

LEGISLATIVE COUNCIL BRIEF

Stamp Duty Ordinance (Chapter 117)
Public Revenue Protection Ordinance (Chapter 120)

STAMP DUTY (AMENDMENT) (RESIDENTIAL PROPERTIES) BILL 2023

PUBLIC REVENUE PROTECTION (STAMP DUTY) (NO. 2) ORDER 2023

INTRODUCTION

At the meeting of the Executive Council on 25 October 2023, the Council ADVISED and the Chief Executive (“CE”) ORDERED that –

A

- (a) the Stamp Duty (Amendment) (Residential Properties) Bill 2023 (“the Bill”), at *Annex A*, should be introduced into the Legislative Council (“LegCo”); and

B

- (b) the Public Revenue Protection (Stamp Duty) (No. 2) Order 2023 (“the Order”), at *Annex B*, should be made to give full force and effect of law to all the provisions of the Bill so long as the Order remains in force.

2. The Bill amends the Stamp Duty Ordinance (Cap. 117) (“SDO”) to implement the following proposals for residential property transactions with effect from 25 October 2023 (i.e. 2023 Policy Address (“PA”) date) –

- (a) shortening the applicable period of the Special Stamp Duty (“SSD”) from three years to two years, i.e. shortening the period where the 10% SSD is applicable;
- (b) reducing the respective rates of the Buyer’s Stamp Duty (“BSD”) and the New Residential Stamp Duty (“NRSD”) by half, from 15% to 7.5%; and

- (c) providing a mechanism for suspension of payment of BSD and NRSD¹ for incoming talents' acquisition of residential property in Hong Kong, including conditions pursuant to which the liability of the suspended stamp duty will be waived, and circumstances where the outstanding stamp duty will need to be paid.

JUSTIFICATIONS

The Subdued Residential Property Market

3. Maintaining the healthy and steady development of the private residential property market is one of the important objectives of the Government's housing policies. The Government has been closely monitoring the local residential property market with reference to a series of indicators (including property price, transaction volume of residential properties, future supply, economic conditions and outlook, as well as market sentiment) in assessing appropriate policies and tools to achieve this objective. In the 2010s, in the midst of tight local housing demand-supply balance and ultra-low interest rates in the global monetary environment, the Government introduced several rounds of demand-side management measures ("DSMMs") to prevent further exuberance in the housing market. Details of the existing DSMMs before the Bill and the Order come into effect are at *Annex C*.

4. The residential property market has undergone a visible correction in the past two years or so, notwithstanding a brief period of rebound in early 2023. Based on the latest available information, compared with the peak in September 2021, property prices have fallen by 16% by September 2023. Trading activities also dropped significantly from a monthly average of some 6 700 cases in the first half of 2021 to 3 100 cases in the past three months from July to September 2023. Looking forward, the residential property market remains overshadowed by a number of uncertainties. Concerns about the US monetary policy staying tight for a longer period and the consequential impacts on local interest rates, as well as the uncertainties surrounding the Mainland economy will continue to weigh on market sentiment.

5. On the supply side, with the Government's sustained efforts in increasing the supply of land and housing units, the projected supply in the primary private

¹ Since NRSD is only exempted for property purchase made by a Hong Kong Permanent Resident ("HKPR"), who at the time of acquisition is not a beneficial owner of any other residential property in Hong Kong, an incoming talent will have to pay BSD and NRSD even for the purchase of his/her first residential property in Hong Kong.

residential property market in the coming three to four years stays high at about 105 000 units. As compared with the period prior to implementing the DSMMs, there will be a marked increase in the supply of housing in the near future, and the housing demand-supply balance will likely ease in the period ahead.

6. The prevailing market conditions as well as the demand-supply balance have changed substantially compared with when DSMMs were introduced. The Government hence sees room for suitable adjustment of the DSMMs.

PROPOSALS

I. Shorten the applicable period of SSD from three years to two years

7. Following the introduction of SSD in November 2010, there was a significant reduction in the number of short-term resale cases in respect of residential properties. Compared with the number of short-term confirmor sales/resales of residential property transactions of 31 328 in the year of 2010, the number of SSD cases in recent years are only a few hundred per year.

8. We **propose** to shorten the applicable period of SSD from three years to two years (i.e. shortening the period where the 10% SSD is applicable). In other words, if a property owner disposes of his/her property two years after acquisition, he/she will no longer need to pay the SSD, which amounts to 10% of the property price. A relaxation of SSD may reduce the financial burden on home owners who have need to sell their flats after the holding period of two years, perhaps due to change in personal and family circumstances. The relaxation is also expected to boost market turnover of residential properties by releasing the “locked-up” housing stock, and increase the housing units available for sale in the secondary market for homebuyers.

9. With regard to the scope of the proposed adjustment of SSD, we consider that the current proposal has struck a proper balance between helping home owners who have need to sell their flats after a reasonable holding period and preserving the effectiveness of SSD in curbing short-term speculative activities. The adjusted SSD (for a holding period up to two years) would continue to serve its purpose of curbing short-term speculative activities, which is essential to ensuring the healthy development of the residential property market.

II. Reduce the respective rates of BSD and NRSD from 15% to 7.5%

10. BSD and NRSD, introduced in October 2012 and November 2016

respectively, have been effective in curbing external and investment demand as intended. For BSD, in the first nine months of 2023, only 1.4% of the residential property transactions (i.e. 549 cases) are subject to payment of BSD. During the period, purchases of residential properties by non-local individuals and non-local companies stayed low at 0.7% of total transactions, much lower than that of 4.5% before the introduction of BSD. As regards NRSD, from January to September of 2023, only 3.5% of the residential property transactions (i.e. 1 369 cases) are subject to payment of NRSD; and among residential property transactions where buyers were HKPRs, 98% of the cases involved buyers who did not own any other residential property in Hong Kong at the time of acquisition, as compared with 75% before the introduction of NRSD.

11. We **propose** to reduce the respective rates of BSD and NRSD by half, i.e. from 15% to 7.5%, with a view to alleviating the financial burden on HKPRs who already own residential properties in their acquisition of another residential property, as well as reduce the costs of non-HKPRs in their acquisition of residential properties. The adjustment of NRSD will also facilitate HKPR home owners in replacing property², since the lump sum of NRSD paid upfront (which will be partially refunded after they have disposed of the original flat within the prescribed timeframe) would be smaller. Given the much higher mortgage interest rates and relatively weak market sentiment nowadays, we expect that a reduction in the BSD and NRSD rates from 15% to 7.5% would not fuel up investment demand for residential property drastically.

III. Suspension of payment of BSD and NRSD for incoming talents

12. As one of the measures to attract and retain talents in the 2022 PA, the Government has introduced a refund mechanism under the BSD and NRSD regimes for non-HKPRs who have entered Hong Kong under designated talent admission schemes, purchased a residential property in Hong Kong on or after 19 October 2022 and subsequently become HKPRs (hereafter referred to as “the Refund Mechanism”). The enabling legislation, i.e. the Stamp Duty (Amendment) (No. 3) Ordinance 2023, was gazetted on 30 June 2023.

13. The Government is committed to attracting and retaining incoming talents from around the world with a view to injecting impetus to the growth of Hong Kong. With due regard to the property market situation as well as views received

² Under the existing arrangement for NRSD, a HKPR who is acquiring a residential Property B to replace his/her only other residential Property A can apply for partial refund of NRSD paid for acquiring Property B. He/she will be subject to NRSD in the first instance, but by virtue of section 29DF of the SDO, he/she may seek a refund of the stamp duty paid in excess of that computed under the lower ad valorem stamp duty (“AVD”) rates at Scale 2 upon proof that Property A has been disposed of within 12 months from the date Property B was assigned to him/her.

since the implementation of the Refund Mechanism, the Government considers that there is room to enhance the related arrangements to further facilitate home purchase of incoming talents. As such, we **propose** to provide a mechanism for suspension of payment of BSD and NRSD for incoming talents' acquisition of residential property in Hong Kong, including conditions pursuant to which the liability of the suspended stamp duty will be waived, and circumstances where the outstanding stamp duty will need to be paid, for reducing the incoming talents' upfront cost of property purchase (hereafter referred to as "the Suspension Mechanism").

14. The key features of the Suspension Mechanism are summarised below –
- (a) when an eligible incoming talent³ purchases a residential property in Hong Kong **on or after 25 October 2023** (i.e. the 2023 PA date), he/she may apply to the Inland Revenue Department ("IRD") for **suspension of stamp duty payment** in respect of BSD and the difference between NRSD and AVD at Scale 2 rates (i.e. "specified amount") when presenting the instrument of acquisition to IRD for stamping. The talent still has to pay AVD at Scale 2 rates to IRD;
 - (b) upon IRD's vetting and approval of the application for suspension, **a statutory charge will be constituted in favour of the Collector of Stamp Revenue ("Collector") automatically by law**. IRD will register an instrument denoting the charge (i.e. **a certificate of charge**) at the Land Registry ("LR"). In terms of priority, the charge in favour of the Collector is proposed to be **second only to the first mortgage for acquiring the property to the extent of a reserved amount**⁴ for striking a proper balance between protecting government revenue and allowing the talent to obtain a mortgage to finance the acquisition of the property concerned with relative ease;
 - (c) **after the eligible incoming talent becomes a HKPR**, he/she can submit an **application for waiver** to IRD for **waiving the liabilities** in respect of the specified amount. Upon IRD's vetting and approval, IRD will issue **a certificate of discharge** in respect of the charge in favour of the

³ An eligible incoming talent is a person to whom a specified talent scheme applies (provided under Schedule 12 to the SDO), who at the time of acquisition of the residential property, is not a beneficial owner of any other residential property.

⁴ The reserved amount would be the lower of (a) the actual amount of the principal and interest in respect of the loan for acquiring the subject property under the acquisition mortgage concerned; or (b) an amount arrived at by deducting the specified amount from the amount/value of the consideration for the acquisition of the subject property to cater for cases where the sum of mortgage loan taken out exceeds the value/consideration of the property.

Collector, which has the effect of discharging the charge and is registrable at LR; and

- (d) in the event that the eligible incoming talent buyer **fails to become HKPR within nine years** from the date when he/she is permitted to stay in Hong Kong under the designated talent scheme (i.e. seven years of ordinary residence in Hong Kong plus two years as buffer), or under certain triggering circumstances⁵, he/she will be liable to **pay the specified amount to IRD within 30 days** of the occurrence of the circumstance. If the eligible incoming talent buyer fails to do so, he/she will be liable to pay late stamping penalty, which is set with reference to the existing provision on “late stamping” under the section 9 of the SDO⁶.

The detailed framework of the proposed Suspension Mechanism, including arrangements/conditions pertaining to joint acquisition by incoming talents and/or with their close relatives, is at *Annex D*.

D

The Order

15. The Order, made by CE pursuant to section 2 of the Public Revenue Protection Ordinance (Cap. 120) after consultation with the Executive Council, gives full force and effect of law to the Bill so long as the Order remains in force. The Order came into force at 11 a.m. on 25 October 2023.

OTHER OPTIONS

16. The proposals cannot be implemented without legislative amendments to the SDO. Before the Bill becomes law, the proposals can only take effect promptly under the Order made by CE. There is no other option.

⁵ The triggering circumstances are (a) on any date before the deadline for waiver – if the talent buyer/each of the talent co-buyers cease(s) to be a beneficial owner of the subject property, or a person, other than one closely related to the buyer or all of the remaining co-buyers, becomes a beneficial owner of the subject property; and (b) as at the deadline for waiver – in case where no liability has been waived by the Collector in respect of the specified amount.

⁶ The late stamping penalty is to be imposed according to the following scale –

- (a) Not exceeding 1 month – double the amount of the specified amount;
- (b) Exceeding 1 months but not exceeding 2 months – 4 times the specified amount; and
- (c) In any other case – 10 times the amount of the specified amount.

