

**Committee Stage Amendments  
to the Stamp Duty (Amendment) Bill 2012**

The Government indicated in LC Paper No. CB(1)1288/12-13(01) and LC Paper No. CB(1)1367/12-13(02) that committee stage amendments (CSAs) would be introduced to the Stamp Duty (Amendment) Bill 2012 (the Bill). This paper sets out the objectives of the proposed CSAs. Details of the CSAs are at **Annex**.

**A. Revised mechanism to refund the Buyer's Stamp Duty (BSD) for redevelopment projects**

2. At the Bills Committee's meeting on 7 June 2013, the Secretary for Transport and Housing advised that the Government would refine the BSD refund mechanism for redevelopment projects in pursuit of the policy objective that the BSD should not hinder redevelopment. The framework of the revised refund mechanism has been explained in LC Paper No. CB(1)1367/12-13(02). In gist, the revised refund mechanism is premised on two major principles, i.e. (a) the developer concerned has obtained ownership of the entire lot to be redeveloped; and (b) there is proof that the developer concerned will use the site for redevelopment purpose. Under the revised refund mechanism, a developer may apply for a refund of the BSD paid **after the developer has become the owner of the entire lot to be redeveloped, AND** –

(a) EITHER has obtained, from the Building Authority under the Buildings Ordinance (Cap.123), the consent to commence any foundation work for the lot;

(b) OR has -

(i) demolished any building existing on the lot, other than a building the demolition of which is prohibited under any Ordinance; and

(ii) obtained the approval of the Building Authority in respect of the general building plan for the redevelopment.

3. When compared to the original refund mechanism, where a developer may apply for refund of the BSD upon issue of the first Occupation Permit within six years after it has become the owner of the lot, under the revised refund mechanism the refund could be advanced by four to five years. The two

alternative conditions under the revised refund mechanism also provide developers greater flexibility in applying for refund of the BSD paid with reference to the actual situation of their redevelopment projects.

4. The relevant provisions in the Annex are highlighted in yellow for ease of reference.

**B. Exempting certain acquisitions of a replacement property by non-Hong Kong permanent residents (non-HKPRs) from the BSD**

5. To address the need of a non-HKPR property owner who has been made to sell residential property not at the owner's own volition as in the case of acquisitions by the Urban Renewal Authority, resumption by the Government under the Lands Resumption Ordinance (Cap.124), or compulsory sale pursuant to an order for sale made under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap.545), the Government has proposed in the Bill that the replacement purchase made by a non-HKPR property owner affected under any of the above three scenarios will be exempted from the BSD. As explained in LC Paper No. CB(1)1288/12-13(01), having considered views from the deputations, the Government recognises that other ordinances also provide for compulsory resumption or acquisition of properties similar in nature to the three scenarios mentioned above. Therefore, CSAs are introduced to extend the exemption in question to cover such scenarios as set out in Annex I to LC Paper No. CB(1)1288/12-13(01).

6. The relevant provisions in the Annex are highlighted in blue.

**C. Admissibility of instruments not duly stamped with the BSD**

7. As explained in LC Paper No. CB(1)1288/12-13(01), the Government will introduce CSAs to implement the suggestion from the Law Society of Hong Kong and the Hong Kong Association of Banks in respect of section 15 of the Stamp Duty Ordinance (Cap.117), which provides that instruments not duly stamped are not admissible in certain proceedings. The two organisations consider that section 15 should not apply to the BSD. The reason is that under the law, the responsibility to pay the BSD lies with the buyer, and that any failure to pay the BSD by the buyer should not affect the innocent seller's right to present the relevant documentation in court proceedings. We agree with such a view.

8. The proposed CSAs allow an instrument to be received in evidence in civil proceedings before a court, even if it is not duly stamped with the BSD. However, the following conditions must be met -

- (a) the instrument is produced by a person other than the purchaser in order to prove the person's title to the property concerned or is produced by the vendor to enforce the instrument;
- (b) the instrument has been registered at the Land Registry; and
- (c) the purchaser has made a misrepresentation that he/she was a HKPR or was acting on his/her own behalf.

