

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

政府總部
運輸及房屋局
香港九龍何文田佛光街33號



Government Secretariat
Transport and Housing Bureau
33 Fat Kwong Street, Ho Man Tin, Kowloon, Hong Kong

本局檔號 Our Ref. HDCR4-3/PH/1-10/0-1 Pt.10
來函檔號 Your Ref. LS/B/2/12-13

電話 TEL. 2761 5039
傳真 FAX. 2761 7444

14 March 2013

Ms Kitty Cheng
Assistant Legal Adviser
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Ms Cheng,

Stamp Duty (Amendment) Bill 2012

Thank you for your letter dated 20 February 2013, raising questions on the legal aspects of the Stamp Duty (Amendment) Bill 2012 (LC Paper No. CB(1)598/12-13(04) refers). Our reply to your questions is set out at **Annex**.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Vicki Kwok', written over a horizontal line.

(Mrs Vicki Kwok)

for Secretary for Transport and Housing

**The Administration's response to the issues raised by
the Legal Service Division of the Legislative Council Secretariat
on 20 February 2013 (LC Paper No.CB(1)598/12-13(04))**

Issue / paragraph number	The Administration's response
1. "Acting on his or her own behalf"	
Para. 1 – 3	<ul style="list-style-type: none">• Proposed sections 29CB(2) and 29DB(2) of the Stamp Duty (Amendment) Bill 2012 ("the Bill") provides that a chargeable agreement for sale / conveyance on sale is not chargeable with the buyer's stamp duty ("BSD") if it is shown to the satisfaction of the Collector of Stamp Revenue ("Collector") that the purchaser is a Hong Kong permanent resident ("HKPR") and is acting on his or her own behalf. To prove that the purchaser is "acting on his or her own behalf", the purchaser is required to make a statutory declaration that he/she does not act on behalf of another person in the transaction such as in the capacity of trustee or agent. If the circumstances warrant, the Collector may require the purchaser to provide further evidence, such as source of funds for payment of consideration, to substantiate that he/she has acted for himself / herself in the transaction.• Similarly, other exemptions such as transfers among close relatives (under the proposed sections 29CB(2), 29CB(3), 29DB(2), 29CB(3) and 29DB(4) of the Bill) and replacement of properties sold or resumed for redevelopment (under the proposed sections 29CB(4) and 29DB(5) of the Bill) also entail the requirement of "acting on his or her own behalf" by the purchaser / transferee. Likewise, they have to make a statutory declaration to that effect.

Issue / paragraph number	The Administration's response
2. Trustee and guardian- definition	
Para. 4	<ul style="list-style-type: none">• The terms “trustee” and “guardian” in the context of proposed sections 29CB(8) and 29 DB(9) are not defined under the Bill and their ordinary meanings will be taken. According to Black’s Law Dictionary, “trustee” is “one who stands in a fiduciary or confidential relation to another; especially one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary”. “Guardian” is “one who has the legal authority and duty to care for another person or property, especially because of the other's infancy, incapacity, or disability”.
3. The nature of trust	
Para 5 – 6	<ul style="list-style-type: none">• A purchaser or vendor who claims exemption under the proposed sections 29CB(8) and 29DB(9) or 29CB(9)and 29DB(10) of the Bill is required to provide documentary evidence such as a valid and legally binding trust instrument, a court order or guardianship order pursuant to the Mental Health Ordinance (Cap.136), a birth certificate (for minor case), etc. to prove his / her capacity as a trustee or guardian in the transaction under consideration.• As to whether the beneficiary is a mentally incapacitated person, the Collector will require the claimant to submit documentary evidence such as a court order or guardianship order pursuant to the MHO to prove that the beneficiary is incapable, by reason of mental incapacity, of managing and administering his property and affairs.• Under section 54(4) of the Stamp Duty Ordinance (Cap. 117), the Collector has the power to inspect any documents whatsoever in the possession or under the control of any person for stamp duty purposes.

Issue / paragraph number	The Administration's response
Para 7 – 10	<ul style="list-style-type: none">• The Collector accepts that for some cases (including the case where the person executing the instrument is in fact a resulting/constructive trustee), the chargeability of an instrument to the BSD may not be apparent or readily ascertainable when the instrument is submitted for stamping.• For such cases, the BSD will not be charged when the instrument is submitted for stamping having regard to the fact that -<ul style="list-style-type: none">(a) stamp duty liability in respect of an instrument has to be determined based on the circumstances existing on the date of the instrument and the Collector cannot adopt a wait and see attitude in determining the stamp duty liability in respect of an instrument; and(b) the declaration of the purchaser/transferee is only in respect of facts he honestly believes to be true at the time of such declaration.• However, the Collector may recover any shortfall of duty whenever such cases come to light.
4. Void or unlawful trust	
Para. 11	<ul style="list-style-type: none">• Ditto
5. Purchase of replacement property	
Para. 12	<ul style="list-style-type: none">• For the purposes of sections 29CB(4) and 29DB(5), there is no limit on the consideration for the purchase of a replacement property.