

## LEGISLATIVE COUNCIL BRIEF

### Stamp Duty Ordinance (Chapter 117)

## STAMP DUTY (AMENDMENT) BILL 2013

### INTRODUCTION

A At the meeting of the Executive Council on 26 March 2013, the Council ADVISED and the Chief Executive ORDERED that the Stamp Duty (Amendment) Bill 2013 (the Bill), at **Annex A**, should be introduced into the Legislative Council (LegCo). The Bill is to implement the following new measures to further address the overheated property market –

- (a) to increase the ad valorem stamp duty (AVD) rates on transactions for residential and non-residential properties as follows -

Property consideration or market value (whichever is the higher)	Existing AVD rate	Proposed AVD rate
Up to \$2,000,000	\$100	1.50%
\$2,000,001 to \$3,000,000	1.50%	3.00%
\$3,000,001 to \$4,000,000	2.25%	4.50%
\$4,000,001 to \$6,000,000	3.00%	6.00%
\$6,000,001 to \$20,000,000	3.75%	7.50%
\$20,000,001 and above	4.25%	8.50%

Note: There is marginal relief among different value bands.

The proposed AVD rates will be applicable to all transactions except for those in respect of residential properties where -

- (i) the purchaser(s)/transferee(s) is/are Hong Kong Permanent Residents (HKPRs) who is/are not beneficial owner(s) of any

other residential property<sup>1</sup> in Hong Kong on the date of acquisition<sup>2</sup> (which means the date when the first chargeable agreement or conveyance is executed, if there is more than one such instrument); or

- (ii) one of the purchasers/transferees is a HKPR and all the other purchasers/transferees (be they HKPRs or not) are his/her close relatives (i.e. parent, spouse, child, brother or sister) and none of them is a beneficial owner of any other residential property in Hong Kong on the date of acquisition;
- (b) to advance the charging of AVD on non-residential property transactions from the conveyance on sale to the agreement for sale, to tally with the existing arrangement for residential properties; and
- (c) to empower the Financial Secretary (FS) to adjust the value bands and existing and proposed AVD rates by way of subsidiary legislation subject to negative vetting by the LegCo.

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<sup>1</sup> A purchaser/transferee who already holds a non-residential property will not be charged the adjusted AVD rates when buying a residential property, provided that he/she is not a beneficial owner of any other residential property in Hong Kong on the date of acquisition. According to section 29A(1) of the Stamp Duty Ordinance (Cap. 117) (the Ordinance), the following documents will be used in determining whether the permitted use of a property is residential or non-residential -

- (a) a Government lease or an agreement for a Government lease;
- (b) a deed of mutual covenant, within the meaning of section 2 of the Building Management Ordinance (Cap. 344);
- (c) an Occupation Permit (OP) issued under section 21 of the Buildings Ordinance (Cap. 123); or
- (d) any other instrument, such as new town planning legislation, which the Collector of Stamp Revenue is satisfied effectively restricts the permitted use of the property.

A property is regarded as a non-residential property if under any of the above-mentioned documents, the property may not be used wholly or partly for residential purpose.

<sup>2</sup> If it happens that a HKPR who is not the beneficial owner of any other residential property in Hong Kong executes several agreements to buy several residential properties on the same day, the agreement which is executed first at a point in time on that day will be charged at the old rates, whereas all the other agreements will be charged at the new rates. With respect to each agreement for sale executed by him/her, the HKPR would have to declare whether he/she is the beneficial owner of any other residential property at that particular point in time for the purpose of seeking exemption from the new rates for the first of those residential properties.

## JUSTIFICATIONS

2. In October 2012, the Government introduced enhanced Special Stamp Duty (SSD) and Buyer's Stamp Duty (BSD) to address the overheated residential property market. The two measures have effectively reduced short-term resale by speculators and the purchase of residential properties by buyers who are not HKPRs. The upward momentum in flat prices was temporarily arrested and transactions plunged sharply in November and December 2012.

3. However, on entering 2013, there were renewed signs of exuberance in the residential property market amidst a low interest rate and abundant liquidity environment. The residential property market is apparently moving further away from economic fundamentals, with heightened risk of a property market bubble<sup>3</sup>. Meanwhile, there were also signs of overheating in the non-residential property market, as evidenced by soaring prices throughout 2012 along with hectic trading activities in respect of retail, office and flatted factory space<sup>4</sup>.

4. Against such backdrop, we see the need to introduce further demand-side measures to dampen local demand for residential and non-residential properties, targeting all persons except HKPRs buying residential properties but who do not own any residential property in Hong Kong on the date of acquisition. Having consulted the Executive Council on 22 February 2013, the Government announced on the same day the new demand-side management measures as set out in paragraph 1(a) to (c) above.

5. By further managing the demand for residential properties and combating short-term resale activities in respect of non-residential properties, we hope that the proposed new measures will help narrow the supply-demand gap, and hence contribute to the stable development of our property market.

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<sup>3</sup> Overall flat prices resumed upward momentum with a 2% gain in January 2013. What is more worrying is that the renewed pick-up is more evident in the mass market (i.e. flats smaller than 70 square meters in saleable area), with price gain of 2% in January 2013, and a cumulative 124% gain over the recent trough in 2008. The luxury end, conceivably more affected by BSD and enhanced SSD, saw only a modest price gain of 0.7% in January. Trading volumes, in terms of the number of sale and purchase agreements received by the Land Registry, also bounced back quite notably to a monthly average of 5 900 cases in January and February 2013, as compared with the low level of 3 300 cases in December 2012.

<sup>4</sup> Prices of retail, office and flatted factory space surged by a cumulative 40%, 23% and 44% respectively in 2012. Compared with the recent trough in 2009, sale prices for these properties have soared by 148% - 202%. For 2012 as a whole, trading volumes for retail, office and flatted factory space rose by 23%, 9% and 30% respectively over 2011.

6. Given the price-sensitive nature of the property market, it is necessary to make it clear that the new measures are proposed to take immediate effect once announced subject to the passage of the Bill. This is to ensure that no one can take advantage of the new measures between the announcement and the enactment of the relevant Bill. Hence, we propose in the Bill that the measures be deemed to have taken effect on 23 February 2013, the day immediately following the announcement on 22 February 2013. Inland Revenue Department (IRD) will keep track of all the property transactions between 23 February 2013 and the gazettal date of the Amendment Ordinance, if enacted. Demand notes for the AVD underpaid will be issued after that gazettal date.

### **Key Features of the Bill**

7. The key features of the Bill are highlighted below.

#### ***(a) Raising the AVD rates***

8. In order to reduce immediate demand for both residential and non-residential properties, the Bill proposes to increase the cost of acquisition generally by doubling across the board the rates of the existing AVD applicable to both residential and non-residential properties<sup>5</sup>. The impact of the proposed increase in AVD rates on potential purchaser(s)/transferee(s) is illustrated as follows -

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<sup>5</sup> For properties valued below \$2 million, the Government reduced in 2007 the AVD of 0.75% to a fixed duty of \$100; if we merely double the flat stamp duty rate for these properties, we see a high risk that buyers could flock to these lower priced units, thus driving up prices in that segment. We see the need to set the proposed AVD rate for properties in this price range by reference to the previous 0.75% rate. Accordingly, the proposed AVD rate for these properties is 1.50%.

<b>Assumed property price</b>	<b>AVD payable at existing rates</b>	<b>AVD payable at proposed rates</b>	<b>Increase in monetary and percentage terms</b>
\$2,000,000	\$100	\$30,000	\$29,900 (299 times)
\$3,000,000	\$45,000	\$90,000	\$45,000 (100%)
\$4,000,000	\$90,000	\$180,000	\$90,000 (100%)
\$6,000,000	\$180,000	\$360,000	\$180,000 (100%)
\$20,000,000	\$750,000	\$1,500,000	\$750,000 (100%)
\$25,000,000	\$1,062,500	\$2,125,000	\$1,062,500 (100%)

B A one-page table summing up the various rates under the stamp duty regime is at **Annex B**.

***(b) Exceptions for HKPRs***

9. Having regard to the Government's prevailing policy of according priority to the housing needs of HKPRs, we are mindful that any new measures to address the overheated property market should not impose undue financial burden on HKPRs who aspire to be homeowners. Hence, for the purpose of the exception for HKPR purchasers/transferees as mentioned in paragraph 1(a) above, the Bill adopts the same definition of HKPR as that under the BSD regime in the Stamp Duty (Amendment) Bill 2012 (the 2012 Amendment Bill) currently under scrutiny in LegCo, which is -

- (a) a person who holds a valid permanent identity card (PIC) issued under the Registration of Persons Ordinance (Cap. 177); or
- (b) a person who is eligible to but exempted from applying for the issue of a PIC under regulation 25(e) of the Registration of Persons Regulation (Cap. 177A).

***(c) Minors and mentally incapacitated persons***

10. We propose that all the purchasers/transferees to be exempted from

the adjusted AVD rates must be acting on their own behalf in the acquisition of the residential properties, except for a HKPR who is a minor or a mentally incapacitated person who, due to the lack of capacity to enter into legally binding agreements, must in practice require another person to act on his/her own behalf. A purchaser or transferee who is acting as a trustee or guardian for a minor or a mentally incapacitated person in the transaction will be liable to AVD at the old rates, provided that the minor or the mentally incapacitated person for whom the trustee or guardian is acting on behalf is not the beneficial owner of any other residential property in Hong Kong. This proposed exemption is analogous to that provided under the BSD regime in the 2012 Amendment Bill.

***(d) Beneficial owner of a residential property***

11. When submitting relevant transaction documents to IRD for stamping, HKPR purchasers/transferees seeking exemption from the adjusted AVD rates will need to declare that they are HKPRs and that they are not beneficial owners of any other residential property in Hong Kong. For non-HKPR purchasers/transferees who are close relatives of a HKPR, in order to enjoy the proposed exemption set out in paragraph 1(a)(ii) above, they also have to declare that they are not beneficial owners of any other residential property in Hong Kong when they acquire a residential property jointly with the HKPR close relative. IRD will verify the declarations against the records held by the Immigration Department and the Land Registry.

12. In verifying whether a HKPR purchaser/transferee holds a residential property on the date of acquisition, IRD will check the records kept by the Land Registry. A HKPR who has signed a chargeable agreement for sale for the disposal of his/her old residential property before acquiring a new residential property would not be regarded as the beneficial owner of his/her old residential property and hence would only be charged the old AVD rates for the acquisition of the new residential property. However, should he/she fail to complete the disposal transaction (i.e. where the agreement for sale is cancelled, annulled or rescinded or is otherwise not performed), IRD would recoup the difference between the old and the adjusted AVD rates on the newly acquired property.

***(e) Liability for AVD underpaid***

13. In line with the existing provisions in the Ordinance, where AVD is underpaid for reason that the stated consideration is less than the market value, IRD will hold both the seller and buyer jointly and severally liable.

Nevertheless, where the AVD is found to have been underpaid on the basis of the statutory declarations made by the purchasers/transferees (in other words, the purchasers/transferees have subsequently been found to be non-HKPRs or found to be the beneficial owners of other residential properties in Hong Kong at the material time), we propose in the Bill that the liability to pay for the difference between the old and the adjusted AVD rates shall rest with the purchasers/transferees only.

***(f) Other exemptions for specified circumstances***

14. Having made reference to the existing SSD and the proposed BSD regimes, we propose to grant exemptions from the enhanced AVD rates under the following circumstances (in which case the old AVD rates would apply, where appropriate) -

- (a) acquisition or transfer of a residential property between close relatives<sup>6</sup>, irrespective of whether they are HKPRs and whether they are beneficial owners of any other residential property in Hong Kong on the date of acquisition or transfer (the old AVD rates would apply);
- (b) nomination<sup>7</sup> of a close relative(s) (be they HKPRs or not) who are beneficial owners of any other residential property in Hong Kong on the date of nomination, to take up the assignment of a residential property (the old AVD rates would apply). If the close relatives are not beneficial owners of any other residential property in Hong Kong on the date of nomination, the nomination will continue to be exempt from all AVD as under the present regime;
- (c) acquisition or transfer of a residential or non-residential property by a court order or pursuant to a court order, which includes a foreclosure order obtained by the mortgagee whether or not it falls under the definition of a financial institution within the meaning of

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<sup>6</sup> Under the existing Ordinance and the 2012 Amendment Bill, a close relative is -

- (a) a parent, spouse or child in the context of AVD; or
- (b) a parent, spouse, child, brother or sister in the context of SSD and BSD.

