

**The Administration's response to the issues raised at  
the meeting of the Bills Committee on the Stamp Duty (Amendment)  
Bill 2012 held on 22 April 2013**

This paper is in response to the issues raised in the letter dated 23 April 2013 from the Legislative Council Secretariat (LC Paper No. CB(1)925/12-13(03) refers).

**BSD Refund mechanism for redevelopment activities**

2. As explained in LC Paper No. CB(1)893/12-13(01), the policy intent is that the Buyer's Stamp Duty (BSD) should not hinder redevelopments. Under the Stamp Duty (Amendment) Bill 2012 (the Bill), a refund mechanism has been proposed so that those that undertake the acquisition of residential properties for redevelopment purpose (whether the residential property acquired is for redevelopment into a residential or a non-residential property) will be able to seek a refund of the BSD paid, provided that the immovable properties being constructed are completed within six years, with an extension allowed in specific circumstances. For BSD purposes, our proposal is that the "six-year period" will start counting from when the relevant developer has become the owner of the entire lot of the redevelopment concerned. To facilitate redevelopments, once the development has been issued with its first occupation permit within the "six-year period", this will be regarded as satisfying the refund requirement and a full refund will be granted for all phases in the redevelopment upon application. In short, we consider that the proposed mechanism will not block redevelopments and should be flexible enough to cater for the actual operation of redevelopments.

3. Our current proposal allows a body corporate to claim a refund of the BSD paid by its associated body corporate after the latter has transferred the residential properties it acquired to the former for redevelopment purpose. By virtue of section 45 of the Stamp Duty Ordinance (Cap.117) (the Ordinance), "associated bodies corporate" are defined as, at the time of and within two years after transferring the residential properties, for two bodies corporate, one is a beneficial owner of not less than 90% of the issued share capital of the other or a third such body is a beneficial owner of not less than 90% of the issued share capital of each. Under our proposed arrangement as set out in section 29DD(3) of the Bill, upon the completion of the redevelopment within the prescribed timeframe, a developer may claim refund of the BSD paid by

its associated bodies corporate in the acquisition of the residential properties being redeveloped. The rationale is that the transfer of the residential properties between the two bodies corporate concerned is not for trading but purely for carrying out the redevelopment in question. On the other hand, if the developer acquires residential properties for redevelopment from a third party vendor, the developer cannot claim refund of the BSD paid by the vendor in the acquisition of the residential properties concerned. This is because, firstly, these vendors' acquisitions may only be carried out for trading purpose; secondly, these acquisitions may take place in the initial stages of a redevelopment project which may eventually not materialize. That said, the developer can still apply for refund of the BSD it has paid when acquiring the residential properties being redeveloped in accordance with the mechanism explained in paragraph 2 above. We consider it necessary to draw a clear and distinct line between third party vendors and associated bodies corporate.

### **Implications of the BSD on the customary Chinese trusts under “Tso” or “Tong”**

4. Since the announcement of the BSD in October 2012, the Administration has conducted briefing sessions for various stakeholders and responded to enquiries from the public as well as deputations attending the Bills Committee of the Legislative Council. The Administration will clarify any further query which the public may have, and will continue to listen to the views of the stakeholders. Subject to the passage of the Bill, we will provide further guidelines on the implementation of the BSD for the relevant trades and the public.

### **Application of the BSD on “usual mortgage”**

5. Under the proposed sections 29CB(12) and 29DB(13) of the Bill, if an instrument is not chargeable with ad valorem stamp duty, it will not be chargeable with the BSD. It has been the view of Inland Revenue Department (IRD) that a bone fide mortgage (i.e. a “usual mortgage”) in respect of residential property is not considered to be an agreement for sale and is therefore not chargeable with ad valorem stamp duty (see paragraph 10 of the Stamp Office Interpretation and Practice Notes No. 1 issued by IRD) or SSD (see paragraph 13 of the Stamp Office Interpretation and Practice Notes No. 5), and hence it is not chargeable with BSD. IRD will spell this out explicitly in the Practice Notes to be

issued for the BSD after the enactment of the Bill. These Practice Notes can be retrieved from IRD's website ([www.ird.gov.hk](http://www.ird.gov.hk)).

**Follow-up issues arising from LC Paper No. CB(1)893/12-13(02)**

6. The Administration has taken note of the deputations' observations as set out in items 16, 19 and 27 of LC Paper No. CB(1)893/12-13(02). We will carefully consider the suggestions and provide a written response separately.

**Transport and Housing Bureau  
May 2013**