

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendments to be moved by Hon Starry LEE Wai-king, JP

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 5 | <p>In the proposed section 29A(1), by adding—</p> <p>“HKPR company (香港永久性居民的公司) means a company limited by shares, being a private company within the meaning of the Companies Ordinance (Cap 32) and—</p> <ul style="list-style-type: none">(a) the issued share capital of the company comprises solely of ordinary shares;(b) the member or each of the members of the company is a Hong Kong permanent resident and holds one or more shares in the company on his or her own behalf as legal and beneficial owner;(c) the director or each of the directors of the company is a Hong Kong permanent resident.”. |
| 9 | <p>In the proposed section 29CB, by adding after subsection (2)—</p> <p>“(2A) (A) A chargeable agreement for sale is not chargeable with buyer’s stamp duty under head 1(1C) in the First Schedule if it is shown to the satisfaction of the Collector that the purchaser, or each of the purchasers, under the chargeable agreement for sale is a HKPR company acting on its own behalf, that the member or each of the members of the HKPR company is a Hong Kong permanent resident acting on his or her own behalf, and that the director or each of the directors of the HKPR company is a Hong Kong permanent resident, and—</p> <ul style="list-style-type: none">(1) For the purpose of this subsection, the Collector may require the member or each of the members of the HKPR company to provide a statutory declaration under the Oaths and Declarations Ordinance (Cap. 11) declaring that—<ul style="list-style-type: none">(a) the purchaser is a Hong Kong permanent resident company acting on its own behalf; |

- (b) the member is a Hong Kong permanent resident and that he or she holds one or more shares in the HKPR company on his or her own behalf as legal and beneficial owner;
- (c) the member is not acting on behalf of any person who is not a Hong Kong permanent resident pursuant to a trust, power of attorney or other authorisation;
- (d) the member undertakes that he or she will not assign transfer or part with possession of the legal and beneficial ownership of his or her share or shares in the HKPR company, or enter into any agreement so to do, or grant any option over his or her share or shares in the HKPR company unless—
 - (i) where the transferee or intended transferee of the share or shares, or grantee of the share option, is a Hong Kong permanent resident, the member shall cause the transferee or intended transferee or grantee (as the case may be) to make a statutory declaration on or before the date of the share transfer or agreement for share transfer or granting of share option (as the case may be), which statutory declaration shall contain the contents provided under subsection (2A)(A)(1), and deliver the same to the Collector within 14 days of the share transfer or agreement for share transfer or granting of share option (as the case may be);
 - (ii) where the transferee or intended transferee of the share or shares, or grantee of the share option, is not a Hong Kong permanent resident, the member and the HKPR company shall notify the Collector of that fact and pay to the Collector within 14 days after the date of the share transfer or agreement for share transfer or granting of share option (as the case may be), by way of stamp duty an amount equal to the

buyer's stamp duty under head 1(1C) in the First Schedule which would be chargeable on the chargeable agreement for sale as if the same had been executed on the date of the share transfer or agreement for share transfer or granting of share option (as the case may be) without the relief granted under this subsection.

- (e) the member undertakes that he or she will not cause allow or permit any person who is not a Hong Kong permanent resident to be appointed as director of the HKPR company and will ensure that any new director appointed to the HKPR company shall provide the Collector with a statutory declaration containing the contents provided under subsection (2A)(A)(2) within 14 days of his appointment; and
- (f) the member undertakes that he or she will not cause allow or permit any existing or new share or shares in the HKPR company to be issued or allotted to, or any option to acquire any such share or shares in the HKPR company to be granted to, any person or persons unless:
 - (i) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is a Hong Kong permanent resident, that person shall on or before the date of the issuance or allotment or granting of share option (as the case may be), make a statutory declaration, which statutory declaration shall contain the contents provided under subsection (2A)(A)(1), and deliver the same to the Collector within 14 days of the issuance or allotment or granting of share option (as the case may be);
 - (ii) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is not a Hong Kong permanent resident, the HKPR company shall notify the Collector of

that fact and pay to the Collector within 14 days after the date of the issuance or allotment or granting of share option (as the case may be), by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1C) in the First Schedule which would be chargeable on the chargeable agreement for sale as if the same had been executed on the date of the issuance or allotment or granting of share option (as the case may be) without the relief granted under this subsection.

