The Administration's responses to the issues raised at the meeting of the Bills Committee on Stamp Duty (Amendment) Bill 2013 held on 31 May 2013

At the meeting of the Bills Committee held on 31 May 2013, some members asked about the policy considerations and statistics in relation to the demand-side management measures proposed under the Bill, and expressed concerns on the impact of the measures. Their questions and concerns mainly include the following –

(a) The proposal of doubling the ad valorem stamp duty (AVD) rates applicable to non-residential property transactions may affect the business environment in Hong Kong. It remains uncertain whether the Administration had conducted any impact assessment before introduction of the measure, including the expected outcome in addressing the overheated non-residential property market and the impact on local and overseas individuals/agencies in acquiring properties in Hong Kong for commercial operations;

(b) The Administration should differentiate between non-residential properties acquired for self-occupation and those for speculation. Exemption should be granted to self-occupied non-residential properties. The Administration should make reference to, and provide information on, relevant measures on non-residential properties adopted by other jurisdictions and the effectiveness of such measures in addressing their overheated property markets domestically; and

(c) As far as the private residential property market is concerned, the Administration should assess the impact of the measures on Hong Kong residents. The assessment should cover past information on the holding of other residential properties by Hong Kong residents when they acquired their residential properties.

2. This paper sets out the Administration's responses to the questions and issues raised by members.

Policy Considerations and Justifications for Covering Non-residential Properties

3. In February 2013, the Administration introduced a new round of demand-side management measures. The main considerations and justifications are related to the following three aspects –

(a) Following the introduction of the enhanced Special Stamp Duty and Buyer's Stamp Duty in October 2012, the upward momentum in flat prices of residential property market had been temporarily arrested. However, on entering 2013, there were renewed signs of exuberance in the residential property market amidst the supply-demand imbalance, exceptionally low interest rate and abundant liquidity environment. The residential property market was moving away from economic fundamentals.

There were signs of overheating in the non-residential property market. The hectic trading activities and soaring prices for non-residential properties affected the business environment. According to the Rating and Valuation Department's statistics, transactions for non-residential properties continued to soar throughout 2012. The increases in transactions for different types of properties are as follows –

Transactions	Retail	Office	Flatted Factory Space
Long-term quarterly average (a)	1 160 cases	630 cases	1 350 cases
Fourth quarter in 2012 (b)	2 430 cases	1 100 cases	3 640 cases
Fourth quarter in 2012 compared to long-term quarterly average (b)-(a)/(a) %	+109%	+75%	+170%
2012 full year compared to 2011	+21%	+6%	+28%

Prices of retail, office and flatted factory space surged by a cumulative 41%, 24% and 46% respectively in 2012. Compared with the recent trough in 2009, sale prices for these properties have soared by 151%-206%.

(b) To accord priority to the housing needs of Hong Kong Permanent Residents amidst the tight supply situation, the Administration saw the need to enhance demand management in respect of the residential property market. To forestall the shifting of the exuberance condition in the residential property market to the already overheated non-residential property market, we should introduce demand-side management measures for the non-residential property market at the same time.

(c) As a matter of fact, the AVD chargeable on transactions for properties is applicable to all types of properties, irrespective of whether residential or non-residential properties are involved. This approach has been consistently adopted.

4. In sum, the ever-increasing prices of residential and non-residential properties would deviate even further away from economic fundamentals. Failure to take actions in a timely manner would carry with it a high risk of the upward spiral in property prices continuing unabated, eventually precipitating a very costly adjustment and endangering the overall macroeconomic and financial stability of Hong Kong.

Reasons for Not Differentiating Non-residential Properties Acquired for Self-occupation and Speculation

5. The Government’s policy objective is to cool down the non-residential property market immediately by way of demand-side management, thereby turning around the market expectation that flat prices could only go up. In order to achieve such objective, we need to implement targeted measure having regard to the prevailing situation in the property market. Adjustment of the AVD rates is intended to create an instant effect.

6. The proposed increase in AVD rates applicable to all

property transactions and the proposed advancement of charging stamp duty in respect of non-residential property transactions at the time of signing the agreement for sale are complementary measures, which could hopefully forestall the shifting of rampant speculation or investment demand from the residential property market to the non-residential property market, thereby achieving the immediate cooling effect on the non-residential market. Since the AVD for transactions on non-residential properties was only payable until conveyance on sale, there is at present no evidence to show that the overheated condition in the non-residential property market has been caused by short-term speculations.

7. When contemplating the relevant demand-side management measures, we did make reference to overseas practices. However, we would like to emphasise that different jurisdictions will formulate their appropriate policies and measures having regard to their own specific circumstances, taxation systems and characteristics. It may not be appropriate to draw conclusions on the effectiveness of their measures by direct comparison. At the last meeting, some members enquired about the demand-side management measures implemented by Singapore. According to our understanding, under Singapore's stamp duty regime, the liability for stamp duty payment basically rests with the buyers, which is fundamentally different from Hong Kong's system where both the sellers and buyers are jointly and severally liable to the AVD. In view of the continued buoyancy of the residential property market, Singapore had launched the Seller's Stamp Duty to combat short-term speculative activities and Additional Buyer's Stamp Duty to dampen demand. Given that speculative activities for industrial properties have been on the rise[1], Singapore introduced Seller's Stamp Duty targeting at industrial properties for the first time in January 2013 to further cool down the market. Depending on the length of holding period of the industrial properties, the sellers will be charged Seller's Stamp Duty at the rates of 5 – 15%. As the Seller's Stamp Duty for industrial properties has been implemented for a few months in Singapore, its effectiveness has yet to be observed.

