

The Administration's Responses to Matters Arising from the Meeting of the Bills Committee on Stamp Duty (Amendment) Bill 2013 held on 13 June 2013

At the meeting held on 13 June 2013, Members offered views and raised questions in the following areas -

- (a) the Administration should provide information on transaction volumes and price levels with regard to different categories of properties to demonstrate that there were renewed signs of overheating in both the residential and non-residential property markets in early 2013;
- (b) the Administration should provide data to support that the proposed measures under the Bill can effectively help Hong Kong permanent residents (HKPRs) acquire residential properties; and
- (c) the Administration should assess the impact of the proposed measures on the operating environment and employment situation of relevant sectors such as estate agents, fitting-out, furniture supplies and cleaning services.

2. This paper sets out the Administration's responses to the above matters.

The Overheated Property Market

3. In the residential property market, the upward momentum in property prices was temporarily arrested upon the introduction of the enhanced Special Stamp Duty (SSD) and Buyer's Stamp Duty (BSD) by the Government in October 2012. However, on entering 2013, the property market was again driven by the expectation that property prices could only go up further. This resulted in rising property prices and buoyant transactions.

4. For the non-residential property market, there were hectic trading activities in 2012 in respect of retail, office and flatted factory space which rose by 22%, 6% and 28% respectively over 2011. Prices of retail, office and flatted factory space surged by cumulative 41%, 25% and 46% respectively in 2012.

5. On entering 2013, the relevant increases in transactions and prices of residential and non-residential properties are tabulated as follows -

Residential property

Increase in January 2013 as compared to -	Transactions	Prices
December 2012 on a month-on-month basis	+65%	+2%
The peak in 1997	-76%	+34%
The recent trough in 2008	+66%	+122%
The long-term average	-34%	- (Note 1)

Non-residential property

Increase in January 2013 as compared to -	Retail Space		Office Space		Flatted Factory Space	
	Transactions	Prices	Transactions	Prices	Transactions	Prices
December 2012 on month-on-month basis	+63%	+2%	+6%	+3%	+3%	+4%
The peak in 1997	- (Note 2)	+145%	- (Note 2)	+68%	- (Note 2)	+231%
The recent trough in 2008-09	+806%	+205%	+341%	+158%	+515%	+218%
The long-term average	+235%	- (Note 1)	+46%	- (Note 1)	+106%	- (Note 1)

Note 1: As far as statistics on prices are concerned, we usually compare with the highest and the lowest levels.

Note 2: The database of Government departments keeps track of non-residential property transactions since 1998.

6. Following the introduction of a new round of demand-side management measures in February 2013, the property market has shown signs of cooling down with dwindled transactions, thus easing the expectation that property prices could only go up. The trends of both residential and non-residential property prices and transaction volumes in recent years are shown in the charts at **Annex A** for reference.

Effectiveness of the Proposed Measures in Helping Hong Kong Permanent Residents to Acquire Residential Properties

7. In the past few years, the Government introduced different demand-side management measures in respect of the property market, including the SSD in November 2010, the enhanced SSD and BSD in October 2012, as well as the doubled ad valorem stamp duty (AVD) in February 2013. Specifically, SSD

tackles speculative activities relating to residential properties, thereby making the market healthier and become users-oriented; BSD manages non-HKPRs' demand for residential properties by raising their acquisition costs, thereby according priority to the housing needs of HKPRs; doubled AVD reinforces demand management on those who have already owned residential properties and forestalls the shifting of overheating to the non-residential property market. We believe the above-mentioned measures help cool down the overheated property market, thereby assisting HKPRs in acquiring residential properties. To the majority of the public, however, home ownership is a major decision of their own. Whether they will actually acquire residential properties depends on such factors as individuals' economic and family considerations.

8. According to the Inland Revenue Department's statistics, following the introduction of demand-side management measures, there is an evident increase in the proportion of residential property transactions where the buyers are holders of Hong Kong identity cards. This is in line with our policy objective of according priority to the housing needs of HKPRs. Relevant statistics are as follows -

Year	Percentage of residential property transactions where buyers are holders of Hong Kong identity cards out of total transactions
2010	82.3%
2011	83.1%
2012	86.5%
January to April 2013	95.6%

9. The Government reckons that a fundamental solution to the tight supply in the residential property market lies in a long-term and continuous increase in housing and land supply. In this regard, the Chief Executive has set out in the 2013 Policy Address an overall blueprint for increasing land supply in the short, medium and long term through a multi-pronged approach to meet the housing and other development needs of Hong Kong.

Impact of the Proposed Measures on Property-related Sectors

10. The employment situation in the property-related sectors, including the real estate sector, the decoration, repair and maintenance for the building

sector, as well as the cleaning and similar services sector, generally improved over the past few years, with the unemployment rates showing a noticeable decline amid a generally tight labour market with full employment. While the Government's measures to curb the housing market exuberance may have affected the various property-related sectors to different extents, the impact has been cushioned by a vibrant domestic sector and the overall tightness in the labour market so far. Relevant data on unemployment rates and year-on-year changes in business statistics are at **Annex B**.

11. More importantly, certain demand-side management measures are considered necessary to curb market exuberance with a view to ensuring the stable and healthy development of the property market. These measures are intended to help protect Hong Kong's macroeconomic and financial stability, to the benefit of the overall economy in the long term. If we do not contain the risk of a property market bubble in a timely manner, there would be even greater impact on Hong Kong's economy in the event of bursting of the asset bubble. Hence, we believe that it would serve the interest of our overall economy and property-related sectors to restore the property market to healthy and stable conditions as soon as possible.

Submissions from Deputations/Individuals

12. We take note of submissions from deputations/individuals in respect of the Bill. Their comments can be broadly summarised as follows -

- (a) Express understanding of the policy objectives pursued by the Administration. The exceptional measures are introduced under exceptional circumstances to address the overheated residential property market and to forestall the shifting of speculative activities from the residential property market to the non-residential property market;
- (b) Hold different views on subjecting non-residential properties to the measures. Some consider that non-residential property transactions should be exempted from doubled AVD or non-residential properties held for less than 3 years should be subject to doubled AVD upon resale;

- (c) Offer suggestions on the review and adjustment mechanism for the measures;
- (d) Offer views and seek clarifications on the operational aspects of the measures; and
- (e) Consider that the Government should take actions to increase land supply with a view to solving the housing problem.

13. The Government's policy objective is to cool down the residential and non-residential property market immediately by way of demand-side management, thereby turning around the market expectation that property prices could only go up. In order to achieve such objective, we need to adjust the AVD rates having regard to the prevailing situation in the property market in order to reinforce the management on demand from those who have already acquired residential properties and to prevent the overheating situation from spreading to the non-residential property market. If there were no corresponding measures to cool down the overheated situation, the wide fluctuations in property prices will ultimately affect our macroeconomic and financial stability. On balance, we believe there is a necessity, in exceptional circumstances, to implement the management measures which serve the overall interest of the Hong Kong in the long run.

14. In order that adjustments to the measures can be made in a timely manner in response to the development in the property market, we have proposed in the Bill to amend the value bands and rates of the AVD by way of subsidiary legislation subject to negative vetting by the Legislative Council (LegCo). The Government has also undertaken to conduct a review and report to the LegCo one year after the enactment of the legislation concerning the extraordinary measures of enhanced SSD and BSD.