- (2) The Collector may require the director or each of the directors of the HKPR company to provide a statutory declaration under the Oaths and Declarations Ordinance (Cap 11) declaring that—
- (a) the purchaser is a Hong Kong permanent resident company acting on its own behalf;
 - (b) the director is a Hong Kong permanent resident;
 - (c) the director is not acting as such director on behalf of any person who is not a Hong Kong permanent resident pursuant to a power of attorney or other authorisation; and
 - (d) the director undertakes that he or she will not cause allow or permit any existing or new share or shares in the HKPR company to be issued or allotted to, or any option to acquire any such share or shares in the HKPR company to be granted to, any person or persons unless:
 - (i) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is a Hong Kong permanent resident, that person shall on or before the date of

the issuance or allotment or granting of share option (as the case may be), make a statutory declaration, which statutory declaration shall contain the contents provided under subsection (2A)(A)(1), and deliver the same to the Collector within 14 days of the issuance or allotment or granting of share option (as the case may be);

- (ii) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is not a Hong Kong permanent resident, the HKPR company shall notify the Collector of that fact and pay to the Collector within 14 days after the date of the issuance or allotment or granting of share option (as the case may be), by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1C) in the First Schedule which would be chargeable on the chargeable agreement for sale as if the same had been executed on the date of the issuance or allotment or granting of share option (as the case may be) without the relief granted under this subsection.

- (3) Any member or director of the HKPR company who breaches any of the undertakings under subsection (2A)(A) shall incur a penalty at level 6 which shall be recoverable by the Collector as a civil debt due to the Government.

- (B) If any member or director of the HKPR company shall breach any of the undertakings under subsection (2A)(A), the HKPR company shall be liable to pay to the Collector within 30 days of such breach, by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1C) in the First

Schedule which would be chargeable on the chargeable agreement for sale as if the same had been executed on the date of such breach without the relief granted under this subsection.

- (C) If the amount referred to in subsection (2A)(B) is not paid within the 30 days—
 - (1) the HKPR company is liable to a penalty;
 - (2) the amount of the penalty payable after a lapse of a period of time after the 30 days is the same as that calculated under section 9 for an instrument chargeable with stamp duty of the amount referred to in subsection (2A)(B) that—
 - (i) is not stamped before or within the time for stamping it; and
 - (ii) is stamped after the lapse of the same period of time after the time for stamping it.
- (D) the Collector may remit the whole or any part of any penalty payable under subsection (2A)(C).”.

9

In the proposed section 29CB—

- (1) by adding after subsection (3)(a)(ii)—

“(iii) that the newcomer or each of the newcomers is a HKPR company which has fulfilled the requirements under subsection (2A)(A).”.
- (2) by adding after subsection (3)(b)(ii)—

“(iii) that the second agreement purchaser is a HKPR company which has fulfilled the requirements under subsection (2A)(A).”.
- (3) by adding after subsection (3)(c)((ii)—

“(iii) that each of the second agreement purchasers is a HKPR company which has fulfilled the requirements under subsection (2A)(A).”.