We now propose in the Bill to align the meaning of “closely related persons” to the lenient side (i.e. to cover parent, spouse, child, brother or sister) for all types of stamp duty on immovable properties.

<sup>7</sup> Under the existing Ordinance, nomination of a close relative to take up the assignment of a property will not attract any AVD liability. As an anti-avoidance measure, we will propose to amend the relevant provision to the effect that the current exemption would only be applicable to close relatives who are not beneficial owners of any other residential property in Hong Kong on the date of nomination.

section 2 of the Inland Revenue Ordinance (Cap. 112) (IRO) (the old AVD rates would apply);

- (d) transfer of a mortgaged residential or non-residential property to a mortgagee which is a financial institution within the meaning of section 2 of the IRO, or to a receiver appointed by such a mortgagee (the old AVD rates would apply);
- (e) transfer of a residential or non-residential property which relates solely to the estate of a deceased person (i.e. transfer by virtue of a will, the law of intestacy or right of survivorship) (exempted from all AVD);
- (f) acquisition or transfer of a residential or non-residential property by or to a body corporate from an associated body corporate (exempted from all AVD);
- (g) acquisition or transfer of a residential or non-residential property by or to the Government (exempted from all AVD);
- (h) acquisition of a residential or non-residential property (including bare sites) for the purpose of redevelopment (the old AVD rates would apply);
- (i) acquisition of a residential or non-residential property by a person to replace another property<sup>8</sup> which was owned by that person and that has been purchased or acquired pursuant to redevelopment projects pursued by the Urban Renewal Authority, or is resumed under the Lands Resumption Ordinance (Cap. 124) or is sold pursuant to an order for sale made by the Lands Tribunal under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) (the old AVD rates would apply); and
- (j) gift of a residential or non-residential property received by charitable institutions exempted from tax under section 88 of the IRO (exempted from all AVD).

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<sup>8</sup> Under the said circumstance, in order to enjoy the proposed exemption from the enhanced AVD rates, the person affected should dispose of his/her replaced property before he/she acquires a new property as replacement. Moreover, the type of the newly-acquired property should be identical with that of the replaced property, i.e. a residential property to replace a residential property.



***(g) Refund of stamp duty for the difference between the enhanced and existing AVD rates***

15. As set out in paragraph 12 above, HKPRs who have disposed of all their old residential properties before acquiring a new residential property (“先賣後買”) would be charged the old AVD rates. As for HKPR purchasers/transferees who acquire a new residential property before disposing of their original one (must be their only other residential property)(“先買後賣”), they have to pay stamp duty on the instrument for the newly acquired property at the enhanced AVD rates (applicable instrument) in the first instance. Yet, the Bill proposes to provide for a refund mechanism, whereby after the disposal of the old property is completed, IRD will refund, on application by the HKPR purchasers/transferees within two years from the date of the applicable instrument, the stamp duty for the difference between the enhanced and the old AVD rates on the newly acquired property, on the condition that the agreement to dispose of their old property was entered into within six months from the date of the applicable instrument.

16. In order not to hinder redevelopment, we also propose to provide in the Bill a refund mechanism to the effect that the stamp duty paid at the new AVD rates for acquisition of immovable properties forming a lot for the construction of new buildings will be partially refunded so that the old AVD rates will in effect be applicable, provided that the construction of a new building on the lot is completed within six years. As with the BSD regime under the 2012 Amendment Bill, the “six-year period” for the above proposed refund will start when the relevant developer has become the owner of the entire lot of the redevelopment concerned. The developer will be considered as having completed the construction on the issue of the OP in respect of the new building.

***(h) Exchange of residential properties for residential/non-residential properties***

17. The Ordinance provides that an agreement for exchange or an instrument effecting the exchange will only be stamped by reference to the “equality money” (i.e. the money paid for the difference in value of the properties) instead of the full value of each of the respective properties. The Bill proposes that the AVD for the “equality money” in relation to exchange of residential properties for residential/non-residential properties would be charged at the old rates, provided that on the date of the relevant instrument, either each party to the relevant instrument is a HKPR acting on his/her own

behalf and each of them is not a beneficial owner of any other residential property in Hong Kong, or the parties are closely related and acting on their own behalf.

***(i) Advancing the timing for charging AVD for non-residential property transactions***

18. Prior to 1992, stamp duty on both residential and non-residential property transactions was not payable until conveyance on sale. After the legislative amendment in 1992 which was meant to dampen speculation, the stamp duty payment for residential property transactions was shifted from the conveyance on sale to the agreement for sale and purchase with only a nominal duty of \$100 for conveyance on sale.

19. For non-residential property, the agreement for sale is not chargeable with any stamp duty, whereas the conveyance on sale is chargeable with the AVD. For consistency sake, we propose to advance the time for charging stamp duty in respect of non-residential property transactions from the conveyance on sale to the agreement for sale. This proposed measure, coupled with the proposed increase in AVD rates applicable to both residential and non-residential property transactions, could hopefully forestall the shifting of speculation or investment demand from the residential market to the non-residential market.

***(j) Power to adjust the value bands and rates of AVD***

20. In order that adjustments can be made in a timely manner as and when necessary having regard to the market situation, the Bill proposes to empower FS to adjust the value bands and rates of both the existing and proposed AVD by means of subsidiary legislation subject to LegCo's negative vetting.

## **OTHER OPTIONS**

21. The aforementioned proposals cannot be implemented without legislative amendments to the Ordinance. There are no other options.

## **THE BILL**

22. The main provisions of the Bill are as follows -

- (a) Clause 1 sets out the short title and provides that the new substantive provisions added by the Bill are deemed to have come into operation on 23 February 2013.
- (b) Clause 3 amends section 15 of the Ordinance to disallow an unstamped chargeable agreement for sale of non-residential property to be registered at the Land Registry.
- (c) Clause 6 revises the heading to Part IIIA of the Ordinance on the addition of new sections under that Part.
- (d) Clause 8(4) adds new definitions of “Hong Kong permanent resident”, “mentally incapacitated person”, “permanent identity card”, “transferee” and “transferor” to section 29A(1) of the Ordinance.
- (e) Clauses 8(5), 16(1) to (9) and 24(15) amend sections 29A(5) and 29D of, and Note 1 to head 1(1A) in the First Schedule to, the Ordinance respectively to extend the application of AVD under that head to agreements for sale of non-residential property. Consequently, sections 26 and 29E of the Ordinance, which relate to agreements for sale of equitable estate or interest in immovable property, are repealed by clauses 5 and 20.
- (f) Clause 9 adds new sections 29AB to 29AH to the Ordinance. Section 29AB stipulates the nominations or directions that are excluded from the existing definition of “agreement for sale” in section 29A(1) of the Ordinance. For interpreting the new provisions added to Part IIIA, sections 29AC and 29AD set out the meanings of beneficial owners of residential property and closely related persons respectively, while sections 29AE to 29AG provide for the determination of the date of acquisition or disposal of immovable property in different situations. Section 29AH deals with instruments involving minors or mentally incapacitated persons.
- (g) Clause 10 adds new sections 29AI to 29AQ to the Ordinance. Section 29AI makes conveyances on sale of immovable property generally chargeable with AVD at increased rates in head 1(1) in the First Schedule to the Ordinance under a new Scale 1 introduced by clause 24(5). Certain conveyances provided in new sections

29AJ to 29AQ remain chargeable with AVD at existing rates in head 1(1) in the First Schedule to the Ordinance, which are listed under the heading of Scale 2 added by clause 24(4). Those instruments include, among others -

- (i) a conveyance on sale of residential property acquired by a HKPR who is not a beneficial owner of any other residential property in Hong Kong on the date of acquisition (section 29AJ);
  - (ii) certain conveyances on sale of residential property between closely related persons (section 29AK); and
  - (iii) conveyances on sale relating to replacement of properties disposed of under certain Ordinances (section 29AL).
- (h) Clause 13 adds new sections 29BA to 29BI to the Ordinance. Section 29BA makes agreements for sale of immovable property generally chargeable with AVD at increased rates in head 1(1A) in the First Schedule to the Ordinance under a new Scale 1 introduced by clause 24(13). Certain agreements provided in new sections 29BB to 29BI remain chargeable with AVD at existing rates in head 1(1A) in the First Schedule to the Ordinance, which are listed under the heading of Scale 2 added by clause 24(12). Those instruments include, among others -
  - (i) an agreement for sale of residential property acquired by a HKPR who is not a beneficial owner of any other residential property on the date of acquisition (section 29BB);
  - (ii) certain agreements for sale of residential property between closely related persons (section 29BC); and
  - (iii) agreements for sale relating to replacement of properties disposed of under certain Ordinances (section 29BD).
- (i) Clause 18 adds further new provisions to Part IIIA of the Ordinance, namely -
  - (i) section 29DE, which provides for partial refund of AVD on the completion of redevelopment projects;

- (ii) section 29DF, which provides for partial refund of AVD on the disposal of a previously owned residential property within a specified period after the acquisition of another residential property in certain circumstances;
  - (iii) section 29DG, which makes further AVD payable on failure to complete the disposal of a previously owned residential property after the acquisition of another residential property in certain circumstances; and
  - (iv) section 29DH, which makes a transferee or purchaser under an instrument liable for underpayment of AVD in certain circumstances.
- (j) Clause 22 adds a new section 63B to the Ordinance to enable FS to amend the value bands and rates of AVD under head 1(1) and (1A) in the First Schedule to the Ordinance by notice published in the Gazette.
- (k) Clause 23 adds a new section 71 to the Ordinance to provide for transitional matters, including those necessitated by the retrospective operation of the relevant new provisions added by the Bill.

## **LEGISLATIVE TIMETABLE**

23. The legislative timetable will be as follows -

Publication in the Gazette	5 April 2013
First Reading and commencement of Second Reading debate	17 April 2013
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

## **IMPLICATIONS OF THE PROPOSAL**

24. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the current

C binding effect of the Ordinance. The economic, financial and civil service, and sustainability implications of the proposal are at **Annex C**. The proposal has no productivity, environmental and family implications.

## **PUBLIC CONSULTATION**

25. Following the announcement of the new measures, we conducted meetings/briefing sessions for relevant stakeholders such as the Law Society of Hong Kong, the Real Estate Developers Association of Hong Kong and the Estate Agents Authority. We also briefed the LegCo Panel on Housing and Panel on Financial Affairs at a joint meeting on 26 March 2013. In general, the community at large supports the objectives of the new demand-side management measures to further address the overheated property market.

## **PUBLICITY**

26. We will issue a press release on the Bill on 5 April 2013.

## **ENQUIRIES**

27. Enquiries on this Brief can be addressed to Ms Shirley Kwan, Principal Assistant Secretary for Financial Services and the Treasury (Treasury) (Revenue) at 2810 2370.

**Financial Services and the Treasury Bureau**  
**April 2013**

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# A BILL

## To

Amend the Stamp Duty Ordinance to increase the stamp duty on certain instruments dealing with immovable property; to make agreements for sale of non-residential property chargeable with stamp duty; to revise the provisions concerning the effect of instruments not duly stamped; to empower the Financial Secretary to amend certain matters specified in the First Schedule to the Ordinance; and to provide for related matters.

Enacted by the Legislative Council.

**Part 1****Preliminary****1. Short title and commencement**

- (1) This Ordinance may be cited as the Stamp Duty (Amendment) Ordinance 2013.
- (2) Except as provided in subsection (3), this Ordinance is deemed to have come into operation on 23 February 2013.
- (3) Sections 3, 22, 25 and 26 come into operation on the day on which this Ordinance is published in the Gazette.

**Part 2****Amendments to Stamp Duty Ordinance****2. Stamp Duty Ordinance amended**

The Stamp Duty Ordinance (Cap. 117) is amended as set out in this Part.

**3. Section 15 amended (non-admissibility, etc. of instruments not duly stamped)**

Section 15(3)(a)—

**Repeal**

“, or is an agreement for sale that either contains a statement to the effect that it relates to non-residential property within the meaning of section 29A(1)”.