THE BILL

17. The main provisions of the Bill are as follows –
- (a) **Clause 1** sets out the short title and provides that the Bill, when enacted, is deemed to have come into operation at 11 a.m. on 25 October 2023;
 - (b) The Bill reorganises Division 6A of Part IIIA of the SDO by dividing it into three Subdivisions. A new Subdivision 3 (new sections 29DM to 29DY) of that Division, added by Clause 12, provides for the Suspension Mechanism;
 - (c) **Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11 and 15** make amendments for reorganising Division 6A of Part IIIA of the SDO, or amendments that are otherwise related to the new Subdivision 3 of that Division, to the SDO, while **Clause 16** adds a new Schedule 13 to the SDO to set out the powers of the Collector as a chargee in respect of a charge constituted under that Subdivision; and
 - (d) **Clause 14** amends the First Schedule to the SDO to shorten the resale period during which SSD can be charged from 36 months to 24 months, and to lower the respective rates of BSD and NRSD from 15% to 7.5%. The new section 76 added to the SDO by Clause 13 is a transitional provision regarding the lowering of the rates.

LEGISLATIVE TIMETABLE

18. The legislative timetable is as follows –

Publication of the Order in the Gazette	25 October 2023
Publication of the Bill in the Gazette	27 October 2023
Tabling of the Order at the LegCo for negative vetting	1 November 2023
First Reading and commencement of Second Reading debate of the Bill	8 November 2023
Resumption of Second Reading debate, committee stage and Third Reading of the Bill	To be notified

19. The Order gives full effect to the Bill for a four-month period⁷ starting from the effective date. The Government aims to have the Bill passed by the LegCo before the Order ceases to have effect on 25 February 2024.

IMPLICATIONS OF THE PROPOSAL

20. The Bill and the Order are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the binding effect of the existing provisions of the SDO and the Public Revenue Protection Ordinance (Cap. 120). The economic, productivity, financial, family and civil service implications are set out at *Annex E*. There are no environmental, gender or sustainability implications (other than the relevant economic implications).

E

PUBLIC CONSULTATION

21. Owing to the market sensitivity of the proposed measures, no formal consultation was carried out specifically for the proposals at paragraph 2 above. That said, in formulating the proposals, we have taken into account views from the public and relevant stakeholders on the adjustment of DSMMs with due regard to the economic and market conditions.

PUBLICITY

22. A press release was issued on 25 October 2023. A spokesman will be available to handle media and public enquiries.

ENQUIRIES

23. Enquiries on this brief can be addressed to Miss Venus TSOI, Principal Assistant Secretary for Housing (Private Housing), at 2761 5117.

Housing Bureau
25 October 2023

⁷ Or such shorter period in the event of the Bill being rejected by LegCo, being withdrawn, or becoming law ahead of the expiry of such four-month period, as stipulated in section 5(2) of the Public Revenue Protection Ordinance (Cap. 120).

**Stamp Duty (Amendment) (Residential Properties) Bill
2023**

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A BILL

To

Amend the Stamp Duty Ordinance to shorten the period ensuing the acquisition of residential properties and during which certain transactions of the properties are chargeable with special stamp duty from 36 months to 24 months; to lower the flat rate of ad valorem stamp duty payable on certain instruments dealing with residential properties, and the rate of buyer's stamp duty payable on certain such instruments, from 15% to 7.5%; to provide for a mechanism under which persons who are admitted into Hong Kong as Hong Kong residents under certain admission schemes and who acquire residential properties not as Hong Kong permanent residents may have certain amounts of ad valorem stamp duty and buyer's stamp duty waived if those persons subsequently become Hong Kong permanent residents; and to make related amendments.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Stamp Duty (Amendment) (Residential Properties) Ordinance 2023.
- (2) This Ordinance is deemed to have come into operation at 11 a.m. on 25 October 2023.

2. Stamp Duty Ordinance amended

The Stamp Duty Ordinance (Cap. 117) is amended as set out in sections 3 to 16.

3. Section 2 amended (interpretation)

Section 2(1), definition of *stamp*, paragraph (b)—

Repeal

“or remission of stamp duty”

Substitute

“, remission, suspension or waiver of stamp duty”.

4. Section 4 amended (charging of, liability for, and recovery of stamp duty)

After section 4(5B)—

Add

“(5C) No action may be brought because of section 29DV for the recovery of the specified amount mentioned in that section more than 6 years after the day on which the liability in respect of the specified amount ceases to be suspended under Subdivision 3 of Division 6A of Part IIIA.”.

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

Before section 15(3)(a)—

Add

“(aaa) an instrument an amount of liability of stamp duty of which has been suspended under Subdivision 3 of Division 6A of Part IIIA;”.

6. Part IIIA, Division 6A heading amended (refund of certain amounts of stamp duty for Hong Kong permanent residents admitted into Hong Kong under certain admission schemes)

Part IIIA, Division 6A, heading—

Repeal

“Refund of Certain Amounts of Stamp Duty”

Substitute

“Stamp Duty Treatment”.

7. Provisions added

Part IIIA, Division 6A, before section 29DI—

Add**“Subdivision 1—Preliminary****29DHA. Interpretation (Division 6A)**

(1) In this Division—

specified scheme (指明計劃) means a scheme (including a policy or arrangement) that is specified in Schedule 12.

(2) For the purposes of this Division, a person is covered by a specified scheme if the person, despite not being a Hong Kong permanent resident, is permitted to stay in Hong Kong by virtue of being a person to whom a specified scheme applies.

(3) In this Division, a reference to a person’s being permitted to stay in Hong Kong is a reference to the person’s being permitted to stay in Hong Kong pursuant to the exercise of a power under the Immigration Ordinance (Cap. 115).

(4) For the purposes of this Division—

(a) an agreement for sale of a residential property is unperformed if the agreement is cancelled, annulled or rescinded or is otherwise not performed; and

(b) such an agreement remains outstanding if the agreement provides for the conveyance of the

residential property concerned but the conveyance is not yet executed.

Subdivision 2—Refund of Certain Amounts of Stamp Duty”.

8. Section 29DI amended (interpretation)

- (1) Section 29DI, heading, after “**Interpretation**”—

Add

“(Subdivision 2)”.

- (2) Section 29DI—

Repeal

“Division”

Substitute

“Subdivision”.

9. Section 29DJ amended (application for refund)

- (1) Section 29DJ(1)(a)—

Repeal

everything after “property”

Substitute

“falls—

(i) on or after 19 October 2022; and

(ii) before 25 October 2023; and”.

- (2) Section 29DJ(5), English text, definition of *specified amount*, paragraph (b)—

Repeal

“instrument;”

Substitute

“instrument.”.

- (3) Section 29DJ(5)—

Repeal the definition of *specified scheme*.

- (4) Section 29DJ—

Repeal subsections (6), (7) and (8).

10. Section 29DK amended (applicants or co-buyers regarded as not being beneficial owners of other residential properties in certain circumstances)

Section 29DK(3)(c) and (6)(c)—

Repeal

“Division”

Substitute

“Subdivision”.

11. Section 29DL amended (deadline for application)

Section 29DL—

Repeal

“Division”

Substitute

“Subdivision”.

12. Part IIIA, Division 6A, Subdivision 3 added

Part IIIA, Division 6A, after section 29DL—

Add

“Subdivision 3—Suspension of and Waiver of Liabilities in respect of Certain Amounts of Stamp Duty

29DM. Interpretation (Subdivision 3)

(1) In this Subdivision—

acquisition mortgage (置業按揭), in relation to a subject property, means a charge by deed executed on the property for securing the repayment of a loan made for acquiring the property;

applicable instrument (適用文書) means an instrument—

- (a) under which a single residential property is acquired; and
- (b) on which, but for this Subdivision—
 - (i) buyer’s stamp duty would have been payable; and
 - (ii) stamp duty would have been payable according to Part 1 of Scale 1 of head 1(1), or Part 1 of Scale 1 of head 1(1A), in the First Schedule;

buyer (買家), in relation to an applicable instrument, means a person who alone acquired the subject property under the instrument;

Cap. 128 (《第 128 章》) means the Land Registration Ordinance (Cap. 128);

co-buyer (共同買家), in relation to an applicable instrument, means a person who, jointly with any other person, acquired the subject property under the instrument;

deadline for waiver (寬免期限)—see section 29DS;

remaining co-buyer (餘下共同買家) means a co-buyer who remains a beneficial owner of the subject property concerned;

remaining specified scheme co-buyer (餘下指明計劃共同買家) means a co-buyer—

- (a) who was, on the date of the co-buyers’ acquisition of the subject property, covered by a specified scheme; and
- (b) who is a remaining co-buyer;

specified amount (指明款項), in relation to an applicable instrument, means the sum of the amounts under paragraphs (a) and (b)—

- (a) an amount equal to the difference between—
 - (i) if the instrument is one on which, but for this Subdivision, stamp duty would have been payable according to Part 1 of Scale 1 of head 1(1) in the First Schedule—
 - (A) the stamp duty so payable on the instrument; and
 - (B) the stamp duty that would have been payable on the instrument if it were chargeable under Scale 2 of head 1(1) in the First Schedule in accordance with Division 2; or
 - (ii) if the instrument is one on which, but for this Subdivision, stamp duty would have been payable according to Part 1 of Scale 1 of head 1(1A) in the First Schedule—
 - (A) the stamp duty so payable on the instrument; and

(B) the stamp duty that would have been payable on the instrument if it were chargeable under Scale 2 of head 1(1A) in the First Schedule in accordance with Division 3;

(b) the amount of buyer's stamp duty that would have been payable on the instrument but for this Subdivision;

specified charge (指明押記), in relation to an applicable instrument, means—

(a) if the instrument is an agreement for sale—an equitable charge constituted in respect of the instrument under section 29DP(2); or

(b) if the instrument is a conveyance on sale—a legal charge constituted in respect of the instrument under section 29DP(3);

subject property (標的物業), in relation to an applicable instrument, means the residential property acquired under the instrument.

(2) The words and expressions used in Schedule 13 and defined in this section for the purposes of this Subdivision have the same meaning as in this Subdivision.

29DN. Application for suspension of liabilities in respect of specified amounts

(1) A person who has acquired a subject property under an applicable instrument may, when the instrument is presented to the Collector for stamping under this Ordinance, make an application for suspension of the instrument's liability to stamp duty in respect of the specified amount.

(2) The Collector may approve the application if it is shown to the satisfaction of the Collector that—

(a) the date of the applicant's acquisition of the subject property concerned falls on or after 25 October 2023;

(b) in relation to the applicant—

(i) if the applicant alone acquired the property under the applicable instrument—the conditions specified in subsection (3) are met; or

(ii) if the applicant, jointly with one or more than one other person, acquired the property under the applicable instrument—the conditions specified in subsection (4) are met; and

(c) a fee specified by the Collector has been paid in respect of the application.

(3) The conditions specified for subsection (2)(b)(i) are—

(a) that on the date of the applicant's acquisition of the subject property—

(i) the applicant was acting on his or her own behalf;

(ii) the applicant was covered by a specified scheme; and

(iii) the applicant was not a beneficial owner of any other residential property in Hong Kong; and

(b) that the applicant is not a vendor under an agreement for sale of any other residential property in Hong Kong—

- (i) that was made before the date of the applicant's acquisition of the subject property; and
 - (ii) that is unperformed, or otherwise remains outstanding, on the date of the application.
- (4) The conditions specified for subsection (2)(b)(ii) are—
- (a) that on the date of the co-buyers' acquisition of the subject property—
 - (i) each of the co-buyers was acting on his or her own behalf;
 - (ii) at least one of the co-buyers was covered by a specified scheme, and—
 - (A) each of the co-buyers who were not so covered was a Hong Kong permanent resident; or
 - (B) all the co-buyers were closely related; and
 - (iii) each of the co-buyers was not a beneficial owner of any other residential property in Hong Kong; and
 - (b) that each of the co-buyers is not a vendor under an agreement for sale of any other residential property in Hong Kong—
 - (i) that was made before the date of the co-buyers' acquisition of the subject property; and

- (ii) that is unperformed, or otherwise remains outstanding, on the date of the application.
- (5) If an application is approved under subsection (2) in relation to an applicable instrument—
- (a) the instrument's liability to stamp duty in respect of the specified amount is suspended until any one of the triggering circumstances specified in section 29DU occurs in relation to the instrument; and
 - (b) the instrument is to be stamped with a stamp, or by way of a stamp certificate, denoting that the instrument's liability to stamp duty in respect of the specified amount has been suspended under this Subdivision.