12

In the proposed section 29DB, by adding—

“(2A) (A) A conveyance on sale is not chargeable with buyer’s

stamp duty under head 1(1AAB) in the First Schedule if it is shown to the satisfaction of the Collector that the purchaser, or each of the purchasers, under the conveyance is a HKPR company acting on its own behalf, that the member or each of the members of the HKPR company is a Hong Kong permanent resident acting on his or her own behalf, and that the director or each of the directors of the HKPR company is a Hong Kong permanent resident, and—

- (1) For the purpose of this subsection, the Collector may require the member or each of the members of the HKPR company to provide a statutory declaration under the Oaths and Declarations Ordinance (Cap. 11) declaring that—
 - (a) the purchaser is a Hong Kong permanent resident company acting on its own behalf;
 - (b) the member is a Hong Kong permanent resident and that he or she holds one or more shares in the HKPR company on his or her own behalf as legal and beneficial owner;
 - (c) the member is not acting on behalf of any person who is not a Hong Kong permanent resident pursuant to a trust, power of attorney or other authorisation;
 - (d) the member undertakes that he or she will not assign transfer or part with possession of the legal and beneficial ownership of his or her share or shares in the HKPR company, or enter into any agreement so to do, or grant any option over his or her share or shares in the HKPR company unless—
 - (i) where the transferee or intended transferee of the share or shares, or grantee of the share option, is a Hong Kong permanent resident, the member shall cause the transferee or intended transferee or grantee (as the case may be) to make a statutory declaration on or before the date of the share transfer or agreement for share transfer or granting of share option (as the case

may be), which statutory declaration shall contain the contents provided under subsection (2A)(A)(1), and deliver the same to the Collector within 14 days of the share transfer or agreement for share transfer or granting of share option (as the case may be);

- (ii) where the transferee or intended transferee of the share or shares, or grantee of the share option, is not a Hong Kong permanent resident, the member and the HKPR company shall notify the Collector of that fact and pay to the Collector within 14 days after the date of the share transfer or agreement for share transfer or granting of share option (as the case may be), by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1AAB) in the First Schedule which would be chargeable on the conveyance as if the same had been executed on the date of the share transfer or agreement for share transfer or granting of share option (as the case may be) without the relief granted under this subsection.
- (e) the member undertakes that he or she will not cause allow or permit any person who is not a Hong Kong permanent resident to be appointed as director of the HKPR company and will ensure that any new director appointed to the HKPR company shall provide the Collector with a statutory declaration containing the contents provided under subsection (2A)(A)(2) within 14 days of his appointment; and
- (f) the member undertakes that he or she will not cause allow or permit any existing or new share or shares in the HKPR company to be issued or allotted to, or any option to acquire any such share or shares in the HKPR company to be granted to, any person or persons unless:

- (i) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is a Hong Kong permanent resident, that person shall on or before the date of the issuance or allotment or granting of share option (as the case may be), make a statutory declaration, which statutory declaration shall contain the contents provided under (2A)(A)(1), and deliver the same to the Collector within 14 days of the issuance or allotment or granting of share option (as the case may be);
 - (ii) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is not a Hong Kong permanent resident, the HKPR company shall notify the Collector of that fact and pay to the Collector within 14 days after the date of the issuance or allotment or granting of share option (as the case may be), by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1AAB) in the First Schedule which would be chargeable on the conveyance as if the same had been executed on the date of the issuance or allotment or granting of share option (as the case may be) without the relief granted under this subsection.
- (2) The Collector may require the director or each of the directors of the HKPR company to provide a statutory declaration under the Oaths and Declarations Ordinance (Cap 11) declaring that—
 - (a) the purchaser is a Hong Kong permanent resident company acting on its own behalf;
 - (b) the director is a Hong Kong permanent resident;
 - (c) the director is not acting as such director on behalf of any person who is not a Hong Kong permanent

resident pursuant to a power of attorney or other authorisation; and

(d) the director undertakes that he or she will not cause allow or permit any existing or new share or shares in the HKPR company to be issued or allotted to, or any option to acquire any such share or shares in the HKPR company to be granted to, any person or persons unless:

(i) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is a Hong Kong permanent resident, that person shall on or before the date of the issuance or allotment or granting of share option (as the case may be), make a statutory declaration, which statutory declaration shall contain the contents provided under subsection (2A)(A)(1), and deliver the same to the Collector within 14 days of the issuance or allotment or granting of share option (as the case may be);

(ii) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is not a Hong Kong permanent resident, the HKPR company shall notify the Collector of that fact and pay to the Collector within 14 days after the date of the issuance or allotment or granting of share option (as the case may be), by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1AAB) in the First Schedule which would be chargeable on the conveyance as if the same had been executed on the date of the issuance or allotment or granting of share option (as the case may be) without the relief granted under this subsection.

