

立法會
Legislative Council

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Tel : 3919 3308

Date : 13 February 2014

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 19 February 2014

Stamp Duty (Amendment) Bill 2012

Committee stage amendments

The Second Reading debate on the above Bill will resume at the Council meeting of 19 February 2014. Subject to the Bill receiving a Second Reading, the President has given permission for the Secretary for Transport and Housing to move proposed amendments to the Bill at its Committee stage (**Appendix 1**).

2. The President has also given permission for the following Members to move proposed Committee stage amendments:

Mover of amendment(s) (set out in the order of receipt)	Appendix
Hon James TO	2a, 2b, 2c and 2d
Hon Dennis KWOK	3
Hon Martin LIAO	4

3. As directed by the President, the proposed amendments are attached for Members' consideration.

(Ms Doris LO)
for Clerk to the Legislative Council

Encl.

Stamp Duty (Amendment) Bill 2012

Committee StageAmendments to be moved by the Secretary for
Transport and Housing

<u>Clause</u>	<u>Amendment Proposed</u>
4(3)	In the proposed section 4(3AA)(b), in the Chinese text, by deleting “各人均可被起訴” and substituting “有關法律程序可針對各人提出”.
New	<p>By adding—</p> <p>“4A. Section 15 amended (non-admissibility, etc. of instruments not duly stamped)</p> <p>(1) Section 15(1)—</p> <p>Repeal</p> <p>“subsection (1A)”</p> <p>Substitute</p> <p>“subsections (1A) and (1B)”.</p> <p>(2) After section 15(1A)—</p> <p>Add</p> <p>“(1B) Despite anything in subsection (1), where an instrument is not duly stamped only because the instrument is not stamped in respect of buyer’s stamp duty chargeable on it, the instrument may be received in evidence in civil proceedings before a court if—</p> <p>(a) in the case of a chargeable agreement for sale, it is produced in evidence by a</p>

person who is not the purchaser under the agreement; or

- (b) in the case of a conveyance on sale, it is produced in evidence by a person who is not the transferee under the conveyance.”.”.

5(1) In the proposed definition of *mentally incapacitated person*, by adding “and is, because of his or her mental state, incapable of managing and administering his or her property and affairs” after “(Cap. 136)”.

8 By deleting subclauses (1) and (2) and substituting—

“(1) Section 29CA(2)—

Repeal

“of 24 months”

Substitute

“specified in the first column of that head”.

(2) Section 29CA(3)—

Repeal

“the 24-month period”

Substitute

“a specified period”.”.

9 In the proposed section 29CB(3)(a)(ii)(B), in the English text, by deleting “a purchaser” and substituting “the purchaser”.

9 In the proposed section 29CB(4)(b)—

- (a) in subparagraph (ii), by adding “an order made under section 3 of” after “resumed under”;

- (b) in subparagraph (ii), by deleting “; or” and substituting a semicolon;
- (c) in subparagraph (iii), by deleting “545).” and substituting “545);”;
- (d) by adding—
 - “(iv) resumed under an order made under section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276);
 - (v) resumed under an order made under section 13(1) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370);
 - (vi) resumed under an order made under section 16 or 28(1) of the Railways Ordinance (Cap. 519);
 - (vii) acquired under an acquisition order made under section 3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance (Cap. 130); or
 - (viii) resumed under an order made under section 37(2) of the Land Drainage Ordinance (Cap. 446).”.

9 In the proposed section 29CB(8)(b) and (9)(b), by deleting
“either a minor or”.

9 In the proposed section 29CC(1)(a)(ii), by adding “and (12)”
after “section 29CB(10)”.

9 In the proposed section 29CC(1)(b), by adding “, and the
person or persons from whom the residential property is to be
transferred is or are deemed to be the vendor or vendors under
the agreement” after “the agreement”.

9 In the proposed section 29CC(2)(b), by adding “, and the
person or persons to whom the consideration is paid or given,

or to be paid or given, is or are deemed to be the vendor or vendors under the agreement” after “the agreement”.

- 11 By deleting subclauses (1) and (2) and substituting—
- “(1) Section 29DA(2)—
- Repeal**
- “of 24 months”
- Substitute**
- “specified in the first column of that head”.
- (2) Section 29DA(3)—
- Repeal**
- “the 24-month period”
- Substitute**
- “a specified period”. ”.
- 12 In the proposed section 29DB(3)(b)(ii), in the English text, by deleting “a purchaser” and substituting “the purchaser”.
- 12 In the proposed section 29DB(5)(b)—
- (a) in subparagraph (ii), by adding “an order made under section 3 of” after “resumed under”;
 - (b) in subparagraph (ii), by deleting “; or” and substituting a semicolon;
 - (c) in subparagraph (iii), by deleting “545).” and substituting “545);”;
 - (d) by adding—
 - “(iv) resumed under an order made under section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276);
 - (v) resumed under an order made under section 13(1) of the Roads (Works, Use and

Compensation) Ordinance (Cap. 370);

- (vi) resumed under an order made under section 16 or 28(1) of the Railways Ordinance (Cap. 519);
- (vii) acquired under an acquisition order made under section 3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance (Cap. 130); or
- (viii) resumed under an order made under section 37(2) of the Land Drainage Ordinance (Cap. 446).”.