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[1] According to the press release issued by the Singapore's Ministry of Finance in January 2013, prices of industrial properties in Singapore have doubled over the last three years, outpacing the increase in rentals. In addition, there has been increasing speculation in industrial properties: in 2011 and the first eleven months of 2012, about 15% and 18% respectively of all transactions of multiple-user factory space were resale transactions carried out within three years of purchase. This is significantly higher than the average of about 10% from 2006 to 2010.

8. The details of Singapore's measure and other jurisdiction such as Macau's recent measure applicable to non-residential properties are at Annex A. Besides, the Administration had provided to the Bills Committee on Stamp Duty (Amendment) Bill 2012 information on measures adopted by some other jurisdictions in relation to the residential property market. The relevant information is now reproduced at Annex B for reference by members.

Effectiveness of the Measure

9. Our preliminary observation is that the market sentiment has cooled down in the past several months. Trading activities have reduced and the monthly rise in the overall pricing for residential properties has softened. On the non-residential property market, transactions on retail, office and flatted factory space have plunged while their prices have become more stabilized. We believe the expectation that property prices would only go up could be changed after the introduction of the latest round of demand-side management measures. However, due to the continued low interest rate and abundant liquidity environment, we could not ignore the risk of a property market bubble. As we have stressed repeatedly, the Government remains committed to increasing land and housing supply with a view to facilitating the healthy and stable development of the property market. At the same time, we need to manage the demand so as to address the exuberance condition in the property market.

Assessment of the Impact on Local Residents Arising from the Measure on the Private Residential Property Market

10. In formulating the demand-side management measure, we did make reference to the statistics kept by the Inland Revenue Department for assessing the possible impact on local residents. Out of the transactions for residential properties involving individual buyers who were holders of Hong Kong Identity Card in the past three years (i.e. from 2010 – 2012), less than half of the buyers owned other properties when conducting the relevant transactions. In other words, more than half of the local buyers would not be affected by the measure based on past statistics. The relevant statistics are at **Annex C**.

Exceptional Measures Subject to Critical Review

11. The property market is influenced by various changing factors. As such, we will as ever continue to monitor the market development closely, and make timely adjustments to the demand-side management measures as necessary.

12. We understand the measures will cause inconvenience to local buyers who have owned residential properties, non-local buyers and the business community. The measures are extraordinary ones introduced under exceptional circumstances with an aim to prevent the macroeconomic and financial stability from being affected by wide fluctuations in the property market. On the other hand, we are aware that local businessmen and overseas agencies have raised concerns on the soaring prices in the property market over the past few years. The Government needs to manage the demand in order to cool down the non-residential property and to contain the risk posed to the financial stability.

13. We believe that local and foreign companies running operations in Hong Kong will ultimately benefit from a stable business environment with steady development in the property market. We will continue to listen to the views of the Bills Committee and the community on the subject matter.

Submissions

14. In addition to the submissions received by the Bills Committee, we enclose, with the consent from relevant parties, the following submissions received by the Administration for members' reference -

(a) Letter dated 2 April 2013 from the Law Society of Hong Kong to the Financial Services and the Treasury Bureau;

(b) Letter dated 3 April 2013 from the Real Estate Developers Association of Hong Kong to the Transport and Housing Bureau (with the reply dated 13 May 2013 from the Transport and Housing Bureau); and

(c) Letter dated 9 April 2013 from the Manulife (International) Limited to the Financial Secretary (with the reply dated 16 May 2013 from the Financial Services and the Treasury Bureau).

Financial Services and the Treasury Bureau
June 2013

Annex A

The Seller's Stamp Duty on Transactions for Industrial Properties by Singapore and Macau

Singapore

Given the exuberance in property market, Singapore implemented further measures to cool down the market on 11 January 2013 which included the Seller's Stamp Duty targeting at the industrial properties for the first time. Details of which are as follows -

Affected entities	For transactions on industrial properties on or after 12 January 2013
Singapore Citizens, Singapore Permanent Residents, foreigners and other entities[2]	Resale in one year or less than one year : 15%
	Resale in two years or less than two years but more than one year: 10%
	Resale in three years or less than three years but more than two years: 5%

Macau

On 30 October 2012, Macau introduced the Special Stamp Duty for transactions on immovable properties involving commercial, office or car park for mechanical vehicles as follows –

Affected entities	For transactions on immovable properties involving commercial, office or mechanical vehicles on 30 October 2012 or after
The tax-paying principals or transferors of the concerned immovable properties	Resale in one year or less than one year: 20%
	Resale in two years or less than two years but more than one year: 10%

[2] "Entity" refers to a person who is not an individual, and includes an unincorporated association, a trustee for a collective investment scheme when acting in that capacity, a trustee-manager for a business trust when acting in that capacity and, in a case where the property conveyed, transferred or assigned is to be held as partnership property, the partners of the partnership whether or not any of them is an individual.