15. We reiterate that it is a prime objective of the Government's housing policy to facilitate the healthy and stable development of the property market. To tackle the supply-demand tension at source, we have to increase housing and land supply. In this connection, the Government is determined to adopt the supply-led strategy as the basis for addressing the housing and other development needs.

16. The Administration is prepared to maintain dialogues with relevant deputations/individuals so as to provide information and responses regarding their views and clarifications sought on the operational aspects of the measures. Our detailed responses to the comments made by deputations/individuals are at **Annex C**.

Financial Services and the Treasury Bureau
July 2013

Residential Property Market

Chart 1 : Overall Residential Property Price

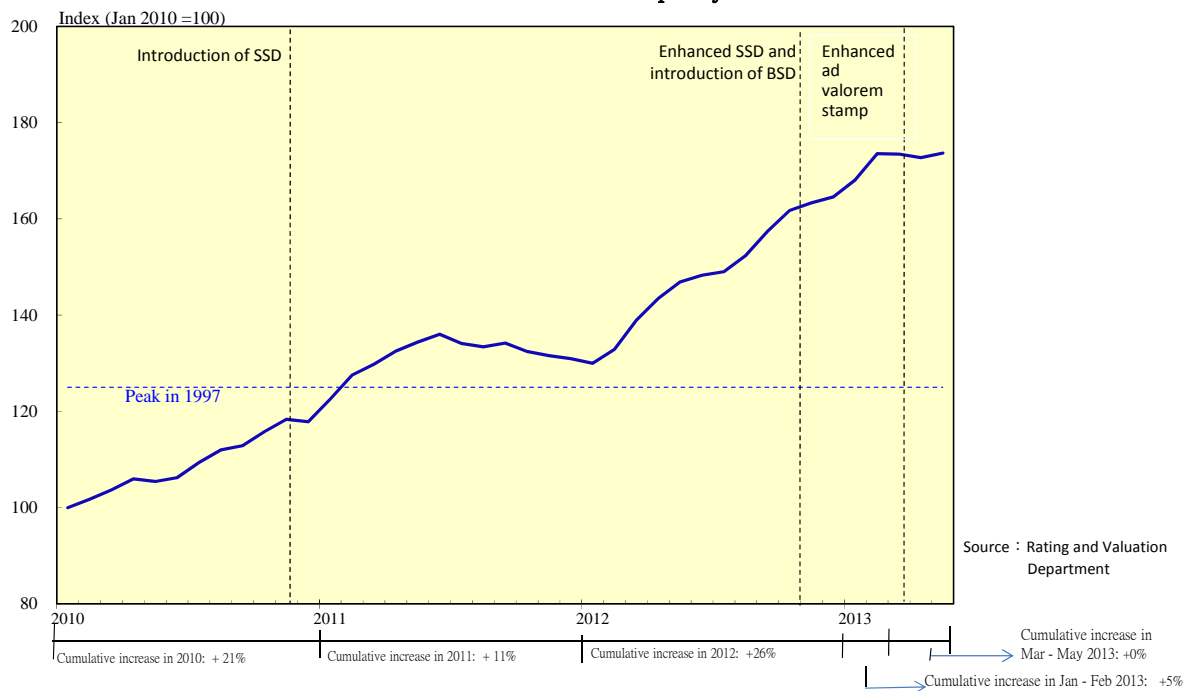
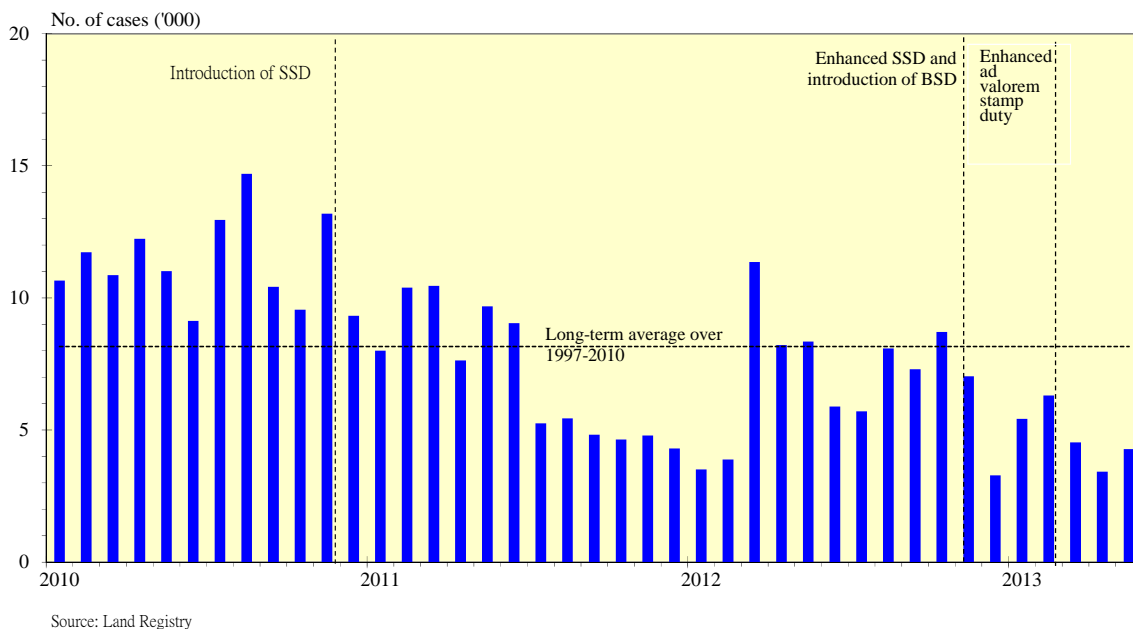


