regarded as HKPRs and hence are exempted from the BSD. We would like to clarify that the CoE is an **administrative instrument** issued by the Immigration Department to those exempted from applying for the issue or renewal of an identity card under regulation 25(e) of Cap.177A. As such, we consider it inappropriate to make reference to the term “CoE” in the Bill. We consider that the proposed definition of HKPR under the Bill has already spelt out clearly the categories of persons who are HKPRs in accordance with Cap.177 and Cap.177A.

4. As regards minors or mentally incapacitated persons, our policy intent is that the home ownership needs of all HKPRs should be accorded priority. As such, all HKPRs who can satisfy the relevant requirements as set out in the Bill, regardless of whether they are minors or mentally incapacitated persons, should be entitled to the same BSD exemption. That said, as HKPR minors / mentally incapacitated persons lack the capacity to enter into legally binding

¹ It refers to people who are aged, blind or infirm and who satisfies the authority that compliance with the requirement to make application for an identity card will injure their health or the health of others.

agreements, if they are to acquire a residential property, in practice they must rely on another person to act on his or her behalf. To cater for the needs of this special group of HKPRs, the Bill proposes that if a residential property is acquired on behalf of a HKPR minor / mentally incapacitated person by his / her guardian / trustee, the relevant transaction should also be exempted from the BSD.

5. We note that some Members have raised concerns as to whether the arrangement mentioned in paragraph 4 above may create loopholes. We wish to point out that under our intended mechanism, there will be administrative measures to guard against potential abuse as the Inland Revenue Department (IRD) would require documentary evidence to substantiate any claim for exemption from people acting on behalf of minors/ mentally incapacitated persons. Specifically, if a buyer claims that he / she is acting on behalf of a HKPR minor or HKPR mentally incapacitated person, he / she is required to provide documentary evidence such as the birth certificate, an instrument to appoint a guardian pursuant to the Guardianship of Minors Ordinance (Cap.13), a valid and legally binding trust instrument, a court order or guardianship order pursuant to the Mental Health Ordinance (Cap.136), etc. to prove his / her capacity as a guardian or trustee in the transaction under consideration. We take note of the suggestions from some Members that steps should be taken further to tighten up the arrangement. We are examining these suggestions in detail. However, we must caution that any proposal to impose arbitrary restriction on the BSD exemption for those HKPR minors whose parents are not HKPRs is likely to be discriminatory and may infringe the right to equality of the relevant HKPRs.

Fallen through transactions

6. Clause 6 of the Bill makes a consequential amendment to section 29B(6) of the Stamp Duty Ordinance (Cap.117) so that a seller under an agreement for sale will not be liable to pay the BSD in the event that any party under the agreement fails to execute an agreement for sale as required under section 29B(1). In case an agreement for sale is cancelled, annulled or rescinded or is otherwise not performed (not because of the occurrence of a further resale), in accordance with the proposed amendment under Clause 7(4) of the Bill to amend section 29C(5A) of Cap.117, the agreement will not be chargeable with the BSD.