

立法會

Legislative Council

LC Paper No. CB(3) 407/13-14

Ref : CB(3)/B/TH/1(12-13)

Tel : 3919 3300

Date : 18 February 2014

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 19 February 2014

Debate and voting arrangements for Committee stage amendments ("CSAs") to the Stamp Duty (Amendment) Bill 2012 ("the Bill")

Further to LC Paper Nos. CB(3) 380/13-14 dated 13 February 2014, CB(3) 388/13-14 dated 14 February 2014 and CB(3) 400/13-14 dated 17 February 2014, and as directed by the President, the following documents are attached for Members' information –

- (a) a table on the debate and voting arrangements for the various provisions of and CSAs to the Bill (LC Paper No. CB(3) 407/13-14(01)) (Chinese version only) (**Appendix I**); and
- (b) the key points of CSAs to Clauses 5, 9, 12, 16 and 17 of the Bill (LC Paper No. CB(3) 407/13-14(02)) (Chinese version only) (**Appendix II**).

Hard copy of (a) and (b) above, with the Annexes thereto, will be placed on Members' desks in the Chamber before the start of tomorrow's Council meeting.

3. Members are invited to note that should Hon Starry LEE's second CSA in Appendix I be passed, she will **withdraw** the notice of her third CSA.

4. In addition, the President has given permission for Hon Starry LEE to revise the terms of her fourth to seventh CSAs in Appendix I under the following circumstances:

Clause to which the CSAs relate	Circumstances under which revision should be made	Revision Required of Hon Starry LEE	Revised CSA
17	Hon Dennis KWOK's CSA was passed	Renumber the subsections proposed to be added to section 70 in her fourth to seventh CSAs as (5) and (6)	Appendix III
	Hon Dennis KWOK's CSA and Hon Starry LEE's fourth or fifth CSA were passed	Renumber the subsections proposed to be added to section 70 in her sixth and seventh CSAs as (7) and (8)	Appendix IV
	Hon Dennis KWOK's CSA was negatived , and Hon Starry LEE's fourth or fifth CSA was passed	Renumber the subsections proposed to be added to section 70 in her sixth and seventh CSAs as (6) and (7)	Appendix V

(Odelia LEUNG)
for Clerk to the Legislative Council

Encl.

《2012 年印花稅(修訂)條例草案》
處理委員會審議階段修正案的次序

(一) 沒有修正案的條文 (合併辯論(I))： 第1、2、3、6、7、10、13、14、15、19及20條	
(二) 只有政府當局提出修正案的條文： 第4、8、11及18條 (就條文作出技術性或行文上的修訂)	
合併辯論(II)—— 就上述原本條文及局長修正案進行合併辯論	
表決安排 —— 一併表決局長修正案	
(三) 政府當局及議員均有提出修正案的條文： 第5、9、12、16及17條	
第5、9及12條 合併辯論(III)——	釋義(包括香港永久性居民、香港永久性居民的公司及精神上無行為能力的人的定義)及豁免香港永久性居民的公司和受指明條例影響人士繳納買家印花稅的規定，以及就重建項目可獲退還買家印花稅的規定
● 李慧琼議員	: 第一項 — 修正第5(1)條，在第29A(1)條建議的“香港永久性居民”的定義中加入有關人士的居籍必須為香港的規定 第二項 — 修正第5、9及12條 修正第5(1)條，在第29A(1)條中加入“香港永久性居民的公司”的定義；及 修正第9及12條，分別在建議的第29CB及29DB條加入新條款，以訂明香港永久性居民的公司可就某些買賣協議及售賣轉易契，獲豁免繳納買家印花稅，以及相關的條件，並就第29CB及29DB條的相關條文作相應的修訂 第三項 — 修正第5及12條 修正第5(1)條，在第29A(1)條中加入“香港永久性居民的公司”的定義 (包括該公司的成員人數不超過5名及董事人數不超過3名)；及 修正第12條，在建議的第29DD條加入新條款，以訂明以香港永久性居民的公司名義置業時，先付買家印花稅，若符合條款所訂條件，可予3年後申請退還
● 局長	: 第一項 — 修正第5、9及12條 修正第5(1)條，在第29A(1)條建議的“精神上無行為能力的人”的定義作出修訂； 修正第9及12條，以修正建議的第29CB(4)(b)及29DB(5)(b)條，使受指明條例影響的非香港永久性居民，因被迫出售住宅物業，就替代物業的買賣協議及售賣轉易契可獲豁免繳納買家印花稅； 修正第12條，以修正建議的第29DD條，以修訂就重建項目退回買家印花稅的機制；及 修正第9及12條，就建議的29CB(3)、29CC(1)及(2)、29DB(3)及(8)、以及29DC(1)及(2)條作出技術性或行文上的修訂