**4. Section 25 amended (stamp duty chargeable in case of certain conveyances)**

Section 25(7)—

**Repeal**

“section 27”

**Substitute**

“sections 27, 29AN and 29AO”.

**5. Section 26 repealed (stamp duty chargeable on contracts, etc. for sale of equitable estate or interest in immovable property)**

Section 26—

**Repeal the section.**

**6. Part IIIA heading amended (agreements to sell immovable property)**

Part IIIA, heading—

**Repeal**

“AGREEMENTS TO SELL IMMOVABLE PROPERTY”

**Substitute**

“Certain Instruments Dealing with Immovable Property”.

**7. Part IIIA, Division 1 heading added**

Before section 29A—

**Add**

**“Division 1—Preliminary”.**

**8. Section 29A amended (interpretation and application of Part IIIA)**

- (1) Section 29A(1), definition of *agreement for sale*, paragraph (h), before “an instrument in which”—

**Add**

“except as provided in section 29AB,”.

- (2) Section 29A(1), definition of *agreement for sale*, paragraph (h)—

**Repeal**

everything after “third party”

**Substitute a semicolon.**

- (3) Section 29A(1), Chinese text, definition of 購買人, paragraph (c)—

**Repeal the full stop**

**Substitute a semicolon.**

## (4) Section 29A(1)—

**Add in alphabetical order**

*“Hong Kong permanent resident* (香港永久性居民) means a person—

- (a) who holds a valid permanent identity card; or
- (b) who does not hold a valid permanent identity card but—
  - (i) is, under regulation 25(e) of the Registration of Persons Regulations (Cap. 177 sub. leg. A), not required to register or apply for the issue of an identity card or for the renewal of an identity card under the Registration of Persons Ordinance (Cap. 177) and those Regulations; and
  - (ii) is entitled to be issued with a permanent identity card if he or she makes an application to the registration officer as defined by section 1A(1) of that Ordinance for that purpose;

*mentally incapacitated person* (精神上無行為能力的人) means a person who is mentally disordered or mentally handicapped within the meaning of the Mental Health Ordinance (Cap. 136);

*permanent identity card* (永久性居民身分證) has the meaning given by section 1A(1) of the Registration of Persons Ordinance (Cap. 177);

*transferee* (承讓人), in relation to a conveyance on sale, means the person to whom the property concerned is transferred, or in whom the property is vested, under the conveyance;

*transferor* (轉讓人), in relation to a conveyance on sale, means the person from whom the property concerned is transferred or divested under the conveyance;”.

## (5) Section 29A(5)—

**Repeal**

“1(1A) and (1B)”

**Substitute**

“1(1B)”.

## (6) After section 29A(7)—

**Add**

“(8) In this Part and section 71—

- (a) a conveyance on sale is executed in conformity with an agreement for sale only if it is executed as provided in section 29D(6)(c); and
- (b) a conveyance on sale is executed in pursuance of an agreement for sale only if it is executed as provided in section 29D(6)(d).”.

**9. Sections 29AB to 29AH added**

After section 29A—

**Add****“29AB. Nominations or directions that are not agreements for sale**

- (1) A nomination or direction is excluded from paragraph (h) of the definition of *agreement for sale* in section 29A(1) if—
  - (a) it is made or given in favour of a person who is to be a trustee for the purchaser mentioned in paragraph (h) of that definition in respect of the property concerned;

- (b) in so far as it relates to head 1(1A) in the First Schedule—
  - (i) the property is residential property; and
  - (ii) it is shown to the satisfaction of the Collector that subsection (2) applies to the nomination or direction; or
- (c) in so far as it relates to head 1(1B) in the First Schedule—
  - (i) the property is residential property; and
  - (ii) subsection (3) applies to the nomination or direction.
- (2) This subsection applies to the nomination or direction if—
  - (a) it is made or given in favour of one, or more than one, person (whether or not also in favour of the purchaser); and
  - (b) on the date of the nomination or direction—
    - (i) that person, or each of those persons, is closely related to the purchaser, or to each of the purchasers;
    - (ii) where there is more than one person, those persons are also closely related;
    - (iii) that person, or each of those persons, is acting on his or her own behalf; and
    - (iv) that person, or each of those persons, is not a beneficial owner of any other residential property in Hong Kong.
- (3) This subsection applies to the nomination or direction if—

- (a) it is made or given in favour of one, or more than one, person (whether or not also in favour of the purchaser);
- (b) that person, or each of those persons, is closely related to the purchaser, or to each of the purchasers; and
- (c) where there is more than one person, those persons are also closely related.

#### **29AC. Meaning of beneficial owner of residential property**

- (1) For the purposes of this Part and head 1 in the First Schedule—  
*beneficial owner* (實益擁有人), in relation to a residential property—
  - (a) includes a purchaser under an agreement for sale of the property that is subsisting; and
  - (b) excludes a vendor under an agreement for sale of the property that is subsisting.
- (2) For subsection (1), an agreement for sale of a residential property is subsisting if—
  - (a) the agreement provides for the conveyance of the property but the conveyance is not yet executed; and
  - (b) the agreement is not one that is—
    - (i) cancelled, annulled or rescinded; or
    - (ii) otherwise not performed.
- (3) For the purposes of this Part and head 1 in the First Schedule, a reference to a beneficial owner of a residential property includes a beneficial owner of part of the property.

**29AD. Meaning of closely related persons**

For the purposes of this Part and head 1 in the First Schedule—

- (a) 2 persons are closely related if one of them is the parent, spouse, child, brother or sister of the other; and
- (b) 3 or more persons are closely related if each of them is a parent, spouse, child, brother or sister of each of the others.

**29AE. Dates of acquisition and disposal of immovable property: general provisions**

- (1) For determining the stamp duty payable on an instrument under this Part (except sections 29CA and 29DA) and head 1 (except sub-heads (1AA) and (1B)) in the First Schedule—
  - (a) the date a person acquires or disposes of immovable property is determined according to this section and sections 29AF and 29AG;
  - (b) if a person acquires 2 or more immovable properties on the same date, a reference to the date of acquisition by the person of one of those properties is a reference to the particular time at which that property is acquired by the person on that date;
  - (c) if a person disposes of 2 or more immovable properties on the same date, a reference to the date of disposal by the person of one of those properties is a reference to the particular time at which that property is disposed of by the person on that date;
  - (d) if a person acquires an immovable property (*subject property*) and disposes of another

immovable property (*original property*) on the same date—

- (i) a reference to the date of acquisition by the person of the subject property is a reference to the particular time at which that property is acquired by the person on that date; and
- (ii) a reference to the date of disposal by the person of the original property is a reference to the particular time at which that property is disposed of by the person on that date; and
- (e) a reference to the date of an instrument—
  - (i) is a reference to the date the instrument is executed; and
  - (ii) for paragraphs (b), (c) and (d), is a reference to the particular time at which the instrument is executed on that date.
- (2) The date of acquisition by a person of immovable property is as follows—
  - (a) subject to sections 29AF and 29AG—
    - (i) if there is an agreement for sale that provides for the conveyance of the property to the person—the date of the agreement;
    - (ii) if more than one such agreement is made between the same parties and on the same terms in respect of the property—the date of the first of those agreements; or
    - (iii) if the agreement consists of 2 or more instruments—the date of the first of those instruments; or
  - (b) in any other case—

- (i) the date of the conveyance under which the property is transferred to or vested in the person; or
  - (ii) if the conveyance consists of 2 or more instruments—the date of the first of those instruments.
- (3) The date of disposal by a person of immovable property is as follows—
  - (a) subject to sections 29AF and 29AG—
    - (i) if there is an agreement for sale that provides for the conveyance of the property from the person—the date of the agreement;
    - (ii) if more than one such agreement is made between the same parties and on the same terms in respect of the property—the date of the first of those agreements; or
    - (iii) if the agreement consists of 2 or more instruments—the date of the first of those instruments; or
  - (b) in any other case—
    - (i) the date of the conveyance under which the property is transferred or divested from the person; or
    - (ii) if the conveyance consists of 2 or more instruments—the date of the first of those instruments.

**29AF. Dates of acquisition and disposal of immovable property: conveyance on sale executed in pursuance of agreement for sale**

- (1) Subsections (2) and (3) apply if a conveyance on sale of immovable property—
  - (a) is executed in pursuance of an agreement for sale; and
  - (b) is in favour of—
    - (i) a purchaser under the agreement (*original purchaser*); and
    - (ii) another person who is not an original purchaser (*additional transferee*).
- (2) The date of acquisition by the original purchaser of the property is as follows—
  - (a) the date of the agreement for sale mentioned in subsection (1); or
  - (b) if the agreement consists of 2 or more instruments—the date of the first of those instruments.
- (3) The date of disposal by the original purchaser of the proportion of the property to be transferred to or vested in the additional transferee is as follows—
  - (a) the date of the conveyance on sale mentioned in subsection (1); or
  - (b) if the conveyance consists of 2 or more instruments—the date of the first of those instruments.
- (4) The date of acquisition by the additional transferee of that transferee's proportion of the property is as follows—

- (a) the date of the conveyance on sale mentioned in subsection (1); or
  - (b) if the conveyance consists of 2 or more instruments—the date of the first of those instruments.
- (5) Subsections (6), (7) and (8) apply if a conveyance on sale of immovable property—
- (a) is executed in pursuance of an agreement for sale; and
  - (b) is in favour of one or some (but not all) of the purchasers under the agreement (*original purchasers*).
- (6) For subsections (7) and (8), a person is a withdrawn purchaser if—
- (a) the person is one of the original purchasers; and
  - (b) the conveyance concerned is not executed in favour of the person.
- (7) The date of acquisition by a withdrawn purchaser of that purchaser's proportion of the property is as follows—
- (a) the date of the agreement for sale mentioned in subsection (5); or
  - (b) if the agreement consists of 2 or more instruments—the date of the first of those instruments.
- (8) The date of disposal by a withdrawn purchaser of that purchaser's proportion of the property is as follows—
- (a) the date of the conveyance on sale mentioned in subsection (5); or

- (b) if the conveyance consists of 2 or more instruments—the date of the first of those instruments.

**29AG. Dates of acquisition and disposal of immovable property: more than one agreement for sale involving same immovable property**

- (1) Subsections (2) and (3) apply if—
- (a) an agreement for sale (*original agreement*) is made in respect of immovable property;
  - (b) another agreement for sale (*second agreement*) is made in respect of the whole or part of the property (whether by the vendor or purchaser or both under the original agreement) before a conveyance on sale of the property or that part of the property is executed in pursuance of the original agreement; and
  - (c) under the second agreement, the purchasers are—
    - (i) a purchaser under the original agreement (*original purchaser*); and
    - (ii) another person who is not an original purchaser (*additional purchaser*).
- (2) The date of acquisition by the original purchaser of the property, or that part of the property, is as follows—
- (a) the date of the original agreement; or
  - (b) if that agreement consists of 2 or more instruments—the date of the first of those instruments.
- (3) The date of disposal by the original purchaser of the proportion of the property to be transferred to or vested in the additional purchaser is as follows—



- (a) the date of the second agreement; or
- (b) if that agreement consists of 2 or more instruments—the date of the first of those instruments.
- (4) The date of acquisition by the additional purchaser of that purchaser's proportion of the property is as follows—
  - (a) the date of the second agreement; or
  - (b) if that agreement consists of 2 or more instruments—the date of the first of those instruments.
- (5) Subsections (6), (7) and (8) apply if—
  - (a) an agreement for sale (*original agreement*) is made in respect of immovable property;
  - (b) another agreement for sale (*second agreement*) is made in respect of the whole or part of the property (whether by the vendor or purchaser or both under the original agreement) before a conveyance on sale of the property or that part of the property is executed in pursuance of the original agreement; and
  - (c) one or some (but not all) of the purchasers under the original agreement (*original purchasers*) is or are the purchaser or purchasers under the second agreement.
- (6) For subsections (7) and (8), a person is a withdrawn purchaser if the person—
  - (a) is one of the original purchasers; but
  - (b) is not a purchaser under the second agreement.

