

立法會
Legislative Council

LC Paper No. CB(1)485/12-13

(These minutes have been seen
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Ref : CB1/PL/FA+HG/1

Panel on Financial Affairs and Panel on Housing

**Minutes of joint meeting on
Friday, 2 November 2012, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Members of the Panel on Financial Affairs

Hon Starry LEE Wai-king, JP (Chairman)
Hon CHAN Kin-por, BBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
* Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
* Hon Abraham SHEK Lai-him, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon NG Leung-sing, SBS, JP
* Hon Kenneth LEUNG
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Hon SIN Chung-kai, SBS, JP

Members of the Panel on Housing

Hon WONG Kwok-hing, MH (Chairman)
Hon Frederick FUNG Kin-kee, SBS, JP (Deputy Chairman)
Hon Vincent FANG Kang, SBS, JP
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon IP Kwok-him, GBS, JP

Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Michael TIEN Puk-sun, BBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Dr Hon Fernando CHEUNG Chiu-hung
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen

Members absent : Members of the Panel on Housing

Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Dr Hon LAM Tai-fai, SBS, JP
Hon WU Chi-wai, MH

* Also members of the Panel on Housing

Public officers attending : Agenda item II

Transport and Housing Bureau

Prof Anthony CHEUNG, GBS, JP
Secretary for Transport and Housing

Mr D W PESCOD, JP
Permanent Secretary for
Transport and Housing (Housing)

Miss Agnes WONG, JP
Deputy Secretary for
Transport and Housing (Housing)

Mrs Vicki KWOK
Principal Assistant Secretary for
Transport and Housing (Housing) (Private Housing)

Financial Services and the Treasury Bureau

Prof K C CHAN, GBS, JP
Secretary for Financial Services and the Treasury

Ms Mable CHAN, JP
Deputy Secretary for
Financial Services and the Treasury (Treasury) 2

Inland Revenue Department

Mr CHU Yam-yuen, JP
Commissioner of Inland Revenue

Mr WONG Kuen-fai, JP
Deputy Commissioner of Inland Revenue (Operations)

Financial Secretary's Office

Mrs Helen CHAN, JP
Government Economist

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Ms Miranda HON
Chief Council Secretary (1)1

Mrs Mary TANG
Senior Council Secretary (1)1

Ms Angel SHEK
Senior Council Secretary (1)4

Ms Sharon CHAN
Legislative Assistant (1)4

I Election of Chairman

Mr WONG Kwok-hing was elected the Chairman for the joint meeting.

II Further measures to address the overheated property market

*(Issued by the Transport and Housing — Legislative Council brief on
Bureau in October 2012 further measures to address
the overheated property
market)*

Presentation

2. At the invitation of the Chairman, the Secretary for Transport and Housing ("STH") and the Secretary for Financial Services and the Treasury ("SFST") briefed members on the background and details of the proposed further measures to address the overheated property market announced by the Financial Secretary ("FS") on 26 October 2012, namely, to adjust the duty rates and to extend the holding period in respect of the Special Stamp Duty ("SSD"), to introduce a Buyer's Stamp Duty ("BSD") on residential properties acquired by any person except a Hong Kong Permanent Resident ("HKPR"), and to introduce a mechanism whereby SSD and BSD rates could be revised by means of subsidiary legislation to be made by FS. Members noted that the Administration's plan was to introduce a Stamp Duty (Amendment) Bill ("the relevant Bill") into the Legislative Council ("LegCo") in January 2013 to implement the proposed further measures.

(Post-meeting note: The speaking notes of STH and SFST were issued to members vide LC Paper No. CB(1)147/12-13 on 7 November 2012.)

Discussion

Effectiveness of the proposed further measures

3. In view of the exceptional circumstances of the exuberant property market and the continued surge in flat prices beyond income growth, Ms Starry LEE agreed with the direction of the extraordinary measures introduced by the Government to stabilize the market. She relayed the concerns of the public that in spite of the 10 housing and land-supply measures announced by the Chief Executive ("CE") on 30 August 2012, including the measure "Hong Kong Property for Hong Kong People", the property market was still exuberant and unstable. Referring to a survey conducted by developers revealing that only some 3% of the Mainland respondents would not consider purchasing flats in

Hong Kong as a result of the proposed BSD and the enhanced SSD, Ms LEE was worried that the effects of the new measures might be limited and short-lived, in particular, given the high liquidity of the Mainland buyers who could ride on the appreciation of Renminbi ("RMB") to offset the impact of an increased investment cost. Mr Kenneth LEUNG said that while he concurred with the need to implement the proposed measures, he considered their effectiveness should be observed over a longer period, having regard to the trend in the number of completed transactions and prices of transacted properties.