條例草案次	修正案動議人	表決修正案的次序	附註	修正案文本
第5條	李慧琼議員	先表決李慧琼議員第一項修正案	不論李慧琼議員第一項修正案是否通過，她均可動議其第二項修正案	附件2
第5、9及12條	李慧琼議員	表決李慧琼議員第二項修正案	若李慧琼議員第二項修正案獲得通過，她會撤回其第三項修正案	附件3
第5及12條	李慧琼議員	若李議員第二項修正案被否決，表決其第三項修正案	不論李慧琼議員第一、二及／或三項修正案是否通過，局長均可動議其第一項修正案	附件4
第5、9及12條	局長	表決局長第一項修正案		附件1

第9及12條

合併辯論(IV) — 以受託人或監護人身份代表未成年人及精神上無行為能力的人購買住宅物業可獲豁免買家印花稅的規定

- 涂謹申議員：第一項 — 修正第9及12條，刪去建議的第29CB(8)及(9)和29DB(9)及(10)條，分別代以新的第29CB(8)及(9)和29DB(9)及(10)條，訂明以受託人或監護人身份代表精神上無行為能力的人，須根據《精神健康條例》或法庭任命，在購買住宅物業時可獲豁免買家印花稅
- 局長：第二項 — 修正第9及12條，以修正建議的第29CB(8)(b)及(9)(b)條和第29DB(9)(b)及(10)(b)條，取消未成年的香港永久性居民透過其受託人或監護人購買住宅物業可豁免買家印花稅
- 郭榮鏗議員：第一項 — 與局長第二項修正案相同

條例草案次	修正案動議人	表決修正案的次序	附註	修正案文本
第9及12條	涂謹申議員	先表決涂謹申議員第一項修正案	若涂謹申議員第一項修正案獲得通過，局長及郭榮鏗議員均不可動議其修正案	附件9
第9及12條	局長	若涂謹申議員第一項修正案被否決，表決局長第二項修正案	不論局長第二項修正案是否通過，郭榮鏗議員不可動議其修正案 若涂謹申議員第一項修正案及局長第二項修正案均被否決，郭榮鏗議員便不可動議其就第17條提出的第二項修正案	附件1

第12條

合併辯論(V)— 豁免慈善機構或慈善信託繳交買家印花稅的規定

- 涂謹申議員：第二項— 修正第12條，加入建議的第29DE條，讓慈善機構或慈善信託購入住宅物業時，可以其慈善宗旨及活動所需，獲豁免繳交買家印花稅

條例草案條次	修正案人	表決修正案的次序	附註	修正案文本
第12條	涂謹申議員	表決涂謹申議員第二項修正案		附件10

第16條

合併辯論(VI)— 額外印花稅及買家印花稅稅率的修訂機制

- 涂謹申議員：第三項— 刪去建議的第63A條而代以新的第63A條，以訂明立法會可藉決議修訂額外印花稅和買家印花稅的稅率
第四項— 刪去建議的第63A條而代以新的第63A條，以訂明財政司司長藉憲報公告修訂額外印花稅和買家印花稅的稅率，須經立法會批准
- 廖長江議員：刪去建議的第63A條而代以新的第63A條，以訂明財政司司長可藉憲報公告修訂額外印花稅和買家印花稅的稅率，但財政司司長須就公告提交議案，並經立法會通過，若不通過，或在6個月後，公告停止生效，並訂明須退回或追收差額
- 局長：第三項— 就建議的第63A條作技術性修訂

條例草案條次	修正案人	表決修正案的次序	附註	修正案文本
第16條	涂謹申議員	表決涂謹申議員第三項修正案	若涂謹申議員第三項修正案 獲得通過 ，他便 不可動議 其第四項修正案，而廖長江議員及局長也 不可動議 其修正案	附件11
第16條	涂謹申議員	若涂謹申議員第三項修正案 被否決 ，表決其第四項修正案	若涂謹申議員第四項修正案 獲得通過 ，廖長江議員及局長便 不可動議 其修正案	附件12
第16條	廖長江議員	若涂謹申議員上述第三及第四項修正案 均被否決 ，表決廖長江議員修正案	若廖長江議員的修正案 獲得通過 ，局長便 不可動議 其第三項修正案	附件14
第16條	局長	若廖長江議員修正案 被否決 ，表決局長第三項修正案		附件1