- (7) The date of acquisition by a withdrawn purchaser of that purchaser's proportion of the property is as follows—
  - (a) the date of the original agreement; or
  - (b) if that agreement consists of 2 or more instruments—the date of the first of those instruments.
- (8) The date of disposal by a withdrawn purchaser of that purchaser's proportion of the property is as follows—
  - (a) the date of the second agreement; or
  - (b) if that agreement consists of 2 or more instruments—the date of the first of those instruments.

**29AH. Instruments involving minors or mentally incapacitated persons**

For determining the stamp duty payable on an instrument under this Part (except sections 29CA and 29DA) and head 1 (except sub-heads (IAA) and (IB)) in the First Schedule, if it is shown to the satisfaction of the Collector that—

- (a) a party to the instrument is acting in the transaction as a trustee or guardian for another person; and
- (b) the other person is a Hong Kong permanent resident who is a minor or mentally incapacitated person,

the Collector must treat the other person as a party to the instrument in place of the trustee or guardian.”.

**10. Part IIIA, Division 2 added**

After section 29AH—

**Add**

**“Division 2—Conveyances on Sale: General Provisions**

**29AI. Conveyances on sale generally chargeable with ad valorem stamp duty at Scale 1 rates**

Except as provided in sections 29AJ to 29AQ, a conveyance on sale is chargeable with stamp duty under Scale 1 of head 1(1) in the First Schedule.

**29AJ. Certain conveyances on sale of residential property to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) A conveyance on sale is chargeable with stamp duty under Scale 2 of head 1(1) in the First Schedule if—
  - (a) the property concerned is residential property; and
  - (b) it is shown to the satisfaction of the Collector that subsection (2) or (3) applies to the conveyance.
- (2) This subsection applies to the conveyance if, on the date of acquisition of the property—
  - (a) the transferee, or each of the transferees, under the conveyance is a Hong Kong permanent resident acting on his or her own behalf; and
  - (b) that transferee, or each of those transferees, is not a beneficial owner of any other residential property in Hong Kong.
- (3) This subsection applies to the conveyance if, on the date of acquisition of the property—
  - (a) the transferees under the conveyance consist of—
    - (i) one, or more than one, person who is a Hong Kong permanent resident; and

- (ii) one, or more than one, person who is not a Hong Kong permanent resident;
- (b) those transferees are closely related;
- (c) each of them is acting on his or her own behalf; and
- (d) each of them is not a beneficial owner of any other residential property in Hong Kong.

**29AK. Certain conveyances on sale of residential property between closely related persons chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) A conveyance on sale is chargeable with stamp duty under Scale 2 of head 1(1) in the First Schedule if—
  - (a) the property concerned is residential property; and
  - (b) it is shown to the satisfaction of the Collector that subsection (2) applies to the conveyance.
- (2) This subsection applies to the conveyance if, on the date of acquisition of the property—
  - (a) the transferee, or each of the transferees, under the conveyance is closely related to the transferor, or to each of the transferors, under the conveyance;
  - (b) where there is more than one transferee under the conveyance, the transferees are also closely related; and
  - (c) that transferee, or each of those transferees, is acting on his or her own behalf.
- (3) For the purpose of subsection (2)(a), if a transferor is acting in the transaction as a trustee for another person, that other person is treated as the transferor in place of the trustee.

**29AL. Conveyances on sale of property for replacing other property disposed of under certain Ordinances chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) A conveyance on sale is chargeable with stamp duty under Scale 2 of head 1(1) in the First Schedule if it is shown to the satisfaction of the Collector that—
  - (a) the transferee under the conveyance is acting on the transferee's own behalf;
  - (b) the property concerned (*replacement property*) is acquired by the transferee to replace another property (*original property*);
  - (c) the original property—
    - (i) was owned by the transferee alone or jointly with any other person or persons; and
    - (ii) falls within subsection (2); and
  - (d) subsection (3) applies to the replacement property.
- (2) The original property falls within this subsection if it has been—
  - (a) purchased or otherwise acquired by the Urban Renewal Authority for the purposes of any of its projects as defined by section 2 of the Urban Renewal Authority Ordinance (Cap. 563);
  - (b) resumed under the Lands Resumption Ordinance (Cap. 124) or purchased by agreement under section 4A of that Ordinance; or
  - (c) sold pursuant to an order for sale made by the Lands Tribunal under section 4(1)(b)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545).
- (3) This subsection applies to the replacement property if—

- (a) the date of disposal of the original property under subsection (2) is earlier than the date of acquisition by the transferee of the replacement property; and
  - (b) the original property and the replacement property are both residential properties, or both non-residential properties.
- (4) Subsection (1) does not apply to a conveyance on sale under which a replacement property is acquired by a transferee to replace an original property if—
  - (a) the transferee has acquired another replacement property to replace the original property under another instrument; and
  - (b) stamp duty has been charged on that other instrument according to Scale 2 of head 1(1), or Scale 2 of head 1(1A), in the First Schedule because of the operation of subsection (1) or section 29BD(1).
- (5) If an original property was owned by more than one person, subsection (1) applies to each owner in relation to 1 replacement property acquired by the owner, regardless of whether or not the replacement property is acquired—
  - (a) by the owner alone; or
  - (b) by the owner jointly with—
    - (i) another owner of the original property; or
    - (ii) any other person.

**29AM. Other conveyances on sale chargeable with ad valorem stamp duty at Scale 2 rates**

A conveyance on sale is chargeable with stamp duty under Scale 2 of head 1(1) in the First Schedule if it is shown to the satisfaction of the Collector that—

- (a) the conveyance is made pursuant to a decree or order of any court;
- (b) the conveyance is a decree or order of any court by which the property concerned is transferred to or vested in the transferee; or
- (c) under the conveyance, a mortgaged property is transferred to, or vested in, a mortgagee that is a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap. 112), or a receiver appointed by such a mortgagee.

**29AN. Certain instruments effecting exchange between residential property and non-residential property chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) An instrument falls within this subsection if—
  - (a) the instrument effects the exchange of a residential property for a non-residential property; and
  - (b) consideration is paid or given for equality.
- (2) An instrument that falls within subsection (1) is chargeable with stamp duty as a conveyance on sale under Scale 2 of head 1(1) in the First Schedule by reference to the consideration mentioned in subsection (1) if it is shown to the satisfaction of the Collector that subsection (3) or (4) applies to the instrument.
- (3) This subsection applies to the instrument if, on the date of the instrument—

- (a) the transferee, or each of the transferees, under the instrument is a Hong Kong permanent resident acting on his or her own behalf; and
- (b) that transferee, or each of those transferees, is not a beneficial owner of any other residential property in Hong Kong.
- (4) This subsection applies to the instrument if, on the date of the instrument—
  - (a) the transferee, or each of the transferees, under the instrument is closely related to the transferor, or to each of the transferors, under the instrument;
  - (b) where there is more than one transferee under the instrument, the transferees are also closely related; and
  - (c) that transferee, or each of those transferees, is acting on his or her own behalf.
- (5) For the purposes of this section, if a person transfers a residential property to another person under an instrument that falls within subsection (1)—
  - (a) the former is the transferor under the instrument; and
  - (b) the latter is the transferee under the instrument.

**29AO. Certain instruments effecting exchange between residential properties chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) An instrument falls within this subsection if—
  - (a) the instrument effects the exchange of a residential property for another residential property; and
  - (b) consideration is paid or given for equality.

- (2) An instrument that falls within subsection (1) is chargeable with stamp duty as a conveyance on sale under Scale 2 of head 1(1) in the First Schedule by reference to the consideration mentioned in subsection (1) if it is shown to the satisfaction of the Collector that subsection (3) or (4) applies to the instrument.
- (3) This subsection applies to the instrument if, on the date of the instrument—
  - (a) each party to the instrument is a Hong Kong permanent resident acting on his or her own behalf; and
  - (b) each of them is not a beneficial owner of any other residential property in Hong Kong.
- (4) This subsection applies to the instrument if, on the date of the instrument—
  - (a) all parties to the instrument are closely related; and
  - (b) each of them is acting on his or her own behalf.

**29AP. Certain conveyances on sale of residential property involving additional closely related persons chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) Except as provided in section 29D(6)(c)(ii) and (7), this section applies to a conveyance on sale if—
  - (a) the property concerned is residential property;
  - (b) the conveyance is executed in pursuance of an agreement for sale; and
  - (c) the conveyance is in favour of—
    - (i) a purchaser under the agreement (*original purchaser*); and

- (ii) another person who falls within subsection (2).
- (2) A person falls within this subsection if the person—
  - (a) is not an original purchaser; and
  - (b) is, on the date of the conveyance, closely related to the original purchaser.
- (3) If the agreement for sale is duly stamped, or stamped under section 5(1), 13(2) or 18E(1) (whether before or after the execution of the conveyance on sale), the conveyance is chargeable with stamp duty under Scale 2 of head 1(1) in the First Schedule by reference to the consideration for the conveyance, less a fraction of the stamp duty representing the proportion of the property that is vested in the original purchaser under the conveyance.
- (4) For the purposes of subsection (3), joint tenants are treated as having equal undivided shares in the property concerned.
- (5) If the agreement for sale is not duly stamped, or not stamped under section 5(1), 13(2) or 18E(1), the Collector may refuse to stamp the conveyance.

**29AQ. Certain conveyances on sale of residential property involving withdrawal of closely related persons chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) Except as provided in section 29D(6)(c)(ii) and (7), this section applies to a conveyance on sale if—
  - (a) the property concerned is residential property;
  - (b) the conveyance is executed in pursuance of an agreement for sale;

- (c) the conveyance is in favour of one or some (but not all) of the purchasers under the agreement; and
  - (d) on the date of the conveyance, the transferee, or each of the transferees, is closely related to the withdrawn purchaser, or to each of the withdrawn purchasers.
- (2) If the agreement for sale is duly stamped, or stamped under section 5(1), 13(2) or 18E(1) (whether before or after the execution of the conveyance on sale), the conveyance is chargeable with stamp duty under Scale 2 of head 1(1) in the First Schedule by reference to the consideration for the conveyance, less a fraction of the stamp duty representing the proportion of the property that was acquired by the transferee or transferees under the agreement.
- (3) For the purposes of subsection (2), an agreement that provides for a conveyance to purchasers as joint tenants is treated as an agreement to convey the property to those purchasers in equal undivided shares.
- (4) If the agreement for sale is not duly stamped, or not stamped under section 5(1), 13(2) or 18E(1), the Collector may refuse to stamp the conveyance.
- (5) In this section—
- (a) a person is a transferee if—
    - (i) the person is one of the purchasers under the agreement; and
    - (ii) the conveyance is executed in favour of the person; and
  - (b) a person is a withdrawn purchaser if—
    - (i) the person is one of the purchasers under the agreement; and

- (ii) the conveyance is not executed in favour of the person.”.

**11. Part IIIA, Division 3 heading added**

Before section 29B—

**Add****“Division 3—Agreements for Sale”.****12. Section 29B amended (duty to execute agreement for sale)**

Section 29B(7)—

**Repeal**

“, within the meaning of section 29D(6)(d)”.

**13. Sections 29BA to 29BI added**

After section 29B—

**Add****“29BA. Agreements for sale generally chargeable with ad valorem stamp duty at Scale 1 rates**

Except as provided in sections 29BB to 29BI, an agreement for sale is chargeable with stamp duty under Scale 1 of head 1(1A) in the First Schedule.

**29BB. Certain agreements for sale of residential property to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) An agreement for sale is chargeable with stamp duty under Scale 2 of head 1(1A) in the First Schedule if—
- (a) the property concerned is residential property; and

- (b) it is shown to the satisfaction of the Collector that subsection (2) or (3) applies to the agreement.
- (2) This subsection applies to the agreement if, on the date of acquisition of the property—
  - (a) the purchaser, or each of the purchasers, under the agreement is a Hong Kong permanent resident acting on his or her own behalf; and
  - (b) that purchaser, or each of those purchasers, is not a beneficial owner of any other residential property in Hong Kong.
- (3) This subsection applies to the agreement if, on the date of acquisition of the property—
  - (a) the purchasers under the agreement consist of—
    - (i) one, or more than one, person who is a Hong Kong permanent resident; and
    - (ii) one, or more than one, person who is not a Hong Kong permanent resident;
  - (b) those purchasers are closely related;
  - (c) each of them is acting on his or her own behalf; and
  - (d) each of them is not a beneficial owner of any other residential property in Hong Kong.