4. Mr CHAN Kam-lam observed that flat prices had continued to rise out of line with income in spite of the implementation of SSD from November 2010. He expressed concern that while increasing the SSD rate and introducing a BSD might help maintain stable development in the property market and constrain excessive growth in mortgage lending, these measures could not avert the rising trend in residential property prices. He cautioned that if the overheated property market was left unchecked, it would harm the economy of Hong Kong and undermine the stability of its financial sector. Mr POON Siu-ping shared the concern about the possible dire consequences of an overheated property market on the livelihood of local people.

5. Dr KWOK Ka-ki agreed that extraordinary measures should be used at this exceptional time to cool down the exuberant property market. Referring to some media reports of Mainland buyers purchasing residential flats at an extremely high price of over \$10,000 per square feet in the old district of San Po Kong where the district was mostly composed of small and medium-sized residential flats, it was doubtful whether the proposed measures could curb speculative activities in the residential property market in the medium and long term given the excessive liquidity of investors at present. Mr SIN Chung-kai shared a similar view. Mr LEUNG Kwok-hung pointed out that the speculative activities in the local property market were not only participated by foreign/Mainland investors but also the local people. He criticized the prevalence of "real estate hegemony" and "financial hegemony" in Hong Kong which had kindled speculative activities in these sectors.

6. Mr Frederick FUNG expressed grave dissatisfaction that the measures taken by the Government so far had not been able to halt the rise in property prices. He pointed out that there had been a hefty increase in the overall flat prices by 20% during the first nine months of 2012 and by September 2012, the prices had surpassed the 1997 peak by 26%, coupled with deterioration in the housing affordability ratio from 31.7% in the fourth quarter of 2008 to around 50% in the third quarter of 2012. Despite the introduction of SSD in 2010, speculative activities had persistently fuelled exuberance in the property market. The situation was further aggravated by the promotional gimmicks of

developers to sell flats under the same development by phases with a view to pushing up the prices of each subsequent phase.

7. On the effectiveness of the proposed further measures, STH said that following the introduction of SSD in November 2010, there was a significant reduction in the number of confirmor and short-term resale cases and the reduction had continued into 2012. This had demonstrated that SSD was effective in curbing speculative activities in the property market. However, with the launching of the third round of quantitative easing ("QE3") in the United States ("US"), more funds had flown into Hong Kong, amongst other emerging markets. The abundant liquidity of investors and the exceptionally low interest rate environment had intensified the risk of a housing bubble that warranted the introduction of the further measures to address the overheated property market. STH added that the Government had taken into account various factors in the consideration of the proposed measures. The Government would continue to monitor development in the market and price trends closely in assessing the effectiveness of the measures. While the number of residential properties transactions appeared to have dropped in the week immediately followed the announcement of the proposed measures, and different market feedbacks on the impact on property prices were reported in the media, the Government would keep in view the situation over an extended period, and gauge more data to facilitate Members in the scrutiny of the relevant Bill.

Target indicators of the proposed measures

8. Mr Frederick FUNG enquired if the Government had set targets to be achieved by the proposed further measures, such as the price level of properties in the general market, to maintain the present price level and curb further rises or to drive it down to an affordable level by ordinary home buyers. He stressed the need for the Government to set such targets so as to evaluate the effectiveness of the proposed measures and determine whether further measures should be introduced. Mr Tony TSE also enquired whether the Government had set any target in bringing down the prices of residential properties. Ms Starry LEE sought the Administration's views on the period required for observing and assessing the effects of the proposed further measures.

9. STH said that the proposed measures had taken into account a number of factors, in particular the high risk associated with speculative activities, and not just the level of property prices. SFST said that it would be infeasible to set an objective and quantifiable target in the price level for the residential property market, and flat price level was only one of the factors to be considered in assessing the effectiveness of the proposed measures. The

Government would also look into other factors such as the affordability ratio and the demand-supply balance in the property market. Mr FUNG remained concerned that in the absence of any quantifiable targets, there would be no objective basis for the Government to evaluate the effectiveness of the proposed measures.