Annex B

Demand-side Management Measures Implemented by Other Jurisdictions in relation to the Residential Property Market

Singapore

- From 14 January 2011 onwards, Singapore has enhanced the rates of Seller's Stamp Duty and the holding period in respect of residential properties as follows -

  Holding period of 1 year: 16%
  Holding period of 2 years: 12%
  Holding period of 3 years: 8%
  Holding period of 4 years: 4%

- 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[3]; 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.

[3] Singapore permanent residents generally refer to those immigrants who have been approved for long term stay but their "permanent resident" status is subject to the renewal application about every five years. Their applications may be rejected and lost the "permanent residents" status if they do not meet the renewal criteria.

- 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%

<u>Macau</u>

- The Macau Government introduced the Special Stamp Duty on 13 June 2011 on transactions for residential properties at a duty rate of maximum 20% (resale in one year or less than one year) or 10% (resale in two years or less than two years but more than one year).
- 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%.

<u>Australia</u>

- 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.

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).

Annex C

Assessment of the Impact on Local Residents Arising from the Measure on the Private Residential Property Market

When buyers who are Hong Kong Identity Card holders acquire their residential properties	Year 2012		Year 2011		Year 2010	
	No.	%	No.	%	No.	%
No other property in Hong Kong*	44 074	59.02	39 634	53.23	61 974	56.11
Holding one or more than one other property in Hong Kong*	30 604	40.98	34 825	46.77	48 472	43.89
Total	74 678	100	74 459	100	110 446	100

* Other properties include residential and non-residential properties solely/jointly owned by the relevant buyers.

Note: The Inland Revenue Department compiles the above statistics based on its database on applicants for stamping. If the buyers who are holders of Hong Kong Identity Card conduct more than one transaction during the year, the Inland Revenue Department will count the last transaction in computing the number of properties held by the buyers.

THE LAW SOCIETY OF HONG KONG
香港律師會

THE LAW SOCIETY'S SUBMISSIONS
NEW REGIME OF AD VALOREM STAMP DUTY

1. Background

The Government has introduced three rounds of special measures on Stamp Duty since November 2010 as follows:

1.1 **1st Round**

The Financial Secretary announced in November 2010 the introduction of Special Stamp Duty ("SSD") effective 20 November 2010 to "*curb speculation in residential properties*". The Stamp Duty (Amendment) (No.2) Bill 2010 was passed by the Legislative Council in 2011.

1.2 **2nd Round**

On 26 October 2012, the Financial Secretary announced the Administration's policy to launch the 2nd round of measures to "*help narrow the supply-demand gap and contribute to the stable development of our property market*". These measures included:

(a) Enhancing SSD by increasing its rates and extending its application from 2 years to 3 years; and

(b) Introduction of Buyers' Stamp duty ("BSD") set at 15% payable by non-Hong Kong Permanent Resident ("HKPRs") buyers of residential properties in addition to existing stamp duty. BSD will not apply to HKPRs. However, there will be no exemption for corporate entities both local and non-local as all companies have to pay BSD.

These measures came into effect on 27 October 2012.

1.3 **Stamp Duty (Amendment) Bill 2012 ("Bill")**

This was gazetted on 28 December 2012 and introduced into the Legislative Council on 9 February 2013. The Bills Committee is still deliberating on the measures.

The Law Society published its first submission on the 2nd round of measures on 21 December 2012; the Administration responded in early January 2013. A second set of submissions dated 5 February 2013 were made a copy of which is attached hereto as **Appendix A.**

1.4 3rd Round

On 22 February 2013, the Financial Secretary announced another round of measures covering both residential and non-residential properties as follows:

(a) increasing the costs of transactions by doubling across the board the rates of existing ad valorem stamp duty ("New AVD") with specific exemptions; and

(b) standardising the stamp duty regime by charging stamp duty on an agreement for sale and purchase on both residential and non-residential properties.

The Administration's stated policy objective is the "*stable development of our property market and the stability of [our] financial system*".

2. Analytical Review of SSD/BSD/AVD

2.1 As a result of these three rounds of special measures within such a short period, the stamp duty regime in Hong Kong is now complicated and uncertain, such that it is difficult for the general public to grasp the full impact of the changes and it is also very difficult for lawyers to advise their clients.

2.2 The Law Society invited the Administration to release its research papers/studies and/or analyses on the success or otherwise of SSD/BSD and the justification for the New AVD.

2.3 The Administration indicated to the Law Society's representatives that these measures are "*temporary in nature*", yet it is noteworthy that it refuses to agree to add any "sunset clauses" to the proposed legislation. In our view, the Administration should adopt a twin pronged approach – it should add sunset clauses into the new legislation and provide flexibility in the subsidiary legislation so that these measures can be adjusted when the "policy objectives" have been achieved. In our view, if there are sunset clauses in place, then the Administration will be required to conduct a thorough review of its policies as currently it appears to be disjointed, implemented on an ad hoc basis and lacking in any forensic analysis.

2.4 It is also essential that such measures can be withdrawn without delay should the economic climate face a sudden downturn, otherwise, any delay in withdrawing such measures may result in serious damage to the economy.

We request the Administration to provide:
(a) An analytical review of the goals to be achieved by all three rounds of amendments to the Stamp Duty Ordinance;
(b) An analysis of the success or otherwise of BSD/SSD within a specified timeframe; and
(c) Sunset provisions for all these measures together with a regular review of the success or otherwise of its policy.