**29BC. Certain agreements for sale of residential property between closely related persons chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) An agreement for sale is chargeable with stamp duty under Scale 2 of head 1(1A) in the First Schedule if—
  - (a) the property concerned is residential property; and

- (b) it is shown to the satisfaction of the Collector that subsection (2) or (4) applies to the agreement.
- (2) This subsection applies to the agreement if, on the date of acquisition of the property—
  - (a) the purchaser, or each of the purchasers, under the agreement is closely related to the vendor, or to each of the vendors, under the agreement;
  - (b) where there is more than one purchaser under the agreement, the purchasers are also closely related; and
  - (c) that purchaser, or each of those purchasers, is acting on his or her own behalf.
- (3) For the purpose of subsection (2)(a), if a vendor is acting in the transaction as a trustee for another person, that other person is treated as the vendor in place of the trustee.
- (4) This subsection applies to the agreement if—
  - (a) the agreement is an instrument in which a purchaser under another agreement for sale of the property concerned (*original agreement*) makes a nomination, or gives a direction;
  - (b) that nomination or direction authorizes another person to execute a conveyance of that property in favour of one, or more than one, third party (whether or not also in favour of the purchaser); and
  - (c) on the date of that nomination or direction—
    - (i) the third party, or each of those parties, is closely related to the purchaser, or to each of the purchasers;

- (ii) where there is more than one purchaser under the original agreement, the purchasers are also closely related; and
- (iii) the third party, or each of those parties, is acting on his or her own behalf.

**29BD. Agreements for sale of property for replacing other property disposed of under certain Ordinances chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) An agreement for sale is chargeable with stamp duty under Scale 2 of head 1(1A) in the First Schedule if it is shown to the satisfaction of the Collector that—
  - (a) the purchaser under the agreement is acting on the purchaser's own behalf;
  - (b) the property concerned (*replacement property*) is acquired by the purchaser to replace another property (*original property*);
  - (c) the original property—
    - (i) was owned by the purchaser alone or jointly with any other person or persons; and
    - (ii) falls within subsection (2); and
  - (d) subsection (3) applies to the replacement property.
- (2) The original property falls within this subsection if it has been—
  - (a) purchased or otherwise acquired by the Urban Renewal Authority for the purposes of any of its projects as defined by section 2 of the Urban Renewal Authority Ordinance (Cap. 563);
  - (b) resumed under the Lands Resumption Ordinance (Cap. 124) or purchased by agreement under section 4A of that Ordinance; or

- (c) sold pursuant to an order for sale made by the Lands Tribunal under section 4(1)(b)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545).
- (3) This subsection applies to the replacement property if—
  - (a) the date of disposal of the original property under subsection (2) is earlier than the date of acquisition by the purchaser of the replacement property; and
  - (b) the original property and the replacement property are both residential properties, or both non-residential properties.
- (4) Subsection (1) does not apply to an agreement for sale under which a replacement property is acquired by a purchaser to replace an original property if—
  - (a) the purchaser has acquired another replacement property to replace the original property under another instrument; and
  - (b) stamp duty has been charged on that other instrument according to Scale 2 of head 1(1), or Scale 2 of head 1(1A), in the First Schedule because of the operation of subsection (1) or section 29AL(1).
- (5) If an original property was owned by more than one person, subsection (1) applies to each owner in relation to 1 replacement property acquired by the owner, regardless of whether or not the replacement property is acquired—
  - (a) by the owner alone; or
  - (b) by the owner jointly with—
    - (i) another owner of the original property; or
    - (ii) any other person.



**29BE. Agreements for sale made pursuant to court orders chargeable with ad valorem stamp duty at Scale 2 rates**

An agreement for sale is chargeable with stamp duty under Scale 2 of head 1(1A) in the First Schedule if it is shown to the satisfaction of the Collector that the agreement is made pursuant to a decree or order of any court.

**29BF. Certain agreements for exchange between residential property and non-residential property chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) An agreement falls within this subsection if—
  - (a) the agreement provides for the exchange of a residential property for a non-residential property; and
  - (b) consideration is paid or given, or agreed to be paid or given, for equality.
- (2) An agreement that falls within subsection (1) is chargeable with stamp duty as an agreement for sale under Scale 2 of head 1(1A) in the First Schedule by reference to the consideration mentioned in subsection (1) if it is shown to the satisfaction of the Collector that subsection (3) or (4) applies to the agreement.
- (3) This subsection applies to the agreement if, on the date of the agreement—
  - (a) the purchaser, or each of the purchasers, under the agreement is a Hong Kong permanent resident acting on his or her own behalf; and
  - (b) that purchaser, or each of those purchasers, is not a beneficial owner of any other residential property in Hong Kong.

- (4) This subsection applies to the agreement if, on the date of the agreement—
  - (a) the purchaser, or each of the purchasers, under the agreement is closely related to the vendor, or to each of the vendors, under the agreement;
  - (b) where there is more than one purchaser under the agreement, the purchasers are also closely related; and
  - (c) that purchaser, or each of those purchasers, is acting on his or her own behalf.
- (5) For the purposes of this section, if an agreement that falls within subsection (1) provides that a person is to transfer a residential property to another person—
  - (a) the former is the vendor under the agreement; and
  - (b) the latter is the purchaser under the agreement.

**29BG. Certain agreements for exchange between residential properties chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) An agreement falls within this subsection if—
  - (a) the agreement provides for the exchange of a residential property for another residential property; and
  - (b) consideration is paid or given, or agreed to be paid or given, for equality.
- (2) An agreement that falls within subsection (1) is chargeable with stamp duty as an agreement for sale under Scale 2 of head 1(1A) in the First Schedule by reference to the consideration mentioned in subsection (1) if it is shown to the satisfaction of the Collector that subsection (3) or (4) applies to the agreement.

- (3) This subsection applies to the agreement if, on the date of the agreement—
  - (a) each party to the agreement is a Hong Kong permanent resident acting on his or her own behalf; and
  - (b) each of them is not a beneficial owner of any other residential property in Hong Kong.
- (4) This subsection applies to the agreement if, on the date of the agreement—
  - (a) all parties to the agreement are closely related; and
  - (b) each of them is acting on his or her own behalf.

**29BH. Certain agreements for sale of residential property involving additional closely related persons chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) Except as provided in Note 5 to head 1(1A) in the First Schedule, this section applies if—
  - (a) an agreement for sale (*original agreement*) is made in respect of residential property;
  - (b) another agreement for sale (*second agreement*) is made in respect of the whole or part of the property (whether by the vendor or purchaser or both under the original agreement) before a conveyance on sale of the property or that part of the property is executed in pursuance of the original agreement; and
  - (c) under the second agreement, the purchasers are—
    - (i) a purchaser under the original agreement (*original purchaser*); and
    - (ii) another person who falls within subsection (2).

- (2) A person falls within this subsection if the person—
  - (a) is not an original purchaser; and
  - (b) is, on the date of the second agreement, closely related to the original purchaser.
- (3) If the original agreement is duly stamped, or stamped under section 5(1), 13(2) or 18E(1) (whether before or after the second agreement is made), the second agreement is chargeable with stamp duty under Scale 2 of head 1(1A) in the First Schedule by reference to the consideration for the second agreement, less a fraction of the stamp duty representing the proportion of the property that is acquired by the original purchaser under the second agreement.
- (4) For the purposes of subsection (3), joint tenants are treated as having equal undivided shares in the property concerned.
- (5) If the original agreement is not duly stamped, or not stamped under section 5(1), 13(2) or 18E(1), the Collector may refuse to stamp the second agreement.

**29BI. Certain agreements for sale of residential property involving withdrawal of closely related persons chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) Except as provided in Note 5 to head 1(1A) in the First Schedule, this section applies if—
  - (a) an agreement for sale (*original agreement*) is made in respect of residential property;
  - (b) another agreement for sale (*second agreement*) is made in respect of the whole or part of the property (whether by the vendor or purchaser or both under the original agreement) before a conveyance on

- sale of the property or that part of the property is executed in pursuance of the original agreement;
- (c) one or some (but not all) of the purchasers under the original agreement (*original purchasers*) is or are the purchaser or purchasers under the second agreement (*remaining purchaser or purchasers*); and
  - (d) on the date of the second agreement, the remaining purchaser, or each of the remaining purchasers, is closely related to the withdrawn purchaser, or to each of the withdrawn purchasers.
- (2) If the original agreement is duly stamped, or stamped under section 5(1), 13(2) or 18E(1) (whether before or after the second agreement is made), the second agreement is chargeable with stamp duty under Scale 2 of head 1(1A) in the First Schedule by reference to the consideration for the second agreement, less a fraction of the stamp duty representing the proportion of the property that was acquired by the remaining purchaser or purchasers under the original agreement.
  - (3) For the purposes of subsection (2), an agreement that provides for a conveyance to purchasers as joint tenants is treated as an agreement to convey the property to those purchasers in equal undivided shares.
  - (4) If the original agreement is not duly stamped, or not stamped under section 5(1), 13(2) or 18E(1), the Collector may refuse to stamp the second agreement.
  - (5) In this section, a withdrawn purchaser is a person who—
    - (a) is one of the original purchasers; but
    - (b) is not a remaining purchaser.”.

**14. Section 29C amended (chargeable agreements for sale)**

- (1) Section 29C, heading—

**Repeal**

“Chargeable agreements for sale”

**Substitute**

“General provisions on chargeable agreements for sale”.

- (2) Section 29C(5AA)(a), before “another agreement for sale”—

**Add**

“except as provided in subsection (5AB),”.

- (3) Section 29C(5AA)(a)—

**Repeal**

everything after “third party”

**Substitute**

“; or”.

- (4) After section 29C(5AA)—

**Add**

“(5AB) A nomination or direction is excluded from subsection (5AA)(a) if—

- (a) it is made or given in favour of a person who is to be a trustee for the purchaser mentioned in that subsection in respect of the property concerned or part of it;
- (b) in so far as it relates to head 1(1A) in the First Schedule—
  - (i) the property is residential property; and
  - (ii) it is shown to the satisfaction of the Collector that subsection (5AC) applies to the nomination or direction; or

- (c) in so far as it relates to head 1(1B) in the First Schedule—
  - (i) the property is residential property; and
  - (ii) subsection (5AD) applies to the nomination or direction.
- (5AC) This subsection applies to the nomination or direction if—
  - (a) it is made or given in favour of one, or more than one, person (whether or not also in favour of the purchaser); and
  - (b) on the date of the nomination or direction—
    - (i) that person, or each of those persons, is closely related to the purchaser, or to each of the purchasers;
    - (ii) where there is more than one person, those persons are also closely related;
    - (iii) that person, or each of those persons, is acting on his or her own behalf; and
    - (iv) that person, or each of those persons, is not a beneficial owner of any other residential property in Hong Kong.
- (5AD) This subsection applies to the nomination or direction if—
  - (a) it is made or given in favour of one, or more than one, person (whether or not also in favour of the purchaser);
  - (b) that person, or each of those persons, is closely related to the purchaser, or to each of the purchasers; and

- (c) where there is more than one person, those persons are also closely related.”.
- (5) Section 29C(10)—
  - Repeal**
  - “section 29F”
  - Substitute**
  - “sections 29F, 29BF and 29BG”.
- 15. **Part IIIA, Division 4 heading added**  
Before section 29D—
  - Add**
  - “Division 4—Conveyances on Sale: Further Provisions”.**
- 16. **Section 29D amended (conveyances on sale of residential property)**
  - (1) Section 29D, heading—
    - Repeal**
    - “Conveyances on sale of residential property”
    - Substitute**
    - “Conveyances on sale and agreements for sale involving same immovable property”.
  - (2) Section 29D(1)—
    - Repeal**
    - “residential”
    - Substitute**
    - “immovable”.

- (3) Section 29D(2)—

**Repeal**

“residential”

**Substitute**

“immovable”.