10. The Chairman expressed concern that if the developers withheld or delayed the sale of first-hand residential flats to alleviate the impact of BSD/enhanced SSD on sales, the proposed measures would be rendered useless in curbing speculative activities. In this connection, he asked if the Government had collected data on the impact of the proposed measures on the primary residential property market, including the number of first-hand residential flats on sale in the market before and after announcement of the measures; and the number of first-hand residential flats that were scheduled to be put to sale by developers but subsequently deferred/withheld after the announcement. He considered that these data would enable Members to have a comprehensive picture on the impact of the proposed measures. STH undertook to provide the relevant information if available. He explained that as the legislative amendments would not specify when the proposed measures would end, under commercial principles, it would be impracticable for developers to withhold or delay the sale of first-hand properties indefinitely in order to evade enhanced SSD or BSD payments.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(1)239/12-13(01) on 28 November 2012.)

11. Mr Albert HO noted from Annex B of the LegCo Brief on "Further Measures to Address the Overheated Property Market" that the number of cases involving confirmor and resale within 24 months in 2011 and 2012 (January to September) was much higher than non-confirmor transactions in the same period. As it was highly likely that speculative activities were involved in confirmor cases, Mr HO said that the Government should monitor the trend of these cases, in particular those involving short-term resale, as this would serve as a useful indicator on the effectiveness or otherwise of the SSD measure in curbing speculation and whether further measures were required to step up the efforts of the Government.

12. With reference to Annex C of the Legislative Council ("LegCo") Brief, the Permanent Secretary for Transport and Housing (Housing) ("PS(H)") advised that the number of confirmor and short-term resale transactions had dropped significantly in 2011 and 2012 (January to September) from the previous two years before the existing SSD was effected. For instance, the number involving confirmor held less than 24 months had fallen from 3 622 cases in 2009 to a handful of only 69 cases in 2012 (January to September). This had demonstrated that the SSD measure had been effective in combating speculative activities associated with confirmor and short-term resale transactions. Hence, the Government considered it appropriate to extend the SSD measure under the current proposals.

Other measures to address the overheated property market

13. Ms Starry LEE was concerned that the proposed measures might divert speculative activities from the residential property market to the commercial property market, and other forms of assets, such as car parking spaces and taxi operating licences etc. She enquired whether the Government had been monitoring the situation in these areas so that appropriate measures would be implemented to address possible problems when necessary.

14. Mr Michael TIEN observed that many completed residential flats remained vacant partly because owners were unwilling to lower the rentals. The tight supply of rentable flats and high rentals had caused much hardship to the local people. He asked if the Government was prepared to implement measures targeting at an exuberant rental market. He also enquired about the vacancy rate of completed residential development. Mr Vincent FANG expressed concern about the alarmingly high rentals for commercial premises that were adversely affecting the viability of small and medium-sized enterprises, in particular those in the retail and catering businesses. He cautioned that the livelihood of the large workforce in these sectors would be at stake if these businesses were forced to close down due to unaffordable rentals. Mr FANG enquired whether and when the Government would introduce "extraordinary measures" to cool down exuberance in the commercial property market.

15. STH and SFST said that the Government was aware of the potential side effects of the proposed measures on the non-residential property market and other investment activities. It would monitor the development, including that in the rental market, and would consider implementing appropriate measures when the situation warranted, taking into account factors such as the macro economic conditions and the financial stability of Hong Kong. SFST said that the Government would take into consideration a number of economic indicators, including the housing affordability ratio and the circumstances of

the external economic environment in considering whether further measures were required. However, the Administration was of the view that the proposed demand-side management measures targeting at the residential property market might not be suitable for dealing with the non-residential property sector which involved more complex issues and considerations. Due to the market sensitive nature of taxation measures, the Government could not indicate at this stage when and what additional measures would be introduced.

16. On the vacancy situation of residential development, the Government Economist said that as at end 2011, the number of vacant private residential flats accounted for 4.3% or around 50 000 residential units out of a total of 1 110 000 private residential flats, including natural vacancy arising from the lead time required to effect a transaction and transfer of property. This vacancy rate was already close to the figure for 1997, and considerably lower than the 2003 peak of around 7% and the long-term average figure.