29DO. Application for refund of and suspension of liabilities in respect of specified amounts in certain circumstances

- (1) Subsection (2) applies in relation to a buyer in respect of an applicable instrument if—
- (a) on the date of the buyer's acquisition of the subject property, the buyer was a beneficial owner of another residential property in Hong Kong (*original property A*); and
 - (b) the instrument is one on which—
 - (i) buyer's stamp duty has been paid; and
 - (ii) stamp duty has been paid according to Part 1 of Scale 1 of head 1(1), or Part 1 of Scale 1 of head 1(1A), in the First Schedule.
- (2) The buyer may make an application for—
- (a) the refund of an amount that would be the specified amount for the applicable instrument had section 29DN been applied in relation to the instrument; and

- (b) the suspension of the instrument's liability to stamp duty in respect of such an amount.
- (3) The Collector may approve the application if—
 - (a) it is shown to the satisfaction of the Collector that—
 - (i) original property A is—
 - (A) disposed of by the applicant under an agreement for sale that is made within the period specified in subsection (7); and
 - (B) transferred or divested from the applicant under a conveyance on sale that is executed in conformity with the agreement; or
 - (ii) original property A is transferred or divested from the applicant under a conveyance on sale within the period specified in subsection (7);
 - (b) it is shown to the satisfaction of the Collector that, had the applicant not been a beneficial owner of original property A on the date of the applicant's acquisition of the subject property, the conditions in section 29DN(2) would have been met in relation to the subject property and the applicant;
 - (c) on the date of the application, no liability to stamp duty or penalty in respect of original property A is outstanding under this Ordinance; and
 - (d) the application is made by the applicant—
 - (i) not later than 2 years after the date of the applicable instrument; or
 - (ii) not later than 2 months after the date of the conveyance on sale under which original property A is transferred or divested,

whichever is the later.

- (4) Subsection (5) applies in relation to a person who is one of the co-buyers in respect of an applicable instrument (*specified co-buyer*) if—
 - (a) on the date of the co-buyers' acquisition of the subject property, any one of the co-buyers was a beneficial owner of another residential property in Hong Kong (*original property B*); and
 - (b) the instrument is one on which—
 - (i) buyer's stamp duty has been paid; and
 - (ii) stamp duty has been paid according to Part 1 of Scale 1 of head 1(1), or Part 1 of Scale 1 of head 1(1A), in the First Schedule.
- (5) The specified co-buyer may make an application for—
 - (a) the refund of an amount that would be the specified amount for the applicable instrument had section 29DN been applied in relation to the instrument; and
 - (b) the suspension of the instrument's liability to stamp duty in respect of such an amount.
- (6) The Collector may approve the application if—
 - (a) it is shown to the satisfaction of the Collector that—
 - (i) original property B is—
 - (A) disposed of by the co-buyer concerned under an agreement for sale that is made within the period specified in subsection (7); and
 - (B) transferred or divested from that co-buyer under a conveyance on sale that is executed in conformity with the agreement; or

- (ii) original property B is transferred or divested from that co-buyer under a conveyance on sale within the period specified in subsection (7);
- (b) it is shown to the satisfaction of the Collector that, had that co-buyer not been a beneficial owner of original property B on the date of the co-buyers' acquisition of the subject property, the conditions in section 29DN(2) would have been met in relation to the subject property and the applicant;
- (c) on the date of the application, no liability to stamp duty or penalty in respect of original property B is outstanding under this Ordinance; and
- (d) the application is made by the applicant—
 - (i) not later than 2 years after the date of the applicable instrument; or
 - (ii) not later than 2 months after the date of the conveyance on sale under which original property B is transferred or divested, whichever is the later.
- (7) The period specified for the purposes of subsections (3)(a)(i)(A) and (ii) and (6)(a)(i)(A) and (ii) is—
 - (a) if the applicable instrument is a conveyance on sale—12 months after the date of the conveyance; or
 - (b) if the applicable instrument is an agreement for sale—12 months after the date of the conveyance on sale executed in conformity with the agreement.
- (8) If an application is approved under subsection (3) or (6) in relation to an applicable instrument—
 - (a) the instrument's liability to stamp duty in respect of the specified amount is suspended until any one of

- the triggering circumstances specified in section 29DU occurs in relation to the instrument; and
- (b) the instrument is to be stamped with a stamp, or by way of a stamp certificate, denoting that the instrument's liability to stamp duty in respect of the specified amount has been suspended under this Subdivision.

29DP. Constitution of specified charges

- (1) This section applies in relation to an applicable instrument if the instrument's liability to stamp duty in respect of the specified amount is suspended under this Subdivision.
- (2) If the applicable instrument is an agreement for sale, the specified amount that may be recoverable by the Collector—
 - (a) if the subject property was acquired by a buyer alone—constitutes an equitable charge on—
 - (i) the buyer's interest, right and title in respect of the agreement; and
 - (ii) the buyer's interest, right and estate in respect of the property, in favour of the Collector; or
 - (b) if the subject property was jointly acquired by co-buyers—constitutes an equitable charge on—
 - (i) the co-buyers' interest, right and title in respect of the agreement; and
 - (ii) the co-buyers' interest, right and estate in respect of the property, in favour of the Collector.

- (3) If the applicable instrument is a conveyance on sale, the specified amount that may be recoverable by the Collector constitutes a legal charge on the subject property in favour of the Collector.
- (4) A specified charge constituted in respect of an applicable instrument is deemed to take effect on the date of acquisition of the subject property.
- (5) If a specified charge is constituted, the Collector must make an instrument denoting it.
- (6) The instrument mentioned in subsection (5) may be registered under Cap. 128 as an instrument affecting land.
- (7) If a specified charge is an equitable charge constituted in respect of an agreement for sale under subsection (2), it is for all purposes taken to be a legal charge constituted on the subject property concerned once a conveyance on sale is executed in conformity with the agreement.

29DQ. Powers of Collector under specified charges

- (1) A specified charge confers on the Collector, as a chargee in respect of the charge, the powers in respect of the subject property concerned that are specified in Schedule 13.
- (2) The powers are not exercisable before the expiry of the specified period for the specified charge.
- (3) In this section—
specified period (指明期間), in relation to a specified charge, means a period of 30 days after the day on which the relevant applicable instrument's liability to stamp duty in respect of the specified amount ceases to be suspended under this Subdivision.

29DR. Priority of specified charges

- (1) Despite any provisions in any other enactment to the contrary, a specified charge is, to the extent of the reserved amount specified in subsection (2), not entitled to priority over the first acquisition mortgage executed on the subject property concerned.
- (2) The reserved amount specified for this section is the lower of the following—
 - (a) the amount of the principal and interest in respect of the loan for acquiring the subject property under the acquisition mortgage concerned;
 - (b) an amount arrived at by deducting the specified amount from the amount or value of the consideration for the acquisition of the subject property under the applicable instrument concerned.
- (3) Section 53 of Cap. 219 applies in relation to the specified charge as if it were a subsequent mortgage mentioned in that section.
- (4) Moreover, for applying section 54 of Cap. 219 to any money received by the mortgagee in respect of the first acquisition mortgage mentioned in subsection (1), paragraph (d) of that section is to be disregarded, and that money is to be applied, after being applied in payment of the amounts mentioned in paragraph (c) of that section, according to the following priority—
 - (a) in payment of mortgage money, interest and costs due under the mortgage to the extent of the reserved amount specified in subsection (2);
 - (b) in payment of the specified amount secured under the specified charge; and

- (c) in payment of the remaining mortgage money, interest and costs due under the mortgage.
- (5) Despite any rule of law, any provisions in any other enactment or any covenants, terms and conditions in any other instruments to the contrary, the priority of the specified charge in respect of the subject property is not to be affected by any right of subrogation of any person.
- (6) To avoid doubt, this section does not otherwise affect any rule of law for determining the priority of a specified charge in respect of the subject property concerned.
- (7) In this section—

Cap. 219 (《第 219 章》) means the Conveyancing and Property Ordinance (Cap. 219);

rule of law (法律規則) means any rule of common law or of equity.

29DS. Meaning of deadline for waiver

- (1) In sections 29DT, 29DU and 29DX, a reference to the deadline for waiver in relation to an applicable instrument is a reference to—
- (a) if the subject property was acquired by a buyer alone—the last day of the period of 9 years beginning on the first day on which the buyer is permitted to stay in Hong Kong because of the relevant specified scheme; or
- (b) if the subject property was jointly acquired by co-buyers—subject to subsection (2), the last day (*due day for co-buyers*) of the period of 9 years beginning on the first day on which the remaining specified scheme co-buyer who, among all such co-buyers, is last permitted to stay in Hong Kong

because of the relevant specified scheme, is so permitted.

- (2) If a co-buyer who was covered by a specified scheme on the date of the co-buyers' acquisition of the subject property ceases to be a beneficial owner of the property and, as a result, the due day for co-buyers would have been advanced to a day that is earlier than the day of the cessation (*cessation day*), the reference to the deadline for waiver in the case of subsection (1)(b) is to be a reference to the cessation day instead of the due day for co-buyers.
- (3) In this section—
- relevant specified scheme** (相關指明計劃)—
- (a) in relation to a buyer, means the specified scheme by which the buyer was covered on the date of the buyer's acquisition of the subject property; or
- (b) in relation to a remaining specified scheme co-buyer, means the specified scheme by which that co-buyer was covered on the date of the co-buyers' acquisition of the subject property.

29DT. Application for waiver of liabilities in respect of specified amounts

- (1) This section applies in relation to an applicable instrument if the instrument's liability to stamp duty in respect of the specified amount has been suspended under this Subdivision.
- (2) The Collector may, on an application made by a buyer or remaining co-buyer (whichever is applicable) before the deadline for waiver, waive the liability mentioned in subsection (1) if it is shown to the satisfaction of the Collector that—

- (a) if the applicant is a buyer—
 - (i) the applicant has after the date of the applicant's acquisition of the subject property become, and on the date of the application remains, a Hong Kong permanent resident; and
 - (ii) no triggering circumstance specified in section 29DU(1)(a)(i) has occurred in relation to the applicable instrument; or
- (b) if the applicant is a remaining co-buyer—
 - (i) each of the remaining co-buyers who were not Hong Kong permanent residents on the date of the co-buyers' acquisition of the subject property has after that date become, and on the date of the application remains, a Hong Kong permanent resident; and
 - (ii) no triggering circumstance specified in section 29DU(1)(a)(ii) has occurred in relation to the applicable instrument.
- (3) If an application is approved under subsection (2) in relation to an applicable instrument, the instrument is to be stamped with a stamp, or by way of a stamp certificate, denoting that the instrument's liability to stamp duty in respect of the specified amount has been waived under this section.

29DU. Triggering circumstances for cessation of suspension of liabilities in respect of specified amounts

- (1) In relation to an applicable instrument, the triggering circumstances specified for this Subdivision are—
 - (a) that on any date before the deadline for waiver—

- (i) if the subject property was acquired by a buyer alone—
 - (A) the buyer ceases to be a beneficial owner of the property; or
 - (B) a person other than an eligible person becomes a beneficial owner of the property in addition to the buyer; or
- (ii) if the subject property was jointly acquired by co-buyers—
 - (A) each of the co-buyers who were covered by a specified scheme on the date of the co-buyers' acquisition of the property has ceased to be a beneficial owner of the property; or
 - (B) a person other than an eligible person becomes a beneficial owner of the property in addition to one or more remaining specified scheme co-buyers; and
- (b) otherwise—that, as at the deadline for waiver, no liability has been waived under section 29DT(2) in relation to the instrument.
- (2) In this section—
 - eligible person* (合資格人士), in relation to the subject property concerned, means a person—
 - (a) who is closely related to—
 - (i) for subsection (1)(a)(i)(B)—the buyer; or
 - (ii) for subsection (1)(a)(ii)(B)—all of the remaining co-buyers; and

- (b) who was acting on his or her own behalf on the date of his or her acquisition of the property.