第17條

合併辯論(VII) — 豁免為未成年人購買住宅物業繳納買家印花稅，及有關徵收額外印花稅及買家印花稅相關條文停止生效的日期

- **局長** : 第四項— 就建議的第70(2)條作技術性修訂
- **郭榮鏗議員** : 第二項— 在建議的第70條加入第(4)款，以訂明在2012年10月27日至本條例通過及刊憲期間，豁免為未成年的香港永久性居民購買物業繳交買家印花稅
- **李慧琼議員** : 第四項— 在建議的第70條加入第(4)及(5)款，以訂明就徵收額外印花稅的相關條文於2014年12月31日午夜停止生效
 第五項— 在建議的第70條加入第(4)及(5)款，以訂明就徵收額外印花稅的相關條文於2015年10月26日午夜到期
 第六項— 在建議的第70條加入第(4)及(5)款，以訂明就徵收買家印花稅的相關條文於2014年12月31日午夜停止生效
 第七項— 在建議的第70條加入第(4)及(5)款，以訂明就徵收買家印花稅的相關條文於2015年10月26日午夜到期

條例草案條次	修正案人	表決修正案的次序	附註	修正案文本
第17條	局長	表決局長第四項修正案	不論局長第四項修正案是否通過，郭榮鏗議員及李慧琼議員均 <u>可動議</u> 其修正案 (但若就第9及12條由涂謹申議員及局長提出的修正案均 <u>被否決</u> ，郭榮鏗議員便 <u>不可動議</u> 其就本條提出的修正案)	附件1
第17條	郭榮鏗議員	表決郭榮鏗議員第二項修正案	不論郭榮鏗議員第二項修正案是否通過，李慧琼議員均 <u>可動議</u> 其第四項修正案 若郭榮鏗議員第二項修正案 <u>獲得通過</u> ，李慧琼議員便須 <u>重編</u> 其第四至七項修正案所建議加入條款的編號	附件13
第17條	李慧琼議員	表決李慧琼議員第四項修正案	若李慧琼議員第四項修正案 <u>獲得通過</u> ，她便 <u>不可動議</u> 其第五項修正案	附件5

第17條	李慧琼議員	若李慧琼議員第四項修正案 被否決 ，表決其第五項修正案	不論李慧琼議員第四或五項修正案是否通過，她均 可動議 其第六項修正案 若郭榮鏗議員第二項修正案 及／或 李慧琼議員第四 或 五項修正案 獲得通過 ，她便須 重編 其第六及七項修正案所建議加入條款的編號	附件6
第17條	李慧琼議員	表決李慧琼議員第六項修正案	若李慧琼議員第六項修正案 獲得通過 ，她便 不可動議 其第七項修正案	附件7
第17條	李慧琼議員	若李慧琼議員第六項修正案 被否決 ，表決其第七項修正案		附件8

(四) 政府當局提出的新條文：新訂的第4A及15A條

合併辯論(VIII)— 就上述新條文進行合併辯論

新訂的第4A條旨在容許未加蓋適當印花的文書在符合若干說明的情況下，仍可在民事法律程序中，在法庭收取為證據

新訂的第15A條旨在因應《2013年稅務及印花稅(另類債券計劃)(修訂)條例》而作相應修訂。

表決安排 —— 一併表決增補上述新條文

局長修正案

(已於 2014 年 2 月 13 日隨立法會 CB(3) 380/13-14 號 文件發出)

涂謹申議員修正案

(已於 2014 年 2 月 13 日隨立法會 CB(3) 380/13-14 號 文件發出)

郭榮鏗議員修正案

(已於 2014 年 2 月 13 日隨立法會 CB(3) 380/13-14 號 文件發出)

李慧琼議員修正案

(已於 2014 年 2 月 14 日隨立法會 CB(3) 388/13-14 號 文件及 2014 年 2 月 17 日隨立法會 CB(3) 400/13-14 號 文件發出)

廖長江議員修正案

(已於 2014 年 2 月 13 日隨立法會 CB(3) 380/13-14 號 文件發出)