17. Mr CHAN Kin-por referred to some public views that a property bubble had been formed as residential property prices continued to surge at an appalling rate. While the extremely low-interest environment would continue to prevail for an extended period of time as the US Federal Reserve had extended its pledge to maintain exceptionally low interest rate at least until mid 2015 under QE3, there might be a change in the US monetary policy following its 2012 presidential election. Mr CHAN asked whether the Government had contingency measures in the event of a reversal of the low-interest environment and abrupt outflow of large amount of capital that could result in a deep property slump at any time. SFST said that the Government was concerned about the emergence of a property bubble and FS and other principal officials had cautioned the investing public of the associated risks. He assured Members that the Government would exercise prudent risk management in deciding the appropriate measures to be implemented with due regard to the local and external economic environment. Nonetheless, it was difficult to make predictions on market changes, and this had explained why the Government had proposed introducing a mechanism for revising BSD/SSD rates through subsidiary legislation so that adjustment to the rates could be implemented more promptly in response to rapid changes in the market.

18. Mr Frederick FUNG re-iterated concern about the effectiveness of the proposed further measures for driving down property prices given the abundant liquidity of investors would offset the effects of additional duty payment. As it would take time for the results of measures targeting to increase flat supply to materialize, he strongly urged the Government to come up with much tougher and decisive measures in the interim. Making reference to the practice in some economies such as Australia, he suggested the Government to consider restricting the purchase of residential properties by non-HKPRs, say,

in the next five years, thereby according "absolute priority" to HKPRs in addressing their housing need. Mr FUNG cautioned that further aggravation of the housing problem could be detrimental to both the economic and political stability of Hong Kong.

19. STH said that the Government was taking forward initiatives to accord priority to the housing demand of local buyers. Apart from the proposed BSD, the Government had introduced the "Hong Kong property for Hong Kong people" policy recently, which would be piloted at two sites in the Kai Tak Development Area. Whilst the Government would consider applying this policy to other new projects under planning, it would not be the case for ongoing or completed residential developments which were bounded by existing contractual agreements on land sales or land use conditions.

20. Dr Fernando CHEUNG pointed out that there had been rapid rise in rentals for residential flats at large and the increases were out of line with income of the general public and had surpassed the 1997 peak. The high rentals had caused much hardship to the middle class households. He asked if the Government would consider restoring rent control for residential properties. STH said that the Government shared the concern about the rise in rentals of the mass residential properties. Nevertheless, the relevant legislative proposals to gradually phase out rent control passed some years ago had undergone thorough discussion by LegCo and the relevant stakeholders. Currently, the Government had no plan to reinstate rent control. He said that the Government would further explain its position on related issues at the motion debate on perfecting housing policy and resolving public housing need which would take place at the Council meeting of 7 November 2012.

21. Mr Frederick FUNG and Dr Fernando CHEUNG considered that capital gains tax would be a much more effective measure to curb speculative activities in the residential market. They enquired whether the Government would consider introducing this tax, or a tax on owners who hoarded up flats for speculative purposes. Dr CHEUNG also suggested providing tax concessions to middle class families residing in rented accommodation.

22. SFST said that tax concessions were currently granted according to specified allowances and deductions under the Inland Revenue Ordinance (Cap. 112). To provide tax/duty exemption on the ground of circumstances of individual taxpayers/duty payers would deviate from the fundamental principles of the existing taxation regime. The introduction of any new types of taxes or tax concessions would require careful consideration having regard to their practicability and a wide range of factors. Nevertheless, the Government would not rule out the possibility of introducing new tax measures in future. Dr CHEUNG expressed deep regrets that in face of the

extremely overheated property market, the Government was still non-committal to introducing capital gains tax to curb speculative activities although this was a common measure adopted in many jurisdictions.

23. Mr LEUNG Kwok-hung said that RMB appreciation, coupled with an extremely low interest environment and a simple tax system of Hong Kong had continued to fuel speculative activities of Mainland investors in the local property market and other investment activities. Against this background and in the light of the weak US dollar, he took the view that the Government should seriously consider de-linking Hong Kong dollar with US dollar to help ease the imported inflationary pressure. SFST re-affirmed the Government stance that it had no plan to de-link the present currency peg to US dollar.

