Meeting of the Bills Committee of the Stamp Duty (Amendment) Bill 2012 on 16 September 2013

Opening Remarks by Secretary for Transport and Housing

Chairman,

I am pleased to attend the meeting of the Bills Committee again to explain to Members the Government's stance on the policy issues with regard to the demand-side management measures introduced by the Government. As I have to attend the 16th Hong Kong/ Guangdong Cooperation Joint Conference earlier this morning, I have not been able to attend this meeting from the outset. Please accept my apologies.

In the light of the irrationally exuberant property market in recent years driven by the demand-supply imbalance, extremely low interest rates and excessive liquidity, which has caused property prices to deviate from the economic fundamentals, the Government has introduced demand-side management measures to reduce the risk of a property market bubble, minimise the adverse impact on the overall macro economy and financial stability, and accord priority to the home ownership needs of Hong Kong permanent residents (HKPRs) in the midst of the tight housing supply. We, of course, understand that the demand-supply imbalance has to be addressed at source by a sustained increase in supply.

Since the introduction of these measures, the Government has been closely monitoring the property market conditions. We believe that the measures have achieved the anticipated results, and the property market is stabilizing gradually.

With an increase of 20% in overall property price over the first nine months of 2012, the price level back then soared by 108% over the trough in 2008. After the announcement of the enhanced Special Stamp Duty (SSD) and the introduction of Buyer's Stamp Duty (BSD) in October 2012, the property market cooled off immediately, and the pace of price acceleration slowed down.

However, the property market resumed its exuberance in early

2013, recording a monthly average increase of 2.7% in the first two months. It was not until the introduction of a new round of demand-side management measures in February 2013 that the market attained overall stability. At present, the market is experiencing a tug-of-war between bulls and bears. The monthly average increase in overall property prices stood at 0.4% between March and July this year.

While the demand-side management measures have effectively curbed market exuberance and reversed the community's irrational expectation that property prices could only go up further, thereby reducing the risk of a property market bubble, individual sectors have asked the Government to relax or even to withdraw these measures. In this connection, I would like to reiterate the Government's determination to safeguard the healthy and stable development of the property market. Until the property market returns to a normal state, the Government has no intention to withdraw these measures. In fact, the community generally recognises the necessity of the demand-side management measures, and the majority of the general public do not support withdrawal of such measures under the prevailing circumstances. Public opinion is, by and large, against withdrawal of these measures by the Government. Recently, a study carried out by The Economist points out that Hong Kong is, among all economies in the world, having the highest risk of a property market bubble. Therefore, having taken account of the reactions from different sectors and our assessment of the current market condition, we have come to the conclusion that if we withdraw the measures now, it will deal a blow to the property market and send a wrong message to the community, calling into question our determination to stabilize the property market. This may trigger the cycle of irrational exuberance in the property market again, and render the Government's efforts in cooling off the market futile. This will also expose the property market to a higher risk of a property bubble, which is to the detriment of the macro economy, and will, in all probability, affect all trades eventually.

Any suggestion to relax the cooling-off measures, if they result in diluting the effectiveness of the measures, would lead to an increase in the risk of a property bubble.

Chairman, as I pointed out at the meeting of the Bills Committee on 7 June, the Government has all along listened carefully to views of Members and different sectors of the community on the policy and implementation issues. The Government is prepared to introduce refinements to the Bill, provided that such refinements will not compromise the policy objective of stabilising the property market, create loopholes which are difficult to plug, send a wrong message to the market, or undermine the effectiveness of the Bill. For example, the Government has proposed a revised BSD refund mechanism for redevelopment projects under which the refund could be advanced by four to five years as compared with the original mechanism. The Government has also proposed three other technical amendments to the Bill.

As regards the proposal of exempting companies owned by HKPRs from paying the BSD, the Government has already explained its stance repeatedly. As I reiterated at the meeting of the Bills Committee on 7 June, there were various forms of share transfer, and shareholders could indirectly transfer the property interest held by a company to non-HKPRs and circumvent the BSD. It is impossible for the Inland Revenue Department (IRD) to identify and to deter abuse of such an exemption.