立法會秘書處

議會事務部 3

2014 年 2 月 18 日

附錄 II
Appendix II

《2012 年印花稅(修訂)條例草案》
政府當局及議員均有提出修正案的條文

就第 5、9、12、16 及 17 條委員會審議階段修正案的重點

修正案 動議人	修正案 (條例草案 條次)	修正案內容	修正案 文本
局長	第一項 (第5、9及 12條)	<ul style="list-style-type: none"> 修正第5(1)條，在第29A(1)條建議的“精神上無行為能力的人”的定義作出修訂； 修正第9及12條，以修正建議的第29CB(4)(b)及29DB(5)(b)條，使受指明條例影響的非香港永久性居民，因被迫出售住宅物業，就替代物業的買賣協議及售賣轉易契可獲豁免繳納買家印花稅； 修正第12條，以修正建議的第29DD條，以修訂就重建項目退回買家印花稅的機制；及 修正第9及12條，就建議的29CB(3)、29CC(1)及(2)、29DB(3)及(8)、以及29DC(1)及(2)條作出技術性或行文上的修訂 	附件1
局長	第二項 (第9及 12條)	修正第9及12條，以修正建議的第29CB(8)(b)及(9)(b)條和第29DB(9)(b)及(10)(b)條，取消未成年的香港永久性居民透過其受託人或監護人購買住宅物業可豁免買家印花稅	
局長	第三項 (第16條)	就建議的第63A條作技術性修訂	
局長	第四項 (第17條)	就建議的第70(2)條作技術性修訂	
李慧琼 議員	第一項 (第5條)	修正第5(1)條，在第29A(1)條建議的“香港永久性居民”的定義中加入有關人士的居籍必須為香港的規定	附件2
李慧琼 議員	第二項 (第5、9及 12條)	<ul style="list-style-type: none"> 修正第5(1)條，在第29A(1)條中加入“香港永久性居民的公司”的定義；及 修正第9及12條，分別在建議的第29CB及29DB條加入新條款，以訂明香港永久性居民的公司可就某些買賣協議及售賣轉易契，獲豁免繳納買家印花稅，以及相關的條件，並就第29CB及29DB條的相關條文作相應的修訂 	附件3

修正案 動議人	修正案 (條例草案 條次)	修正案內容	修正案 文本
李慧琼 議員	第三項 (第5及 12條)	<ul style="list-style-type: none"> 修正第5(1)條，在第29A(1)條中加入“香港永久性居民的公司”的定義（包括該公司的成員人數不超過5名及董事人數不超過3名）；及 修正第12條，在建議的第29DD條加入新條款，以訂明以香港永久性居民的公司名義置業時，先付買家印花稅，若符合條款所訂條件，可予3年後申請退還 	附件4
李慧琼 議員	第四項 (第17條)	在建議的第70條加入第(4)及(5)款，以訂明就徵收額外印花稅的相關條文於2014年12月31日午夜停止生效	附件5
李慧琼 議員	第五項 (第17條)	在建議的第70條加入第(4)及(5)款，以訂明就徵收額外印花稅的相關條文於2015年10月26日午夜到期	附件6
李慧琼 議員	第六項 (第17條)	在建議的第70條加入第(4)及(5)款，以訂明就徵收買家印花稅的相關條文於2014年12月31日午夜停止生效	附件7
李慧琼 議員	第七項 (第17條)	在建議的第70條加入第(4)及(5)款，以訂明就徵收買家印花稅的相關條文於2015年10月26日午夜到期	附件8
涂謹申 議員	第一項 (第9及 12條)	修正第9及12條，刪去建議的第29CB(8)及(9)和29DB(9)及(10)條，分別代以新的第29CB(8)及(9)和29DB(9)及(10)條，訂明以受託人或監護人身份代表精神上無行為能力的人，須根據《精神健康條例》或法庭任命，在購買住宅物業時可獲豁免買家印花稅	附件9
涂謹申 議員	第二項 (第12條)	修正第12條，加入建議的第29DE條，讓慈善機構或慈善信託購入住宅物業時，可以其慈善宗旨及活動所需，獲豁免繳交買家印花稅	附件10
涂謹申 議員	第三項 (第16條)	刪去建議的第63A條而代以新的第63A條，以訂明立法會可藉決議修訂額外印花稅和買家印花稅的稅率	附件11
涂謹申 議員	第四項 (第16條)	刪去建議的第63A條而代以新的第63A條，以訂明財政司司長藉憲報公告修訂額外印花稅和買家印花稅的稅率，須經立法會批准	附件12