3. Comments on the New AVD

The Law Society's Revenue and Property Law Committees have reviewed the New AVD and note the following issues require clarification:

A. Exemptions

1. HKPRs not owning other Residential Properties

1.1 Exemptions will be available to the following HKPRs:

(a) acquisition of a residential property by an HKPR who does not own any other residential properties at the time of acquisition; or
(b) acquisition of a residential property by two or more HKPRs jointly, and where each is acting on their own behalf and do not own any other residential properties at the time of acquisition; or
(c) acquisition of a residential property by a HKPR jointly with a close relative or close relatives who is/are not HKPRs and where each of them is acting on their own behalf and do not own any other residential properties at the time of acquisition.

1.2 In the letter from the Inland Revenue Department to the Law Society dated 22 February 2013 ("IRD's Letter"), it provides a sample Statutory Declaration - IRSD-XX1 ("SD") and proposes that each buyer must declare and submit the same to the Stamp Office when the agreement is presented for stamping. By completing the SD, a buyer confirms:

- his HKPR status; and
- he is not the beneficial owner of any other residential properties.

We note the IRD's Letter further stated that "*Both the buyer and the seller are jointly and severally liable to pay the New AVD, as well as other persons who use such instruments*".

1.3 **HKPRs**

As pointed out in our earlier submissions, whether a buyer is a HKPR is a complicated issue and only the Director of Immigration is in a position to verify this status. Unless the Immigration Department can provide solicitors with a quick mechanism to verify a buyer's HKPR's status, it is unfair to impose this verification burden on the seller and his solicitors and to make the seller equally liable for the New AVD if the SD made by the buyer is subsequently found to be untrue. [1] Neither the vendor nor his solicitor can guard against the risk of a false declaration made by a buyer.

The Administration has failed to address the practical problems the SD imposes on solicitors. This matter must be addressed otherwise there will be future problems over the title to such properties. (See also our comments in Paragraph 3E below).

1.4 **"Not owning other Properties"**

There is no mechanism in place for a seller to check whether the buyer has any beneficial interest in any other residential properties.

The current land search system only enables solicitors to carry out a land search on the basis of property addresses, not by the names of owners.

We note there are many scenarios involving this "exemption", the following is only one example:

- A buyer may not own a property in his own name but is a beneficial owner under a trust - a seller cannot obtain information on beneficial ownership.
- The Administration has failed to consider the practical problems of this example.

  Unless a quick mechanism is put into place to verify whether a buyer has any beneficial interest in other residential properties, it will be inequitable:

  - to impose such an impracticable burden on the seller and his solicitors as the vendor cannot guard against a false declaration made by a buyer
  - to make the seller liable for the New AVD if the buyer's SD is subsequently found to be invalid.

1.5 We note the Administration's intention is to make all "*other persons who use the instruments*" (which phrase is so wide that it may cover all subsequent mortgagees and buyers) to be liable for the New AVD. This is totally inequitable as "innocent parties" will be caught by the legislation.

The statement in the IRD's Letter requires a full review. It will clearly result in problems over title going forward.

[1] See the Law Society's Submissions dated 5 February 2013, page 9, para C (Appendix 1 hereto)

1.6 By a letter dated 28 March 2013 from Financial Services and the Treasury Bureau, the Administration accepted our view that it would not be equitable to hold the vendor liable for unpaid New AVD arising from statutory declarations made by purchasers/transferees in acquiring properties. The Administration proposes to clarify the liability of such vendors in the amendment bill. We welcome this clarification but note the Administration has failed to clarify the position of "*other persons who use the instruments*" as they too are innocent persons.

The Law Society submits that any person, including subsequent mortgagees and buyers, who use the instrument should not be liable for the New AVD if it subsequently turns out that the buyer's SD is invalid, unless there has been fraudulent activity.

2. Residential Property and Car Park

2.1 If a buyer purchases a flat, for HK$25,000,000, with a car park for HK$1,000,000 covered by one agreement for sale and purchase, this buyer (assuming a HKPR and not owning any other residential properties) will be exempted under the category set out in paragraph 1.1(a) above and will pay the old rate of AVD (i.e. 4.25%).

However, the exemption applies to acquisition of only residential property and it is unclear whether the old rate will apply to both the "flat" and "car park", or the "flat" alone in the above example?

2.2 Under existing Stamp Office practice[2], both the "flat" and "car park" in our example will be treated solely as residential property, therefore the old rate of 4.25% would be applied to both the "flat" and "car park", not 4.25% for the flat and 8.5% for the car park.

The Law Society invites the Administration to clarify the situation in the example in paragraph 2.1 above.

3. "Close Relative"

3.1 Acquisition or transfer of residential properties between close relatives, HKPR or non-HKPR, who may or may not own any other residential properties will be exempted.

3.2 However, the Administration has indicated that close relatives will be restricted to "spouses, parents, children, brothers and sisters".

[2] Stamp Office Interpretation and Practice Note 1

3.3 The following "close relatives" have been excluded: grandparents, grandchildren, son-in laws and daughter-in-laws even though transactions between such close relatives have been a common practice in Hong Kong.

