

**The Government's response to the committee stage amendment
proposed by the Hon Regina IP**

This paper sets out the Government's response to the committee stage amendment (CSA) proposed by the Hon Regina IP to the Stamp Duty (Amendment) Bill 2012 (the Bill) (LC Paper No. CB(1)594/13-14(04) refers), which proposes to remove from the Bill the exemption from the Buyer's Stamp Duty (BSD) for acquisitions of residential properties made on behalf of a minor who is a Hong Kong permanent resident (HKPR) by his or her trustee or guardian.

The policy intention of the arrangement under the Bill

2. In pursuance of the policy objective to accord priority to the home ownership needs of HKPRs under the tight housing supply situation, 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 includes a provision that if a trustee or guardian acquires a residential property on behalf of a minor who is a HKPR, the minor will be treated as a purchaser under the agreement for sale in place of the trustee or guardian. The provision aims to enable minors to be exempted from the BSD when someone acquires residential properties on their behalf given their HKPR status.

Views of the Bills Committee

3. We note that the Bills Committee has expressed concern that the BSD exemption arrangement in respect of HKPR minors might be vulnerable to abuse, which would undermine the effectiveness of the BSD. Specifically, we are aware that most Members consider that since minors may not be able to protect their own interest, the exemption arrangement concerned would provide incentives for non-HKPR trustees or guardians, including the non-HKPR parents of Type-II children¹, to use the names of the minors to acquire residential properties and hence evade the BSD. In addition, some Members consider that trust law is complicated. This might enable non-HKPRs to make use of a trust

¹ They refer to children born in Hong Kong to Mainland parents, both of whom are not HKPRs.

set up to circumvent the BSD. If this were the case, it would be practically impossible to verify and to ensure that a trustee is truly acting on behalf of the HKPR minor.

4. To address the Bills Committee's concern, particularly over the Type-II children issue, some Members have suggested that the BSD 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. Since such an arrangement would discriminate against certain HKPR minors based on the HKPR status of their parents or guardians, legal advice is that such an approach is not advisable from the human rights perspective. On the other hand, the Hon Regina IP's CSA proposes an outright removal of the BSD exemption for acquisitions of residential properties made on behalf of a HKPR minor by his or her trustee or guardian to address the above mentioned issues. The proposed outright withdrawal of the BSD exemption for acquisitions made on behalf of minors would safeguard the effectiveness of the BSD but 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 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.

5. Against the above, the Government finds the Hon Regina IP's CSA agreeable, and considers it appropriate for the Government to take over this amendment to the Bill.