

L.N. 148 of 2023

**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 months beginning on that day

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

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

(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

(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 months beginning on that day

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

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

(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 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 principal Ordinance (and certain other conditions are met) (new sections 29DN and 29DO);
- (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).

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

Schedule

L.N. 148 of 2023
B3979

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.

John KC LEE
Chief Executive

25 October 2023