Chart 2 : Transactions for Residential Properties



Non-residential Property Market

Chart 3 : Non-residential Property Prices

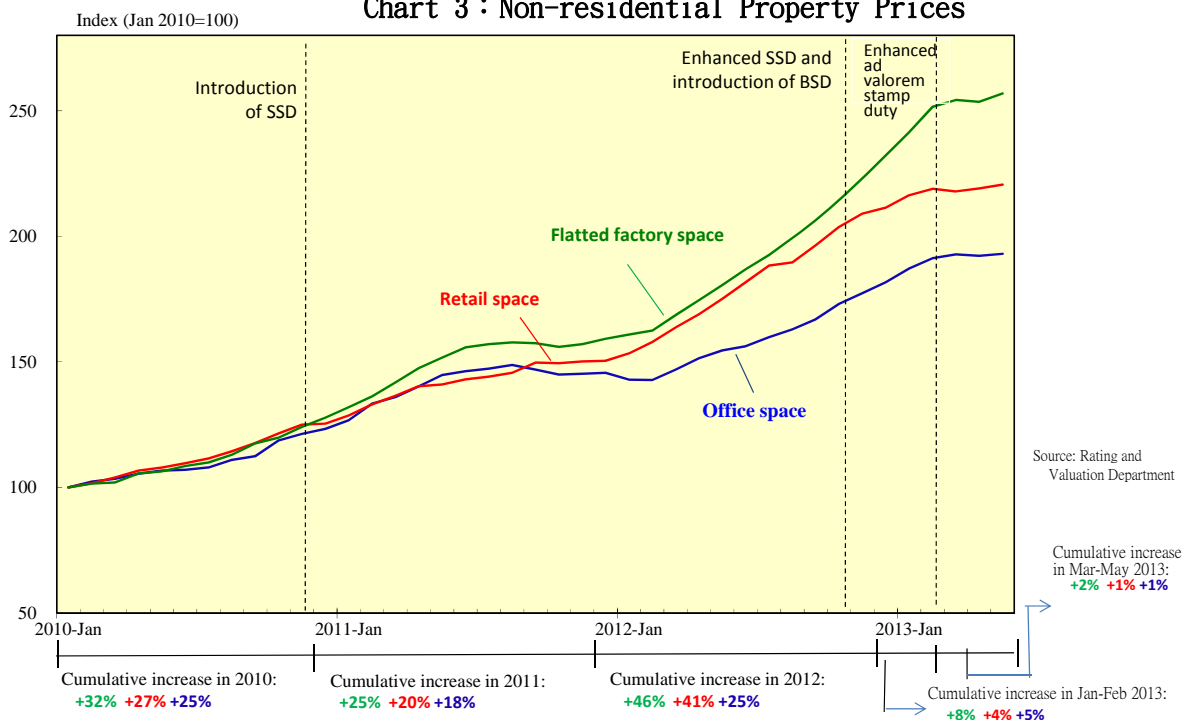
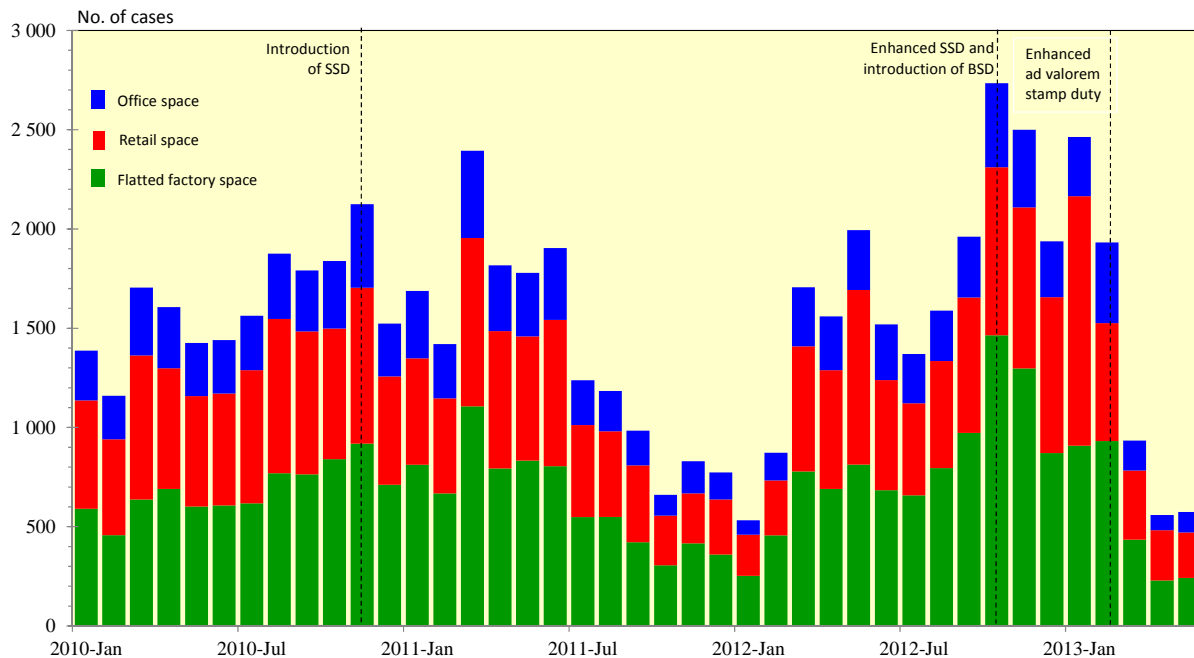


Chart 4 : Transactions for Office, Retail and Flatted Factory Space



Note: Carpark transactions not included.

Source: Rating and Valuation Department

Economic data concerning property-related sectors

Unemployment rates

	Real estate sector	Decoration, repair and maintenance for the building sector	Cleaning and similar services sector
2013 Q1	2.3%	7.8%	2.2%
2012 Q1	2.5%	9.5%	4.1%

Year-on-year rate of changes in business receipts/output indicators

	Business receipts of real estate sector ¹ (in value terms)	Gross value of construction works at locations other than construction sites ² (at constant (2000) market prices)	Retail sales of furniture and fixture ³ (in volume terms)
2013 Q1	5%	-1%	-1%
2012 Q1	7%	0.2%	-14%

Source: Census and Statistics Department

¹ It refers to service receipts, receipts from sales of goods, commissions, rental, interest and other income of the real estate sector.

² Includes general trades (including decoration, repair and maintenance, and construction works at minor work locations such as site investigation, demolition, and structural alteration and addition works) and special trades (including carpentry, electrical equipment, ventilation, gas and water fitting installation and maintenance etc).

³ Covers retail outlets selling furniture and fixtures, mattress and kitchen cupboards, etc.

Stamp Duty (Amendment) Bill 2013 (“the Bill”)
The Administration’s Responses to Submissions from Deputations/Individuals

Comments/Issues Raised	Deputations/Individuals	The Administration’s Responses
A. Policy Objectives and General Directions of Measures		
1. Express understanding of the Administration’s policy objective to implement extraordinary measures under exceptional circumstances to deal with the overheated property market.	Consumer Council The Hong Kong Association of Banks Federation of Hong Kong Industries Hong Kong Professionals and Senior Executives Association	● Comment noted.
2. Support the Bill.	Professor Stephen Yuen-shan Wong Mr Joe Lai	● Comment noted.
3. The Administration should explain the justifications and purposes of the introduction of doubled ad valorem stamp duty (AVD).	The Law Society of Hong Kong The Hong Kong Conveyancing & Property Law Association Limited	● At the meeting held on 13 June 2013, the Government explained the considerations and justifications of introducing a new round of demand-side management measures which are related to the following three main aspects - ◆ Following the introduction of the enhanced Special Stamp Duty (SSD) and Buyer’s Stamp Duty (BSD) in October 2012, the upward momentum in property prices

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		<p>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 also signs of overheating in the non-residential property market. The hectic trading activities and soaring prices for non-residential properties have affected the business environment;</p> <ul style="list-style-type: none"> ♦ To accord priority to the housing needs of Hong Kong permanent residents (HKPRs) amidst the tight supply situation, the Administration saw the need to enhance demand-side 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; and ♦ The ever-increasing prices of residential and non-residential properties will deviate even further away from economic fundamentals. Failure to take actions in a timely manner will 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

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		stability of Hong Kong.
4. No comment on the Bill.	Hong Kong Bar Association	● Comment noted.
5. Support the extension of the doubled AVD to cover non-residential property transactions which will help control the overall asset bubbling.	Professor Stephen Yuen-shan Wong	● Comment noted.
6. Have reservations over the doubled AVD on non-residential property transactions.	<p>The British Chamber of Commerce in Hong Kong</p> <p>The Australian Chamber of Commerce in Hong Kong and Macau</p> <p>The Canadian Chamber of Commerce in Hong Kong</p> <p>The American Chamber of Commerce in Hong Kong</p> <p>Royal Institution of Chartered Surveyors</p> <p>Mr Louie Chi-ling Hui</p> <p>Mr David Webb</p> <p>Cordells</p>	<ul style="list-style-type: none"> ● The proposed increase in the AVD rates applicable to all property transactions and the proposed advancement of charging AVD in respect of non-residential property transactions at the time of signing the agreement for sale are complementary measures, which can 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 property market. ● As a matter of fact, the AVD chargeable on transactions for properties has all along been applicable to all types of properties, irrespective of whether residential or non-residential properties are involved. This approach has been consistently adopted. ● We understand the measures will cause inconvenience to the business community. However, we believe that the business community will ultimately benefit from a stable business environment with steady development of the property market. We will continue to listen to the views

