

**The Administration's response to the issues raised at  
the meeting of the Bills Committee on the Stamp Duty (Amendment)  
Bill 2012 held on 18 March 2013**

This paper is in response to the issues raised in the letter dated 18 March 2013 from the Legislative Council Secretariat (LC Paper No. LC Paper No. CB(1)793/12-13(01) refers).

**Exempting companies owned by Hong Kong permanent residents (HKPRs) from the Buyer's Stamp Duty (BSD)**

2. We are aware that there are views that companies of which all shareholders are HKPRs should be exempted from the BSD. We would like to emphasise that such a proposal would create loopholes and seriously undermine the effectiveness of the BSD in achieving the policy objectives of cooling down the property market and according priority to HKPRs in addressing their home ownership needs. First of all, in law, a company is an entity independent of its shareholders. Under the legal framework of Hong Kong, we have all along distinguished companies by whether they are established locally or overseas, instead of making reference to the HKPR status of shareholders. To identify a company for the exemption from the BSD on the basis of the HKPR status of its shareholders will cause confusion to the fundamental legal principle under company law that "a company is an entity independent of its shareholders".

3. Besides, if companies are exempted from the BSD, it would lead to the problem that HKPR shareholders may circumvent the BSD through transferring property entitlement to non-HKPR shareholders by various means. Such ways include 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. As there is no way for the Inland Revenue Department (IRD) to be informed of such transfer of entitlement, even if the self-declaration mechanism as proposed by some Members is in place, the IRD will not be able to carry out investigations to safeguard the mechanism from being abused.

4. We are not assuming that all companies would abuse the

self-declaration mechanism proposed by some Members to circumvent the BSD. However, as a responsible Government, we cannot simply ignore the obvious loopholes that may be created by exempting companies from the BSD, which would undermine the effectiveness of the measure in cooling down the property market and according priority to HKPRs in addressing their home ownership needs.

5. We are also concerned about the impact of exempting companies from the BSD on the effectiveness of the various demand-side management measures which the Administration has introduced. The enhanced Special Stamp Duty, the introduction of the BSD and the increase in the ad valorem stamp duty rates (AVD) target at different demands of different buyers. These measures are interrelated and work collectively to achieve the objectives of combating speculations and managing demand. Under the AVD regime, in determining whether a HKPR has possessed more than one residential property and hence subject to AVD, the residential property(ies) held by that HKPR in the name of a company would not be taken into account. If companies of which all shareholders are HKPRs were to be exempted from the BSD, those who wish to possess more than one residential property might simply purchase a residential property in the name of a company without the need to pay the BSD, and at the same time can also circumvent the AVD. If so, this would seriously undermine the effectiveness of the AVD regime. These persons would be able to completely avoid the BSD and AVD, which would be inconsistent with the policies behind the series of demand-side management measures and seriously undermine the effectiveness of these measures in achieving their objectives.

6. We would like to emphasise that the demand-side management measures, including the BSD, are extraordinary measures introduced in response to the present exceptional circumstances. We will continue to closely monitor the private residential property market and consider withdrawing these measures when the supply and demand regains balance. We will continue to listen to the views of the Bills Committee and the community on this issue.

**Transport and Housing Bureau**  
**March 2013**