- (4) Section 29D(3)—

**Repeal**

“of residential”

**Substitute**

“of immovable”.

- (5) Section 29D(3)—

**Repeal**

“the residential”

**Substitute**

“the”.

- (6) Section 29D(4)—

**Repeal**

“of residential”

**Substitute**

“of immovable”.

- (7) Section 29D(4)(a)—

**Repeal**

“residential”.

- (8) Section 29D(5)—

**Repeal**

“of residential”

**Substitute**

“of immovable”.

- (9) Section 29D(5)(a)—

**Repeal**

“residential”.

- (10) Section 29D(6)(c)(ii), before “is in favour of”—

**Add**

“subject to subsection (7),”.

- (11) Section 29D(6)(c)(ii)—

**Repeal**

everything after “and no other person;”.

- (12) After section 29D(6)—

**Add**

“(7) For subsection (6)(c)(ii), if the property concerned is residential property—

- (a) for the purposes of head 1(1) in the First Schedule, 2 or more persons are treated as the same person if, on the date of the conveyance concerned—
  - (i) they are closely related;
  - (ii) each of them is acting on his or her own behalf; and
  - (iii) the person, or each of the persons, in whose favour the conveyance is executed is not a beneficial owner of any other residential property in Hong Kong; and

(b) for the purposes of head 1(IAA) in the First Schedule, 2 or more persons are treated as the same person if they are closely related.

(8) Despite section 71(3) and (4), a reference in subsection (3) to an agreement for sale includes an agreement for sale of non-residential property made before 23 February 2013.”.

**17. Section 29DA amended (further provisions on special stamp duty chargeable on certain conveyances on sale)**

Section 29DA—

**Repeal subsection (15).**

**18. Part IIIA, Division 5 added**

Before section 29E—

**Add**

**“Division 5—Further Provisions on Ad Valorem Stamp Duty**

**29DE. Partial refund of ad valorem stamp duty in case of redevelopment**

(1) In this section—

*applicable instrument* (適用文書) means an instrument on which stamp duty had been paid according to Scale 1 of head 1(1), or Scale 1 of head 1(IA), in the First Schedule;

*specified amount* (指明款項) means—

(a) for an applicable instrument on which stamp duty had been paid according to Scale 1 of head 1(1) in the First Schedule—an amount equal to the

difference between the stamp duty paid and the stamp duty that would have been payable on that instrument if it were chargeable under Scale 2 of head 1(1) in the First Schedule; or

(b) for an applicable instrument on which stamp duty had been paid according to Scale 1 of head 1(IA) in the First Schedule—an amount equal to the difference between the stamp duty paid and the stamp duty that would have been payable on that instrument if it were chargeable under Scale 2 of head 1(IA) in the First Schedule.

(2) Subject to subsection (5), if—

- (a) a person has paid stamp duty on an applicable instrument; and
- (b) the conditions specified in subsection (3) are satisfied in relation to the immovable property concerned,

the Collector may, on an application made by the person, refund to the person the specified amount.

(3) The conditions are—

- (a) the immovable property concerned consisted, or formed part, of a lot (*the lot*);
- (b) the person—
  - (i) became the owner of the lot, or 2 or more lots (collectively *the lots*) including the lot; or
  - (ii) after becoming the owner of the lot or the lots, was granted a new lot (*new lot*) by the Government consequent on any of the following—
    - (A) the surrender of the lot or the lots, wholly or partly, to the Government;

- (B) the acquisition of the lot or the lots, wholly or partly, by the Government through purchase by agreement under section 4A of the Lands Resumption Ordinance (Cap. 124) or resumption of the lot or the lots, wholly or partly, by the Government under that Ordinance;
- (c) any building or buildings existing on the lot, the lots or the new lot was or were demolished;
- (d) the person has constructed, or caused to be constructed, a new building on the lot, the lots or the new lot; and
- (e) an occupation permit is issued under section 21(2)(a) of the Buildings Ordinance (Cap. 123) in respect of the new building before the time specified in subsection (4).

(4) The time is—

- (a) where the new building is constructed on a single lot other than a new lot—
  - (i) if the lot was the subject of an order for sale made by the Lands Tribunal under section 4(1)(b)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) and was sold to the person in the sale, the latest of the following—
    - (A) the expiry of 6 years after the date the person became the owner of the lot;
    - (B) where the Lands Tribunal, on an application by the person for extending the time for completion of the redevelopment of the lot, allows a

further period, the expiry of that period;  
or

(C) where the person has applied to the Government for a modification of any condition in the lease of the lot, the expiry of 6 years after the date of the instrument effecting the first modification; or

(ii) in any other case, the later of the following—

(A) the expiry of 6 years after the date the person became the owner of the lot; or

(B) where the person has applied to the Government for a modification of any condition in the lease of the lot, the expiry of 6 years after the date of the instrument effecting the first modification;

(b) where the new building is constructed on 2 or more lots—

(i) if the lots were the subject of one, or more than one, order for sale made by the Lands Tribunal under section 4(1)(b)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) and were sold to the person in the sale or sales, the latest of the following—

(A) the expiry of 6 years after the date the person became the owner of the lots or, where there is more than one order for sale, the owner of the last lot;

- (B) where the Lands Tribunal, on an application by the person for extending the time for completion of the redevelopment of the lots, allows a further period, the expiry of that period; or
  - (C) where the person has applied to the Government for a modification of any condition in the lease of any of the lots, the expiry of 6 years after the date of the instrument effecting the first modification;
- (ii) if the lots include one, or more than one, lot that was the subject of one, or more than one, order for sale referred to in subparagraph (i), and that lot or those lots was or were sold to the person in the sale or sales, the latest of the following—
- (A) the expiry of 6 years after the date the person became the owner of the last of the lots;
  - (B) where the Lands Tribunal, on an application by the person for extending the time for completion of the redevelopment of that lot or those lots, allows a further period, the expiry of that period; or
  - (C) where the person has applied to the Government for a modification of any condition in the lease of any of the lots, the expiry of 6 years after the date of the

- instrument effecting the first modification; or
  - (iii) in any other case, the later of the following—
    - (A) the expiry of 6 years after the date the person became the owner of the last of the lots; or
    - (B) where the person has applied to the Government for a modification of any condition in the lease of any of the lots, the expiry of 6 years after the date of the instrument effecting the first modification; or
  - (c) where the new building is constructed on a new lot, the expiry of 6 years after the date the new lot was granted to the person.
- (5) If—
- (a) immovable property was acquired by a body corporate (*first body corporate*) under an instrument on which it had paid stamp duty according to Scale 1 of head 1(1), or Scale 1 of head 1(1A), in the First Schedule;
  - (b) the property was subsequently transferred by the first body corporate to another body corporate (*second body corporate*) directly or through one, or more than one, other body corporate; and
  - (c) the instrument or instruments effecting the transfer of the property to the second body corporate were, by virtue of section 45, not chargeable with stamp duty,



the second body corporate is regarded, for the purpose of subsection (1)(a), to have paid the stamp duty on the instrument.

- (6) For the purposes of this section, in relation to a lot that has been divided into undivided shares, a person becomes the owner of the lot when the person becomes the legal owner of all the undivided shares in the lot.
- (7) In this section—

*lot* (地段) has the meaning given by section 2(1) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545).

**29DF. Partial refund of ad valorem stamp duty on disposal of residential property in certain circumstances**

- (1) In this section—

*applicable instrument* (適用文書) means an instrument—

- (a) under which a residential property is acquired; and
- (b) on which stamp duty had been paid according to Scale 1 of head 1(1), or Scale 1 of head 1(1A), in the First Schedule;

*original property* (原物業), in relation to a person who acquires a subject property under an applicable instrument, means another residential property of which the person is a beneficial owner on the date of that acquisition;

*specified amount* (指明款項) means—

- (a) for an applicable instrument on which stamp duty had been paid according to Scale 1 of head 1(1) in the First Schedule—an amount equal to the difference between the stamp duty paid and the stamp duty that would have been payable on that

instrument if it were chargeable under Scale 2 of head 1(1) in the First Schedule; or

- (b) for an applicable instrument on which stamp duty had been paid according to Scale 1 of head 1(1A) in the First Schedule—an amount equal to the difference between the stamp duty paid and the stamp duty that would have been payable on that instrument if it were chargeable under Scale 2 of head 1(1A) in the First Schedule;

*subject property* (標的物業) means the residential property acquired under an applicable instrument.

- (2) The Collector may, on an application made by a person (*applicant*) who had paid stamp duty on an applicable instrument, refund to the applicant the specified amount if—
- (a) subsection (3) or (4) applies to the disposal of an original property of the applicant; and
  - (b) had the original property been disposed of before the subject property was acquired, the applicable instrument would have been chargeable with stamp duty under Scale 2 of head 1(1), or Scale 2 of head 1(1A), in the First Schedule.
- (3) This subsection applies to the disposal of an original property of the applicant if—
- (a) it is shown to the satisfaction of the Collector that the original property is disposed of by the applicant under an agreement for sale that is made within 6 months after the date of the applicable instrument;
  - (b) it is shown to the satisfaction of the Collector that the original property is transferred or divested from

- the applicant under a conveyance on sale executed in conformity with that agreement; and
- (c) the application for refund is made by the applicant not later than 2 years after the date of the applicable instrument.
- (4) This subsection applies to the disposal of an original property of the applicant if—
- (a) it is shown to the satisfaction of the Collector that the original property is transferred or divested from the applicant under a conveyance on sale within 6 months after the date of the applicable instrument; and
- (b) the application for refund is made by the applicant not later than 2 years after the date of the applicable instrument.

**29DG. Further ad valorem stamp duty payable on failure to complete disposal of residential property in certain circumstances**

- (1) In this section—

***applicable instrument*** (適用文書) means an instrument—

- (a) under which a residential property is acquired; and
- (b) on which stamp duty had been paid—
- (i) according to Scale 2 of head 1(1) in the First Schedule because of the operation of section 29AJ, 29AN(1) to (3), or 29AO(1) to (3); or
- (ii) according to Scale 2 of head 1(1A) in the First Schedule because of the operation of section 29BB, 29BF(1) to (3), or 29BG(1) to (3);

***original property*** (原物業), in relation to a person who acquires a subject property under an applicable instrument, means another residential property of which the person is a beneficial owner before that acquisition;

***specified amount*** (指明款項) means—

- (a) for an applicable instrument on which stamp duty had been paid according to Scale 2 of head 1(1) in the First Schedule—an amount equal to the difference between the stamp duty paid and the stamp duty that would have been payable on that instrument if it were chargeable under Scale 1 of head 1(1) in the First Schedule; or
- (b) for an applicable instrument on which stamp duty had been paid according to Scale 2 of head 1(1A) in the First Schedule—an amount equal to the difference between the stamp duty paid and the stamp duty that would have been payable on that instrument if it were chargeable under Scale 1 of head 1(1A) in the First Schedule;

***subject property*** (標的物業) means the residential property acquired under an applicable instrument.

- (2) This section applies if—

- (a) a person has disposed of an original property under an agreement for sale (***original agreement***) before the person acquires a subject property under an applicable instrument;
- (b) had that original property not been disposed of before the subject property was acquired, the applicable instrument would have been chargeable with stamp duty under Scale 1 of head 1(1), or Scale 1 of head 1(1A), in the First Schedule;

- (c) after that acquisition, the original agreement is cancelled, annulled or rescinded or is otherwise not performed in circumstances that would qualify that agreement not to be regarded as one to which head 1(1A) in the First Schedule applies under section 29C(5A); and
  - (d) the stamp duty paid on the original agreement is refunded to the person under section 49.
- (3) Despite section 4(5) and the fact that the applicable instrument may have been stamped according to section 13(1), the person is liable civilly to the Collector for the payment, within 30 days after the date the refund mentioned in subsection (2)(d) is made, of the following—
- (a) the specified amount for that instrument; and
  - (b) the interest on the specified amount at the rate of 4 cents per \$100 or part of \$100 per day for the period beginning on the expiration of 1 month from the expiration of the time for stamping that instrument, and ending on the date of payment of the specified amount.
- (4) The Collector may remit, wholly or in part, any interest payable under subsection (3).