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	<p>The Taxation Institute of Hong Kong</p> <p>Hong Kong Professionals and Senior Executives Association</p> <p>Chiu Kit Fun</p>	<p>of the Bills Committee and the community on the subject matter.</p>
<p>7. Have reservations over the doubled AVD on “non-first residential property” acquired by HKPRs.</p>	<p>Property Agencies Association</p> <p>The Hong Kong Conveyancing & Property Law Association Limited</p> <p>Pamela Mar</p> <p>Jessie Chow</p> <p>Ivy Ma</p>	<ul style="list-style-type: none"> ● The demand-side management measures aim at according priority to HKPRs’ housing needs amidst the exceptional circumstances of exuberance and supply shortage in the property market. Doubling the AVD will increase the transaction costs of certain groups of buyers and dampen demand from those who already own residential properties, thereby alleviating the overall demand for housing.
<p>8. The proposed measures will increase the property transaction costs, going against our free market and simple tax regime.</p>	<p>Joint Council of Estate Agents Associations</p> <p>Mr Ho Man-kit, Raymond</p> <p>Mr Lee Yuk-cheung</p> <p>Mr Paul Z Tsang</p> <p>Nigel J H Reid</p>	<ul style="list-style-type: none"> ● The Government respects market operation. The introduction of the demand-side management measures aims to prevent any market failure from affecting our economy and people’s livelihood. Once there are changes in the interest rates or other external factors, the adjustments that follow will be more painful to the community. ● We must emphasise that the demand-side management measures are extraordinary measures introduced under

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	Sharon Altman Nick Sibley Irene Chow 毛良	exceptional circumstances. We will continue to monitor the property market closely and make appropriate adjustments to the measures in a timely manner as and when necessary.
9. The proposed measures will only dampen property transactions, but not moderating the increase in property prices.	Mr David Webb The Lion Rock Institute Mr Ho Man-kit, Raymond Momentum 107 Mr Roger Wardall Mr Julian Galvin Mr Marcus Everard A. Cameron Hestler Tang Chong Him Jamee Wong John Low	<ul style="list-style-type: none"> Given that the situation of tight supply of residential properties, low interest rate and abundant liquidity environment still persists, the risk of a property bubble cannot be neglected. We see the need to manage demand in order to address the exuberance condition in the property market. Since the introduction of doubled AVD in February 2013, the overheated property market has been cooled down and the market expectation that property prices will only go up could hopefully be eased.

Comments/Issues Raised	Deputations/Individuals	The Administration's Responses
B. AVD Measure on Residential Properties		
1. Welcome the exemption of HKPRs not owning any other residential property in Hong Kong from having to pay doubled AVD.	The Taxation Institute of Hong Kong	<ul style="list-style-type: none"> ● The Government's prevailing policy is to accord priority to the housing needs of HKPRs amidst the tight supply situation. We are mindful that any measures to address the overheated property market should not impose undue financial burden on those HKPRs who aspire to be homeowners.
2. It is proposed to refund the difference between the new and old AVD rates to purchasers holding their residential properties for not less than two years.	Real Estate Developers Association of Hong Kong Federation of Hong Kong Industries Mr Lee Yuk-cheung	<ul style="list-style-type: none"> ● The risk of a property bubble cannot be neglected taking account of the current conditions of exceptionally low interest rates and excessive liquidity and that the external environment remains fragile, fuelled with the tight supply in the short run. To expand the exemption coverage will only weaken the effectiveness of the doubled AVD measure.
3. It is proposed that the six-month period for buyers of a new residential property to dispose of their only other residential property in Hong Kong be extended to, say 12 or 24 months.	The Law Society of Hong Kong Property Agencies Association Consumer Council Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none"> ● To cater for the situation where HKPRs may own more than one residential property in the process of replacing their old property by a new one, we have put in place a refund mechanism to handle the replacement of properties properly. ● It is necessary to formulate a mechanism for a refund of the difference between the old and new AVD rates for buyers acquiring a new property before selling the old one, i.e. they have to pay stamp duty at the enhanced AVD rates first, and to set the timeline for the disposal of the original residential property and submission of the refund application. If the relevant period is to be extended

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		<p>beyond six months, buyers would be allowed to own more than one residential property for a long period of time. This will undermine the effectiveness of the demand-side management measures.</p> <ul style="list-style-type: none"> ● We will continue to listen to the views of the Bills Committee and the community on this subject matter.
<p>4. It is proposed that property market be divided into investment market and housing demand market for charging AVD at different rates.</p>	<p>Property Agencies Association</p>	<ul style="list-style-type: none"> ● The doubled AVD measure on residential properties is based squarely on the rationale of separating the investment and self-use markets with the aim to dampen the demand from those who have already acquired residential properties.
<p>5. It is proposed to re-examine the appropriateness of exempting only the HKPRs who do not own any residential property in Hong Kong from the doubled AVD.</p>	<p>The Hong Kong Conveyancing & Property Law Association Limited</p>	<ul style="list-style-type: none"> ● The doubled AVD measure on residential properties aims to reduce the demand from those who have already acquired residential properties.
<p>C. AVD Measure on Non-residential Properties</p>		
<p>1. Support the advancement of charging AVD in respect of non-residential property transactions at the time of signing the agreement for sale with a view to raising the transaction cost of speculation.</p>	<p>The Taxation Institute of Hong Kong</p> <p>The Hong Kong Conveyancing & Property Law Association Limited</p>	<ul style="list-style-type: none"> ● Comment noted.

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<p>2. It is proposed that transactions of acquiring non-residential properties for long-term investment (e.g. holding for at least 3 years) and self-occupation be exempt from the doubled AVD.</p>	<p>The British Chamber of Commerce in Hong Kong</p> <p>The Australian Chamber of Commerce in Hong Kong and Macau</p> <p>The Canadian Chamber of Commerce in Hong Kong</p> <p>The American Chamber of Commerce in Hong Kong</p> <p>Royal Institution of Chartered Surveyors</p> <p>Hong Kong Economic Development Strategy Studies Centre</p> <p>Cordells</p> <p>KPMG Tax Limited</p> <p>The Taxation Institute of Hong Kong</p> <p>Federation of Hong Kong Industries</p> <p>Mr David Webb</p>	<ul style="list-style-type: none"> ● We understand the measures will cause inconvenience to the business and industrial enterprises. 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 market and to contain the risk posed to financial stability. In order to achieve the objective of immediate cooling down, we need to implement targeted measures having regard to the prevailing situation in the property market. Adjustment of the AVD rates is intended to create an instant effect. ● 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.
<p>3. It is proposed that non-residential</p>	<p>Real Estate Developers Association</p>	<ul style="list-style-type: none"> ● Due to the persistent low interest rates, abundant liquidity,