29DV. Payments of specified amounts

- (1) If an applicable instrument's liability to stamp duty in respect of the specified amount ceases to be suspended under this Subdivision, then despite section 4(3) and paragraph (C) in Part 1 of Scale 1 of head 1(1) or paragraph (C) in Part 1 of Scale 1 of head 1(1A) (whichever is applicable) in the First Schedule—
- (a) if the subject property was acquired by a buyer alone—the buyer is liable civilly to the Collector for the payment of the specified amount, and any penalty payable under subsection (3), in accordance with this section; or
- (b) if the subject property was jointly acquired by co-buyers—
- (i) the co-buyers are jointly and severally liable civilly to the Collector for the payment of the specified amount, and any penalty payable under subsection (3), in accordance with this section; and
- (ii) the co-buyers may be proceeded against without reference to any civil liability of them inter se for the payment of the specified amount and penalty.
- (2) The specified amount must be paid to the Collector within 30 days after the day on which the relevant triggering circumstance specified in section 29DU occurred.
- (3) If the specified amount is not paid to the Collector within the period mentioned in subsection (2) (*30-day period*)—

- (a) for subsection (1)(a)—the buyer is liable to a penalty; or
- (b) for subsection (1)(b)—the co-buyers are jointly and severally liable to a penalty.
- (4) The amount of the penalty is—
- (a) if the specified amount is paid to the Collector not later than 1 month after the expiry of the 30-day period—double the amount of the specified amount;
- (b) if the specified amount is paid to the Collector later than 1 month but not later than 2 months after the expiry of the 30-day period—4 times the amount of the specified amount; or
- (c) in any other case—10 times the amount of the specified amount.
- (5) The Collector may remit the whole or any part of any penalty payable under subsection (3).

29DW. Discharge of specified charges

- (1) If an applicable instrument's liability to stamp duty in respect of the specified amount is waived on an application under section 29DT, the Collector must issue to the applicant a certificate of discharge in respect of the specified charge that has been constituted in respect of the instrument.
- (2) The Collector may also, on an application made by an eligible person, issue a certificate of discharge in respect of the specified charge to the person if—
- (a) it is shown to the satisfaction of the Collector that the applicable instrument concerned is an agreement for sale that is unperformed; or

- (b) a liability to stamp duty has ceased to be suspended under this Subdivision, but no such liability remains outstanding.
- (3) The issue of a certificate of discharge under subsection (1) or (2) constitutes a discharge of the specified charge concerned.
- (4) In this section—
 - eligible person* (合資格人士), in relation to an applicable instrument, means—
 - (a) the buyer or any one of the remaining co-buyers (whichever is applicable); or
 - (b) a vendor or transferor from whom the buyer or co-buyers acquired the subject property under the instrument.

29DX. Treatment of persons becoming Hong Kong permanent residents on appeal etc.

- (1) The Collector may, on an application made by a person who had, in relation to an applicable instrument, paid the specified amount or any penalty (or both) to the Collector because of section 29DV(1)(a), refund the amount so paid to the person if it is shown to the satisfaction of the Collector that—
 - (a) an application of the person for a permanent identity card was refused by a decision made under the Registration of Persons Ordinance (Cap. 177) (*Cap. 177*) before the deadline for waiver;
 - (b) the person has subsequently become a Hong Kong permanent resident because of an appeal against, or any other legal proceedings concerning, the decision; and

- (c) had the person been a Hong Kong permanent resident on the day on which the decision was made, the conditions specified in section 29DT(2)(a) would have been met in relation to the person and the instrument on any day during the period—
 - (i) beginning on the day on which the decision was made; and
 - (ii) ending on the day immediately before the deadline for waiver.
- (2) The Collector may, on an application made by a person who had, in relation to an applicable instrument, paid the specified amount or any penalty (or both) to the Collector because of section 29DV(1)(b), refund the amount so paid to the person if it is shown to the satisfaction of the Collector that—
 - (a) an application of a remaining specified scheme co-buyer for a permanent identity card was refused by a decision made under Cap. 177 before the deadline for waiver;
 - (b) that co-buyer has subsequently become a Hong Kong permanent resident because of an appeal against, or any other legal proceedings concerning, the decision; and
 - (c) had that co-buyer been a Hong Kong permanent resident on the day on which the decision was made, the conditions specified in section 29DT(2)(b) would have been met in relation to the remaining co-buyers and the instrument on any day during the period—
 - (i) beginning on the day on which the decision was made; and

- (ii) ending on the day immediately before the deadline for waiver.

29DY. Admissibility etc. of applicable instruments affected by this Subdivision

- (1) If an applicable instrument is stamped in accordance with section 29DT(3), the instrument is admissible in evidence and available for all purposes.
- (2) If an applicable instrument's liability to stamp duty in respect of the specified amount has been suspended under this Subdivision, the instrument is admissible in evidence and available for all purposes relating to any legal proceedings that concern the acquisition of the subject property under the instrument so long as the charge instrument concerned has been registered under Cap. 128.
- (3) If—
- (a) an applicable instrument's liability to stamp duty in respect of the specified amount has been suspended under this Subdivision; and
- (b) either of the following conditions is met—
- (i) a mortgagee exercises a power of sale in respect of the subject property under an acquisition mortgage;
- (ii) the Collector exercises a power of sale in respect of the subject property under a specified charge,

the instrument is admissible in evidence and available for all purposes (including proof of title) relating to the sale of the property by the mortgagee or the Collector (whichever is applicable) or any subsequent sale of the

property by any other person so long as the charge instrument concerned has been registered under Cap. 128.

- (4) In this section—

charge instrument (押記文書) means an instrument made under section 29DP(5).”.

13. Section 76 added

After section 75—

Add

“76. Transitional provisions for Stamp Duty (Amendment) (Residential Properties) Ordinance 2023

- (1) In this section—

Amendment Ordinance (《修訂條例》) means the Stamp Duty (Amendment) (Residential Properties) Ordinance 2023 (of 2023);

pre-amended Ordinance (《未經修訂條例》) means this Ordinance as in force immediately before 11 a.m. on 25 October 2023.

- (2) The pre-amended Ordinance continues to apply to—

- (a) an instrument that was executed before 25 October 2023;
- (b) an agreement for sale that supersedes another agreement for sale made between the same parties and on the same terms before that day; or
- (c) a conveyance on sale that is executed in conformity with an agreement for sale made before that day, as if section 14(2), (5), (6) and (9) of the Amendment Ordinance had not been enacted.”.

14. First Schedule amended

- (1) First Schedule, within the square brackets, after “29DJ,”—
Add
“29DM, 29DO, 29DV,”.
- (2) First Schedule, head 1(1), Scale 1, Part 1, paragraph (A)—
Repeal
“15%”
Substitute
“7.5%”.
- (3) First Schedule, head 1(1AA), Part 2, after “27 October 2012”—
Add
“and disposed of before 25 October 2023”.
- (4) First Schedule, head 1(1AA), before Note 1—
Add
“Part 3—for residential property disposed of on or after 25 October 2023
- | | |
|---|---|
| <p>(a) if the residential property is disposed of within a period of 6 months beginning on the day on which it was acquired</p> <p>(b) if the residential property is disposed of within a period of 12 months beginning on the day on which it was acquired, but after the expiry of a period of 6</p> | <p>(A) (a) 20% of the amount or value of the consideration</p> <p>(b) 15% of the amount or value of the consideration</p> |
|---|---|

- | | |
|---|---|
| <p>months beginning on that day</p> <p>(c) if the residential property is disposed of within a period of 24 months beginning on the day on which it was acquired, but after the expiry of a period of 12 months beginning on that day</p> | <p>(c) 10% of the amount or value of the consideration</p> <p>(B) The same time as that which applies to a conveyance on sale specified under sub-head (1)</p> <p>(C) The same parties as those who are liable in respect of a conveyance on sale specified under sub-head (1)”. </p> |
|---|---|
- (5) First Schedule, head 1(1AAB), paragraph (A)—
Repeal
“15%”
Substitute
“7.5%”.
- (6) First Schedule, head 1(1A), Scale 1, Part 1, paragraph (A)—
Repeal
“15%”
Substitute

“7.5%”.

- (7) First Schedule, head 1(1B), Part 2, after “27 October 2012”—

Add

“and disposed of before 25 October 2023”.

- (8) First Schedule, head 1(1B), before Note 1—

Add

“Part 3—for residential property disposed of on or after 25 October 2023

- | | |
|--|--|
| <p>(a) if the residential property is disposed of within a period of 6 months beginning on the day on which it was acquired</p> | <p>(A) (a) 20% of the amount or value of the consideration</p> |
| <p>(b) if the residential property is disposed of within a period of 12 months beginning on the day on which it was acquired, but after the expiry of a period of 6 months beginning on that day</p> | <p>(b) 15% of the amount or value of the consideration</p> |
| <p>(c) if the residential property is disposed of within a period of 24 months beginning on the day on which it was acquired, but after the expiry of a period of 12</p> | <p>(c) 10% of the amount or value of the consideration</p> |

months beginning on that day

- (B) The same time as that which applies to an agreement for sale specified under sub-head (1A)
- (C) The same parties as those who are liable in respect of an agreement for sale specified under sub-head (1A)”.

- (9) First Schedule, head 1(1C), paragraph (A)—

Repeal

“15%”

Substitute

“7.5%”.

15. **Schedule 12 amended (schemes specified for Division 6A of Part IIIA)**

Schedule 12—

Repeal

“[ss. 29DJ”

Substitute

“[ss. 29DHA”.

16. **Schedule 13 added**
After Schedule 12—
Add

“Schedule 13

[ss. 29DM & 29DQ]

Powers of Collector under Specified Charges

1. To insure the subject property (or any part of it) for a sum not exceeding its full reinstatement value (where any money paid for the insurance constitutes a charge on the property in addition to the original charge with the same priority with it).
2. To take possession of the subject property and, for that purpose, to take any legal proceedings.
3. To do any thing necessary or desirable to preserve, maintain and manage the subject property.
4. To lease, surrender and accept the surrender of leases of, the subject property.
5. To exercise any powers or rights incidental to the ownership of the subject property.
6. To exercise any powers or rights as a party to any claim, demand, dispute or legal proceedings relating to the subject property.
7. To, without affecting any applicable rules on priority and free from the specified charge and all other interests, rights and estates to which the specified charge has priority, sell and assign the subject property in a manner, and subject to any lawful conditions, that the Collector considers appropriate, including—

- (a) to vary or rescind any contract for sale in respect of the property;
 - (b) to buy in the property at any auction; and
 - (c) to resell the property.
8. To do any thing necessary or desirable for realizing the subject property.”
-

Explanatory Memorandum

The object of this Bill is to amend the Stamp Duty Ordinance (Cap. 117) (*principal Ordinance*)—

- (a) to shorten the period ensuing the acquisition of residential properties and during which certain transactions of the properties are chargeable with special stamp duty (*SSD period*);
 - (b) to lower the flat rate of ad valorem stamp duty payable on certain instruments dealing with residential properties (*flat rate*) and the rate of buyer's stamp duty payable on certain such instruments (*BSD rate*); and
 - (c) to provide for a mechanism under which persons who are admitted into Hong Kong as Hong Kong residents under certain admission schemes and who acquire residential properties not as Hong Kong permanent residents may have certain amounts of stamp duty waived if those persons subsequently become Hong Kong permanent residents (*waiver mechanism*).
2. Clause 1 sets out the short title and provides that the Bill, when enacted, is deemed to have come into operation at 11 a.m. on 25 October 2023.
 3. The Bill reorganizes Division 6A of Part IIIA of the principal Ordinance by dividing it into 3 Subdivisions. A new Subdivision 3 (new sections 29DM to 29DY) of that Division, added by clause 12, provides for the waiver mechanism, under which—
 - (a) the Collector of Stamp Revenue (*Collector*) may suspend a person's liability to pay a certain amount of ad valorem stamp duty and buyer's stamp duty if the person was admitted into Hong Kong as a Hong Kong resident under certain admission schemes specified in Schedule 12 to the