The Law Society submits that close relatives should be expanded to include grandparents, grandchildren, son-in laws and daughter-in-laws.

4. Mortgagee

4.1 The Administration proposes to exempt transfers of a mortgaged property, residential or non-residential, to a mortgagee which is a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap.112), or to a receiver appointed by such a mortgagee.

4.2 The Administration has failed to provide any rationale why mortgagees should be restricted to those within s.2 of the Inland Revenue Ordinance (Cap.112). As Hong Kong is an international financial centre, the exemption should cover foreign banks as well. We note mortgagees of genuine staff loans should also be covered.

The Law Society submits that the definition of mortgagee should be expanded to include foreign banks as well as genuine staff loan mortgagees.

5. Estate

5.1 The Administration should provide clarification on the following situations to enable solicitors to advise their clients on estate planning:

(a) If a beneficiary acquires a residential property pursuant to a Will or under the law of intestacy, does this mean such beneficiary cannot thereafter buy additional residential properties unless he pays the New AVD?
(b) If the answer to (a) is positive, is this fair because the beneficiary may not have any occupation rights or is subject to certain restrictions in the Will?
(c) In case of renunciation by a beneficiary in favour of others by way of a Deed of Family Arrangement, will such renunciation be subject to the New AVD?
(d) Will persons holding properties as trustee/personal representative be liable for the New AVD?

The Administration is invited to clarify the situations in 5.1 above.

6. Replacement of Properties

6.1 We note an exemption will be available to persons who acquire residential or non-residential property to replace previously owned property in the following circumstances:

- purchased or acquired by an Urban Renewal Authority (URA) re-development projects; or
- under the Lands Resumption Ordinance Cap.124; or
- sold, pursuant to an order for sale made by the Lands Tribunal under the Land (Compulsory Sale for Redevelopment) Ordinance Cap.545.

6.2 However, the list of statutory acquisitions or resumptions is incomplete and we query the failure to include the following Ordinances:

- MTR (Land Resumption and Related Provisions) Ordinance Cap.276;
- Roads (Works use and Compensation) Ordinance Cap.370; and
- Railways Ordinance Cap.519.

The Administration is invited to expand the list to include the Ordinances in 6.2 above.

B. Change of Residence

The IRD Letter states:

"*Where a HKPR owns only one residential property (the 1st property) at the time he acquires another residential property (the 2nd property) but with the intent to dispose of the 1st property shortly, the New AVD will apply to the acquisition of the 2nd property as usual in the first instance, but he may seek a refund of the stamp duty paid in excess of that computed under the old rates upon proof that the 1st property has been disposed of within six months from the date when he executed the agreement to acquire the 2nd property.*"

In our view, the six months period is too short as it may take more than 6 months for an owner to sell and complete the transfer of his property. A period of one year is preferable and more reasonable.

The Administration is invited to extend the period from 6 months to 12 months.

C. Redevelopment

We note the proposal to provide similar relief as that under the BSD regime for acquisition of residential and non-residential properties for redevelopment under the New AVD regime, thus the amount of New AVD paid in excess of the old rates would be refunded.

As we stated in our earlier submissions, the acquisition of all units in a building for re-development may constitute "*a series of transactions*" subject to a higher rate of ad valorem stamp duty, the maximum of which will now be 8.5% under the New AVD regime.

We note that if a developer is required to pay 15% BSD at the time of acquisition, the aggregated rate, including NEW ADV, would be 23.5%. This aggregate amount of tax increases the financial burden for smaller developers. We note that if the acquisition project fails, and there is no refund of the BSD, which added together with the New AVD rates will create an undesirable side effect as it will have a disproportionate effect on smaller developer namely that "*the small developers become smaller while the big developers become bigger*". [3]

The Administration is invited to reconsider its policy in order to minimize any disruption to redevelopment activities. We suggest an exemption for the New AVD where a developer has acquired up to 30% of the undivided shares in a residential lot[4] which is not less than 30 years old.

D. Companies

In Hong Kong it is a common practice for investment purchasers to own properties through a corporate entity in order to maximise tax advantages. We note that before the Administration changed its policies on Stamp Duty that a company buying a property worth say HK$25 million only paid 4.25% as stamp duty. However, if the same company buys now, it has to pay 8.5% as New AVD plus 15% BSD amounting in total to 23.5% duty; this is a substantial increase in costs.

The Law Society invites the Administration to consider an exemption for corporate entities from the New AVD which invest in property where all the shareholders are HKPRs and which maintain only one class of shares.

E. Liabilities

The New AVD is a temporary and exceptional measure. A transaction will be exempted if the buyer is a HKPR and does not own any other residential properties, which the buyer has to confirm by way of SD.

We note there is no requirement for the buyer to supply the seller with a certified copy of the SD filed with the Stamp Office, thus the seller has no idea what the buyer has declared in such SD.

Section 15 of the Stamp Duty Ordinance ("SDO") provides that no instrument chargeable with stamp duty shall be received in evidence in any proceedings (save and

[3] See the Law Society's Submission dated 5 February 2013, pages 5-6, para 7 (Appendix 1 hereto)
[4] Definition of Lot in the Land (Compulsory Sale for Redevelopment) Ordinance (Cap.545)

except: (i) criminal proceedings and (ii) civil proceedings by the Collector to recover stamp duty and penalty) unless such instrument is duly stamped.

