The Administration's response to the issues raised at the meeting of the Bills Committee on the Stamp Duty (Amendment) Bill 2012 held on 25 January 2013

This paper serves to respond to the issues as set out in the letter dated 29 January 2013 from the Legislative Council Secretariat.

Effectiveness of the Special Stamp Duty (SSD)

2. The SSD aims at curbing short-term speculative activities in the residential property market and ensure the market's healthy and stable development. The SSD has been effective in curbing short-term speculative activities since its implementation in November 2010. According to the Inland Revenue Department (IRD), after the enactment of enabling legislation for the SSD, the numbers of confirmor and resale cases within 24 months have dropped significantly. The total number of such transactions in 2011 represented a 42.5% reduction as compared with 2010, and a further drop of 56% was recorded in 2012 as compared with 2011.

3. We have reviewed the SSD in view of the continued exuberant state of the property market. We consider that there is a need to further enhance the SSD with a view to strengthening its effectiveness to combat speculative activities. In the first nine months of 2012, i.e. before the announcement of the new demand-side management measures in October 2012, on average there were a total of 15 cases per month for resale within 12 months (including confirmor transactions) which were subject to the SSD. During the same period, the monthly average number of transactions for resale between 12 to 24 months subject to SSD was higher, at 102 cases. Moreover, the number of such cases has been on the rise, from 83 in March 2012 to 218 in September 2012, as properties bought in the early months after the introduction of SSD reach the end of the first year of the higher SSD rates. Given the current tight supply, we see a need to provide a stronger disincentive for speculators and short-term investors. Accordingly, we propose to enhance the SSD by increasing its coverage period from 24 months to 36 months, and increase the SSD rates of the different holding periods. The breakdown of SSD cases is at **Annex A** for reference.

Statistics on residential property transactions involving companies

4. The relevant statistics are set out at **<u>Annex B</u>**.

Exempting companies from the Buyer's Stamp Duty (BSD)

5. Some have advocated that companies should be exempted from the BSD if they can satisfy certain conditions, for example, having declared that all its shareholders are Hong Kong permanent residents (HKPRs), and that it will not sell the residential property acquired within a certain period of time. While we will examine this proposal carefully, our current view is that, in law, a company is an entity independent of its shareholder(s). To identify a company for the exemption of the BSD on the basis of the HKPR status of its shareholder(s) will cause confusion to this fundamental legal principle under company law. Besides, the suggested self-declaration mechanism fails to tackle the problem that the HKPR shareholders can circumvent the BSD through transferring property entitlement to non-HKPR shareholders by ways of nomination, declaration of trust or authorisation, allotment of new shares, or issue of new class of shares, etc. Upon the completion of entitlement transfer, the original shareholders may appear to remain as shareholders of the company. In reality, however, the control of the company has been transferred to someone else. Furthermore, a registered company may involve a huge number of shareholders, and some of them may be corporate bodies incorporated in Hong Kong or overseas. It will call into question how many tiers of company structure should be captured by the suggested self-declaration mechanism for the purpose of verifying the identity of the ultimate shareholders. Moreover, companies incorporated overseas are not required to provide information on their shareholders to the Stamp Office or Companies Registry, thus rendering it particularly not possible to enforce the proposed mechanism. In view of the above, our current view is that it is inappropriate to exempt companies from the BSD simply on the basis that their shareholders are HKPRs.