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<p>property transactions be exempted from the doubled AVD.</p>	<p>of Hong Kong</p>	<p>fragile external environment as well as tight supply of residential properties in the short run, the risk of a property bubble cannot be neglected. Without corresponding measures to rein in the non-residential property market so as to forestall the shifting of speculation or investment demand from the residential property market to the non-residential property market, local and foreign companies operating in Hong Kong will have to face the ever-surging property prices, and the wide fluctuations in prices will eventually undermine our macroeconomic and financial stability.</p> <ul style="list-style-type: none"> ● The Government is fully aware that the doubled AVD, being an extraordinary and targeted measure, will inevitably cause inconvenience to certain parties. However, after giving due consideration in various aspects, we believe that the launch of the demand-side management measures serves the best interest of the community as a whole.
<p>D. Exemptions</p>		
<p>1. It is considered that resulting trusts or constructive trusts may be involved in an acquisition if funds are provided by persons other than the buyer. Clarification is sought on whether doubled AVD is payable for such transactions and how the Inland Revenue Department (IRD) will determine if the</p>	<p>The Law Society of Hong Kong Hong Kong Association of Banks</p>	<ul style="list-style-type: none"> ● In an acquisition of residential property involving funds provided by persons other than the buyer, such contribution is generally provided by way of a gift, a loan or an entrustment. The buyer shall state whether he acts on his/her own behalf in the acquisition having regard to the known facts and circumstances surrounding the contribution. Where the purpose of the contribution is not clearly communicated by the contributor to the purchaser,

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<p>buyer concerned is acting on his/her own behalf.</p>		<p>the purchaser is advised to ascertain from or establish the true nature of such contribution with the contributor before execution of the declaration.</p>
<p>2. Clarification is sought on the deeds of family arrangement that are used for redistribution of estate; and whether a beneficiary of an estate, who is the beneficial owner of a residential property in part instead of in whole, has to pay doubled AVD if he/she subsequently purchases a new residential property on his/her own; and the trustee or guardian, who is acting on behalf of others in acquiring new residential properties, has to pay doubled AVD.</p>	<p>The Law Society of Hong Kong</p>	<ul style="list-style-type: none"> ● For the purposes of the new AVD, a person “owns” a residential property if he/she is the beneficial owner of such property, or any share or interest thereof. Therefore, a person “owns” a residential property if he/she jointly owns the property with another person/other persons, or is a co-owner thereof. When he/she subsequently purchases a new residential property, he/she has to pay doubled AVD . ● We intend to put in place a simple and clear exemption mechanism to facilitate operation. Allowing HKPRs who own other residential properties, even just in part, to enjoy exemption, is not in line with the Government’s prevailing policy of according priority to the housing needs of those HKPRs who do not own residential properties. ● From a practical point of view, there are practical difficulties in setting a threshold of the share of ownership interest in a property as the basis for deciding whether new AVD could be exempted. In particular, it would be controversial to decide on the appropriate share of interest for the purpose. ● For a HKPR who is a minor or a mentally incapacitated person, due to the lack of capacity to enter into legally binding agreements, he/she must in practice require another

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		<p>person to act on his/her own behalf. The Bill proposes that the trustee or guardian of such a minor or mentally incapacitated person should be exempted from the doubled AVD for the purpose of protecting the rights of a minor or mentally incapacitated person as a HKPR. For subsequent transfers upon change of trustees or transfers to beneficiaries, no doubled AVD is payable.</p>
<p>3. In the case of a transaction in which a HKPR acquires a residential property with a parking space, the respective considerations are separately set out in the agreement and the buyer is not the beneficial owner of any other residential properties in Hong Kong at the time of acquisition, the Government should clarify whether the parking space acquired by way of the said transaction will be regarded as part of the residential property and be handled as a whole, thus rendering the buyer liable to AVD at the old rates only.</p>	<p>The Law Society of Hong Kong</p>	<ul style="list-style-type: none"> ● IRD will handle each and every transaction based on relevant facts of the case. Generally speaking, when a single agreement for sale involves both residential and non-residential units (such as parking space) and with a single amount as consideration, the whole consideration is liable to AVD, SSD and BSD (if applicable). ● Where the residential property and the parking space in the said agreement for sale are separate and distinct properties, and their respective considerations are separately set out in the agreement, IRD, for the purposes of the Stamp Duty Ordinance, will make stamp duty assessments with regard to the classification of residential and non-residential properties accordingly, but the AVD rate applicable will be based on the total consideration of the whole transaction. Based on the proposals set out in the Bill, the HKPR buyer concerned may only be exempted from doubled AVD for the residential property in the said transaction, whereas the parking space in the same transaction shall be liable to doubled AVD at applicable rates.
<p>4. It is proposed that Hong Kong residents</p>	<p>Hong Kong Professionals and</p>	<ul style="list-style-type: none"> ● Apart from making exemptions to cater for the home-

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<p>under the Quality Migrant Admission Scheme may be liable to AVD at old rates when acquiring properties.</p>	<p>Senior Executives Association</p>	<p>ownership needs of HKPRs and specified circumstances, we believe that other individual and company purchasers should all be subject to the doubled AVD. This is to strike a reasonable balance between the policy objectives to cool down the property market on the one hand and to accord priority to the home-ownership needs of HKPRs on the other.</p> <ul style="list-style-type: none"> ● We understand that the measures will cause inconvenience to some non-HKPRs, including non-locals who wish to acquire Hong Kong properties for self-occupation and those who are yet to become HKPRs. We hope they can understand that this is an extraordinary measure introduced under exceptional circumstances.
<p>5. It is proposed to expand the exemption mechanism for closely-related persons. For instance, the old AVD rates should be applied to property transactions regarding acquisition of partial interest of a self-occupied property between non-closely related persons.</p>	<p>Office of Hon. Gary Fan Kwok Wai Albert</p>	<ul style="list-style-type: none"> ● The Government's prevailing policy is to accord priority to the home-ownership needs of HKPRs, and we propose to put in place exemption arrangements in specified circumstances. For instance, the old AVD rates will be applicable to the acquisition or transfer of a residential property between closely related persons. ● We intend to put in place a simple and clear exemption mechanism to facilitate operation. If the partial ownership of a residential property of a HKPR buyer is neither acquired nor transferred from closely related persons, the doubled AVD will be applicable to the relevant transaction, irrespective of whether he/she already holds a share of interest in the relevant property.

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<p>6. It is proposed that the refund requirement for redevelopment projects be relaxed. As long as the developer has completed the demolition works of an original building and the building plan of the redevelopment has been approved, the difference between the new and old AVD rates should be refunded.</p>	<p>Hong Kong Professionals and Senior Executives Association</p>	<ul style="list-style-type: none"> ● It is the Government's policy objective that the doubled AVD should not hinder redevelopment. To implement this policy objective, we have made reference to the proposed BSD regime to establish a refund mechanism which enables a person or a company acquiring residential properties for redevelopment to apply for the refund of the difference between the new and old AVD rates, subject to specified conditions being fulfilled.
<p>7. It is proposed that the refund requirement for redevelopment projects be relaxed. If a developer has acquired up to 30% of undivided shares in a residential lot on which the building is of not less than 30 years old, the difference between the new and old AVD rates should be refunded.</p>	<p>The Law Society of Hong Kong</p>	<ul style="list-style-type: none"> ● The Government has considered Members' suggestion for relaxing the refund mechanism for redevelopment arising from discussions at the Bills Committee on Stamp Duty (Amendment) Bill 2012. Details are recapitulated as follows - <p>The two major principles held by the Government in formulating the BSD refund mechanism for redevelopment are that before the BSD paid can be refunded, (a) the developer concerned has to obtain ownership of the entire lot to be redeveloped; and (b) there is proof that the developer concerned will use the site for redevelopment purpose. The Government has, based on the two principles stated above, devised the following enhanced refund mechanism for developers to apply for refund of BSD paid after -</p> <ul style="list-style-type: none"> (a) the developer has obtained ownership of the entire lot to be redeveloped; and (b) the developer has satisfied any one of the following