We note an issue may arise in relation to a transaction which had been exempted from the New AVD but it subsequently comes to light the buyer was liable for the New AVD, thus all other persons, including the seller, may not be able to produce the relevant instrument (to which such buyer is a party) in court as evidence. This inability to produce the document may form a blot on title.

The Law Society recommends that:

(i) the buyer shall supply the seller with a certified copy of the SD filed with the Stamp Office;

(ii) only the buyer be liable for the New AVD if it subsequently transpires that the buyer's SD is invalid; and

(iii) to exclude Section 15 of the SDO to assist innocent parties who need to present documentation in court proceedings.

The Law Society of Hong Kong
2 April 2013

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(ii) 香港地產建設商會意見書連運輸及房屋局的回信
(ii) Submission from The Real Estate Developers Association of Hong Kong and the reply letter from the Transport and Housing Bureau

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By fax and mail

Mr. Duncan Pescod, JP
Permanent Secretary for Transport and Housing
Housing Authority Headquarters
33 Fat Kwong Street
Homantin
Kowloon

Dear Duncan,

New Round of Measures to Address the Overheated Property Market

I wish to thank you and your colleagues for meeting with our members on 15 March. I have summarized below the views expressed by our members during the meeting and trust that you would give them due consideration.

Firstly, we are afraid that this latest round of "demand-side management" measures in doubling the ad valorem stamp duty on *all* property transactions will bring even greater distortion to an already distorted property market. Our overheated property market is the result of a shortage in housing supply (caused by the Government's constriction on land supply in the previous years) exacerbated by a super-low interest rate environment and abundance of liquidity, both arising from the quantitative easing measures taken by the Fed and other central banks.

We have pointed out time and again that the solution lies in increasing land supply. We are encouraged to see that the Government is finally taking steps to enhance land supply. This is beginning to bear fruit as corroborated by the findings of our own supply forecast survey showing an increase in new housing coming onto the market in the next few years.

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In contrast, the "demand-side management" measures taken by the Government are, to say the least, unfair to the investors who had been making investment decisions in the property market based on the merits of a housing policy that is clear and certain, which is now suddenly thrown into complete disarray. The risk appetite of developers will inevitably be curtailed by such change in policy and the result is a reduction in housing supply in the long run.

While the Government has repeatedly justified such "extreme" measures in the name of "extraordinary times", we are disappointed that it refuses todate to provide a set of objective criteria upon which achievement it would be prepared to withdraw from the market.

The latest proposal to double the ad valorem stamp duty on all and not just the residential properties is the proverbial last straw. It has sent a clear message to international investors that they are not welcome to do business in Hong Kong. The reputation that we have been fostering painstakingly as an open economy with a level playing field and the destination of choice for foreign investments has been tarnished significantly.

Locally, the 6-month window proposed for those owners who intend to sell their current homes and buy later is too short to be of use, as such homeowners will be subject to undue time pressure and may have to accept a lower than market offer for their existing homes and suffer monetary losses. Further, with the 20-month presale period currently set for the sale of uncompleted properties, they will not be able to purchase a flat from pre-sale projects, thus needlessly limiting their freedom of choice.

To address the overheated property market, we believe the Government should:

1. Set a good example to bring down land price by being more realistic with the land premium.
2. Speed up the delivery of housing supply by extending the pre-sale period of uncompleted properties from 20 months to 30 months, and removing hurdles in the development process by being more realistic with the premium assessment,

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simplifying the protracted DD&H approval procedure, and streamlining other control procedures which are often repeated under different authorities.

Insofar as the "demand-side management" measures is concerned, the Government should

1. Introduce a sunset clause with periodic reviews in the enabling legislation.
2. Extend the window for exemption for owners to trade up/down from 6 months to 24 months.

At our meeting, I believe we have come to the agreement that the market has a mind of its own. I would urge the Government to be extremely cautious in trying to temper with the market and refrain from taking any action that may destroy the underpinning principles of the economic success of Hong Kong

Yours sincerely

Stewart Leung
Chairman, Executive Committee

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The Government of the Hong Kong Special Administrative Region

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本局檔號 Our Ref. HDCR4-3/PH/1-10/0-1 Pt.14
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13 May 2013

Mr Stewart Leung
Chairman, Executive Committee
The Real Estate Developers Association of Hong Kong
1403, World Wide House
19 Des Voeux Road, Central
Hong Kong

Dear Stewart,

New Round of Measures to Address the Overheated Property Market

Thank you for your letter of 3 April 2013, summarizing the views of your members on the new measures the Government announced on 22 February 2013. This serves as a consolidated reply from the Administration.

Need for the Latest Round of Demand-side Management Measures

At our meeting with your Association on 15 March 2013, we have elaborated on the policy justifications for the Government to introduce the latest round of demand-side management measures. In short, amidst a low interest rate, tight supply and abundant liquidity environment as well as the exuberant state of the property market, we see the need to introduce new demand-side management measures to dampen local demand for residential and non-residential properties. As we have emphasised on various occasions, the measures (including the enhanced Special Stamp Duty (SSD) and Buyer's Stamp Duty (BSD) introduced in October 2012) are extraordinary ones introduced under the current exceptional circumstances. The Government would consider withdrawing these measures (except for the advancement of the timing for charging ad valorem stamp duty (AVD) on non-residential property transactions from the conveyance on sale to the agreement for sale) once the demand-supply situation of the property market has regained its balance.