**29DH. Liability for underpayment of ad valorem stamp duty in certain circumstances**

- (1) In this section—

***applicable agreement*** (適用協議) means an instrument on which stamp duty had been paid according to Scale 2 of head 1(1A) in the First Schedule because of the operation of section 29BB, 29BF(1) to (3), or 29BG(1) to (3);

***applicable conveyance*** (適用轉易契) means an instrument on which stamp duty had been paid according to Scale 2 of head 1(1) in the First Schedule because of the operation of section 29AJ, 29AN(1) to (3), or 29AO(1) to (3);

***specified amount*** (指明款項) means—

- (a) for an applicable conveyance—an amount equal to the difference between the stamp duty paid on it and the stamp duty that would have been payable if it were chargeable under Scale 1 of head 1(1) in the First Schedule; or
  - (b) for an applicable agreement—an amount equal to the difference between the stamp duty paid on it and the stamp duty that would have been payable if it were chargeable under Scale 1 of head 1(1A) in the First Schedule.
- (2) Subsection (3) applies to the transferee, or each of the transferees, who acquires a residential property under an applicable conveyance if the Collector expresses an opinion under section 13 that—
- (a) if stamp duty had been paid on the conveyance according to Scale 2 of head 1(1) in the First Schedule because of the operation of section 29AJ—the conveyance should have been chargeable with stamp duty under Scale 1 of head 1(1) in the First Schedule because section 29AJ(1)(b) was not satisfied;
  - (b) if stamp duty had been paid on the conveyance according to Scale 2 of head 1(1) in the First Schedule because of the operation of section 29AN(1) to (3)—the conveyance should have been chargeable with stamp duty under Scale 1 of head

- 1(1) in the First Schedule because section 29AN(2) and (3) was not satisfied; or
- (c) if stamp duty had been paid on the conveyance according to Scale 2 of head 1(1) in the First Schedule because of the operation of section 29AO(1) to (3)—the conveyance should have been chargeable with stamp duty under Scale 1 of head 1(1) in the First Schedule because section 29AO(2) and (3) was not satisfied.
- (3) Despite section 4(3) and paragraph (C) in head 1(1) in the First Schedule, the transferee or transferees under the conveyance—
  - (a) is liable, or are jointly and severally liable, civilly to the Collector for the payment of the specified amount for the conveyance and any penalty payable under section 9; and
  - (b) (if there is more than one transferee) may be proceeded against without reference to any civil liability of those transferees inter se for the payment of the specified amount and penalty.
- (4) Subsection (5) applies to the purchaser, or each of the purchasers, who acquires a residential property under an applicable agreement if the Collector expresses an opinion under section 13 that—
  - (a) if stamp duty had been paid on the agreement according to Scale 2 of head 1(1A) in the First Schedule because of the operation of section 29BB—the agreement should have been chargeable with stamp duty under Scale 1 of head 1(1A) in the First Schedule because section 29BB(1)(b) was not satisfied;

- (b) if stamp duty had been paid on the agreement according to Scale 2 of head 1(1A) in the First Schedule because of the operation of section 29BF(1) to (3)—the agreement should have been chargeable with stamp duty under Scale 1 of head 1(1A) in the First Schedule because section 29BF(2) and (3) was not satisfied; or
- (c) if stamp duty had been paid on the agreement according to Scale 2 of head 1(1A) in the First Schedule because of the operation of section 29BG(1) to (3)—the agreement should have been chargeable with stamp duty under Scale 1 of head 1(1A) in the First Schedule because section 29BG(2) and (3) was not satisfied.
- (5) Despite section 4(3) and paragraph (C) in head 1(1A) in the First Schedule, the purchaser or purchasers under the agreement—
  - (a) is liable, or are jointly and severally liable, civilly to the Collector for the payment of the specified amount for the agreement and any penalty payable under section 9; and
  - (b) (if there is more than one purchaser) may be proceeded against without reference to any civil liability of those purchasers inter se for the payment of the specified amount and penalty.”.

# 19. Part IIIA, Division 6 heading added

After section 29DH—

**Add**

**“Division 6—Miscellaneous Provisions”.**

20. **Section 29E repealed (section 26 inapplicable to certain agreements)**

Section 29E—

**Repeal the section.**

21. **Section 29H amended (exemptions and relief)**

Section 29H(3)—

**Repeal**

“(within the meaning of section 29D(6)(c))”.

22. **Section 63B added**

After section 63—

**Add**

**“63B. Amendment of First Schedule**

The Financial Secretary may, by notice published in the Gazette, amend any of the following—

- (a) a monetary amount specified in the first column of head 1(1) or (1A) in the First Schedule;
- (b) a monetary amount or a percentage specified in the second column of head 1(1) or (1A) in the First Schedule.”.

23. **Section 71 added**

Before the First Schedule—

**Add**

**“71. Transitional provisions for Stamp Duty (Amendment) Ordinance 2013**

(1) In this section—

***additional stamp duty*** (附加印花稅)—

- (a) in relation to an applicable instrument that is chargeable with stamp duty under Scale 1 of head 1(1) in the First Schedule, means the difference between that stamp duty and the stamp duty chargeable on the instrument under head 1(1) in the First Schedule to the pre-amended Ordinance;
- (b) in relation to an applicable instrument that is chargeable with stamp duty under Scale 1 of head 1(1A) in the First Schedule (except as provided in paragraph (c)), means the difference between that stamp duty and the stamp duty chargeable on the instrument under head 1(1A) in the First Schedule to the pre-amended Ordinance; and
- (c) in relation to an applicable instrument that is an agreement for sale of non-residential property, means the stamp duty chargeable on the agreement under Scale 1 of head 1(1A) in the First Schedule;

***Amendment Ordinance*** (《修訂條例》) means the Stamp Duty (Amendment) Ordinance 2013 ( of 2013);

***applicable instrument*** (適用文書) means an instrument that is—

- (a) executed on or after 23 February 2013 and before the gazettal date; and
- (b) chargeable with stamp duty under Scale 1 of head 1(1), or Scale 1 of head 1(1A), in the First Schedule;

**gazettal date** (刊憲日期) means the date of publication of the Amendment Ordinance in the Gazette;

**pre-amended Ordinance** (《未經修訂條例》) means this Ordinance as in force immediately before 23 February 2013.

- (2) If, but for this section, the time for stamping an applicable instrument with any additional stamp duty payable on the instrument begins before the gazettal date, that time for stamping is to be replaced by a period of 30 days commencing immediately after the gazettal date.
- (3) The amendments made by the Amendment Ordinance do not apply in relation to an instrument specified in subsection (4), and the pre-amended Ordinance continues to apply in relation to the instrument as if those amendments had not been made.
- (4) The following instruments are specified for the purposes of subsection (3)—
  - (a) an instrument that was executed before 23 February 2013;
  - (b) an agreement for sale that supersedes another agreement for sale made between the same parties and on the same terms before 23 February 2013;
  - (c) a conveyance on sale that is executed in conformity with an agreement for sale made before 23 February 2013.”

## 24. First Schedule amended

- (1) First Schedule—

### Repeal

“[ss. 2, 4, 5, 5A, 13, 18D, 19, 19A, 20, 29, 29A, 29C, 29CA, 29D, 29DA, 29G, 29H, 30, 44, 45 & 47B & 2nd Sch.]”

### Substitute

“[ss. 2, 4, 5, 5A, 13, 18D, 19, 19A, 20, 29, 29A, 29AB to 29AE, 29AH to 29AQ, 29BA to 29BI, 29C, 29CA, 29D, 29DA, 29DE to 29DH, 29G, 29H, 30, 44, 45, 47B, 63B & 71 & 2nd Sch.]”.

- (2) First Schedule, head 1—

### Repeal

“Agreement or Contract for Sale of equitable interest,

See AGREEMENT FOR SALE and section 29E, and CONVEYANCE ON SALE and section 26”.

- (3) First Schedule, head 1(1), heading, after “CONVEYANCE ON SALE”—

### Add

“CHARGEABLE WITH AD VALOREM STAMP DUTY”.

- (4) First Schedule, head 1(1), first column, before paragraph (a)—

### Add

“SCALE 2—”.

- (5) First Schedule, head 1(1), before “SCALE 2”—

### Add

“SCALE 1—

(a) if the amount or value of the consideration does not exceed \$2,000,000 and the instrument is certified in accordance with section 29 at	(A) (a) 1.5% of the amount or value of the consideration
--	--

- |     |  |   |
|-----|--|---|
|     | \$2,000,000  |   |
| (b) | if the amount or value of the consideration exceeds \$2,000,000 but does not exceed \$2,176,470 and the instrument is certified in accordance with section 29 at \$2,176,470 | (b) \$30,000 plus 20% of the amount by which the amount or value of the consideration exceeds \$2,000,000 |
| (c) | if the amount or value of the consideration exceeds \$2,176,470 but does not exceed \$3,000,000 and the instrument is certified in accordance with section 29 at \$3,000,000 | (c) 3% of the amount or value of the consideration  |
| (d) | if the amount or value of the consideration exceeds \$3,000,000 but does not exceed \$3,290,330 and the instrument is certified in accordance with section 29 at \$3,290,330 | (d) \$90,000 plus 20% of the amount by which the amount or value of the consideration exceeds \$3,000,000 |
| (e) | if the amount or value of the consideration exceeds \$3,290,330 but does not exceed \$4,000,000 and the  | (e) 4.5% of the amount or value of the consideration  |

- |     |  |  |
|-----|--|--|
|     | instrument is certified in accordance with section 29 at \$4,000,000   |  |
| (f) | if the amount or value of the consideration exceeds \$4,000,000 but does not exceed \$4,428,580 and the instrument is certified in accordance with section 29 at \$4,428,580 | (f) \$180,000 plus 20% of the amount by which the amount or value of the consideration exceeds \$4,000,000 |
| (g) | if the amount or value of the consideration exceeds \$4,428,580 but does not exceed \$6,000,000 and the instrument is certified in accordance with section 29 at \$6,000,000 | (g) 6% of the amount or value of the consideration   |
| (h) | if the amount or value of the consideration exceeds \$6,000,000 but does not exceed \$6,720,000 and the instrument is certified in accordance with section 29 at \$6,720,000 | (h) \$360,000 plus 20% of the amount by which the amount or value of the consideration exceeds \$6,000,000 |
| (i) | if the amount or value of the consideration  | (i) 7.5% of the amount or value  |

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|---|--|
| <p>exceeds \$6,720,000 but does not exceed \$20,000,000 and the instrument is certified in accordance with section 29 at \$20,000,000</p> <p>(j) if the amount or value of the consideration exceeds \$20,000,000 but does not exceed \$21,739,130 and the instrument is certified in accordance with section 29 at \$21,739,130</p> <p>(k) in any other case</p> | <p>of the consideration</p> <p>(j) \$1,500,000 plus 20% of the amount by which the amount or value of the consideration exceeds \$20,000,000</p> <p>(k) 8.5% of the amount or value of the consideration</p> <p>(B) 30 days after the execution; but see Note 2 to this sub-head</p> <p>(C) All parties, and all other persons executing; but see Notes 2 and 7 to this sub-head”.</p> |
|---|--|
- (6) First Schedule, head 1(1), Scale 2, paragraph (C)—
- Repeal**
- “Note 2”

- Substitute**
- “Notes 2 and 7”.
- (7) First Schedule, head 1(1)—
- Repeal**
- “And see sections 2, 4, 22, 23, 24, 25, 26,”
- Substitute**
- “And see sections 2, 4, 22, 23, 24, 25,”.
- (8) First Schedule, head 1(1), before Note 1—
- Add**
- “Note 1A
- This sub-head applies to a conveyance on sale according to sections 29AI to 29AQ”.
- (9) First Schedule, head 1(1), Note 5—
- Repeal**
- “residential”
- Substitute**
- “immovable”.
- (10) First Schedule, head 1(1)—
- Repeal**
- “Exchange, Instruments effecting—see section 25(7)”
- Substitute**
- “Note 7
- This sub-head is subject to sections 29DE, 29DF, 29DG and 29DH
- Exchange, Instruments effecting—see sections 25(7), 29AN and 29AO”.



- (11) First Schedule, head 1(1A), heading, after “AGREEMENT FOR SALE”—

**Add**

“CHARGEABLE WITH AD VALOREM STAMP DUTY”.