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		<p>conditions -</p> <p>(i) the Buildings Department has consented to the commencement of foundation works for the redevelopment project; or</p> <p>(ii) the original building(s) on the lot concerned (if any) has been demolished and the Buildings Department has approved the building plan for the redevelopment project.</p> <ul style="list-style-type: none"> ● In the light of the scrutiny by the Legislative Council (LegCo) on the finalized amendments to the Stamp Duty (Amendment) Bill 2012, we will make corresponding amendments to the Bill for consistency in handling similar situations.
<p>8. It is proposed that those who are affected by the following legislations and have to purchase replacement properties should be exempted from the doubled AVD -</p> <ul style="list-style-type: none"> ◆ Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276); Roads (Works, Use and Compensation) Ordinance (Cap. 370); ◆ Railways Ordinance (Cap. 519);and ◆ Demolished Buildings (Re- 	<p>The Law Society of Hong Kong</p>	<ul style="list-style-type: none"> ● Having studied the same suggestion made by the Law Society of Hong Kong to the Bills Committee on Stamp Duty (Amendment) Bill 2012, the Government has agreed that some of the suggested scenarios involve similar resumption of land not of the land owner's volition and that BSD exemption should be offered for replacement purchases thus made. The Government has already stated that it would introduce relevant committee stage amendments (CSAs) to cover the following scenarios - <ul style="list-style-type: none"> ◆ Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276); ◆ Roads (Works, Use and Compensation) Ordinance

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development of Sites) Ordinance (Cap. 337).		<p>(Cap. 370);</p> <ul style="list-style-type: none"> ◆ Land Acquisition (Possessory Title) Ordinance (Cap. 130); ◆ Railways Ordinance (Cap. 519); and ◆ section 37(2) of Land Drainage Ordinance (Cap. 446). <p>● In the light of LegCo's scrutiny of the above-mentioned CSAs to the Stamp Duty (Amendment) Bill 2012, we will make corresponding amendments to the Bill for consistency in handling similar situations.</p>
9. It is proposed that the Administration should consider exemption from doubled AVD for corporate entities which invest in property where all the shareholders are HKPRs acting on his/her own behalf and maintain only one class of shares.	The Law Society of Hong Kong	<ul style="list-style-type: none"> ● As the Government has indicated at meetings of the Bills Committee on Stamp Duty (Amendment) Bill 2012, we should exercise caution amidst the exuberance situation and the current tight supply in the property market. Given the extremely low interest rates, excessive liquidity and tight housing supply situation, if we accept the proposal, it will send out a wrong message to the public. The market will mistakenly believe that the Government has no determination to cool down the property market and the exuberance situation in the property market may revive. ● The Government's policy intention is that the scope of exemption should not be widened lest the effectiveness of the doubled AVD be undermined. Therefore, residential properties purchased in the name of a company, even if it is held by HKPRs, should also be subject to the doubled AVD. This is to strike a reasonable balance between the

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		<p>policy objectives to cool down the property market on the one hand and to accord priority to the home-ownership needs of HKPRs on the other.</p> <ul style="list-style-type: none"> ● If we are to determine the chargeability of BSD on the basis of the HKPR status of a company's shareholders, this will cause confusion to the fundamental legal principle currently governing companies that "a company is an entity independent of its shareholders". Based on the same legal principle, the Government will not take into account the residential properties held by HKPRs through a company in determining whether the relevant persons can be exempted from the proposed doubled AVD. The enhanced SSD, BSD and the doubled AVD measures target at different demands in the spectrum of buyers for the primary objective of combating speculation and managing demand. Therefore, we need to adopt the same yardstick to address issues concerning stamp duties payable by companies in acquiring properties.
10. It is proposed to exempt companies owned by HKPRs from paying BSD.	Joint Council of Estate Agents Associations	<ul style="list-style-type: none"> ● Comment noted. BSD falls outside the scope of the Bill.
11. It is proposed to exempt the charitable organisations in Hong Kong from paying BSD.	Hong Kong Christian Council	<ul style="list-style-type: none"> ● Comment noted. BSD falls outside the scope of the Bill.
12. It is proposed that the Administration should not seek to impose additional legal obligation on banks or lawyers to	Hong Kong Association of Banks The Law Society of Hong Kong	<ul style="list-style-type: none"> ● The Administration has clarified that the solicitor acting for the purchaser or the bank processing mortgage application in the transaction has no obligation to confirm the capacity

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verify the buyer's declaration.		of the HKPR buyer. IRD will do so in order to determine the correct amount of duty payable on the relevant instrument. Under the existing system, the solicitors acting for both parties to the transaction have no obligation to determine whether the amount of duty payable on the instrument is adequate or whether there is underpayment of stamp duty (e.g. by virtue of stated consideration being less than the market value). Under the proposed doubled AVD regime, it is IRD's responsibility to determine if doubled AVD should be payable.
13. It is proposed that where the AVD is underpaid on the basis of the declarations made by the buyer, and the buyer has subsequently been found to be ineligible, the liability to pay for the difference between the old and the enhanced AVD rates shall rest with the buyer only. This should not affect the innocent seller's right to present relevant documentation in court proceedings for purposes including to prove his/her title to the property, so as to protect future bona fide purchasers and mortgagees for dealing with the residential property.	Hong Kong Association of Banks The Law Society of Hong Kong	<ul style="list-style-type: none"> ● At present, section 15 of the Stamp Duty Ordinance (Cap. 117) provides that instrument which is not duly stamped shall not be received in evidence in any proceedings whatsoever except criminal proceedings and civil proceedings by IRD to recover stamp duty or penalty. The Law Society of Hong Kong and the Hong Kong Association of Banks have made their submissions to the Bills Committee on Stamp Duty (Amendment) Bill 2012, setting out that as it is the property buyer's liability to pay BSD, any failure to pay BSD by such a buyer should not affect the innocent seller's right to present relevant documentation in court proceedings for purposes including to prove his/her title to the property. The Administration agrees to the suggestion, and proposes that an instrument that is chargeable with BSD but has not been duly stamped may still be received in evidence in civil proceedings before a court, provided that - <ul style="list-style-type: none"> (a) the instrument is not duly stamped only in relation to

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		<p>BSD chargeable on the instrument;</p> <p>(b) the instrument has been registered with the Land Registry under the Land Registration Ordinance (Cap. 128); and</p> <p>(c) the instrument is produced in evidence by any person other than the buyer under the instrument.</p> <p>The Administration will introduce to the Bills Committee on Stamp Duty (Amendment) Bill 2012 relevant CSAs.</p> <ul style="list-style-type: none"> ● We will consider appropriate adjustments to the Bill, having regard to the above-mentioned development in relation to the Stamp Duty (Amendment) Bill 2012.
<p>14. The Government should clarify if the transfer of properties made pursuant to undertakings in a decree or order of any court will be regarded as made pursuant to a decree or order of any court under the new section 29BE of the Bill and thereby chargeable at the old AVD rate.</p>	<p>The Hong Kong Conveyancing & Property Law Association Limited</p>	<ul style="list-style-type: none"> ● If a buyer acquires properties pursuant to a decree or order of any court, the subject agreement for sale will be exempted from doubled AVD under section 29BE of the Bill. This is in accordance with the existing practice of handling SSD exemption claims made under section 29CA(11)(a). So long as a consent order in accordance with such a consent summons is issued by the court and an agreement for sale is made in pursuant to the consent order, the agreement is considered eligible for the exemption.
<p>15. It is proposed that closely related persons, as stipulated in section 29AD of the Bill, should cover grandparents, grandsons, granddaughters, sons-in-law and daughters-in-law.</p>	<p>The Law Society of Hong Kong</p>	<ul style="list-style-type: none"> ● The Government's prevailing policy is to accord priority to the home ownership needs of HKPRs. As such, we propose that the old AVD rates be applicable to acquisition or transfer of a residential property between closely related persons (including spouse, parents, children, brothers or