- 12 In the proposed section 29DB(8)(c)—
 - (a) by deleting “a mortgagee that” and substituting “its mortgagee that”;
 - (b) by deleting “such a mortgagee” and substituting “the mortgagee”.
- 12 In the proposed section 29DB(9)(b) and (10)(b), by deleting “either a minor or”.
- 12 In the proposed section 29DC(1)(a)(ii), by adding “and (13)” after “section 29DB(11)”.
- 12 In the proposed section 29DC(1)(b), by adding “, and the person or persons from whom the residential property is transferred is or are deemed to be the transferor or transferors under the conveyance” after “the conveyance”.
- 12 In the proposed section 29DC(2)(b), by adding “, and the person or persons to whom the consideration is paid or given is or are deemed to be the transferor or transferors under the conveyance” after “the conveyance”.

12

By deleting the proposed section 29DD(1)(b), (c), (d) and (e) and substituting—

“(b) the applicant—

- (i) alone or jointly with an associated body corporate within the meaning of section 45(2), became the owner of the lot; or
- (ii) after becoming the owner as mentioned in subparagraph (i), was, alone or jointly with the associated body corporate, granted a new lot (***the new lot***) by the Government consequent on either or both of the following—

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

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

(i) has—

- (A) demolished or caused to be demolished all buildings (if any) existing on the lot or the new lot, other than a building or part of a building the demolition of which is prohibited under any Ordinance; and
- (B) obtained approval of plans and details prescribed in regulation 8(1)(a), (b), (f), (g), (h), (j), (k) and (m) of the Building (Administration) Regulations (Cap. 123 sub. leg. A) in respect

of building works to be carried out on the lot or the new lot (whether or not together with any other lot) from the Building Authority under the Buildings Ordinance (Cap. 123); or

- (ii) has obtained consent to commence any foundation works for the lot or the new lot (whether or not together with any other lot) from the Building Authority under the Buildings Ordinance (Cap. 123).”.

12 By deleting the proposed section 29DD(2).

12 In the proposed section 29DD(4), in the Chinese text, by deleting “任何人是該地段所有不分割份數的法定擁有人之前，該人不屬” and substituting “某人是該地段所有不分割份數的法定擁有人之時，該人方”.

12 By deleting the proposed section 29DD(5).

New By adding—

“15A. Section 47F amended (relief on transactions under qualified investment arrangement)

Section 47F(1)—

Repeal

“1(1A), 1(1B),”

Substitute

“1(1AAB), 1(1A), 1(1B), 1(1C),”.”.

16 In the proposed section 63A—

- (a) by deleting “a percentage specified in the second column of”;

- (b) by adding “to effect a change to the rate of stamp duty set out in that head” after “Schedule”.

17 In the proposed section 70(2), by deleting everything after “was published in” and substituting—

“the Gazette—

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

18 By deleting subclause (2) and substituting—

“(2) First Schedule—

Repeal

“& 47G”

Substitute

“, 47G, 63A & 70”.”.

Stamp Duty (Amendment) Bill 2012

Committee StageAmendments to be moved by the Honourable James TO Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
9	<p>By deleting the proposed section 29CB(8) and substituting —</p> <p>“(8) If it is shown to the satisfaction of the Collector that —</p> <p>(a) any purchaser under a chargeable agreement for sale is acting in the transaction as a trustee or guardian for another person;</p> <p>(b) the trustee or guardian for another person is appointed under the Mental Health Ordinance (Cap. 136), or otherwise by the court; and</p> <p>(c) the other person is a Hong Kong permanent resident and is a mentally incapacitated person,</p> <p>the Collector must, in determining whether the agreement is chargeable with buyer’s stamp duty under head 1(1C) in the First Schedule in accordance with this section, treat the other person as a purchaser under the agreement in place of the trustee or guardian, and this section is to apply to the agreement accordingly.”.</p>

By deleting the proposed section 29CB(9) and substituting —

“(9) If it is shown to the satisfaction of the Collector that —

(a) any vendor under a chargeable agreement for sale is acting in the transaction as a trustee or guardian for another person;

(b) the trustee or guardian for another person is appointed under the Mental Health Ordinance (Cap. 136), or otherwise by the court; and

(c) the other person is a Hong Kong permanent resident and is a mentally incapacitated person, the Collector must, in determining whether the agreement is chargeable with buyer’s stamp duty under head 1(1C) in the First Schedule in accordance with this section, treat the other person as a vendor under the agreement in place of the trustee or guardian, and this section is to apply to the agreement accordingly.”.