修正案 動議人	修正案 (條例草案 條次)	修正案內容	修正案 文本
郭榮鏗 議員	第一項 (第9及 12條)	修正第9及12條，以修正建議的第29CB(8)(b)及(9)(b)條和第29DB(9)(b)及(10)(b)條，取消未成年的香港永久性居民透過其受託人或監護人購買住宅物業可豁免買家印花稅 (與局長第二項修正案相同)	附件13
郭榮鏗 議員	第二項 (第17條)	在建議的第70條加入第(4)款，以訂明在2012年10月27日至本條例通過及刊憲期間，豁免為未成年的香港永久性居民購買物業繳交買家印花稅	
廖長江 議員	一項 (第16條)	刪去建議的第63A條而代以新的第63A條，以訂明財政司司長可藉憲報公告修訂額外印花稅和買家印花稅的稅率，但財政司司長須就公告提交議案，並經立法會通過，若不通過，或在6個月後，公告停止生效，並訂明須退回或追收差額	附件14

立法會秘書處
議會事務部 3
2014年2月18日

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(If the amendment to Clause 17 proposed by
the Honourable Dennis KWOK has been **passed**,
the Honourable Starry LEE Wai-king will move the revised amendment set out below)

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by the Honourable Starry LEE Wai-king

Clause

Amendment Proposed

17

In the proposed section 70, by adding—

“(45) Sections 29CA and 29DA and head 1(1AA) and (1B) in the First Schedule cease to have effect at midnight on 31 December 2014.

(56) The Secretary for Transport and Housing may, subject to the approval of the Legislative Council, by notice published in the Gazette amend subsection (45) by substituting for the date specified in that subsection such date as may be specified in the notice.”.

Note: Revised amendment is marked in *italic type* or with deletion line.

(If the amendment to Clause 17 proposed by
the Honourable Dennis KWOK has been **passed**,
the Honourable Starry LEE Wai-king will move the revised amendment set out below)

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by the Honourable Starry LEE Wai-king

<u>Clause</u>	<u>Amendment Proposed</u>
17	<p>In the proposed section 70, by adding—</p> <p>“(45) Sections 29CA and 29DA and head 1(1AA) and (1B) in the First Schedule expire at midnight on 26 October 2015.</p> <p>(56) The Legislative Council may by resolution amend subsection (45) by substituting for the date specified in that subsection such date as may be specified in the resolution.”.</p>

Note: Revised amendment is marked in *italic type* or with deletion line.

(If the amendment to Clause 17 proposed by
the Honourable Dennis KWOK has been **passed**,
the Honourable Starry LEE Wai-king will move the revised amendment set out below)

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by the Honourable Starry LEE Wai-king

Clause

Amendment Proposed

17

In the proposed section 70, by adding—

“(45) Sections 29CB, 29CC, 29DB and 29DC and head 1(1AAB) and (1C) in the First Schedule cease to have effect at midnight on 31 December 2014.

(~~56~~) The Secretary for Transport and Housing may, subject to the approval of the Legislative Council, by notice published in the Gazette amend subsection (45) by substituting for the date specified in that subsection such date as may be specified in the notice.”.

Note: Revised amendment is marked in *italic type* or with deletion line.

(If the amendment to Clause 17 proposed by the Honourable Dennis KWOK has been **passed**, the Honourable Starry LEE Wai-king will move the revised amendment set out below)

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by the Honourable Starry LEE Wai-king

<u>Clause</u>	<u>Amendment Proposed</u>
17	<p>In the proposed section 70, by adding—</p> <p>“(45) Sections 29CB, 29CC, 29DB and 29DC and head 1(1AAB) and (1C) in the First Schedule expire at midnight on 26 October 2015.</p> <p>(56) The Legislative Council may by resolution amend subsection (45) by substituting for the date specified in that subsection such date as may be specified in the resolution.”.</p>

Note: Revised amendment is marked in *italic type* or with deletion line.

Appendix IV

(If the amendment to Clause 17 proposed by the Honourable Dennis KWOK **and** any of the amendments to Clause 17 in relation to sections 29CA and 29DA and head 1(1AA) and (1B) in the First Schedule proposed by the Honourable Starry LEE Wai-king have been **passed**, the Honourable Starry LEE Wai-king will move the revised amendment set out below)

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by the Honourable Starry LEE Wai-king

Clause

Amendment Proposed

17

In the proposed section 70, by adding—

“(47) Sections 29CB, 29CC, 29DB and 29DC and head 1(1AAB) and (1C) in the First Schedule cease to have effect at midnight on 31 December 2014.