- (b) the amount of stamp duty constitutes a charge in favour of the Collector for securing the recovery of the amount (new sections 29DP, 29DQ and 29DR);
 - (c) the Collector may waive the person's liability to pay the amount of stamp duty if the person has become a Hong Kong permanent resident while remaining to be a beneficial owner of the relevant residential property (and certain other conditions are met), or otherwise the liability would cease to be suspended (new sections 29DT and 29DU);
 - (d) if the liability ceases to be suspended, the person must pay the amount of stamp duty to the Collector within a certain period (new section 29DV);
 - (e) if the liability is waived, the charge for securing the recovery of the amount of stamp duty is discharged (new section 29DW); and
 - (f) a person whose application for becoming a Hong Kong permanent resident was refused and who did not benefit from the waiver may be refunded an amount of stamp duty if the refusal is overturned by an appeal etc. and the person would have been entitled to the waiver but for the refusal (new section 29DX).
4. Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11 and 15 make amendments for reorganizing Division 6A of Part IIIA of the principal Ordinance, or amendments that are otherwise related to the new Subdivision 3 of that Division, while clause 16 adds a new Schedule 13 to the principal Ordinance to set out the powers of the Collector as a chargee in respect of a charge constituted under that Subdivision.

5. Clause 14 amends the First Schedule to the principal Ordinance to shorten the SSD period from 36 months to 24 months, and to lower the flat rate and the BSD rate from 15% to 7.5%. The new section 76 added to the principal Ordinance by clause 13 is a transitional provision regarding the lowering of the rates.

Public Revenue Protection (Stamp Duty) (No. 2) Order 2023

(Made by the Chief Executive under section 2 of the Public Revenue Protection Ordinance (Cap. 120) after consultation with the Executive Council)

1. Commencement

This Order comes into force at 11 a.m. on 25 October 2023.

2. Operation of Scheduled Bill

The Bill set out in the Schedule has the full force and effect of law so long as this Order remains in force.

Schedule

[s. 2]

A BILL

To

Amend the Stamp Duty Ordinance to shorten the period ensuing the acquisition of residential properties and during which certain transactions of the properties are chargeable with special stamp duty from 36 months to 24 months; to lower the flat rate of ad valorem stamp duty payable on certain instruments dealing with residential properties, and the rate of buyer's stamp duty payable on certain such instruments, from 15% to 7.5%; to provide for a mechanism under which persons who are admitted into Hong Kong as Hong Kong residents under certain admission schemes and who acquire residential properties not as Hong Kong permanent residents may have certain amounts of ad valorem stamp duty and buyer's stamp duty waived if those persons subsequently become Hong Kong permanent residents; and to make related amendments.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Stamp Duty (Amendment) (Residential Properties) Ordinance 2023.
- (2) This Ordinance is deemed to have come into operation at 11 a.m. on 25 October 2023.

2. Stamp Duty Ordinance amended

The Stamp Duty Ordinance (Cap. 117) is amended as set out in sections 3 to 16.

3. Section 2 amended (interpretation)

Section 2(1), definition of *stamp*, paragraph (b)—

Repeal

“or remission of stamp duty”

Substitute

“, remission, suspension or waiver of stamp duty”.

4. Section 4 amended (charging of, liability for, and recovery of stamp duty)

After section 4(5B)—

Add

“(5C) No action may be brought because of section 29DV for the recovery of the specified amount mentioned in that section more than 6 years after the day on which the liability in respect of the specified amount ceases to be suspended under Subdivision 3 of Division 6A of Part IIIA.”.

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

Before section 15(3)(a)—

Add

“(aaa) an instrument an amount of liability of stamp duty of which has been suspended under Subdivision 3 of Division 6A of Part IIIA;”.

6. Part IIIA, Division 6A heading amended (refund of certain amounts of stamp duty for Hong Kong permanent residents admitted into Hong Kong under certain admission schemes)

Part IIIA, Division 6A, heading—

Repeal

“Refund of Certain Amounts of Stamp Duty”

Substitute

“Stamp Duty Treatment”.

7. Provisions added

Part IIIA, Division 6A, before section 29DI—

Add**“Subdivision 1—Preliminary****29DHA. Interpretation (Division 6A)**

(1) In this Division—

specified scheme (指明計劃) means a scheme (including a policy or arrangement) that is specified in Schedule 12.

(2) For the purposes of this Division, a person is covered by a specified scheme if the person, despite not being a Hong Kong permanent resident, is permitted to stay in Hong Kong by virtue of being a person to whom a specified scheme applies.

(3) In this Division, a reference to a person’s being permitted to stay in Hong Kong is a reference to the person’s being permitted to stay in Hong Kong pursuant to the exercise of a power under the Immigration Ordinance (Cap. 115).

(4) For the purposes of this Division—

- (a) an agreement for sale of a residential property is unperformed if the agreement is cancelled, annulled or rescinded or is otherwise not performed; and
- (b) such an agreement remains outstanding if the agreement provides for the conveyance of the residential property concerned but the conveyance is not yet executed.

Subdivision 2—Refund of Certain Amounts of Stamp Duty”.

8. Section 29DI amended (interpretation)

- (1) Section 29DI, heading, after “**Interpretation**”—

Add

“(Subdivision 2)”.

- (2) Section 29DI—

Repeal

“Division”

Substitute

“Subdivision”.

9. Section 29DJ amended (application for refund)

- (1) Section 29DJ(1)(a)—

Repeal

everything after “property”

Substitute

“falls—

- (i) on or after 19 October 2022; and
- (ii) before 25 October 2023; and”.

- (2) Section 29DJ(5), English text, definition of *specified amount*, paragraph (b)—

Repeal

“instrument;”

Substitute

“instrument.”.

- (3) Section 29DJ(5)—

Repeal the definition of *specified scheme*.

- (4) Section 29DJ—

Repeal subsections (6), (7) and (8).

10. Section 29DK amended (applicants or co-buyers regarded as not being beneficial owners of other residential properties in certain circumstances)

Section 29DK(3)(c) and (6)(c)—

Repeal

“Division”

Substitute

“Subdivision”.

11. Section 29DL amended (deadline for application)

Section 29DL—

Repeal

“Division”

Substitute

“Subdivision”.

12. Part IIIA, Division 6A, Subdivision 3 added

Part IIIA, Division 6A, after section 29DL—

Add**“Subdivision 3—Suspension of and Waiver of Liabilities in respect of Certain Amounts of Stamp Duty****29DM. Interpretation (Subdivision 3)**

(1) In this Subdivision—

acquisition mortgage (置業按揭), in relation to a subject property, means a charge by deed executed on the property for securing the repayment of a loan made for acquiring the property;*applicable instrument* (適用文書) means an instrument—

- (a) under which a single residential property is acquired; and
- (b) on which, but for this Subdivision—
 - (i) buyer’s stamp duty would have been payable; and
 - (ii) stamp duty would have been payable according to Part 1 of Scale 1 of head 1(1), or Part 1 of Scale 1 of head 1(1A), in the First Schedule;

buyer (買家), in relation to an applicable instrument, means a person who alone acquired the subject property under the instrument;*Cap. 128* (《第 128 章》) means the Land Registration Ordinance (Cap. 128);*co-buyer* (共同買家), in relation to an applicable instrument, means a person who, jointly with any other person, acquired the subject property under the instrument;*deadline for waiver* (寬免期限)—see section 29DS;*remaining co-buyer* (餘下共同買家) means a co-buyer who remains a beneficial owner of the subject property concerned;*remaining specified scheme co-buyer* (餘下指明計劃共同買家) means a co-buyer—

- (a) who was, on the date of the co-buyers’ acquisition of the subject property, covered by a specified scheme; and
- (b) who is a remaining co-buyer;

specified amount (指明款項), in relation to an applicable instrument, means the sum of the amounts under paragraphs (a) and (b)—

- (a) an amount equal to the difference between—
 - (i) if the instrument is one on which, but for this Subdivision, stamp duty would have been payable according to Part 1 of Scale 1 of head 1(1) in the First Schedule—
 - (A) the stamp duty so payable on the instrument; and
 - (B) the stamp duty that would have been payable on the instrument if it were chargeable under Scale 2 of head 1(1) in the First Schedule in accordance with Division 2; or
 - (ii) if the instrument is one on which, but for this Subdivision, stamp duty would have been

payable according to Part 1 of Scale 1 of head 1(1A) in the First Schedule—

- (A) the stamp duty so payable on the instrument; and
- (B) the stamp duty that would have been payable on the instrument if it were chargeable under Scale 2 of head 1(1A) in the First Schedule in accordance with Division 3;

- (b) the amount of buyer's stamp duty that would have been payable on the instrument but for this Subdivision;

specified charge (指明押記), in relation to an applicable instrument, means—

- (a) if the instrument is an agreement for sale—an equitable charge constituted in respect of the instrument under section 29DP(2); or
- (b) if the instrument is a conveyance on sale—a legal charge constituted in respect of the instrument under section 29DP(3);

subject property (標的物業), in relation to an applicable instrument, means the residential property acquired under the instrument.

- (2) The words and expressions used in Schedule 13 and defined in this section for the purposes of this Subdivision have the same meaning as in this Subdivision.

29DN. Application for suspension of liabilities in respect of specified amounts

- (1) A person who has acquired a subject property under an applicable instrument may, when the instrument is

presented to the Collector for stamping under this Ordinance, make an application for suspension of the instrument's liability to stamp duty in respect of the specified amount.

- (2) The Collector may approve the application if it is shown to the satisfaction of the Collector that—
 - (a) the date of the applicant's acquisition of the subject property concerned falls on or after 25 October 2023;
 - (b) in relation to the applicant—
 - (i) if the applicant alone acquired the property under the applicable instrument—the conditions specified in subsection (3) are met; or
 - (ii) if the applicant, jointly with one or more than one other person, acquired the property under the applicable instrument—the conditions specified in subsection (4) are met; and
 - (c) a fee specified by the Collector has been paid in respect of the application.
- (3) The conditions specified for subsection (2)(b)(i) are—
 - (a) that on the date of the applicant's acquisition of the subject property—
 - (i) the applicant was acting on his or her own behalf;
 - (ii) the applicant was covered by a specified scheme; and
 - (iii) the applicant was not a beneficial owner of any other residential property in Hong Kong; and

- (b) that the applicant is not a vendor under an agreement for sale of any other residential property in Hong Kong—
 - (i) that was made before the date of the applicant's acquisition of the subject property; and
 - (ii) that is unperformed, or otherwise remains outstanding, on the date of the application.
- (4) The conditions specified for subsection (2)(b)(ii) are—
 - (a) that on the date of the co-buyers' acquisition of the subject property—
 - (i) each of the co-buyers was acting on his or her own behalf;
 - (ii) at least one of the co-buyers was covered by a specified scheme, and—
 - (A) each of the co-buyers who were not so covered was a Hong Kong permanent resident; or
 - (B) all the co-buyers were closely related; and
 - (iii) each of the co-buyers was not a beneficial owner of any other residential property in Hong Kong; and
 - (b) that each of the co-buyers is not a vendor under an agreement for sale of any other residential property in Hong Kong—
 - (i) that was made before the date of the co-buyers' acquisition of the subject property; and

- (ii) that is unperformed, or otherwise remains outstanding, on the date of the application.
- (5) If an application is approved under subsection (2) in relation to an applicable instrument—
 - (a) the instrument's liability to stamp duty in respect of the specified amount is suspended until any one of the triggering circumstances specified in section 29DU occurs in relation to the instrument; and
 - (b) the instrument is to be stamped with a stamp, or by way of a stamp certificate, denoting that the instrument's liability to stamp duty in respect of the specified amount has been suspended under this Subdivision.