- (12) First Schedule, head 1(1A), first column, before paragraph (a)—

**Add**

“SCALE 2—”.

- (13) First Schedule, head 1(1A), before “SCALE 2”—

**Add**

“SCALE 1—

- (a) if the amount or value of the consideration does not exceed \$2,000,000 and the instrument is certified in accordance with section 29G at \$2,000,000

- (b) if the amount or value of the consideration exceeds \$2,000,000 but does not exceed \$2,176,470 and the instrument is certified in accordance with section 29G at \$2,176,470

- (c) if the amount or value of the consideration exceeds \$2,176,470 but does not exceed

- (A) (a) 1.5% of the amount or value of the consideration

- (b) \$30,000 plus 20% of the amount by which the amount or value of the consideration exceeds \$2,000,000

- (c) 3% of the amount or value of the

\$3,000,000 and the instrument is certified in accordance with section 29G at \$3,000,000

- (d) if the amount or value of the consideration exceeds \$3,000,000 but does not exceed \$3,290,330 and the instrument is certified in accordance with section 29G at \$3,290,330

- (e) if the amount or value of the consideration exceeds \$3,290,330 but does not exceed \$4,000,000 and the instrument is certified in accordance with section 29G at \$4,000,000

- (f) if the amount or value of the consideration exceeds \$4,000,000 but does not exceed \$4,428,580 and the instrument is certified in accordance with section 29G at \$4,428,580

- (g) if the amount or value of the consideration exceeds \$4,428,580 but

consideration

- (d) \$90,000 plus 20% of the amount by which the amount or value of the consideration exceeds \$3,000,000

- (e) 4.5% of the amount or value of the consideration

- (f) \$180,000 plus 20% of the amount by which the amount or value of the consideration exceeds \$4,000,000

- (g) 6% of the amount or value of the

	does not exceed \$6,000,000 and the instrument is certified in accordance with section 29G at \$6,000,000	consideration
(h)	if the amount or value of the consideration exceeds \$6,000,000 but does not exceed \$6,720,000 and the instrument is certified in accordance with section 29G at \$6,720,000	(h) \$360,000 plus 20% of the amount by which the amount or value of the consideration exceeds \$6,000,000
(i)	if the amount or value of the consideration exceeds \$6,720,000 but does not exceed \$20,000,000 and the instrument is certified in accordance with section 29G at \$20,000,000	(i) 7.5% of the amount or value of the consideration
(j)	if the amount or value of the consideration exceeds \$20,000,000 but does not exceed \$21,739,130 and the instrument is certified in accordance with section 29G at \$21,739,130	(j) \$1,500,000 plus 20% of the amount by which the amount or value of the consideration exceeds \$20,000,000
(k)	in any other case	(k) 8.5% of the amount or

	value of the consideration
	(B) 30 days after the relevant date (within the meaning of section 29B(3)); but see Notes 2 and 3 to this sub-head
	(C) All parties except a party who on the relevant date (within the meaning of section 29B(3)) does not know that the agreement affects that party, and all other persons executing; but see Note 7 to this sub-head".
(14)	First Schedule, head 1(1A), Scale 2, paragraph (C), after "all other persons executing"— <b>Add</b> "; but see Note 7 to this sub-head".
(15)	First Schedule, head 1(1A)— <b>Repeal Note 1</b> <b>Substitute</b> "Note 1 This sub-head applies to an agreement for sale according to sections 29BA to 29BI".
(16)	First Schedule, head 1(1A)—

**Repeal Note 5****Substitute**

“Note 5

For the purposes of Notes 2, 3 and 4, and if the immovable property concerned is residential property, 2 or more persons are treated as the same person if, on the date of the agreement made between those persons—

- (a) they are closely related;
- (b) each of them is acting on his or her own; and
- (c) each of them is not a beneficial owner of any other residential property in Hong Kong”.

- (17) First Schedule, at the end of head 1(1A)—

**Add**

“Note 7

This sub-head is subject to sections 29D, 29DE, 29DF, 29DG and 29DH”.

- (18) First Schedule, head 1(1B)—

**Repeal Note 3.**

- (19) First Schedule, head 1(1B)—

**Repeal Note 4****Substitute**

“Note 4

Notes 2, 3 and 4 to head 1(1A) apply to special stamp duty chargeable on an agreement for sale of residential property under this sub-head as they apply to stamp duty chargeable under head 1(1A); and for the purposes of applying those Notes to special stamp duty, 2 or more persons are treated as the same person if they are closely related”.

**Part 3****Consequential Amendment****25. Land Titles Ordinance amended**

The Land Titles Ordinance (Cap. 585) is amended as set out in this Part.

**26. Schedule 3 amended (consequential amendments)**

Schedule 3, section 41(b), new section 15(3)(aa)—

**Repeal**

everything after “registration of the matter”

**Substitute**

“is stamped under section 5(1), 13(2) or 18E(1); or”.

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**Explanatory Memorandum**

The main object of this Bill is to amend the Stamp Duty Ordinance (Cap. 117) (*the Ordinance*) to increase the stamp duty on certain instruments dealing with immovable property and to make agreements for sale of non-residential property chargeable with stamp duty.

2. Clause 1 sets out the short title and provides that the new substantive provisions added by the Bill are deemed to have come into operation on 23 February 2013.
3. Clause 3 amends section 15 of the Ordinance to disallow an unstamped chargeable agreement for sale of non-residential property to be registered at the Land Registry.
4. Clause 6 revises the heading to Part IIIA of the Ordinance on the addition of new sections under that Part.
5. Clause 8(4) adds new definitions of *Hong Kong permanent resident*, *mentally incapacitated person*, *permanent identity card*, *transferee* and *transferor* to section 29A(1) of the Ordinance.
6. Clauses 8(5), 16(1) to (9) and 24(15) respectively amend sections 29A(5) and 29D of, and Note 1 to head 1(1A) in the First Schedule to, the Ordinance to extend the application of ad valorem stamp duty under that head to agreements for sale of non-residential property. Consequently, sections 26 and 29E of the Ordinance, which relate to agreements for sale of equitable estate or interest in immovable property, are repealed by clauses 5 and 20.
7. Clause 9 adds new sections 29AB to 29AH to the Ordinance. Section 29AB stipulates the nominations or directions that are excluded from the existing definition of *agreement for sale* in section 29A(1) of the Ordinance. For interpreting the new provisions added to Part IIIA, sections 29AC and 29AD respectively set out the meanings of beneficial owners of residential

property and closely related persons, while sections 29AE to 29AG provide for the determination of the date of acquisition or disposal of immovable property in different situations. Section 29AH deals with instruments involving minors or mentally incapacitated persons.

8. Clause 10 adds new sections 29AI to 29AQ to the Ordinance. Section 29AI makes conveyances on sale of immovable property generally chargeable with ad valorem stamp duty at increased rates in head 1(1) in the First Schedule to the Ordinance under a new Scale 1 introduced by clause 24(5).
9. Certain conveyances provided in new sections 29AJ to 29AQ remain chargeable with ad valorem stamp duty at existing rates in head 1(1) in the First Schedule to the Ordinance, which are listed under the heading of Scale 2 added by clause 24(4). Those instruments include, among others—
  - (a) a conveyance on sale of residential property acquired by a Hong Kong permanent resident who is not a beneficial owner of any other residential property in Hong Kong on the date of acquisition (section 29AJ);
  - (b) certain conveyances on sale of residential property between closely related persons (section 29AK); and
  - (c) conveyances on sale relating to replacement of properties disposed of under certain Ordinances (section 29AL).
10. Clause 13 adds new sections 29BA to 29BI to the Ordinance. Section 29BA makes agreements for sale of immovable property generally chargeable with ad valorem stamp duty at increased rates in head 1(1A) in the First Schedule to the Ordinance under a new Scale 1 introduced by clause 24(13).
11. Certain agreements provided in new sections 29BB to 29BI remain chargeable with ad valorem stamp duty at existing rates in head

1(1A) in the First Schedule to the Ordinance, which are listed under the heading of Scale 2 added by clause 24(12). Those instruments include, among others—

- (a) an agreement for sale of residential property acquired by a Hong Kong permanent resident who is not a beneficial owner of any other residential property on the date of acquisition (section 29BB);
  - (b) certain agreements for sale of residential property between closely related persons (section 29BC); and
  - (c) agreements for sale relating to replacement of properties disposed of under certain Ordinances (section 29BD).
12. Clause 18 adds further new provisions to Part IIIA of the Ordinance, namely—
  - (a) section 29DE, which provides for partial refund of ad valorem stamp duty on the completion of redevelopment projects;
  - (b) section 29DF, which provides for partial refund of ad valorem stamp duty on the disposal of a previously owned residential property within a specified period after the acquisition of another residential property in certain circumstances;
  - (c) section 29DG, which makes further ad valorem stamp duty payable on failure to complete the disposal of a previously owned residential property after the acquisition of another residential property in certain circumstances; and
  - (d) section 29DH, which makes a transferee or purchaser under an instrument liable for underpayment of ad valorem stamp duty in certain circumstances.
13. Clause 22 adds a new section 63B to the Ordinance to enable the Financial Secretary to amend the value bands and rates of ad

valorem stamp duty under head 1(1) and (1A) in the First Schedule to the Ordinance by notice published in the Gazette.

14. Clause 23 adds a new section 71 to the Ordinance to provide for transitional matters, including those necessitated by the retrospective operation of the relevant new provisions added by the Bill.

## Annex B

### Various Rates under the Stamp Duty Regime

A table summing up the existing and enhanced AVD rates, the SSD rates imposed in November 2010 and enhanced rates in October 2012, as well as the BSD rate imposed in October 2012 is set out below -

Property value	AVD (residential & non-residential)		SSD (residential) (20.11.10 – 26.10.12)			SSD (residential) (27.10.12 – after)			BSD (residential) (27.10.12 – after)
	Existing	23.2.2013 onwards (except for residential properties of HKPRs with no residential property in Hong Kong)	Held ≤ 6 mths	Held > 6 mths but ≤ 1 yr	Held > 1 yr but ≤ 2 yrs	Held ≤ 6 mths	Held > 6 mths but ≤ 1 yr	Held > 1 yr but ≤ 3 yrs	
Up to \$2,000,000	\$100	1.50%	15%	10%	5%	20%	15%	10%	15%
\$2,000,001 to \$3,000,000	1.50%	3.00%	15%	10%	5%	20%	15%	10%	15%
\$3,000,001 to \$4,000,000	2.25%	4.50%	15%	10%	5%	20%	15%	10%	15%
\$4,000,001 to \$6,000,000	3.00%	6.00%	15%	10%	5%	20%	15%	10%	15%
\$6,000,001 to \$20,000,000	3.75%	7.50%	15%	10%	5%	20%	15%	10%	15%
\$20,000,001 and above	4.25%	8.50%	15%	10%	5%	20%	15%	10%	15%

## **Implications of the Proposal**

### ***Economic implications***

The proposed across-the-board increase in the AVD rates will affect all potential buyers of residential and non-residential properties, except for those HKPR individuals who are not the beneficial owners of any other residential property in Hong Kong on the date of acquisition. Overall, the latest demand management measure on residential property is deemed necessary to forestall a further build-up in property market exuberance, thereby safeguarding macro-economic and financial sector stability, and hence lessening the pain of eventual adjustments.

2. Separately, the AVD hike would apply to all non-residential property acquisitions without any exemption. Together with the advancement of stamp duty payment from the date of assignment to the date of agreement for sale and purchase, the transaction costs to speculators and investors would increase markedly, yielding possibly also some dampening effects on the current momentum in commercial property prices.

### ***Financial and civil service implications***

3. The proposed increase in AVD rates is not intended to be a revenue-generating measure to meet fiscal or budgetary objectives, although they are expected to bring about additional revenue to the Government. The amount of additional revenue is uncertain as it depends on the number and value of the transactions caught by the new measure.

4. Additional workload and administrative cost arising from implementation of the measures will be absorbed within the existing resources of relevant departments as far as possible.

### ***Sustainability implications***

5. The measures aim to ensure the healthy and stable development of the property market, which is crucial to the sustainable development of Hong Kong as a whole.