

**Bills Committee on Stamp Duty (Amendment) Bill 2012**

**List of follow-up actions arising from the discussion  
at the meeting on 28 October 2013**

The Administration was requested to provide written response on the following issues:

Follow-up to the Administration's response to issues raised at the meeting on 15 October 2013 (LC Paper No. CB(1)133/13-14(02))

- (a) in respect of the administrative measures to guard against potential abuse of the exemption from the Buyer's Stamp Duty (BSD) for Hong Kong permanent residents (HKPRs) in the case of a non-HKPR acquiring a residential property as the guardian or trustee of a HKPR minor or mentally incapacitated person, or on behalf of an aged, blind or infirm –
  - (i) advise how the Administration would ascertain the exact nature and details of the trust and whether the trust or guardianship is bona fide;
  - (ii) consider members' suggestion of providing that only certain types of trust (e.g. irrevocable trust) would be accepted to avoid potential abuse of the exemption;
  - (iii) advise whether a company, a de facto guardian (e.g. siblings, grandparents or other relatives), a court order or guardianship order issued by other jurisdictions would be acceptable for the purpose of BSD exemption under the Bill; and
  - (iv) seek legal advice from the Department of Justice and explain how, with respect to trust and guardianship arrangements, the administrative measures proposed by the Administration are compatible with the provisions of the Bill and would not be ultra vires under the principles of administrative law.

"Acting on his or her own behalf"

- (b) to address the practical difficulties in ascertaining whether a HKPR was acting on his or her own behalf in the case of an acquisition of a residential property involving provision of funds by persons other than the

purchaser who took the legal title of the property in his name, which might create resulting or constructive trusts.

Acquisition of a residential property jointly by HKPR and non-HKPR as tenants in common

- (c) to explain the reasons and justifications for charging the BSD on the whole value of the consideration, instead of on the proportion of the share of the non-HKPR, if a residential property was acquired jointly by a HKPR and a non-HKPR as tenants in common.

Exempting certain acquisitions of a replacement property by non-HKPRs from the BSD (Proposed section 29CB(4))

- (d) to clarify the restrictions, if any, on the size and value of the replacement property or timeframe for the replacement purchase by a non-HKPR property owner who was made to sell a residential property under the specified legislation;
- (e) to address members' concern about the appropriateness of the use of the terms "replace", "replacement property";
- (f) in the case of acquisitions by the Urban Renewal Authority (URA), to consider members' suggestion of allowing the affected non-HKPR property owner to acquire a replacement property before the acquisition by the URA was completed (e.g. after the commencement of the URA project was gazetted);
- (g) to address members' concerns that additional demand for residential properties would be created when a residential property to be replaced was jointly owned by two or more persons, each of them might make one replacement purchase which would be exempted from the BSD; and
- (h) to advise whether the BSD exemption for a replacement property would be granted in the case of a resumption of the underground strata of a residential property.