(58) The Secretary for Transport and Housing may, subject to the approval of the Legislative Council, by notice published in the Gazette amend subsection (47) by substituting for the date specified in that subsection such date as may be specified in the notice.”.

Note: Revised amendment is marked in *italic type* or with deletion line.

(If the amendment to Clause 17
proposed by the Honourable Dennis KWOK **and**
any of the amendments to Clause 17 in relation to sections 29CA and 29DA
and head 1(1AA) and (1B) in the First Schedule proposed by
the Honourable Starry LEE Wai-king have been **passed**,
the Honourable Starry LEE Wai-king will move the revised amendment set out below)

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by the Honourable Starry LEE Wai-king

<u>Clause</u>	<u>Amendment Proposed</u>
17	<p>In the proposed section 70, by adding—</p> <p>“(47) Sections 29CB, 29CC, 29DB and 29DC and head 1(1AAB) and (1C) in the First Schedule expire at midnight on 26 October 2015.</p> <p>(58) The Legislative Council may by resolution amend subsection (47) by substituting for the date specified in that subsection such date as may be specified in the resolution.”.</p>

Note: Revised amendment is marked in *italic type* or with deletion line.

Appendix V

(If any of the amendments to Clause 17 in relation to sections 29CA and 29DA and head 1(1AA) and (1B) in the First Schedule proposed by the Honourable Starry LEE Wai-king has been **passed**, and the amendment to Clause 17 proposed by Hon Dennis KWOK has been **negatived**, the Honourable Starry LEE Wai-king will move the revised amendment set out below)

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by the Honourable Starry LEE Wai-king

Clause

Amendment Proposed

17

In the proposed section 70, by adding—

“(46) Sections 29CB, 29CC, 29DB and 29DC and head 1(1AAB) and (1C) in the First Schedule cease to have effect at midnight on 31 December 2014.

(57) The Secretary for Transport and Housing may, subject to the approval of the Legislative Council, by notice published in the Gazette amend subsection (46) by substituting for the date specified in that subsection such date as may be specified in the notice.”.

Note: Revised amendment is marked in *italic type* or with deletion line.

(If any of the amendments to Clause 17 in relation to sections 29CA and 29DA and head 1(1AA) and (1B) in the First Schedule proposed by the Honourable Starry LEE Wai-king has been **passed**, and the amendment to Clause 17 proposed by Hon Dennis KWOK has been **negatived**, the Honourable Starry LEE Wai-king will move the revised amendment set out below)

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by the Honourable Starry LEE Wai-king

<u>Clause</u>	<u>Amendment Proposed</u>
17	<p>In the proposed section 70, by adding—</p> <p>“(46) Sections 29CB, 29CC, 29DB and 29DC and head 1(1AAB) and (1C) in the First Schedule expire at midnight on 26 October 2015.</p> <p>(57) The Legislative Council may by resolution amend subsection (46) by substituting for the date specified in that subsection such date as may be specified in the resolution.”.</p>

Note: Revised amendment is marked in *italic type* or with deletion line.

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 Stage

Amendment to be moved by the Honourable Starry LEE Wai-king

Clause

Amendment Proposed

5(1)

In the proposed definition of “***Hong Kong Permanent resident***, by deleting “purpose;” and substituting—

“purpose, and the person under paragraph (a) or (b) is domiciled in Hong Kong;”.

Stamp Duty (Amendment) Bill 2012

Committee StageAmendments to be moved by the Honourable Starry LEE Wai-king

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

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

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

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

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

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

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

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

(c) any member or director of the HKPR company who breaches any of the undertakings under this subsection must incur a penalty at level 6 which is recoverable by the Collector as a civil debt due to the Government.

(2B) If any member or director of the HKPR company breaches any of the undertakings under subsection (2A), the HKPR company is liable to pay to the Collector within 30 days of such breach, by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1C) in the First Schedule which would be chargeable on the chargeable agreement for sale as if the same had been executed on the date of such breach without the relief granted under subsection (2A).

(2C) If the amount referred to in subsection (2B) is not paid

within the 30 days—

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

9 In the proposed section 29CB(3)(a)—

- (a) in subparagraph (ii), by deleting “; or” and substituting a semicolon;
- (b) in subparagraph (ii)(B), by adding “ or” after “related;”;
- (c) by adding—
 - “(iii) that the newcomer or each of the newcomers is an HKPR company which has fulfilled the requirements under subsection (2A);”.

