

立法會 CB(1)316/17-18(01)號文件
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(English version only)

Written Submissions

By

**THE HONG KONG CONVEYANCING &
PROPERTY LAW ASSOCIATION LIMITED**

on

Stamp Duty (Amendment)(No. 2) Bill 2017

November 2017

Submissions on Stamp Duty (Amendment) (No. 2) Bill 2017 (the “Bill”)

1. Our Association notes that the purpose of the Bill is to amend the Stamp Duty Ordinance such that the exemption for Hong Kong permanent resident buyers from the 15% ad valorem stamp duty rate only applies to instruments dealing with a single residential property. In doing so the Administration intends to close the loophole where buyers can take advantage of the above exemption through the simultaneous purchase of multiple residential properties in a single instrument, a concern raised in a previous submission by our Association and members of the public.
2. Addressing the drafting of the Bill, it is our view that in Clause 3(1), which amends Section 29A(1) of the Stamp Duty Ordinance, the definition for “*single residential property*” would create excessive uncertainty for property buyers. The definition of a single residential property is stated to “*include*” the examples given in sub-clauses (a) to (c) without providing a baseline definition which those said examples would illustrate. Other properties may fall outside the list of examples and are left only to the determination of the Collector of Stamp Revenue as to whether they fall under the definition of “*single residential property*” without any guidance otherwise.
3. Nor in our view are the examples in sub-clauses (a) to (c) exhaustive or definitive enough to help establish the definition for “*single residential property*”. For example, it is unclear whether sub-clause (a) would include a unit and a flat roof or terrace that is not situated above the unit, or whether sub-clause (c) would include units joined together not by the demolition of walls but the construction of a staircase linking two units one above the other. Another less ambiguous example excluded from sub-clause (c) would be a unit created by joining more than two units, unless it is the Government’s intention that a property created from more than two units should not count as a single residential property.
4. Although the Inland Revenue Department can issue Interpretation and Practice Notes and post answers to frequently asked questions

on its website to address what counts as a single residential property in more detail, we nevertheless view that such publications lack the force and certainty of legislation. We request the Administration to clarify the definition of “*single residential property*” in the Bill to achieve the intended effect of closing the loophole in the Hong Kong permanent resident exemption as well as certainty for property buyers. In view of the complex nature of the Stamp Duty Ordinance, especially after the series of amendments which it has undergone during recent years, there should also be a hotline or helpdesk at the Stamp Office to give prompt and clear guidance to the public on stamp duty issues.

The Hong Kong Conveyancing &
Property Law Association Limited
November 2017