9. The relevant provisions in the Annex are highlighted in green.

**D. Consequential amendment to the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013**

10. The Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013 was enacted on 19 July 2013 to provide a comparable taxation framework for some common types of Islamic bond (sukuk) vis-à-vis conventional bonds in terms of profits tax, property tax and stamp duty liabilities. The Amendment Ordinance has thus exempted the relevant instruments from stamp duty and special stamp duty, but not the BSD as the latter is not yet part of the Stamp Duty Ordinance (Cap.117). To ensure that consistent stamp duty relief is provided and in response to the request of Members of the Bills Committee on the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Bill 2012, the Government has proposed that consequential amendment to the Stamp Duty (Amendment) Bill 2012 would be introduced such that BSD relief would be provided for the relevant instruments. The Bills Committee on the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Bill 2012 has agreed to the arrangement.

11. The relevant provisions in the Annex are highlighted in grey.

**E. Others amendments to improve the clarity of the Bill**

12. The CSAs also include some minor and technical amendments to improve clarity of the provisions. These amendments will not affect the substance of the Bill.

**Transport and Housing Bureau  
August 2013**

Stamp Duty (Amendment) Bill 2012

**Committee Stage**

Amendments to be moved by the Secretary for  
Transport and Housing

Clause

Amendment Proposed

New	By adding—
	<b>“4A. Section 15 amended (non-admissibility, etc. of instruments not duly stamped)</b>
	(1) Section 15(1)—
	<b>Repeal</b>
	“subsection (1A)”
	<b>Substitute</b>
	“subsections (1A) and (1B)”.
	(2) After section 15(1A)—
	<b>Add</b>
	“(1B) Despite anything in subsection (1), an instrument that is chargeable with buyer’s stamp duty but is not stamped with that duty may be received in evidence in civil proceedings before a court if it has been registered in the Land Registry under the Land Registration Ordinance (Cap. 128) and—
	(a) in the case of a chargeable agreement for sale—
	(i) it was believed by the Collector to be not so chargeable because of a misrepresentation made by the purchaser

under the agreement (*purchaser*) that the purchaser, at the date of the agreement, was a Hong Kong permanent resident or was acting on the purchaser's own behalf; and

(ii) it is produced in evidence—

(A) by a person who is not the purchaser for proving the person's title to the property concerned; or

(B) by the vendor under the agreement or by the person who, under the terms of the agreement, is to transfer the property concerned to the purchaser for enforcing the agreement; or

(b) in the case of a conveyance on sale—

(i) it was believed by the Collector to be not so chargeable because of a misrepresentation made by the transferee under the conveyance that the transferee, at the date of the conveyance, was a Hong Kong permanent resident or was acting on the transferee's own behalf; and

(ii) it is produced in evidence by a person who is not the

	transferee under the conveyance for proving the person's title to the property concerned.”.”.
9	In the proposed section 29CB(3)(a)(ii)(B), in the English text, by deleting “a purchaser” and substituting “the purchaser”.
9	<p>In the proposed section 29CB(4)(b)—</p> <p>(a) in subparagraph (ii), by adding “an order made under section 3 of” after “resumed under”;</p> <p>(b) in subparagraph (ii), by deleting “; or” and substituting a semicolon;</p> <p>(c) in subparagraph (iii), by deleting “545).” and substituting “545);”;</p> <p>(d) by adding—</p> <p>“(iv) resumed under an order made under section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276);</p> <p>(v) resumed under an order made under section 13(1) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370);</p> <p>(vi) resumed under an order made under section 16 or 28(1) of the Railways Ordinance (Cap. 519);</p> <p>(vii) acquired under an acquisition order made under section 3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance (Cap. 130); or</p> <p>(viii) resumed under an order made under section 37(2) of the Land Drainage Ordinance (Cap. 446).”.</p>
9	In the proposed section 29CC(1)(a)(ii), by adding “and (12)” after “section 29CB(10)”.
12	In the proposed section 29DB(3)(b)(ii), in the English text, by deleting “a purchaser” and substituting “the purchaser”.
12	In the proposed section 29DB(5)(b)—