Mechanism for Future Adjustments to the Measures

We note that the property market has recently cooled down and consolidated with price adjustment after successive rounds of measures. However, we do not consider it possible for us to pre-determine a date on which the measures 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.

In order to have the necessary flexibility for the Government to make adjustments to the measures in a timely manner with reference to market situation, we have proposed in both the Stamp Duty (Amendment) Bill 2012 and the Stamp Duty (Amendment) Bill 2013 to empower the Financial Secretary to adjust the applicable SSD and BSD rates, and the AVD value bands and rates respectively by means of subsidiary legislation subject to negative vetting by the Legislative Council (LegCo).

Six-month Grace Period for Hong Kong Permanent Residents (HKPRs) to Change Residential Properties

In formulating the latest round of demand-side management measures, the Government is mindful of the possible situation that HKPRs may own more than one residential property in the course of changing their properties. To cater for such situation, we have proposed a refund mechanism for HKPR buyers. In short, if HKPR buyers choose to acquire a new residential property before disposing of their original and only residential property in Hong Kong, they have to pay AVD for the new property at the proposed new rates in the first instance. Provided that they have disposed of their old property by way of an agreement for sale within six months from the date of acquisition of the new property, after completion of the disposal of the old property, they can make an application within two years from the date of acquisition of the new property to the Inland Revenue Department for refund of stamp duty for the difference between the enhanced and the old AVD rates on the newly acquired property. The Government considers that the six-month grace period can meet the needs of HKPR buyers for replacing their residential properties without undermining the policy intent and effectiveness of the new measures in curbing demand of those buyers who already hold one or more residential properties in Hong Kong.

Increasing Housing Land Supply

Demand-side management measures aside, the Government reckons that increasing supply of flats is the key to solving the housing problem. In this regard, the Chief Executive has set out in his 2013 Policy Address an overall blueprint for increasing land supply in the short, medium and long term through a multi-pronged approach, involving both optimizing the use of developed land and identifying new land for development.

Land Premium Assessment and Streamlining of the Land Development Process

While taking note of your Association's remarks about land premium assessment by the Government, we would like to point out that the professional valuers of the Lands Department (LandsD) assess premium with reference to prevailing market evidence, including the transacted prices of completed units and the prices bid through Government land sales as determined by developers. As regards the suggestion on streamlining the land administration and control procedures, we understand that there is a regular dialogue between your Association and LandsD in this respect. Some enhancement proposals and practices regarding lease conditions were presented at the last meeting of the Land Sub-committee of the Land Development Advisory Committee on 20 March 2013, at which your Association was represented. We trust that your Association will continue to contribute to this constructive two-way communication process.

Pre-sale Period of Uncompleted Properties

As part and parcel of the overall package of measures to tackle the housing problem, the Government has been speeding up the processing of pre-sale consent applications in order to increase the supply of housing units. While taking note of your Association's suggestion of further extending the pre-sale period of uncompleted properties, the Government does not consider it suitable to change the prevailing mechanism under the present market situation.

Legislation for Effecting the New Round of Measures

As you may be aware, the Secretary for Financial Services and the Treasury introduced the Stamp Duty (Amendment) Bill 2013 into the LegCo on 17 April 2013 to implement the latest round of demand-side management measures. In the coming months, the Administration will as usual work closely with the LegCo Bills Committee to facilitate its scrutiny of the Bill. Meanwhile, we will continue to listen to the views of the community.

Yours sincerely,

Agnes Wong

(Agnes Wong)
for Secretary for Transport and Housing

c.c. Secretary for Financial Services
and the Treasury (Attn: Ms Elizabeth Tse)
Secretary for Development (Attn: Ms Judy Chung)
Commissioner of Inland Revenue (Attn: Mr Wong Kuen-fai)

Manulife Financial

For your future™

Robert A. Cook
Senior Executive Vice President
General Manager, Asia

9 April 2013

The Honorable Tsang Chun Wah, John
The Financial Secretary
25/F, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Sir,

Proposed measures to increase Stamp Duty on commercial property acquisitions

Further to recent discussions between our advisors and the Financial Services and the Treasury Bureau, and following the Gazettal on 5 April 2013 of the implementing legislation, we write to set out certain concerns relating to the proposed increase in Stamp Duty on commercial property acquisitions. We are aware that these concerns are shared by other entities in the commercial sector, and are therefore likely to be raised when the bill is considered at the Committee stage.

We are supportive of the Government's moves to curb speculation in both the residential and non-residential market, and there appears to be a general level of public acceptance of those measures. While the Government's measures are aimed at addressing speculation in the market, it would not be in the interest of Hong Kong to impact genuine long-term investment in the commercial property sector. Should the final legislation penalize genuine investors in non-residential property (either as a long term investment and/or for their own use) this could have an adverse impact on occupancy costs, diversity of supply and the market perception of Hong Kong as a location for a regional business headquarters.

Our concern with the proposed measures, which is shared by others in the business community, is that companies like Manulife who wish to purchase new commercial premises for their own use so as to control occupancy costs and thus secure their own commercial future in Hong Kong are being strongly discouraged from doing so.