The new Buyer's Stamp Duty and the enhanced Special Stamp Duty

24. Ms Starry LEE considered the proposed BSD an appropriate and useful measure for curbing speculative activities in the property market by increasing the investment cost and risk on non-HKPR buyers. The measure would aptly address the need to accord priority to local buyers amidst tight supply in the residential property market. Dr KWOK Ka-ki and Mr Tony TSE shared similar views.

25. Referring to feedbacks from some developers that the deterring effects of the proposed measures would last no more than three months as some developers had resorted to offer discount for non-HKPR buyers in order to counteract the effects of the additional stamp duties, Mr SIN Chung-kai sought the Administration's views on such marketing tactics launched by developers. STH responded that with the Residential Properties (First-hand Sale) Ordinance (Cap. 621) commencing in 2013, developers would be required to enhance the transparency and fairness of sales arrangements and transactions of first-hand residential properties, including the provision of prescribed information in sales brochures, making public a price list and disclosure of transaction information such as the offer of discount, if any, to a particular group of buyers. As long as the property transactions in question were transparent and fair, the Government would not interfere in the business strategy of developers.

26. Mr James TO considered that as the BSD measure was mainly targeted at the speculative activities of non-HKPRs, it would seem unfair to subject a property acquired by a company solely owned by HKPRs to BSD payment but to grant exemption to BSD in the case of transferring a residential property to a close relative who was not a HKPR as under the current proposal. The Deputy Secretary for Financial Services and the Treasury (Treasury) 2 ("DS(Tsy)2") advised that the Administration had made reference to similar arrangement in place under the existing SSD regime in drawing up the proposed exemptions for BSD. Careful consideration had been made as to whether exemption to BSD should be granted to local companies solely owned by HKPRs. The Administration had come to the view that granting an exemption to such companies could give rise to loopholes for BSD evasion as property transfer to non-HKPRs could be effected through a transfer of company shares which was not subject to BSD. Nevertheless, the proposed BSD measure did not prevent a HKPR from acquiring flats in the name of an individual.

27. Mr James TO commented that the mode of acquisition referred to by the Administration would give rise to legal ownership issue of the property if it was acquired by a HKPR for the operation of a company instead of for personal use. He further suggested that to address the possible loophole in question, the Administration might consider recouping BSD from HKPR solely-owned companies when the shares of their HKPR holders had diminished to a specified threshold within a designated period after the acquisition of a BSD-chargeable property. The relevant Bill could incorporate anti-tax avoidance provisions to prevent tax evasion involving share transfer to effect property transactions.

28. DS(Tsy)2 advised that in view of the complexity of the existing regulatory regime pertaining to the transfer of company shares, it was impracticable to include such provisions in the relevant Bill. Mr Dennis KWOK suggested that the Government should consult the Law Society of Hong Kong on the legal issues relating to the implementation of the new measures, including the issue of transfer of shares. The Administration took note of the views.

29. Mr POON Siu-ping expressed support to introduce BSD but pointed out that some overseas companies purchased properties in Hong Kong and used them as housing accommodation for their expatriate staff. If the BSD would apply across-the-board for all persons/companies except HKPRs, he asked if the Government had considered whether the proposed measure might discourage overseas companies from doing business or investing in Hong Kong. Mr Tony TSE supported BSD as a measure to manage demand and ensure that the housing need of local buyers would be accorded priority. However, he was concerned that the measure might unintentionally convey a

message to the market that the taxation policies of Hong Kong were inclined towards the interests of HKPRs over non-HKPRs. Mr TSE opined that the Administration should take measures to address this possible concern of foreign investors and prevent a dampening of their investment sentiment.

30. SFST said that investment sentiment could be affected by a host of factors, including the external economic environment and market forces which were beyond control of the Government. Notwithstanding the proposed measures, Hong Kong remained an open economy and a free market for investment without restriction on the inflow and outflow of capital. Whilst it was understandable that the proposed BSD might bring about inconvenience to foreign companies and increase their investment cost, the measure was warranted under these exceptional circumstances to stabilize the property market. SFST remarked that given the small number of cases of residential property transactions involving purchase by overseas companies as accommodation for their expatriate staff, it was envisaged that there would be minimal adverse impact on the investment sentiment arising from the implementation of BSD.