	<ul style="list-style-type: none"><li>(a) in subparagraph (ii), by adding “an order made under section 3 of” after “resumed under”;</li><li>(b) in subparagraph (ii), by deleting “; or” and substituting a semicolon;</li><li>(c) in subparagraph (iii), by deleting “545).” and substituting “545);”;</li><li>(d) by adding—<ul style="list-style-type: none"><li>“(iv) resumed under an order made under section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276);</li><li>(v) resumed under an order made under section 13(1) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370);</li><li>(vi) resumed under an order made under section 16 or 28(1) of the Railways Ordinance (Cap. 519);</li><li>(vii) acquired under an acquisition order made under section 3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance (Cap. 130); or</li><li>(viii) resumed under an order made under section 37(2) of the Land Drainage Ordinance (Cap. 446).”.</li></ul></li></ul>
12	<p>In the proposed section 29DB(8)(c)—</p> <ul style="list-style-type: none"><li>(a) by deleting “a mortgagee that” and substituting “its mortgagee that”;</li><li>(b) by deleting “such a mortgagee” and substituting “the mortgagee”.</li></ul>
12	<p>In the proposed section 29DC(1)(a)(ii), by adding “and (13)” after “section 29DB(11)”.</p>
12	<p>By deleting the proposed section 29DD(1)(b), (c), (d) and (e) and substituting—</p> <ul style="list-style-type: none"><li>“(b) the applicant—<ul style="list-style-type: none"><li>(i) alone or jointly with an associated body corporate within the meaning of section 45(2), became the owner of the lot, or 2 or more lots of which the</li></ul></li></ul>



lot formed part (collectively *the lots*);  
or

(ii) after becoming the owner as mentioned in subparagraph (i), was, alone or jointly with the associated body corporate, granted a new lot (*the new lot*) by the Government consequent on either or both of the following—

(A) the surrender to the Government of the lot (wholly or partly and whether or not together with any other lot);

(B) the acquisition by the Government through purchase by agreement under section 4A of the Lands Resumption Ordinance (Cap. 124), or resumption by the Government under an order made under section 3 of that Ordinance, of the lot (wholly or partly and whether or not together with any other lot); and

(c) the applicant, alone or jointly with the associated body corporate—

(i) has—

(A) demolished or caused to be demolished any building existing on the lot, the lots or the new lot, other than a building or part of a building the demolition of which is prohibited under any Ordinance; and

(B) obtained approval of plans and details prescribed in regulation

	<p>8(1)(a), (b), (f), (g), (h), (j), (k) and (m) of the Building (Administration) Regulations (Cap. 123 sub. leg. A) in respect of building works to be carried out on the lot, the lots or the new lot from the Building Authority under the Buildings Ordinance (Cap. 123); or</p> <p>(ii) has obtained consent to commence any foundation works for the lot, the lots or the new lot from the Building Authority under the Buildings Ordinance (Cap. 123).”.</p>
12	By deleting the proposed section 29DD(2).
12	In the proposed section 29DD(4), in the Chinese text, by deleting “任何人是該地段所有不分割份數的法定擁有人之前，該人不屬” and substituting “某人是該地段所有不分割份數的法定擁有人之時，該人方”.
12	By deleting the proposed section 29DD(5).
New	<p>By adding—</p> <p><b>“15A. Section 47F amended (relief on transactions under qualified investment arrangement)</b></p> <p>Section 47F(1)—</p> <p><b>Repeal</b></p> <p>“1(1A), 1(1B),”</p> <p><b>Substitute</b></p> <p>“1(1AAB), 1(1A), 1(1B), 1(1C),”.”.</p>
17	In the proposed section 70(2), by deleting everything after “was published in” and substituting—

“the Gazette—

- (a) that time for stamping is to be replaced by a period of 30 days commencing immediately after that day; and
- (b) where before the Amendment Ordinance was published in the Gazette, the relevant instrument had been stamped with the special stamp duty with which it was chargeable in accordance with this Ordinance, section 9 applies only in relation to the additional special stamp duty if it is not paid within the period specified in paragraph (a).”.

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By deleting subclause (2) and substituting—

“(2) First Schedule—

**Repeal**

“& 47G”

**Substitute**

“, 47G, 63A & 70”.”. ”.