9 In the proposed section 29CB(3)(b)—

- (a) in subparagraph (i), by deleting “; or” and substituting a semicolon;
- (b) by adding—
 - “(iii) that the second agreement purchaser is an HKPR company which has fulfilled the requirements under subsection (2A);”.

9 In the proposed section 29CB(3)(c)—

- (a) in subparagraph (i), by deleting “; or” and substituting a semicolon;
- (b) in subparagraph (ii)(B), by deleting the full-stop and substituting “; or”;

(c) by adding—

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

12 In the proposed section 29DB, by adding—

“(2A) A conveyance on sale is not chargeable with buyer’s stamp duty under head 1(1AAB) in the First Schedule if it is shown to the satisfaction of the Collector that the transferee, or each of the transferees, under the conveyance is an HKPR company acting on its own behalf, that the member or each of the members of the HKPR company is an Hong Kong permanent resident acting on his or her own behalf, and that the director or each of the directors of the HKPR company is a Hong Kong permanent resident, and—

(a) for the purpose of this subsection, the Collector may require the member or each of the members of the HKPR company to provide a statutory declaration under the Oaths and Declarations Ordinance (Cap. 11) declaring that—

(i) the transferee is an HKPR company acting on its own behalf;

(ii) the member is a Hong Kong permanent resident and that he or she holds one or more shares in the HKPR company on his or her own behalf as legal and beneficial owner;

(iii) the member is not acting on behalf of any person who is not a Hong Kong permanent resident pursuant to a trust, power of attorney or other authorization;

(iv) the member undertakes that he or she will not assign transfer or part with possession of the legal and beneficial ownership of his or her share or shares in the HKPR company, or enter into any agreement so to do, or grant any option over his or her share or shares in the HKPR company unless—

(A) where the transferee or intended transferee of the share or shares, or grantee of the share option, is a Hong Kong permanent resident, the member must cause the transferee or intended transferee or grantee (as the case may be) to make a statutory declaration on or before the date of the share transfer or agreement for share transfer or granting of share option (as the case may be), which statutory declaration must contain the contents provided under subsection (2A)(a), and

deliver the same to the Collector within 14 days of the share transfer or agreement for share transfer or granting of share option (as the case may be);

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

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

(b) the Collector may require the director or each of the directors of the HKPR company to provide a statutory declaration under the Oaths and Declarations Ordinance (Cap. 11) declaring that—

- (i) the transferee is an HKPR company acting on its own behalf;
- (ii) the director is a Hong Kong permanent resident;
- (iii) the director is not acting as such director on behalf of any person who is not a Hong Kong permanent resident pursuant to a power of attorney or other authorization; and
- (iv) the director undertakes that he or she will not cause allow or permit any existing or new share or shares in the HKPR company to be issued or allotted to, or any option to acquire any such share or shares in the HKPR company to be granted to, any person or persons unless—

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

- (B) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is not a Hong Kong permanent resident, the HKPR company must notify the Collector of that fact and pay to the Collector within 14 days after the date of the issuance or allotment or granting of share option (as the case may be), by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1AAB) in the First Schedule which would be chargeable on the conveyance as if the same had been executed on the date of the issuance or allotment or granting of share option (as the case may be) without the relief granted under this subsection;
 - (c) any member or director of the HKPR company who breaches any of the undertakings under subsection (2A) must incur a penalty at level 6 which is recoverable by the Collector as a civil debt due to the Government.
- (2B) If any member or director of the HKPR company breaches any of the undertakings under subsection (2A), the HKPR company is liable to pay to the Collector within 30 days of such breach, by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1AAB) in the First Schedule which would be chargeable on the relevant conveyance as if the same had been executed on the date of such breach without the relief granted under subsection (2A).
- (2C) If the amount referred to in subsection (2B) is not paid within the 30 days—
- (a) the HKPR company is liable to a penalty;
 - (b) the amount of the penalty payable after a lapse of a period of time after the 30 days is the same as that calculated under section 9 for an instrument chargeable with stamp duty of the amount referred to in subsection (2B) that—
 - (i) is not stamped before or within the time for stamping it; and
 - (ii) is stamped after the lapse of the same period of time after the time for stamping it.
- (2D) the Collector may remit the whole or any part of any penalty payable under subsection (2C).”.

12 In the proposed section 29DB(3)—

- (a) in paragraph (a), by deleting “; or” and substituting a semicolon;
- (b) in paragraph (b)(ii), by deleting the full-stop and substituting “; or”;
- (c) by adding—

“(c) that the newcomer or each of the newcomers is an HKPR company which has fulfilled the requirements under subsection (2A).”.