(e) Any member or director of the HKPR company who breaches any of the undertakings under subsection (2A)(A) shall incur a penalty at level 6 which shall be recoverable by the Collector as a civil debt due to the Government.

(B) If any member or director of the HKPR company shall breach any of the undertakings under subsection (2A)(A), the HKPR company shall be liable to pay to the Collector within 30 days of such breach, by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1AAB) in the First Schedule

which would be chargeable on the conveyance as if the same had been executed on the date of such breach without the relief granted under this subsection.

- (C) If the amount referred to in subsection (2A)(B) is not paid within the 30 days—
 - (a) the HKPR company is liable to a penalty;
 - (b) the amount of the penalty payable after a lapse of a period of time after the 30 days is the same as that calculated under section 9 for an instrument chargeable with stamp duty of the amount referred to in subsection (2A)(B) that—
 - (i) is not stamped before or within the time for stamping it; and
 - (ii) is stamped after the lapse of the same period of time after the time for stamping it.
- (D) the Collector may remit the whole or any part of any penalty payable under subsection (2A)(C).”.

12

In the proposed section 29DB—

- (1) by adding after subsection 3(b)—
 - “(c) that the newcomer or each of the newcomers is a HKPR company which has fulfilled the requirements under subsection (2A)(A).”.
- (2) by adding after subsection 4(a)(ii)—
 - “(iii) that the transferee is a HKPR company which has fulfilled the requirements under subsection (2A)(A).”.
- (3) by adding after subsection 4(b)(ii)—
 - “(iii) that each of the transferees is a HKPR company which has fulfilled the requirements under subsection (2A)(A).”.

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Amendments to be moved by Hon Starry LEE Wai-king, JP

Clause

Amendment Proposed

17

In the proposed section 70, by adding after subsection (3)—

- “(4) Sections 29CA and 29DA and head 1(1AA) and 1(1B) in the First Schedule shall cease to have effect at midnight on 31 December 2014.
- (5) The Secretary for Transport and Housing may, subject to the approval of the Legislative Council, by notice published in the Gazette amend subsection (4) by substituting for the date specified in that subsection such date as may be specified in the notice.”.

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Clause

Amendment Proposed

17

In the proposed section 70, by adding after subsection (3)—

- “(4) Sections 29CB, 29CC, 29DB and 29DC and head 1(1AAB) and (1C) in the First Schedule shall cease to have effect at midnight on 31 December 2014.
- (5) The Secretary for Transport and Housing may, subject to the approval of the Legislative Council, by notice published in the Gazette amend subsection (4) by substituting for the date specified in that subsection such date as may be specified in the notice.”.

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Clause

Amendment Proposed

5

In the proposed section 29A(1), by adding—

“**HKPR company** (香港永久性居民的公司) means a company limited by shares, being a private company, within the meaning of the Companies Ordinance (Cap. 32) and—

- (a) the issued share capital of the company comprises solely of ordinary shares;
- (b) the number of members of the company is not more than 5 and, for this purpose, where 2 or more persons hold one or more shares in the company jointly, they shall be treated as a single member;
- (c) the member or each of the members of the company is a Hong Kong permanent resident and he or she as such member holds the one or more shares in the company on his or her own behalf as registered and beneficial owner; and
- (d) the number of directors of the company is not more than 3 and the director or each of the directors of the company is a Hong Kong permanent resident.”.