31. Mr WONG Ting-kwong said that he supported the proposed measures to combat speculative activities as far as the interests of genuine home buyers would not be impeded. Mr WONG enquired whether exemptions from BSD would broadly cover all Hong Kong Identity Card holders, including those working/residing in Hong Kong under the Admission Scheme for Mainland Talents and Professionals. STH explained that BSD was applicable to any person (including companies), except a HKPR. The definition of HKPR followed that stipulated in the Immigration Ordinance (Cap. 115). SFST added that other definitions of HKPR would be arbitrary and might give rise to complications in the implementation of BSD.

32. Mr Albert HO enquired about the criminal and civil consequences on a HKPR who provided false information or forged documents in order to purchase a residential property on behalf of a non-HKPR with a view to evading BSD payment. The Commissioner of Inland Revenue ("CIR") said that subject to investigation of suspected cases, any person who willfully evade or assist any other person to evade BSD would lead to criminal and civil consequences. If the case involved forgery, the convict would be subject to criminal penalty of a maximum of seven-year imprisonment and the possible civil consequence might be that the non-HKPR could not recover ownership of the residential property in question.

33. Mr Kenneth LEUNG expressed concern that investors could circumvent BSD/SSD through transfer of shares in companies to effect property transactions. He asked how the Government would plug this loophole to

prevent possible tax evasion. Mr LEUNG Kwok-hung shared a similar view. He recalled that similar issues were discussed by the Bills Committee formed to scrutinize the bill for implementation of SSD but the Administration had not taken heed of the concern. Mr SIN Chung-kai pointed out that since the cost of setting up a shell company to effect properties transfers did not involve high cost or complicated procedures, non-HKPR could resort to this mechanism to acquire/transfer properties and evade BSD/SSD.

34. CIR explained that transfer of shares in companies was a different matter that would give rise to payment for stamping of shares transfer, except for companies incorporated overseas which were exempted from stamp duties in share transfers. At present, the Administration did not have plan to extend the application of BSD/SSD to property transactions effected by transfer of company shares having regard that the residential property transactions undertaken by companies accounted for less than 10% of all residential property transactions in the local market and these transactions might not necessarily involve speculative activities. DS(Tsy)2 added that of the companies involved in residential property transactions in Hong Kong in 2011, about 90% were Hong Kong companies and some 10% were overseas companies. In other words, only about 1% of the overall residential property transactions were undertaken by overseas companies.

35. Mr SIN Chung-kai pointed out that the place of incorporation of a company might not be indicative of its resource of finances, and hence it would be inappropriate for the Administration to only base on the said statistics in making assessment on the possible extent of speculative activities and tax evasion involving non-HKPR through transfer of shares to effect property transactions. Mr LEUNG Kwok-hung considered that the Administration should not underestimate the possible loophole by simply looking at the small percentage of residential property transactions involving companies. He also pointed out that local and foreign companies alike could exploit the loophole to avoid payment of stamp duties for property transactions.

36. Mr Alan LEONG enquired about the reasons for introducing a mechanism whereby SSD/BSD rates could be revised by means of subsidiary legislation in future. He noted that as the existing mechanism had already provided for the legislative proposals, if enacted, to take retrospective effect, the timing of implementation should not be affected if the relevant legislative proposals were to be implemented by enactment of a bill. SFST and DS(Tsy)2 explained that at present the types of stamp duties and their rates were stipulated in the provisions of SDO. The proposal to introduce the said mechanism for revising SSD and BSD rates by means of subsidiary legislation would facilitate making rapid adjustment to the rates in response to market conditions in a timely and flexible manner. DS(Tsy)2 added that Members

could study the proposal further when the relevant Bill was introduced into LegCo.

Impact of the proposed further measures on genuine home buyers and sellers

37. Mr NG Leung-sing expressed concern that the proposed measures seemingly addressed the housing shortage only by "freezing" demand associated with speculative activities. As the current shortage of flat supply was attributable not just by speculative activities but also a genuine demand from home buyers, he was concerned that the BSD measure might indiscriminately affect the interests of home buyers at large, including the genuine need of non-HKPRs to acquire local flats for accommodation during their regular visits to Hong Kong. Mr NG considered that the Government should study how far the exuberance in residential property market was connected with speculative activities in assessing the appropriateness and risks of the measure. STH took note of the views and said that while BSD was introduced to accord priority to the housing need of local buyers, the measure or the enhanced SSD was not intended to suppress genuine housing demand or deter long-term investment in the property market.