12 In the proposed section 29DB(4)(a)—

- (a) in subparagraph (i), by deleting “; or” and substituting a semicolon;
- (b) by adding—

“(iii) that the transferee is an HKPR company which has fulfilled the requirements under subsection (2A); or”.

12 In the proposed section 29DB(4)(b)—

- (a) in subparagraph (i), by deleting “; or” and substituting a semicolon;
- (b) in subparagraph (ii)(B), by deleting the full-stop and substituting “; or”;
- (c) by adding—

“(iii) that each of the transferees is an HKPR company which has fulfilled the requirements under subsection (2A).”.

Stamp Duty (Amendment) Bill 2012

Committee StageAmendments to be moved by the Honourable Starry LEE Wai-kingClauseAmendment Proposed

5(1)

By adding in alphabetical order to the proposed definitions—

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

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

12

In the proposed section 29DD—

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

“(1A) Despite anything in this Ordinance, the Collector must, on an application made by an applicant who has paid buyer’s stamp duty in respect of an instrument, refund the buyer’s stamp duty if it is shown to the satisfaction of the Collector that—

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

been disposed of by the applicant during a period of 3 years beginning on the date on which it was acquired (*the 3-year period*);

- (c) the applicant has continued to be and has not ceased to be an HKPR company throughout the 3-year period;
 - (d) the residential property concerned has not been demolished, or replaced by another building or part of a building (*redeveloped*), during the 3-year period; and
 - (e) the application for refund is made by the applicant not later than 5 years after the date of the applicable instrument.
- (1B) On an application for refund of buyer's stamp duty under subsection (1A), the Collector may require the applicant to produce—
- (a) a statutory declaration made by one or more members of the applicant—
 - (i) that he or she was a Hong Kong permanent resident and that he or she as such member held one or more shares in the company on his or her own behalf as registered and beneficial owner during the 3-year period;
 - (ii) that the residential property concerned has not been demolished or redeveloped during the 3-year period;
 - (iii) that he or she had no intention to cause the residential property concerned to be demolished or redeveloped at the time when the residential property was acquired and throughout the 3-year period; and
 - (iv) in respect of any matters mentioned in subsection (1A)(a), (b) and (c) which are within his or her own knowledge;

(b) a statutory declaration made by every person who during the 3-year period was a director of the applicant that—

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

(ii) either—

(A) he or she did not at any time during the 3-year period hold any share either as registered owner or as beneficial owner in the applicant; or

(B) if he or she has at any time during the 3- year period held any share in the applicant, he or she did so on his or her own behalf as registered and beneficial owner.

(1C) The Collector may waive one or more of the requirements stipulated in subsection (1B) having regard to all circumstances of the applicant or of its members or directors; ”.

(c) by adding—

“(4A) For the purposes of subsection (1A)(c) but subject to subsection (4B), the applicant is deemed to have ceased to be an HKPR company if—

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

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

(c) any new share of the applicant is allotted or issued or any agreement is

entered into for the allotment or issue of any new share of the applicant.

- (4B) Subsection (4A)(a) and (b) does not apply to a change in the person (*the first person*) who is a member of the applicant or a transfer or an agreement for the transfer of the beneficial interest of any share held by the first person, if the share concerned of the applicant—
- (a) is transferred to or vested in another person (*the second person*) by or pursuant to any decree or order of any court;
 - (b) relates solely to the estate of the first person who is deceased;
 - (c) is devised by or otherwise passed on the death of the first person under a will, the law of intestacy or right of survivorship to the second person; or
 - (d) relates solely to the estate of the first person who has become bankrupt.”.

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by the Honourable Starry LEE Wai-king

Clause

Amendment Proposed

17

In the proposed section 70, by adding—

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

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by the Honourable Starry LEE Wai-king

Clause

Amendment Proposed

17

In the proposed section 70, by adding—

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

Stamp Duty (Amendment) Bill 2012

Committee StageAmendment to be moved by the Honourable Starry LEE Wai-kingClauseAmendment Proposed

17

In the proposed section 70, by adding—

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

Stamp Duty (Amendment) Bill 2012

Committee StageAmendment to be moved by the Honourable Starry LEE Wai-kingClauseAmendment Proposed

17

In the proposed section 70, by adding—

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

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 StageAmendment to be moved by the Honourable James TO Kun-sunClauseAmendment 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. ”.