12

In the proposed section 29DD—

- (a) in the heading, by deleting “in case of redevelopment”;
- (b) by adding after subsection (1)—

“(2) Despite anything in this Ordinance, the Collector must, on an application made by an applicant who has paid buyer’s stamp duty in respect of an instrument, refund the buyer’s stamp duty if it is shown to the satisfaction of the Collector that—

- (a) the applicant was a HKPR company on the date of acquisition of the residential property concerned;
- (b) the residential property concerned has not been disposed of by the applicant during a

period of 3 years beginning on the date on which it was acquired (*the three year period*);

- (c) the applicant has continued to be and has not ceased to be a HKPR company throughout the three year period;
- (d) the residential property concerned has not been demolished, or replaced by another building or part of a building (*redeveloped*), during the three year period; and
- (e) the application for refund is made by the applicant not later than 5 years after the date of the applicable instrument.

(2A) On an application for refund of buyer's stamp duty under subsection (2), the Collector may require the applicant to produce—

- (a) a statutory declaration made by one or more members of the applicant—
 - (i) that he or she was a Hong Kong permanent resident and that he or she as such member held the one or more shares in the company on his or her own behalf as registered and beneficial owner during the three year period;
 - (ii) that the residential property concerned has not been demolished or redeveloped during the three year period;
 - (iii) that he or she had no intention to cause the residential property concerned to be demolished or redeveloped at the time when the residential property was acquired and throughout the three year period; and
 - (iv) in respect of any matters mentioned in subsection (2)(a) to (c) which are within his or her own knowledge.

(b) a statutory declaration made by every person who during the three year period was a director of the applicant that—

(i) he or she was a Hong Kong permanent resident when he or she was appointed as a director and has not ceased to be a Hong Kong permanent resident during the period when he or she was a director; and

(ii) either—

(A) he or she did not at any time during the three year period hold any share either as registered owner or as beneficial owner in the applicant; or

(B) if he or she has at any time during the three year period held any share in the applicant, he or she did so on his or her own behalf as registered and beneficial owner.

(2B) The Collector may waive one or more of the requirements stipulated in subsection (2A) having regard to all circumstances of the applicant or of its members or directors.”.

(c) by adding after subsection (4)—

“(5) For the purposes of subsection (2)(c) but subject to subsection (6), the applicant shall be deemed to have ceased to be a HKPR company if—

(a) there is any change in the person who is a member of the applicant;

(b) any member of the applicant transfers or enters into an agreement for the transfer of the beneficial interest of any share held by him or her; or

(c) any new share of the applicant is allotted or issued or any agreement is entered into for the allotment or issue of any new share of the applicant.

(6) Subsections (5)(a) and (b) does not apply to a change in the person (*the first person*) who is a member

of the applicant or a transfer or an agreement for the transfer of the beneficial interest of any share held by the first person, if the share concerned of the applicant—

- (a) is transferred to or vested in another person (*the second person*) by or pursuant to any decree or order of any court;
- (b) relates solely to the estate of the first person who is deceased;
- (c) is devised by or otherwise passed on the death of the first person under a will, the law of intestacy or right of survivorship to the second person; or
- (d) relates solely to the estate of the first person who has become bankrupt.”.

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Clause

Amendment Proposed

17

In the proposed section 70, by adding after subsection (3)—

- “(4) Section 29CA and 29DA and head 1(1AA) and 1(1B) in the First Schedule shall expire at midnight on 26 October 2015.
- (5) The Legislative Council may by resolution amend subsection (4) by substituting for the date specified in that subsection such date as may be specified in the resolution.”.

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Clause

Amendment Proposed

17

In the proposed section 70, by adding after subsection (3)—

- “(4) Section 29CB, 29CC, 29DB and 29DC and head 1(1AAB) and (1C) in the First Schedule shall expire at midnight on 26 October 2015.
- (5) The Legislative Council may by resolution amend subsection (4) by substituting for the date specified in that subsection such date as may be specified in the resolution.”.

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Clause

Amendment Proposed

5

In the proposed section 29A(1), by adding at the end of the definition of “Hong Kong Permanent resident (香港永久性居民)” —

“and under either (a) or (b) is domiciled in Hong Kong”.