

**The Administration's response to the issues
raised at the meeting of the Bills Committee on
the Stamp Duty (Amendment) Bill 2012 held on 6 January 2014**

This paper serves as a response to the issues set out in the letter dated 7 January 2014 from the Legislative Council Secretariat (LC Paper No. CB(1)698/13-14(01) refers).

2. The Government has already explained in LC Paper No. CB(1)623/13-14(04) the rationale behind accepting the Hon Regina Ip's CSA, which seeks to remove the exemption from the Buyer's Stamp Duty (BSD) for acquisitions of residential properties made by minors who are Hong Kong permanent residents (HKPRs) through their trustees or guardians. The original policy intention to provide such an exemption in the Stamp Duty (Amendment) Bill 2012 is to enable HKPR minors to be exempted from the BSD when someone acquires residential properties on their behalf, 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. However, the Government notes that the Bills Committee has expressed grave concern that the BSD exemption arrangement in respect of HKPR minors might be vulnerable to abuse and would undermine the effectiveness of the BSD. Specifically, most Members of the Bills Committee consider that since minors may not be able to protect their own interest, the exemption arrangement could 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 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.

3. As we have already explained, the Hon Regina IP's proposed outright withdrawal of the BSD exemption for acquisitions made on behalf of 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

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

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 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.

4. As regards the Court of Final Appeal's judgement on the seven-year residence requirement of the Comprehensive Social Security Assistance (CSSA) Scheme, the judgement was specific to the CSSA Scheme. The Court clearly stated that the judgment cannot be extrapolated for general application across the spectrum of all public services. In other words, in determining whether a difference in treatment between Hong Kong permanent residents (HKPRs) and non-HKPRs is reasonable, rational and constitutional, one has to take into account the objectives, justifications and other key factors of the relevant Government policies or services.

5. We have also repeatedly explained in writing and at the Bills Committee that while Article 25 of the Basic Law provides that all Hong Kong residents shall be equal before the law, this guarantee does not invariably require exact equality in all cases. First, only like cases should be treated alike. Second, differential treatment of persons in analogous situations would not infringe BL25 if the difference in treatment is justified: the difference in treatment pursues a legitimate aim, is rationally connected to the legitimate aim, and is no more than is necessary to accomplish that aim.

6. The BSD aims to reduce the demand for residential properties (including demand from foreign investments) by increasing the transaction costs of all residential properties, excluding those involving HKPRs and other reasonable situations that are exempted. It pursues the legitimate aim of according priority to meeting the home ownership needs of HKPRs who have a close connection with Hong Kong under the current tight supply situation, and is also rationally connected to its policy objective. It is also no more than necessary to accomplish the policy objectives to address the irrationally exuberant property market in recent years. We would also like to emphasise that the demand-side management measures have proved to be effective in stabilising the property market since they were introduced, and are in the interest of the community as a whole and the macro economy. As the relevant

measures are extraordinary measures under the exceptional circumstances, suitable adjustments to the measures would be made as and when necessary.

Transport and Housing Bureau
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