By deleting the proposed section 29DB(9) and substituting —

“(9) If it is shown to the satisfaction of the Collector that —

(a) any transferee under a conveyance on sale is acting in the transaction as a trustee or guardian for another person;

(b) the trustee or guardian for another person is appointed under the Mental Health Ordinance (Cap. 136), or otherwise by the court; and

(c) the other person is a Hong Kong permanent resident and is a mentally incapacitated person, the Collector must, in determining whether the conveyance is chargeable with buyer’s stamp duty under head 1(1AAB) in the First Schedule in accordance with this section, treat the other person as a transferee under the conveyance in place of the trustee or guardian, and this section is to apply to the conveyance accordingly.”.

By deleting the proposed section 29DB(10) and substituting —

“(10) If it is shown to the satisfaction of the Collector that —

- (a) any transferor under a conveyance on sale is acting in the transaction as a trustee or guardian for another person;
 - (b) the trustee or guardian for another person is appointed under the Mental Health Ordinance (Cap. 136), or otherwise by the court; and
 - (c) the other person is a Hong Kong permanent resident and is a mentally incapacitated person,
- the Collector must, in determining whether the conveyance is chargeable with buyer’s stamp duty under head 1(1AAB) in the First Schedule in accordance with this section, treat the other person as a transferor under the conveyance in place of the trustee or guardian, and this section is to apply to the conveyance accordingly.”.

Stamp Duty (Amendment) Bill 2012

Committee StageAmendment to be moved by the Honourable James TO Kun-sunClauseAmendment Proposed

12 By deleting the heading and substituting—

**“12. Sections 29DB, 29DC, 29DD and 29DE
added”.**

12 By adding—

**“29DE. Exemption of buyer’s stamp duty in case of
charitable institution or trust**

Despite anything in this Ordinance, the Collector must, on an application made by an applicant, exempt the buyer’s stamp duty if it is shown to the satisfaction of the Collector that the applicant was a charitable institution or a trust which is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap.112) on the date of acquisition of the residential property concerned.”.

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

16 By deleting the proposed section 63A and substituting —

“63A. Amendment of First Schedule

The Legislative Council may, by resolution,
amend head 1(1AA), (1AAB), (1B) or (1C) in
the First Schedule to effect a change to the rate
of stamp duty set out in that head.”.

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

16 By deleting the proposed section 63A and substituting —

“63A. Amendment of First Schedule

The Financial Secretary may, subject to the approval of the Legislative Council, by notice published in the Gazette, amend head 1(1AA), (1AAB), (1B) or (1C) in the First Schedule to effect a change to the rate of stamp duty set out in that head.”.

Stamp Duty (Amendment) Bill 2012

Committee StageAmendments to be moved by the Honourable Dennis KWOK

<u>Clause</u>	<u>Amendment Proposed</u>
9	In the proposed section 29CB(8)(b), by deleting “either a minor or”.
9	In the proposed section 29CB(9)(b), by deleting “either a minor or”.
12	In the proposed section 29DB(9)(b), by deleting “either a minor or”.
12	In the proposed section 29DB(10)(b), by deleting “either a minor or”.
17	In the proposed section 70, by adding - “ (4) Before the day on which the Amendment Ordinance was published in the Gazette, sections 29CB(8)(b) and (9)(b) and 29DB(9)(b) and (10)(b) shall also apply to a Hong Kong permanent resident minor.”.

Stamp Duty (Amendment) Bill 2012

Committee StageAmendments to be moved by the Honourable Martin LIAO Cheung-kongClauseAmendment Proposed

16

By deleting the proposed section 63A and substituting—

“63A. Amendment of First Schedule

- (1)The Financial Secretary may, by notice published in the Gazette, amend a percentage specified in the second column of head 1(1AA), (1AAB), (1B) or (1C) in the First Schedule, but subject to the conditions stated in subsection (3).
- (2)The notice referred to in subsection (1) shall come into operation at the beginning of the day on which it is published in the Gazette.
- (3)The following conditions shall apply to the notice —
 - (a) unless the notice has received approval of the Legislative Council upon a motion moved by the Financial Secretary, it shall cease to have effect upon the motion being not passed by the Legislative Council or upon the expiration of 6 months from the date of its publication in the Gazette (whichever is the earlier);
 - (b) upon the cessation of the notice in accordance with paragraph (a), so much of any stamp duty paid in accordance with the notice in excess of the stamp duty payable immediately after the cessation of the notice shall be repaid to the person who paid the same;
 - (c) upon the cessation of the notice in accordance with paragraph (a), so much of

any stamp duty payable immediately before the coming into effect of the notice in excess of the stamp duty paid in accordance with the notice shall be paid by the person having the obligation to pay the same within 30 days of the date of the cessation of the notice. ”.