Refunding the BSD for redevelopment

6. On the suggestion to exempt companies from the BSD when they acquire a residential property for redevelopment purpose, in fact, our policy intent is that the BSD should not hinder redevelopment (whether the residential property acquired is for redevelopment into a residential or a non-residential property). Under the Stamp Duty (Amendment) Bill

2012 (the Bill), a refund mechanism is proposed whereby acquisition of residential properties for the construction of immovable properties will be exempted from the BSD, provided that the immovable properties being constructed are completed within six years, with extension allowed in specific circumstances. In drawing up this proposal, we have made reference to the Land (Compulsory Sale for Redevelopment) Ordinance (Cap.545) which stipulates (Schedule 3) that the redevelopment of the lot sold under an order for sale made by the Lands Tribunal under Cap.545 shall be completed and made fit for occupation within six years after the date on which the purchaser of the lot became the owner of the lot. For BSD purposes, the general rule is that the "six-year period" will start when the relevant developer has become the owner of the entire lot of the redevelopment concerned. The developer will be considered as having completed the construction if it has obtained, within six years thereafter, the Occupation Permit (OP) in respect of the redevelopment, or the first OP if there is more than one for the entire redevelopment. If the lot is the subject of an order for sale made by the Lands Tribunal under Cap.545 and the Lands Tribunal, on an application by the developer for extending the time for completion of the redevelopment of the lot, allows a further period, then the further period prevails. In the scenario where lease modification is required after the developer has acquired the lot(s), the counting of this "six-year period" commences from the completion of first such lease modification of the lot(s) i.e. the date of the lease modification document. In the scenario where a new lot is granted by the Government, the counting of this "six-year period" commences with the grant of a new lot by the Government consequent upon either or both of the following, namely, surrender of the whole or a part of the lot or the lots to the Government; resumption of the whole or a part of the lot or the lots by the Government under the Lands Resumption Ordinance (Cap.124). The refund mechanism has taken into account the views raised by the trade. For instance, noting that it takes time to acquire the properties to be redeveloped, we have proposed in the Bill that the "six-year period" will start only after the entire lot has been acquired.

Time limit for the BSD

7. Some Members suggested that a time limit of, say 24 or 36 months, should be set for the BSD. We do not consider it possible for us to pre-determine a date on which the BSD would be deemed no longer necessary. We will continue to closely monitor the property market by making reference to a basket of indicators, including property prices, the housing affordability for the general public, the volume of property

transactions, the supply of residential properties, mortgage payments, rent-to-income ratio, etc. The demand-side management measures are extraordinary measures introduced under the current exceptional circumstances. We would consider withdrawing these measures after the demand-supply situation of the property market has regained its balance. Accordingly, we have proposed in the Bill that adjustments to the SSD and BSD rates should be made by means of subsidiary legislation subject to negative vetting by the Legislative Council, in order to have the necessary flexibility to adjust the applicable rates (to zero if necessary) in a timely manner with reference to the market situation.

Overseas experience

8. As requested by Members, measures adopted by some overseas jurisdictions in relation to the purchase of residential properties by non-locals are summarised at **Annex C**. We would like to emphasise that different jurisdictions will make reference to their own specific circumstances and legal systems in formulating measures and policies and the information mainly serve as a reference.

9. Separately, the Administration has also received requests for information from the Hon James To Kun-sun and the Hon Tony Tse Wai-chuen. We will respond to these requests as soon as possible.

Transport and Housing Bureau
January 2013

Annex A

Breakdown of SSD cases
(as at end 2012)

Holding period	SSD rate	No. of cases	Amount of SSD involved
6 months or below	15%	89	$24.9M
6 to 12 months	10%	198	$48.3M
12 to 24 months	5%	1549	$255.6M

Note: No SSD case under the proposed enhanced regime has been recorded.

Annex B

Table 1: Number of residential property transactions involving company buyers

Year	Consideration ($)	Total no. of agreements for sale (a)	Total no. of agreements for sale involving company buyers (b)	Proportion of company buyers. i.e. (b)/(a)
2010	< 20M	152,365	19,436	12.76%
	>=20M and <25M	1,184	566	47.80%
	>=25M and <=30M	649	325	50.08%
	> 30M	1,525	1,010	66.23%
2010 Total		**155,723**	**21,337**	**13.70%**
2011	< 20M	92,857	9,447	10.17%
	>=20M and <25M	1,033	411	39.79%
	>=25M and <=30M	724	352	48.62%
	> 30M	1,420	825	58.10%
2011 Total		**96,034**	**11,035**	**11.49%**
2012	< 20M	88,425	7,433	8.41%
	>=20M and <25M	892	330	37.00%
	>=25M and <=30M	538	239	44.42%
	> 30M	1,409	787	55.86%
2012 Total		**91,264**	**8,789**	**9.63%**

