

Stamp Duty (Amendment) Bill 2012
The exemption from the Buyer's Stamp Duty in respect of minors

In response to the request from the Hon Abraham Shek, this paper highlights Government's justifications for (a) the original proposed arrangement to exempt, from the Buyer's Stamp Duty (BSD), acquisitions of residential properties made by minors who are Hong Kong permanent residents (HKPRs) through their guardians and trustees; and (b) the subsequent agreement to take over the committee stage amendment (CSA) proposed by the Hon Regina Ip. It should be noted that these justifications have already been set out in previous papers to the Bills Committee. There has also been detailed discussion of the issue at previous meetings of the Bills Committee. As such, this paper only aims at making reference to relevant papers in response to Members' request. For details, please refer to relevant Bills Committee papers as stated below.

2. Under the BSD regime as proposed in the Stamp Duty (Amendment) Bill 2012 (the Bill) introduced into the Legislative Council in January 2013, a HKPR buyer must be acting on his or her own behalf in order to be exempted from the BSD. Having regard to the fact that minors lack the capacity to enter into legally binding agreements and in practice require another person to act on his or her behalf in acquiring a residential property, the Bill has included a provision that if a trustee or guardian acquires a residential property on behalf of a minor who is a HKPR, the acquisition will be exempted from the BSD given the HKPR status of the minor. This has been clearly explained in the Legislative Council Brief.

3. When the relevant provisions of the Bill were scrutinised by the Bills Committee, many Members expressed concern that the BSD exemption arrangement in respect of HKPR minors might be vulnerable to abuse, which could in turn undermine the effectiveness of the BSD. On some Members' suggestion to remove the relevant exemption arrangement entirely, the Government informed the meeting that given the wider implications, the Government needed to consider the suggestion carefully and there would also be a need to seek legal advice. As regards Members' other suggestion that the exemption in respect of minors should only be granted if the trustee or guardian acting on the minor's behalf is himself / herself a HKPR, the Government indicated 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.

For details, please refer to LC Paper No. CB(1)133/13-14(02).

4. The Government has taken into account the Bills Committee's concern in considering the CSA proposed by the Hon Regina Ip. As we have explained in LC Paper No. CB(1)623/13-14(04) and LC Paper No. CB(1)698/13-14(02), the Hon Regina IP's proposed outright withdrawal of the BSD exemption for acquisitions made on behalf of HKPR minors would safeguard the effectiveness of the BSD and would not result in any difference in treatment between minors with HKPR trustees or guardians and those with non-HKPR trustees or guardians. Having considered the fact that the Hon Regina IP's CSA would result in tightening up of the BSD regime, thus enhancing its effectiveness to achieve the policy objectives to accord priority to the home ownership needs of HKPRs, and in light of Members' views that minors are expected to be taken care of by, and stay with, their parents or guardians and that their housing needs would not be prejudiced *per se*, on balance, the Government considers that the Hon Regina IP's CSA is acceptable from both the policy and legal perspectives, and considers it appropriate for the Government to take over this amendment to the Bill.

Transport and Housing Bureau
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