Comments/Issues Raised	Deputations/Individuals	The Administration's Responses
		<p>sisters), irrespective of whether they are HKPRs and whether they are beneficial owners of any other residential property in Hong Kong at the time of acquisition or transfer.</p> <ul style="list-style-type: none"> ● The “closely related persons” exemption arrangement stipulated in the Bill follows the same principle of the SSD regime and the proposed BSD regime, which exempt transactions involving persons who (a) are blood-related or half blood-related, (b) have spousal relationship, or (c) have adoption or step relationship. The Administration considers that the proposed exemption arrangement strikes a balance between addressing the genuine needs of the public and safeguarding the effectiveness of the doubled AVD by avoiding loopholes for circumvention.
<p>16. It is proposed that section 29AM(c) of the Bill should stipulate that the mortgagee referred to in that section must be the same mortgagee of the mortgaged property.</p>	<p>The Hong Kong Association of Banks The Law Society of Hong Kong</p>	<ul style="list-style-type: none"> ● After due consideration of the same proposal put forward by the Hong Kong Association of Banks and the Law Society of Hong Kong to the Bills Committee on Stamp Duty (Amendment) Bill 2012, the Administration agrees to introduce CSAs to amend the texts of section 29DB(8)(c) of the Stamp Duty (Amendment) Bill 2012 to make it clearer that the mortgagee referred to in that section must be the same mortgagee of the mortgaged property. ● In the light of LegCo's scrutiny of the above-mentioned CSAs to the Stamp Duty (Amendment) Bill 2012, we will make appropriate refinements to the texts of the Bill for sake of consistency.

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17. It is considered that the measures will encourage more property speculation in the form of share transfer of "property holding companies".	Mr David Webb	<ul style="list-style-type: none"> ● IRD has all along been keeping a watch on property speculation cases in the form of share transfer of "property holding companies", for which follow-up actions are needed in order to ensure that profits derived from property speculations are duly assessed to profits tax. ● For the exact reason that shareholders of companies can take advantage of transfers of shares of the "property holding companies" to indirectly transfer the titles of the residential properties they hold, we see the need to impose BSD on company buyers.
18. It is considered that the penalty for late stamping of 10 times of the AVD payable under section 9 of the Stamp Duty Ordinance (Cap. 117) is excessive.	The Law Society of Hong Kong	<ul style="list-style-type: none"> ● The maximum penalty for late stamping (up to 10 times of the stamp duty payable) is the standard level of maximum penalty in the Stamp Duty Ordinance (Cap. 117) applicable to all types of duties under the stamp duty regime. It is not applicable to AVD only. We consider it prudent and reasonable to apply the established penalty system of the stamp duty regime to the late payment of the doubled AVD. We are mindful of the misleading message that we may be sending to the market if we deviate from the established penalty system specifically for the doubled AVD.
E. Review and Adjustment Mechanism		
1. It is agreed that the Financial Secretary be empowered to adjust the value bands and rates of the AVD by means of subsidiary legislation subject to LegCo's	The Hong Kong Conveyancing & Property Law Association Limited	<ul style="list-style-type: none"> ● Comment noted.

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negative vetting.		
2. It is proposed that criteria be set to review and adjust the measures.	Property Agencies Association Federation of Hong Kong Industries Royal Institution of Chartered Surveyors The American Chamber of Commerce in Hong Kong Real Estate Developers' Association of Hong Kong Hong Kong Professionals and Senior Executives Association Professor Stephen Yuen-shan Wong	<ul style="list-style-type: none"> ● We must emphasise that the demand-side management measures are extraordinary measures introduced under exceptional circumstances. We will continue to monitor the property market closely and make appropriate adjustments to the measures in a timely manner as and when necessary upon careful assessment by making reference to a basket of indicators, including property prices, housing affordability of the general public, volume of property transactions, supply of residential properties, mortgage payments, rent-to-income ratio, etc.
3. It is proposed that the measures be withdrawn as soon as possible.	Mr Ho Man-kit, Raymond Momentum 107	<ul style="list-style-type: none"> ● The Government is fully aware that the doubled AVD, being an extraordinary and targeted measure, will inevitably cause inconvenience to certain parties. However, after giving due consideration in various aspects, we consider that the launch of the demand-side management measures serves the best interest of the community as a whole. ● Although the residential property market has shown signs of cooling down since the introduction of the demand-side

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		<p>management measures, the market sentiment remains unsettled. At the same time, the risk of a property bubble cannot be neglected taking account of the conditions of low interest rates and excessive liquidity against the backdrop of tight supply in the short run. Thus, there is a necessity for us to maintain the relevant measures.</p>
<p>4. It is proposed that a sunset clause be added.</p>	<p>The Law Society of Hong Kong The Hong Kong Conveyancing & Property Law Association Limited</p>	<ul style="list-style-type: none"> ● The Government does not agree that a sunset clause should be introduced for the demand-side management measures since it is impossible for us to make wild speculation on the future changes of the market conditions and the external factors and pre-determine a date on which these measures will be deemed no longer necessary. The sunset clause may only stimulate the demand later on and send a wrong message to the market. We would rather monitor the market situation closely and make adjustments to the measures in a timely manner as and when necessary. In this regard, we have proposed in the Bill that adjustments to the value bands and rates of AVD be made by means of subsidiary legislation subject to LegCo's negative vetting so that we can make flexible and timely adjustments having regard to the market conditions.
<p>F. Others</p>		
<p>1. The Government should increase land supply so as to tackle the high property prices at source.</p>	<p>Real Estate Developers Association of Hong Kong Royal Institution of Chartered Surveyors</p>	<ul style="list-style-type: none"> ● The Government reckons that the ultimate solution to the tight demand and supply situation in housing lies in long-term and continued increase in housing and land supply. We reiterate that the Government is determined to increase land supply so as to meet the housing and other

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	<p>The American Chamber of Commerce in Hong Kong</p> <p>Mr Lee Yuk-cheung</p>	<p>development needs of Hong Kong. In the 2013 Policy Address, the Chief Executive has set out an overall blueprint for increasing land supply in the short, medium and long term through a multi-pronged approach involving both optimising the use of developed land and identifying new land for development.</p>
<p>2. The Government should formulate housing policies for the medium and long term.</p>	<p>Property Agencies Association</p> <p>Joint Council of Estate Agents Associations</p> <p>Hong Kong Economic Development Strategy Studies Centre</p>	<ul style="list-style-type: none"> ● The Government is now conducting a Long Term Housing Strategy (LTHS) review which aims to ensure optimal use of the existing land and housing resources to meet the housing needs of the community in the medium and long term. The LTHS Steering Committee is looking into issues including the housing needs of specific groups (viz. the elderly, non-elderly singletons, poorly-housed households, youngsters and first-time home buyers) in the community and the priorities of their needs; the Public Rental Housing Waiting List position; measures to maximize / rationalize the use of public housing resources; reviews and projections on housing demands for both public and private housing; discussion on housing supply issues so as to address the housing needs of different groups in the community. The Transport and Housing Bureau expects to issue the LTHS consultation document in September 2013 and to conduct a three-month public consultation.
<p>3. It is proposed to introduce vacant property tax.</p>	<p>The American Chamber of Commerce in Hong Kong</p>	<ul style="list-style-type: none"> ● According to the Rating and Valuation Department, the overall vacancy rate of private residential properties as at end 2012 was about 4.3%, which was on a relatively low level. From a practical point of view, there are practical difficulties to verify whether a property is vacant, especially