Table 2: Number of short-term resale of residential properties by companies

Year	Total agreements for sale (a)	Resale cases by companies				Proportion of resale cases, i.e. (b)/(a)
		≤ 12mths	>12 to ≤ 24mths	>24 to ≤ 36mth	Sub-total (b)	
2010	155,723	1,944	685	654	3,283	2.11%
2011	96,034	726	719	213	1,658	1.73%
2012	91,264	17	483	156*	656	0.72%

* For 2012, IRD's latest records only cover resale cases from January to August 2012. The whole-year figure is being worked out.

Annex C

Overseas experiences in relation to the purchase of residential properties by non-locals

Singapore

- Singapore introduced an Additional Buyer's Stamp Duty (ABSD) on 8 December 2011. For foreigners and non-individuals (corporate entities) buying a residential property, the ABSD rate was 10% of the total purchase price or market value, whichever is higher. For Singapore permanent residents owning one residential property and buying the second and subsequent residential property; as well as Singapore Citizens owning two and buying the third and subsequent residential property, the ABSD rate was 3%.

- In view of the continued buoyancy of the property market, Singapore launched a further set of measures to cool the housing market in January 2013. For the ABSD, with effect from 12 January 2013, the rates have been raised between 5% and 7% across the board. The duty has also been imposed on Singapore Permanent Residents purchasing their first residential property, and on Singapore Citizens purchasing their second residential property.

- The ABSD regime of Singapore is illustrated in the following table –

Profile of buyer	**ASBD rates**	
	from 8 Dec 2011 to 11 Jan 2013	**from 12 Jan 2013 onwards**
Foreigners and non-individuals (corporate entities) buying any residential property	10%	15%
Singapore Permanent Residents buying first residential property	Nil	5%
Singapore Permanent Residents buying second residential property	3%	10%
Singapore Citizens buying first residential property	Nil	Nil
Singapore Citizens buying second residential property	Nil	7%
Singapore Citizens buying third and subsequent residential property	3%	10%

The United Kingdom (UK)

- In its Budget 2012, the UK Government introduced a package of measures to ensure that individuals and companies pay a fair share of tax on residential property transactions and to tackle avoidance, including the wrapping of property in corporate and other "envelopes". These measures include -
  - The introduction from 21 March 2012 of a 15% rate of stamp duty land tax on acquisitions of residential dwellings costing more than £2 million by certain non-natural persons (i.e. companies, partnerships including a company and collective investment vehicles);

- From 1 April 2013, an annual charge (known as Annual Residential Property Tax) on residential property valued over £2 million owned by certain non-natural persons; and
- From 6 April 2013, the extension of Capital Gains Tax to gains on the disposal of residential property valued over £2 million by non-resident companies and others (but not individuals).

Australia

- While there is currently no specific tax levied on foreign purchasers of residential property in Australia, foreign persons holding property through managed investment trusts in Australia are subject to higher rates of withholding tax, up from 7.5% to 15%.
- Separately, purchases of residential properties by temporary resident individuals (such as those living in Australia but not permanent residents or citizens), individuals resident in a foreign country and companies or trusts controlled by foreign persons are subject to approval by the Foreign Investment Review Board. For example, temporary resident individuals may only purchase one established dwelling as their residence in Australia, and must compulsorily sell the property once they depart. They may not buy any established dwelling for investment purposes.

Macau

- The Macau Government implemented the Additional Stamp Duty (ASD) on all residential properties transactions involving non-Macau permanent residents (including bodies corporate) on 30 October 2012, at a duty rate of 10%.
- The Macau Government will review the ASD two years after its implementation with reference to the prevailing situation.