Manulife has had a significant presence in Hong Kong for more than 100 years and is a major employer. As a key player in the insurance industry, Manulife has made a significant contribution to Hong Kong as an international financial centre. With rising rents and a lack of future supply, Manulife looked to secure its future in Hong Kong by acquiring a property for its own long term use and occupation. After a long search, Manulife identified a suitable property under construction in Kwun Tong. Negotiations with the developer were complex and prolonged, but an application for early consent to pre-sell was submitted to Legal Advisory and Conveyancing Office (LACO) in December 2012. Although comments from LACO were minor, consent was delayed and was not finally issued until 1 March 2013, a week after the February 22nd introduction of the new Stamp Duty. Through this acquisition, Manulife is making a significant, long term and non-speculative investment into Hong Kong, and the imposition of the new ad valorem stamp duty well after we had negotiated the principle terms of the purchase has significantly added to the costs of this acquisition.

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We would suggest that the Government consider an exemption to the application of the new *ad valorem* stamp duty for genuine non-speculative acquisitions of non-residential property. This could follow the approach taken by the Government for SSD, where the amount of SSD payable varies depending on the period for which the property has been held. For example, the legislation could provide that the new *ad valorem* stamp duty rates for non-residential property would not be payable in a situation where a non-residential property was acquired for non-speculative purposes (as to which appropriate declarations could be made) and held for a period of more than, say, 3 years. This would also reflect the approach taken by the Singapore government. The proposed measures to double the *ad valorem* stamp duty should be aimed at addressing speculation in the market, however they should not affect transactions by investors such as Manulife who have a long-term investment outlook or who intend to use the property for their own use.

Additionally in light of the length of time we required to locate an appropriate commercial property and then to negotiate its acquisition and obtain LACO consent, we would also ask the Government to consider whether there should also be an exemption for purchase of new buildings for which LACO consent was being sought prior to the February 22 announcement of legislation.

In writing this letter we hope to assist the Government in responding to our concerns and those which will be raised by the commercial sector when the bill is discussed by the Bills Committee of the Legislative Council. We believe that the proposal we have outlined is fair, it addresses our specific circumstances and will encourage other owner occupiers to make long term investments in Hong Kong, while strongly discouraging speculative activity.

We would welcome the opportunity to meet with you at a mutually convenient time so that we may discuss these matters further with you in person.

Yours faithfully
For and on behalf of
Manulife (International) Limited

Robert A. Cook
Senior Executive Vice President and
General Manager, Asia

RAC/lc

c.c.: Professor K C Chan, Secretary for Financial Services and the Treasury
Ms. Julia Leung, Financial Services and the Treasury Bureau

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Via fax no.: 2104 8508

16 May 2013

Mr Robert A. Cook
Senior Executive Vice President and
General Manager, Asia
The Manufacturers Life Insurance Company
48/F, The Lee Gardens
33 Hysan Avenue, Causeway Bay
Hong Kong

Dear Mr Cook,

New Measures to Address the Overheated Property Market

Thank you for your letter of 9 April 2013 to the Financial Secretary, expressing views on the new measures the Government announced on 22 February 2013 to further address the overheated property market. We are authorized to reply on behalf of the Financial Secretary.

As briefly outlined by the Permanent Secretary for Financial Services and the Treasury (Financial Services) to the President and CEO of Manulife Financial Corporation, Mr Donald Guloien, at their meeting on 12 April 2013, it is amidst a low interest rate, tight supply and abundant liquidity environment as well as the exuberant state of the property market that the Government sees the need to introduce the new demand-side management measures to dampen local demand for residential and non-residential properties. The measures are extraordinary ones introduced under the current exceptional circumstances.

To implement the measures, we have on 17 April 2013 introduced into the Legislative Council the Stamp Duty (Amendment) Bill 2013. Under the Bill, the enhanced ad valorem stamp duty (AVD) rates are applicable to all non-residential property transactions taking place on or after 23 February 2013 on a fair basis, irrespective of the identity of the buyers and the purpose of acquisitions. In other words, whether the non-residential properties acquired are intended for long-term investment or for self-use does not constitute grounds for exemptions from the enhanced AVD rates. Further, under the existing Stamp Duty Ordinance (Cap. 117), an application for consent to pre-sell is not relevant to or recognised as an agreement for sale and purchase. As such, there is no basis for granting an exemption under the Bill for Manulife's case.

We reckon that the demand-side management measures would inevitably cause inconvenience to the business community. Nonetheless, we find such measures essential to forestall the risk of a property market bubble, thereby safeguarding the macroeconomic and financial stability in Hong Kong. Indeed, we note that the property market has recently cooled down and consolidated with price adjustments after successive rounds of demand-side management measures. We will continue to closely monitor the property market and take necessary actions to respond to market conditions in a timely manner.

Last but not least, we are grateful for Manulife's commitment to Hong Kong over the past decades, and we look forward to its continued contributions to the prosperity of the financial industry in the years to come.

Yours sincerely,

(Ms Mable Chan)
for Secretary for Financial Services
and the Treasury

c.c.
Administrative Assistant to Financial Secretary
Administrative Assistant to Secretary for Financial Services and the Treasury
Commissioner of Inland Revenue
(Attn: Mr Wong Kuen-fai)