Comments/Issues Raised	Deputations/Individuals	The Administration's Responses
		for properties not rent out.
4. It is proposed to shorten the processing time for pre-sale consent applications.	<p>Joint Council of Estate Agents Associations</p> <p>Federation of Hong Kong Industries</p>	<ul style="list-style-type: none"> ● The Government has announced that the pre-sale period for private residential developments will be extended to up to 30 months with effect from 2 July 2013 to facilitate developers to plan and conduct pre-sale of their residential properties flexibly, thereby increasing the flexibility of the overall housing supply in the market. This arrangement also allows potential home buyers to draw up their home purchase plans in a more flexible manner by considering whether to purchase a flat earlier by way of pre-sale. ● At the same time, the Lands Department has redeployed its resources to expedite the processing of the pre-sale consent applications. It has also implemented measures to resolve the outstanding issues of pre-sale consent applications quickly by meeting with the developers, their Authorised Persons and solicitors as and when necessary and practicable.
5. It is proposed to relax the maximum loan-to-value ratio for self-occupied properties owned by HKPRs.	<p>Hong Kong Chamber of Professional Property Consultants Ltd</p> <p>Joint Council of Estate Agents Associations</p>	<ul style="list-style-type: none"> ● As property-related loans account for over 50% of domestic lending, the Hong Kong Monetary Authority (HKMA) has been attaching great importance to risk management of banks in property mortgage business. In view of the increasing risk of a property bubble, HKMA has introduced six rounds of countercyclical prudential measures since October 2009 to strengthen the resilience of the banking sector against a severe adjustment in property prices and to minimise any harm to banks and the economy as a whole.

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		<ul style="list-style-type: none"> ● The measures include lowering the loan-to-value ratio cap, requiring banks to strictly assess the repayment ability of mortgage loan applicants, and limiting the maximum mortgage loan tenor. The measures are mainly targeted at property mortgages of higher risks, particularly mortgages for high-value properties, non-owner-occupied properties, borrowers whose principal income is derived from outside Hong Kong and borrowers with more than one outstanding property mortgage loans. ● Whenever introducing prudential supervisory measures, HKMA has always strived to strike a balance to minimise the impact on first-time homebuyers or buyers of replacement properties. For example, under the existing measures, a first-time homebuyer or buyer of replacement property who purchases a residential property at a value of HK\$6 million or below for self-occupation is still eligible for a maximum loan-to-value ratio of 70%. In addition, a buyer who meets the eligibility requirements, such as passing the stress test on repayment ability, will be able to apply for mortgage loans with a loan-to-value ratio up to 80-90% under mortgage insurance arrangements. ● HKMA will continue to closely monitor market developments and introduce appropriate measures in response to changes in the property market cycle to safeguard the stability of the banking sector.
6. It is considered that the measures are in breach of the Basic Law:	Mr David Webb	<ul style="list-style-type: none"> ● Property prices have been soaring in recent years due to the imbalance between supply and demand, extremely low

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<p>– Article 105 provides for the protection of the right of individuals and legal persons to the acquisition, use, and disposal of property; Article 5 states that the previous capitalist system and way of life shall remain unchanged; and Article 11 stipulates that the systems and policies practised in the Hong Kong Special Administrative Region shall be based on the provisions of the Basic Law; and</p> <p>– The exemption mechanism should also apply to non-HKPRs holding Hong Kong identity cards as the right to equality of Hong Kong residents is protected under the Basic Law.</p>	<p>Hong Kong Institute of Estate Agents</p> <p>Nia Price</p> <p>Antonine Blondeau</p>	<p>interest rates and excessive liquidity. It is more worrying that the market is showing an irrational sign of exuberance. Property prices will deviate further from the economic fundamentals if we do not respond in a timely manner. Worse still, should there be a change in the interest rates or other external factors, the subsequent adjustment would bring even greater pain to the community.</p> <ul style="list-style-type: none"> ● In view of the above-mentioned situation and after due consideration, the Government decided to introduce new demand-side management measures, i.e. the doubled AVD, in February 2013 to further combat speculative activities and cool down the property market by raising the transaction costs, and to accord priority to the home ownership needs of HKPRs under the tight supply situation. The Bill aims to implement the above extraordinary measures under the current exceptional circumstances. The Government is fully aware that the extraordinary and targeted measures will inevitably cause pain and inconvenience to certain parties. However, after balancing various considerations, we find that the launch of relevant demand-side management measures serves the best interest of the community as a whole. ● We consider that the doubled AVD is constitutional and, being a legitimate form of taxation, is governed by Article 108 of the Basic Law. Legitimate taxation under Article 108 is not subject to an overriding requirement of proportionality. Even if taxation were subject to such an overriding requirement of proportionality, the collection of

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		<p>doubled AVD is a proportionate measure.</p> <ul style="list-style-type: none"> ● The proposed exemption for HKPRs from doubled AVD pursues the aim of meeting the housing needs of persons who have a close connection with Hong Kong, and is considered reasonable and appropriate. With reference to the SSD regime and the proposed BSD arrangements, the proposals under the Bill can reasonably ensure achievement of such aim. As only HKPRs who acquire their sole residential property and replacement property are exempted, the arrangement is no more than what is necessary to accomplish that aim. ● We must emphasise that the demand-side management measures are extraordinary measures introduced under exceptional circumstances. We will continue to closely monitor the property market and consider making timely adjustment after the demand-supply situation of the property market has regained its balance.
<p>7. The measures affect those engaged in property-related sectors.</p>	<p>Mr Ho Man-kit, Raymond</p> <p>Momentum 107</p> <p>The Lion Rock Institute</p> <p>Property Agencies Association</p> <p>Joint Council of Estate Agents Associations</p>	<ul style="list-style-type: none"> ● We understand that those engaged in property-related sectors are affected by reduced property trading recently. We hope they will appreciate that setting aside the demand-side management measures, soaring prices will also bring down the transaction volume. On the contrary, if we just ignore the risk of a property bubble, the impact on our economy and the estate agents will be even more far-reaching and long-lasting in the event of bursting of the asset bubble. It is our policy objective to facilitate the healthy and stable development of the property market as

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	Federation of Hong Kong Industries	soon as possible for the long-term benefit of the community of Hong Kong as a whole and the real estate related sectors.
8. It is proposed to introduce capital gains tax.	Woo Lap Fu	<ul style="list-style-type: none"> ● According to our understanding, the majority of jurisdictions which impose capital gains tax apply such tax on all types of assets, not just immovable properties. The introduction of capital gains tax will bring about a fundamental change to Hong Kong's tax regime and involve complicated legal provisions. To address the current problem, we consider the proposed measures more effective to manage the demand immediately while according priority to the housing needs of HKPRs.

Financial Services and the Treasury Bureau
Transport and Housing Bureau
July 2013