29DO. Application for refund of and suspension of liabilities in respect of specified amounts in certain circumstances

- (1) Subsection (2) applies in relation to a buyer in respect of an applicable instrument if—
 - (a) on the date of the buyer's acquisition of the subject property, the buyer was a beneficial owner of another residential property in Hong Kong (*original property A*); and
 - (b) the instrument is one on which—
 - (i) buyer's stamp duty has been paid; and
 - (ii) stamp duty has been paid according to Part 1 of Scale 1 of head 1(1), or Part 1 of Scale 1 of head 1(1A), in the First Schedule.
- (2) The buyer may make an application for—
 - (a) the refund of an amount that would be the specified amount for the applicable instrument had section 29DN been applied in relation to the instrument; and

- (b) the suspension of the instrument's liability to stamp duty in respect of such an amount.
- (3) The Collector may approve the application if—
 - (a) it is shown to the satisfaction of the Collector that—
 - (i) original property A is—
 - (A) disposed of by the applicant under an agreement for sale that is made within the period specified in subsection (7); and
 - (B) transferred or divested from the applicant under a conveyance on sale that is executed in conformity with the agreement; or
 - (ii) original property A is transferred or divested from the applicant under a conveyance on sale within the period specified in subsection (7);
 - (b) it is shown to the satisfaction of the Collector that, had the applicant not been a beneficial owner of original property A on the date of the applicant's acquisition of the subject property, the conditions in section 29DN(2) would have been met in relation to the subject property and the applicant;
 - (c) on the date of the application, no liability to stamp duty or penalty in respect of original property A is outstanding under this Ordinance; and
 - (d) the application is made by the applicant—
 - (i) not later than 2 years after the date of the applicable instrument; or
 - (ii) not later than 2 months after the date of the conveyance on sale under which original property A is transferred or divested,

- whichever is the later.
- (4) Subsection (5) applies in relation to a person who is one of the co-buyers in respect of an applicable instrument (*specified co-buyer*) if—
 - (a) on the date of the co-buyers' acquisition of the subject property, any one of the co-buyers was a beneficial owner of another residential property in Hong Kong (*original property B*); and
 - (b) the instrument is one on which—
 - (i) buyer's stamp duty has been paid; and
 - (ii) stamp duty has been paid according to Part 1 of Scale 1 of head 1(1), or Part 1 of Scale 1 of head 1(1A), in the First Schedule.
- (5) The specified co-buyer may make an application for—
 - (a) the refund of an amount that would be the specified amount for the applicable instrument had section 29DN been applied in relation to the instrument; and
 - (b) the suspension of the instrument's liability to stamp duty in respect of such an amount.
- (6) The Collector may approve the application if—
 - (a) it is shown to the satisfaction of the Collector that—
 - (i) original property B is—
 - (A) disposed of by the co-buyer concerned under an agreement for sale that is made within the period specified in subsection (7); and
 - (B) transferred or divested from that co-buyer under a conveyance on sale that is executed in conformity with the agreement; or

- (ii) original property B is transferred or divested from that co-buyer under a conveyance on sale within the period specified in subsection (7);
- (b) it is shown to the satisfaction of the Collector that, had that co-buyer not been a beneficial owner of original property B on the date of the co-buyers' acquisition of the subject property, the conditions in section 29DN(2) would have been met in relation to the subject property and the applicant;
- (c) on the date of the application, no liability to stamp duty or penalty in respect of original property B is outstanding under this Ordinance; and
- (d) the application is made by the applicant—
 - (i) not later than 2 years after the date of the applicable instrument; or
 - (ii) not later than 2 months after the date of the conveyance on sale under which original property B is transferred or divested, whichever is the later.
- (7) The period specified for the purposes of subsections (3)(a)(i)(A) and (ii) and (6)(a)(i)(A) and (ii) is—
 - (a) if the applicable instrument is a conveyance on sale—12 months after the date of the conveyance; or
 - (b) if the applicable instrument is an agreement for sale—12 months after the date of the conveyance on sale executed in conformity with the agreement.
- (8) If an application is approved under subsection (3) or (6) in relation to an applicable instrument—
 - (a) the instrument's liability to stamp duty in respect of the specified amount is suspended until any one of

- the triggering circumstances specified in section 29DU occurs in relation to the instrument; and
- (b) the instrument is to be stamped with a stamp, or by way of a stamp certificate, denoting that the instrument's liability to stamp duty in respect of the specified amount has been suspended under this Subdivision.

29DP. Constitution of specified charges

- (1) This section applies in relation to an applicable instrument if the instrument's liability to stamp duty in respect of the specified amount is suspended under this Subdivision.
- (2) If the applicable instrument is an agreement for sale, the specified amount that may be recoverable by the Collector—
 - (a) if the subject property was acquired by a buyer alone—constitutes an equitable charge on—
 - (i) the buyer's interest, right and title in respect of the agreement; and
 - (ii) the buyer's interest, right and estate in respect of the property,
 in favour of the Collector; or
 - (b) if the subject property was jointly acquired by co-buyers—constitutes an equitable charge on—
 - (i) the co-buyers' interest, right and title in respect of the agreement; and
 - (ii) the co-buyers' interest, right and estate in respect of the property,
 in favour of the Collector.

- (3) If the applicable instrument is a conveyance on sale, the specified amount that may be recoverable by the Collector constitutes a legal charge on the subject property in favour of the Collector.
- (4) A specified charge constituted in respect of an applicable instrument is deemed to take effect on the date of acquisition of the subject property.
- (5) If a specified charge is constituted, the Collector must make an instrument denoting it.
- (6) The instrument mentioned in subsection (5) may be registered under Cap. 128 as an instrument affecting land.
- (7) If a specified charge is an equitable charge constituted in respect of an agreement for sale under subsection (2), it is for all purposes taken to be a legal charge constituted on the subject property concerned once a conveyance on sale is executed in conformity with the agreement.

29DQ. Powers of Collector under specified charges

- (1) A specified charge confers on the Collector, as a chargee in respect of the charge, the powers in respect of the subject property concerned that are specified in Schedule 13.
- (2) The powers are not exercisable before the expiry of the specified period for the specified charge.
- (3) In this section—
specified period (指明期間), in relation to a specified charge, means a period of 30 days after the day on which the relevant applicable instrument's liability to stamp duty in respect of the specified amount ceases to be suspended under this Subdivision.

29DR. Priority of specified charges

- (1) Despite any provisions in any other enactment to the contrary, a specified charge is, to the extent of the reserved amount specified in subsection (2), not entitled to priority over the first acquisition mortgage executed on the subject property concerned.
- (2) The reserved amount specified for this section is the lower of the following—
 - (a) the amount of the principal and interest in respect of the loan for acquiring the subject property under the acquisition mortgage concerned;
 - (b) an amount arrived at by deducting the specified amount from the amount or value of the consideration for the acquisition of the subject property under the applicable instrument concerned.
- (3) Section 53 of Cap. 219 applies in relation to the specified charge as if it were a subsequent mortgage mentioned in that section.
- (4) Moreover, for applying section 54 of Cap. 219 to any money received by the mortgagee in respect of the first acquisition mortgage mentioned in subsection (1), paragraph (d) of that section is to be disregarded, and that money is to be applied, after being applied in payment of the amounts mentioned in paragraph (c) of that section, according to the following priority—
 - (a) in payment of mortgage money, interest and costs due under the mortgage to the extent of the reserved amount specified in subsection (2);
 - (b) in payment of the specified amount secured under the specified charge; and

- (c) in payment of the remaining mortgage money, interest and costs due under the mortgage.
- (5) Despite any rule of law, any provisions in any other enactment or any covenants, terms and conditions in any other instruments to the contrary, the priority of the specified charge in respect of the subject property is not to be affected by any right of subrogation of any person.
- (6) To avoid doubt, this section does not otherwise affect any rule of law for determining the priority of a specified charge in respect of the subject property concerned.
- (7) In this section—

Cap. 219 (《第 219 章》) means the Conveyancing and Property Ordinance (Cap. 219);

rule of law (法律規則) means any rule of common law or of equity.

29DS. Meaning of deadline for waiver

- (1) In sections 29DT, 29DU and 29DX, a reference to the deadline for waiver in relation to an applicable instrument is a reference to—
- (a) if the subject property was acquired by a buyer alone—the last day of the period of 9 years beginning on the first day on which the buyer is permitted to stay in Hong Kong because of the relevant specified scheme; or
- (b) if the subject property was jointly acquired by co-buyers—subject to subsection (2), the last day (*due day for co-buyers*) of the period of 9 years beginning on the first day on which the remaining specified scheme co-buyer who, among all such co-buyers, is last permitted to stay in Hong Kong

because of the relevant specified scheme, is so permitted.

- (2) If a co-buyer who was covered by a specified scheme on the date of the co-buyers' acquisition of the subject property ceases to be a beneficial owner of the property and, as a result, the due day for co-buyers would have been advanced to a day that is earlier than the day of the cessation (*cessation day*), the reference to the deadline for waiver in the case of subsection (1)(b) is to be a reference to the cessation day instead of the due day for co-buyers.
- (3) In this section—
- relevant specified scheme* (相關指明計劃)—
- (a) in relation to a buyer, means the specified scheme by which the buyer was covered on the date of the buyer's acquisition of the subject property; or
- (b) in relation to a remaining specified scheme co-buyer, means the specified scheme by which that co-buyer was covered on the date of the co-buyers' acquisition of the subject property.

29DT. Application for waiver of liabilities in respect of specified amounts

- (1) This section applies in relation to an applicable instrument if the instrument's liability to stamp duty in respect of the specified amount has been suspended under this Subdivision.
- (2) The Collector may, on an application made by a buyer or remaining co-buyer (whichever is applicable) before the deadline for waiver, waive the liability mentioned in subsection (1) if it is shown to the satisfaction of the Collector that—

- (a) if the applicant is a buyer—
 - (i) the applicant has after the date of the applicant's acquisition of the subject property become, and on the date of the application remains, a Hong Kong permanent resident; and
 - (ii) no triggering circumstance specified in section 29DU(1)(a)(i) has occurred in relation to the applicable instrument; or
- (b) if the applicant is a remaining co-buyer—
 - (i) each of the remaining co-buyers who were not Hong Kong permanent residents on the date of the co-buyers' acquisition of the subject property has after that date become, and on the date of the application remains, a Hong Kong permanent resident; and
 - (ii) no triggering circumstance specified in section 29DU(1)(a)(ii) has occurred in relation to the applicable instrument.
- (3) If an application is approved under subsection (2) in relation to an applicable instrument, the instrument is to be stamped with a stamp, or by way of a stamp certificate, denoting that the instrument's liability to stamp duty in respect of the specified amount has been waived under this section.

29DU. Triggering circumstances for cessation of suspension of liabilities in respect of specified amounts

- (1) In relation to an applicable instrument, the triggering circumstances specified for this Subdivision are—
 - (a) that on any date before the deadline for waiver—

- (i) if the subject property was acquired by a buyer alone—
 - (A) the buyer ceases to be a beneficial owner of the property; or
 - (B) a person other than an eligible person becomes a beneficial owner of the property in addition to the buyer; or
- (ii) if the subject property was jointly acquired by co-buyers—
 - (A) each of the co-buyers who were covered by a specified scheme on the date of the co-buyers' acquisition of the property has ceased to be a beneficial owner of the property; or
 - (B) a person other than an eligible person becomes a beneficial owner of the property in addition to one or more remaining specified scheme co-buyers; and
- (b) otherwise—that, as at the deadline for waiver, no liability has been waived under section 29DT(2) in relation to the instrument.
- (2) In this section—

eligible person (合資格人士), in relation to the subject property concerned, means a person—

 - (a) who is closely related to—
 - (i) for subsection (1)(a)(i)(B)—the buyer; or
 - (ii) for subsection (1)(a)(ii)(B)—all of the remaining co-buyers; and

- (b) who was acting on his or her own behalf on the date of his or her acquisition of the property.