The transfer of the ownership of a company may be carried out by various means such as the execution of a nomination, declaration of trust or power of attorney, allotment of new shares, issue of a new class of shares and variation of the right of existing shares. In some cases (e.g. the allotment of new shares or the issue of a new class of shares), there is no legal obligation on the parties concerned to notify the IRD of the transfer. If changes were to be made to the well-established taxation and company regimes to plug the loopholes by, say, requiring notification to the IRD and the Companies Registry of any acts involving the transfer of beneficiary interest in company shares, it will bring about material changes to the operation of all companies. Given the fact that the BSD is an extraordinary measure introduced under exceptional circumstances, we consider that it would be against the principle of proportionality if the above were put into practice.

Some Members have proposed to grant exemption by way of a tax refund, alongside a statutory declaration mechanism and heavier penalties. However, since there is no way for the IRD to be informed of any contravention of the conditions of exemption, the mechanism could not combat irregularities effectively, and the penalty, however heavy, could hardly be of any deterrent value. I will invite the representatives of the IRD to explain the details later.

The procedures involved in setting up companies in Hong Kong are simple. Given the rate and amount of the BSD payable, if HKPR-owned companies were to be exempted from the BSD, the resultant incentive for and the risk of tax evasion should not be under-estimated. Should it become a trend for holding properties in the name of companies, I can hardly imagine how far the IRD has to investigate in order to ascertain whether the properties are held by HKPRs or not.

On the other hand, the purpose of the proposed BSD exemption for HKPRs is to accord priority to address the HKPRs' home-ownership needs in the midst of the current tight housing supply. The policy intent is clear and legitimate. If the scope of exemption were to be extended to companies with HKPR shareholders or with less than a certain number of HKPR shareholders, it would call into question whether the level playing field among companies in Hong Kong can be maintained, giving rise to an even greater controversy.

Chairman, regarding the proposal to exempt charitable organizations which are exempted from tax under section 88 of the Inland Revenue Ordinance (IRO) from paying the BSD, the Government has carefully considered this from different perspectives. In fact, these charitable organizations have always been required to pay ad valorem stamp duty under the Stamp Duty Ordinance upon purchase of any residential property. The proposal of exempting these charitable organizations from paying the BSD, if endorsed, would be inconsistent with the existing taxation and stamp duty regimes.

In addition, there is at present no definition of "charitable organisations" or "charitable purpose" in the law of Hong Kong. In enforcing section 88 of the IRO, the IRD makes its decisions based on precedents. The nature of the charitable organisations which are exempted from tax under section 88 of the IRO varies, and they exist in different forms including companies, trusts or societies. At present, there are over 7 00 charitable organisations, most of which (about 75%) are corporations registered under the Companies Ordinance. If charitable organizations were to be exempted from paying the BSD, it might provide an incentive for tax evasion, prompting those who intend to evade the BSD to establish a charitable organization in the form of a company, control the charitable organization and purchase residential properties in its name. In order to plug the loophole, a comprehensive review of the monitoring mechanism for charitable organizations has to be conducted, which will lead us to a more complicated arena.

Chairman, we understand that there are worries that the Government will not be able to revoke the demand-side management measures in time once the property market trend reverses. The Government however disagrees with the suggestion to introduce a sunset clause for these measures, because it is simply impossible to speculate on future market changes and external factors, and use them to predict when the demand-side management measures such as the BSD are no longer required. Therefore, any sunset clause based on wishful thinking would only send a wrong message to the market and fuel future demand. However, I assure that the Government will continue to monitor the development of the property market closely, review the SSD and the BSD in a timely manner, and make adjustments as and when necessary in response to the latest market conditions. We undertake to report to the Legislative Council a year after the Bill is enacted, while we will definitely continue to monitor the market trend closely before then. When I entered the Chamber, the Honourable Jeffrey LAM Kin-fung was asking how the Government was going to carry out the monitoring work. Put it simply, regarding the overall development of the market, including that of the residential property market, I myself, as well as the Financial Secretary and the Secretary for Financial Services and the Treasury, are vigilant about the trends reflected by different market indicators. Furthermore, the Chief Executive holds weekly meetings with the three Secretaries and the relevant Bureau Secretaries to discuss the latest issues of society. At present, we meet to discuss issues about land and the real estate market, as well as other related matters every week. Therefore, please rest assured that the Government will monitor the market closely.