29DV. Payments of specified amounts

- (1) If an applicable instrument's liability to stamp duty in respect of the specified amount ceases to be suspended under this Subdivision, then despite section 4(3) and paragraph (C) in Part 1 of Scale 1 of head 1(1) or paragraph (C) in Part 1 of Scale 1 of head 1(1A) (whichever is applicable) in the First Schedule—
- (a) if the subject property was acquired by a buyer alone—the buyer is liable civilly to the Collector for the payment of the specified amount, and any penalty payable under subsection (3), in accordance with this section; or
- (b) if the subject property was jointly acquired by co-buyers—
- (i) the co-buyers are jointly and severally liable civilly to the Collector for the payment of the specified amount, and any penalty payable under subsection (3), in accordance with this section; and
- (ii) the co-buyers may be proceeded against without reference to any civil liability of them inter se for the payment of the specified amount and penalty.
- (2) The specified amount must be paid to the Collector within 30 days after the day on which the relevant triggering circumstance specified in section 29DU occurred.
- (3) If the specified amount is not paid to the Collector within the period mentioned in subsection (2) (*30-day period*)—

- (a) for subsection (1)(a)—the buyer is liable to a penalty; or
- (b) for subsection (1)(b)—the co-buyers are jointly and severally liable to a penalty.
- (4) The amount of the penalty is—
- (a) if the specified amount is paid to the Collector not later than 1 month after the expiry of the 30-day period—double the amount of the specified amount;
- (b) if the specified amount is paid to the Collector later than 1 month but not later than 2 months after the expiry of the 30-day period—4 times the amount of the specified amount; or
- (c) in any other case—10 times the amount of the specified amount.
- (5) The Collector may remit the whole or any part of any penalty payable under subsection (3).

29DW. Discharge of specified charges

- (1) If an applicable instrument's liability to stamp duty in respect of the specified amount is waived on an application under section 29DT, the Collector must issue to the applicant a certificate of discharge in respect of the specified charge that has been constituted in respect of the instrument.
- (2) The Collector may also, on an application made by an eligible person, issue a certificate of discharge in respect of the specified charge to the person if—
- (a) it is shown to the satisfaction of the Collector that the applicable instrument concerned is an agreement for sale that is unperformed; or

- (b) a liability to stamp duty has ceased to be suspended under this Subdivision, but no such liability remains outstanding.
- (3) The issue of a certificate of discharge under subsection (1) or (2) constitutes a discharge of the specified charge concerned.
- (4) In this section—
 - eligible person* (合資格人士), in relation to an applicable instrument, means—
 - (a) the buyer or any one of the remaining co-buyers (whichever is applicable); or
 - (b) a vendor or transferor from whom the buyer or co-buyers acquired the subject property under the instrument.

29DX. Treatment of persons becoming Hong Kong permanent residents on appeal etc.

- (1) The Collector may, on an application made by a person who had, in relation to an applicable instrument, paid the specified amount or any penalty (or both) to the Collector because of section 29DV(1)(a), refund the amount so paid to the person if it is shown to the satisfaction of the Collector that—
 - (a) an application of the person for a permanent identity card was refused by a decision made under the Registration of Persons Ordinance (Cap. 177) (*Cap. 177*) before the deadline for waiver;
 - (b) the person has subsequently become a Hong Kong permanent resident because of an appeal against, or any other legal proceedings concerning, the decision; and

- (c) had the person been a Hong Kong permanent resident on the day on which the decision was made, the conditions specified in section 29DT(2)(a) would have been met in relation to the person and the instrument on any day during the period—
 - (i) beginning on the day on which the decision was made; and
 - (ii) ending on the day immediately before the deadline for waiver.
- (2) The Collector may, on an application made by a person who had, in relation to an applicable instrument, paid the specified amount or any penalty (or both) to the Collector because of section 29DV(1)(b), refund the amount so paid to the person if it is shown to the satisfaction of the Collector that—
 - (a) an application of a remaining specified scheme co-buyer for a permanent identity card was refused by a decision made under Cap. 177 before the deadline for waiver;
 - (b) that co-buyer has subsequently become a Hong Kong permanent resident because of an appeal against, or any other legal proceedings concerning, the decision; and
 - (c) had that co-buyer been a Hong Kong permanent resident on the day on which the decision was made, the conditions specified in section 29DT(2)(b) would have been met in relation to the remaining co-buyers and the instrument on any day during the period—
 - (i) beginning on the day on which the decision was made; and

- (ii) ending on the day immediately before the deadline for waiver.

29DY. Admissibility etc. of applicable instruments affected by this Subdivision

- (1) If an applicable instrument is stamped in accordance with section 29DT(3), the instrument is admissible in evidence and available for all purposes.
- (2) If an applicable instrument's liability to stamp duty in respect of the specified amount has been suspended under this Subdivision, the instrument is admissible in evidence and available for all purposes relating to any legal proceedings that concern the acquisition of the subject property under the instrument so long as the charge instrument concerned has been registered under Cap. 128.
- (3) If—
- (a) an applicable instrument's liability to stamp duty in respect of the specified amount has been suspended under this Subdivision; and
- (b) either of the following conditions is met—
- (i) a mortgagee exercises a power of sale in respect of the subject property under an acquisition mortgage;
- (ii) the Collector exercises a power of sale in respect of the subject property under a specified charge,

the instrument is admissible in evidence and available for all purposes (including proof of title) relating to the sale of the property by the mortgagee or the Collector (whichever is applicable) or any subsequent sale of the

property by any other person so long as the charge instrument concerned has been registered under Cap. 128.

- (4) In this section—

charge instrument (押記文書) means an instrument made under section 29DP(5).”

13. Section 76 added

After section 75—

Add

“76. Transitional provisions for Stamp Duty (Amendment) (Residential Properties) Ordinance 2023

- (1) In this section—

Amendment Ordinance (《修訂條例》) means the Stamp Duty (Amendment) (Residential Properties) Ordinance 2023 (of 2023);

pre-amended Ordinance (《未經修訂條例》) means this Ordinance as in force immediately before 11 a.m. on 25 October 2023.

- (2) The pre-amended Ordinance continues to apply to—

- (a) an instrument that was executed before 25 October 2023;
- (b) an agreement for sale that supersedes another agreement for sale made between the same parties and on the same terms before that day; or
- (c) a conveyance on sale that is executed in conformity with an agreement for sale made before that day, as if section 14(2), (5), (6) and (9) of the Amendment Ordinance had not been enacted.”

14. First Schedule amended

- (1) First Schedule, within the square brackets, after “29DJ,”—

Add

“29DM, 29DO, 29DV,”.

- (2) First Schedule, head 1(1), Scale 1, Part 1, paragraph (A)—

Repeal

“15%”

Substitute

“7.5%”.

- (3) First Schedule, head 1(1AA), Part 2, after “27 October 2012”—

Add

“and disposed of before 25 October 2023”.

- (4) First Schedule, head 1(1AA), before Note 1—

Add

“Part 3—for residential property disposed of on or after 25 October 2023

- (a) if the residential property is disposed of within a period of 6 months beginning on the day on which it was acquired

- (b) if the residential property is disposed of within a period of 12 months beginning on the day on which it was acquired, but after the expiry of a period of 6

- (A) (a) 20% of the amount or value of the consideration

- (b) 15% of the amount or value of the consideration

months beginning on that day

- (c) if the residential property is disposed of within a period of 24 months beginning on the day on which it was acquired, but after the expiry of a period of 12 months beginning on that day

- (c) 10% of the amount or value of the consideration

- (B) The same time as that which applies to a conveyance on sale specified under sub-head (1)

- (C) The same parties as those who are liable in respect of a conveyance on sale specified under sub-head (1)”.
-

- (5) First Schedule, head 1(1AAB), paragraph (A)—

Repeal

“15%”

Substitute

“7.5%”.

- (6) First Schedule, head 1(1A), Scale 1, Part 1, paragraph (A)—

Repeal

“15%”

Substitute

“7.5%”.

- (7) First Schedule, head 1(1B), Part 2, after “27 October 2012”—

Add

“and disposed of before 25 October 2023”.

- (8) First Schedule, head 1(1B), before Note 1—

Add

“Part 3—for residential property disposed of on or after 25 October 2023

- | | |
|--|--|
| <p>(a) if the residential property is disposed of within a period of 6 months beginning on the day on which it was acquired</p> | <p>(A) (a) 20% of the amount or value of the consideration</p> |
| <p>(b) if the residential property is disposed of within a period of 12 months beginning on the day on which it was acquired, but after the expiry of a period of 6 months beginning on that day</p> | <p>(b) 15% of the amount or value of the consideration</p> |
| <p>(c) if the residential property is disposed of within a period of 24 months beginning on the day on which it was acquired, but after the expiry of a period of 12</p> | <p>(c) 10% of the amount or value of the consideration</p> |

months beginning on that day

- (B) The same time as that which applies to an agreement for sale specified under sub-head (1A)
- (C) The same parties as those who are liable in respect of an agreement for sale specified under sub-head (1A)”.

- (9) First Schedule, head 1(1C), paragraph (A)—

Repeal

“15%”

Substitute

“7.5%”.

15. Schedule 12 amended (schemes specified for Division 6A of Part IIIA)

Schedule 12—

Repeal

“[ss. 29DJ”

Substitute

“[ss. 29DHA”.

16. Schedule 13 added

After Schedule 12—

Add

“Schedule 13

[ss. 29DM & 29DQ]

Powers of Collector under Specified Charges

1. To insure the subject property (or any part of it) for a sum not exceeding its full reinstatement value (where any money paid for the insurance constitutes a charge on the property in addition to the original charge with the same priority with it).
2. To take possession of the subject property and, for that purpose, to take any legal proceedings.
3. To do any thing necessary or desirable to preserve, maintain and manage the subject property.
4. To lease, surrender and accept the surrender of leases of, the subject property.
5. To exercise any powers or rights incidental to the ownership of the subject property.
6. To exercise any powers or rights as a party to any claim, demand, dispute or legal proceedings relating to the subject property.
7. To, without affecting any applicable rules on priority and free from the specified charge and all other interests, rights and estates to which the specified charge has priority, sell and assign the subject property in a manner, and subject to any lawful conditions, that the Collector considers appropriate, including—

- (a) to vary or rescind any contract for sale in respect of the property;
 - (b) to buy in the property at any auction; and
 - (c) to resell the property.
8. To do any thing necessary or desirable for realizing the subject property.”

Explanatory Memorandum

The object of this Bill is to amend the Stamp Duty Ordinance (Cap. 117) (*principal Ordinance*)—

- (a) to shorten the period ensuing the acquisition of residential properties and during which certain transactions of the properties are chargeable with special stamp duty (*SSD period*);
 - (b) to lower the flat rate of ad valorem stamp duty payable on certain instruments dealing with residential properties (*flat rate*) and the rate of buyer's stamp duty payable on certain such instruments (*BSD rate*); and
 - (c) to provide for a mechanism under which persons who are admitted into Hong Kong as Hong Kong residents under certain admission schemes and who acquire residential properties not as Hong Kong permanent residents may have certain amounts of stamp duty waived if those persons subsequently become Hong Kong permanent residents (*waiver mechanism*).
2. Clause 1 sets out the short title and provides that the Bill, when enacted, is deemed to have come into operation at 11 a.m. on 25 October 2023.
 3. The Bill reorganizes Division 6A of Part IIIA of the principal Ordinance by dividing it into 3 Subdivisions. A new Subdivision 3 (new sections 29DM to 29DY) of that Division, added by clause 12, provides for the waiver mechanism, under which—
 - (a) the Collector of Stamp Revenue (*Collector*) may suspend a person's liability to pay a certain amount of ad valorem stamp duty and buyer's stamp duty if the person was admitted into Hong Kong as a Hong Kong resident under certain admission schemes specified in Schedule 12 to the

- (b) the amount of stamp duty constitutes a charge in favour of the Collector for securing the recovery of the amount (new sections 29DP, 29DQ and 29DR);
 - (c) the Collector may waive the person's liability to pay the amount of stamp duty if the person has become a Hong Kong permanent resident while remaining to be a beneficial owner of the relevant residential property (and certain other conditions are met), or otherwise the liability would cease to be suspended (new sections 29DT and 29DU);
 - (d) if the liability ceases to be suspended, the person must pay the amount of stamp duty to the Collector within a certain period (new section 29DV);
 - (e) if the liability is waived, the charge for securing the recovery of the amount of stamp duty is discharged (new section 29DW); and
 - (f) a person whose application for becoming a Hong Kong permanent resident was refused and who did not benefit from the waiver may be refunded an amount of stamp duty if the refusal is overturned by an appeal etc. and the person would have been entitled to the waiver but for the refusal (new section 29DX).
4. Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11 and 15 make amendments for reorganizing Division 6A of Part IIIA of the principal Ordinance, or amendments that are otherwise related to the new Subdivision 3 of that Division, while clause 16 adds a new Schedule 13 to the principal Ordinance to set out the powers of the Collector as a chargee in respect of a charge constituted under that Subdivision.

5. Clause 14 amends the First Schedule to the principal Ordinance to shorten the SSD period from 36 months to 24 months, and to lower the flat rate and the BSD rate from 15% to 7.5%. The new section 76 added to the principal Ordinance by clause 13 is a transitional provision regarding the lowering of the rates.

Chief Executive

2023

**Existing Demand-side Management Measures
before the Bill and the Order come into effect**

SSD was first introduced in November 2010 and further enhanced in October 2012 to combat short-term speculative activities. Currently, the SSD rates are – (i) 20% if the property has been held for six months or less; (ii) 15% if the property has been held for more than six months but for 12 months or less; and (iii) 10% if the property has been held for more than 12 months but for 36 months or less. SSD applies equally to all HKPRs and non-HKPRs.

2. BSD and NRSD were introduced in October 2012 and November 2016 respectively to curb external demand and to reduce investment demand, thereby stabilising the residential property market and according priority to the home ownership needs of HKPRs. Generally speaking, BSD applies to all residential property transactions except for those acquired by a HKPR acting on his or her own behalf; while NRSD applies to all residential property transactions except for those acquired by a HKPR acting on his or her own behalf and not owning any other residential property in Hong Kong at the time of acquisition. Both BSD and NRSD are charged at a flat rate of 15% on the stated consideration or market value of the residential property.

3. As announced in the 2022 PA, as one of the measures to attract and retain talents, the Government has introduced a refund mechanism under the BSD and NRSD regimes. For non-HKPRs who have entered Hong Kong under designated talent admission schemes, purchased a residential property in Hong Kong on or after 19 October 2022 and subsequently become HKPRs, they may enjoy the refund arrangement. The enabling legislation, i.e. the Stamp Duty (Amendment) (No. 3) Ordinance 2023, was gazetted on 30 June 2023. As at 30 September 2023, six refund applications have been received. Three refund applications have been approved while three applications were being processed.

Detailed Framework of the proposed Suspension Mechanism

Under the proposed Suspension Mechanism –

- (a) the suspension would only apply to a residential property in Hong Kong acquired¹ **on or after 25 October 2023**² (i.e. the 2023 PA date) by an eligible incoming talent solely, or jointly with other eligible incoming talent(s), HKPR(s), or their closely related person(s)³ who may neither be HKPR nor eligible incoming talent(s) themselves;
- (b) at the time of acquisition of the residential property, the eligible incoming talent, as the sole buyer or one of the co-buyers, was permitted to stay in Hong Kong by virtue of being a person to **whom a specified talent scheme applies** as provided under Schedule 12 to the SDO (i.e. the same list of specified talent scheme under the Refund Mechanism);
- (c) at the time of acquisition of the residential property, the eligible incoming talent as the sole buyer, or each of the co-buyers, **must not be a beneficial owner of any other residential property** in Hong Kong (unless in the case of replacing property)⁴;
- (d) when presenting the instrument of acquisition to IRD for stamping, the eligible incoming talent (as the sole buyer or as one of the co-buyers) may submit an **application for suspension** of stamp duty payment in

¹ Under section 29AF of the SDO, the date of acquisition of an immovable property by a person is the date of the agreement for sale and purchase (ASP). However, if more than one such agreement is made between the same parties and on the same terms in respect of the property (i.e. preliminary ASP (PASP) and ASP), it is the date of the first of those agreements (i.e. PASP).

² For the avoidance of doubt, the proposed Suspension Mechanism should not cover those eligible incoming talents who had purchased flats between the announcement of the Refund Mechanism in the 2022 PA and the announcement of the Suspension Mechanism, meaning those eligible incoming talents would have to follow the existing Refund Mechanism to apply for refund of BSD and NRSD paid.

³ To adopt the definition of “closely related persons” under section 29AD of the SDO. Two persons are closely related if one person is the parent, spouse, child, brother or sister of the other person. If there are more than two persons, they are closely related if each of the persons is a parent, spouse, child, brother or sister of each of the other persons.

⁴ The approach is the same as that adopted in the Refund Mechanism, where reference was made to the existing arrangement for NRSD (for details, see bullet (k)).

respect of BSD and the difference between NRSD and AVD at Scale 2 rates (i.e. “specified amount”). The eligible incoming talent still has to pay AVD at Scale 2 rates to IRD;

- (e) upon IRD’s vetting and approval of the application for suspension, **a statutory charge will be constituted in favour of the Collector of Stamp Revenue (“Collector”) automatically by law**, and the charge is deemed by law to take effect on the date of acquisition of the subject property. IRD will register an instrument denoting the charge (i.e. **a certificate of charge**) at the Land Registry (LR). In terms of priority, the charge in favour of the Collector is proposed to be **second only to the first mortgage for acquiring the property to the extent of a reserved amount**⁵ for striking a proper balance between protecting government revenue and allowing the eligible incoming talent to obtain a mortgage to finance the acquisition of the property concerned with relative ease;
- (f) **after the eligible incoming talent has become a HKPR** or, if applicable, after every co-buyer who, at the time of the initial acquisition was not HKPR and remains a beneficial owner of the residential property concerned, has become HKPR, the eligible incoming talent buyer or one of the remaining co-buyers can submit an **application for waiver** to IRD for waiving the liabilities in respect of the specified amount. Upon IRD’s vetting and approval of the application, IRD will issue **a certificate of discharge** in respect of the charge in favour of the Collector, which has the effect of discharging the charge and is registrable at LR;
- (g) at the time of application for waiver, the eligible incoming talent, or if applicable, at least one of the eligible incoming talent(s) who is a co-buyer of the initial acquisition, **must still be the beneficial owner(s)** of the residential property concerned;
- (h) the **deadline for waiver** with regard to the liabilities of the specified amount is **nine years** starting from the date the eligible incoming talent is permitted to stay in Hong Kong under the specified talent scheme

⁵ The reserved amount would be the lower of (a) the actual amount of the principal and interest in respect of the loan for acquiring the subject property under the acquisition mortgage concerned; and (b) an amount arrived at by deducting the specified amount from the amount/value of the consideration for the acquisition of the subject property to cater for cases where the sum of mortgage loan taken out exceeds the value/consideration of the property.

(i.e. seven years of ordinary residence in Hong Kong plus two years as buffer). In other words, if an eligible incoming talent fails to become HKPR within nine years from the date when he/she is permitted to stay in Hong Kong under the specified talent scheme, he/she will be liable to pay the specified amount to IRD;

- (i) under certain **triggering circumstances**, the eligible incoming talent buyer/co-buyers should pay the specified amount to IRD within 30 days⁶ of the occurrence of the circumstance. The triggering circumstances are (i) *on any date before the deadline for waiver* – if the eligible incoming talent buyer/each of the eligible incoming talent co-buyers cease(s) to be a beneficial owner of the subject property, or a person, other than one closely related to the eligible incoming talent buyer or all of the remaining co-buyers, becomes a beneficial owner of the subject property; and (ii) *as at the deadline for waiver* – in case where no liability has been waived by the Collector in respect of the specified amount;
- (j) the eligible incoming talent, as a sole buyer or as one of the co-buyers of the residential property concerned, can only apply for suspension **in respect of one residential property**;
- (k) in case the subject property (“the new property”) is one for replacing the only other property then owned by the eligible incoming talent buyer or co-buyers (“the original property”), the eligible incoming talent buyer or co-buyers should first pay the BSD and NRSD in respect of the new property. **Upon disposal of the original property within 12 months after the date of the assignment of the new property**, the eligible incoming talent buyer or one of the co-buyers may, upon payment of any outstanding BSD and NRSD payable in respect of the original property, **apply to IRD for refund of the specified amount and suspension of the same**. This follows the existing refund arrangement for replacement of property by HKPR; and

⁶ If an eligible incoming talent fails to pay the specified amount to IRD within 30 days of the occurrence of the relevant triggering circumstance, he/she shall be liable to pay late stamping penalty, which is set with reference to the existing provision on “late stamping” under the section 9 of the SDO as follows –

- (a) Not exceeding 1 month – double the amount of the specified amount;
- (b) Exceeding 1 months but not exceeding 2 months – 4 times the specified amount; and
- (c) In any other case – 10 times the amount of the specified amount.

- (1) the Suspension Mechanism is **not applicable** if the eligible incoming talent has acquired **multiple residential properties** under a single instrument⁷.

⁷ The Stamp Duty (Amendment) (No. 2) Ordinance 2018 was enacted to tighten up the circumstances in which AVD at Scale 2 rates are applicable to HKPRs where the acquisition is for a single residential property under one instrument. The same restriction was also applicable to eligible incoming talents under the Refund Mechanism.

Implications of the Proposals

In terms of **economic** implications, the adjustments of the DSMMs are expected to boost market confidence and render some support to the property market. The relaxation of SSD would facilitate some flat owners to sell while the reduction of the respective rates of BSD and NRSD would entice some investors to enter into the market, though the boost to market turnover may be limited by the prevailing rising mortgage interest rates and weak market sentiment. The proposed Suspension Mechanism will reduce the upfront cost for incoming talents to acquire a property in Hong Kong, which should help increase their sense of belonging and propensity of staying in Hong Kong for good, thereby contributing to the long-term development of Hong Kong. In terms of **productivity** implications, the attraction and retention of incoming talents will enrich Hong Kong's talent pool and help enhance the productivity of the workforce in Hong Kong.

2. In terms of **financial** implications, the implications of the proposals on government revenue are uncertain as the change in the amount of stamp duty collected will depend on the number and the value of transactions, as well as whether eligible incoming talents would purchase residential property in Hong Kong after implementation of the proposed Suspension Mechanism. In any event, the adjustments in the DSMMs and the proposed Suspension Mechanism are not intended to meet fiscal or budgetary objectives.

3. In terms of **family** implications, under the prevailing economic and market conditions, suitable adjustment of the DSMMs may help citizens achieve their home ownership aspiration, thereby strengthening their capability to foster care of their family members. For instance, a relaxation of SSD will release the "locked-up" housing stock, thereby increasing the options of housing units available for sale in the secondary market for homebuyers. The adjustment will also reduce the financial burden on home owners who have genuine need to sell their flats after a reasonable holding period. Meanwhile, the proposed Suspension Mechanism for incoming talents may bring positive family impact since it will reduce the upfront cost of home purchase by eligible incoming talents, which may encourage them to settle and raise a family in Hong Kong.

4. In terms of **civil service** implications, additional manpower and administrative costs arising from the proposals will be absorbed within the existing resources of relevant bureaux/departments as far as possible. Should additional manpower resources be required, they will be sought in accordance with the established mechanism.