38. Mr Christopher CHEUNG cautioned against the possible side effects of BSD on genuine home buyers including those acquiring properties under the name of a company. He enquired whether the Government would re-consider granting exemption to BSD for companies with shares held solely by HKPRs. SFST said that the Government was aware of calls in the community to exclude local companies from BSD and understood that the proposed measures might bring about inconvenience to some of the home buyers. The Government had carefully studied these issues and arrived at the view that the suggested exemption would create a huge loophole as non-HKPRs could acquire flats through local companies and evade BSD payment. He maintained the view that HKPR might consider alternative ways of acquiring flats other than in the name of companies.

39. Mr WONG Ting-kwong suggested that in order to provide BSD exemption to genuine home buyers, the Government might consider rebating the BSD collected from a non-HKPR/company buyer if the property in question had been kept by the non-HKPR/company after a specified period of time. STH said that while non-HKPR/company had to pay BSD for an applicable residential property, if the owner did not re-sell the property within the specified three-year time frame, no additional expenses would be incurred by the owner in relation to SSD. SFST emphasized that BSD aimed not just to forestall speculative activities but also to manage demand in the housing market which was imperative in face of the exuberant property market.

40. Mr Christopher CHEUNG considered it unfair that a genuine property buyer without engaging in speculative activities had to bear the enhanced SSD if he subsequently needed to sell the property within the three-year period to meet emergent financial needs. He pointed out that the interests of these property buyers should not be compromised, and that the Government should consider granting exemptions on a case-by-case basis. The Chairman shared a similar view and pointed out that there might be genuine need for some property owners to sell their properties, such as to pay medical or other living expenses. He asked whether exemptions would be granted if these property owners could produce proof to demonstrate their financial needs.

41. STH said that similar issues had been thoroughly discussed by the Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010 when the existing SSD was introduced. He explained that it would be difficult to determine whether a property owner had genuine reasons in selling his property. It should be cautioned that exemption based on personal reasons would be unadvisable lest complicating the operation of the proposed scheme and compromising its effectiveness. STH remarked that issues relating to exemptions of BSD could be further discussed by the Bills Committee of the relevant Bill if one was to be formed by LegCo.

Increasing supply of land and housing

42. Mr CHAN Kin-por referred to some public comments that the new BSD and enhanced SSD were only transitional measures so that the Government could "buy time" before the medium and long-term measures to increase land and flat supply could materialize. To tackle the problem of housing shortage at source, he considered it necessary for the Administration to step up efforts in expanding land resources and identifying suitable sites for housing development in the long run. He enquired about the progress made in this respect, including exploring options for reclamation outside Victoria Harbour.

43. Mr CHAN Kam-lam, Mr Jeffrey LAM, Mr Tony TSE and Dr Fernando CHEUNG concurred that there was an urgent need to enhance land supply for housing and urged the Government to step up efforts in this regard. Mr CHAN commented that it would not be sufficient to put in place just demand-management measures to address the housing problem. He suggested that the Government should be more proactive in expanding land resources for increasing flat supply. For instance, the Administration should make reference to past experience to identify potential infill sites in existing public estates or less developed areas for building more flats. In view of the dwindling student population, the Government should also actively review whether sites reserved for building schools could be re-deployed for housing development.

44. Mr NG Leung-sing cautioned that if flat supply was not expedited to address the problem of housing shortage timely, only by relying on the proposed measures in "freezing the housing demand" would not be conducive to a healthy development of the property market. He suggested that the Government should devise strategies to plan and build up a reserve of public/subsidized flats when there was fiscal surplus so as to strengthen its ability in dealing with the housing shortage problem in the long term. The Government should also explore the feasibility to enhance the utilization of vacant residential flats to alleviate the housing shortage. Mr Jeffrey LAM considered that the Government should provide more flexibility in implementing requirements on building density, building height and plot ratio with a view to enhancing utilization of land resources. He enquired about the Administration's plan to accelerate land supply for residential development within the short term.

45. STH re-iterated that the Government had taken into account different factors, including the exuberant state of the property market, in proposing the further measures to address the overheated property market. These measures were not intended to "buy time" before the longer-term measures could give effects. STH said that the Administration was fully aware that the fundamental issue of the housing problem laid in shortage of land supply. It had been implementing short and medium-term measures to address the shortage while developing a long-term housing strategy. In identifying land resources, it was necessary for the Government to give due consideration to development density, sustainability, land conservation and other factors of town planning. He added that as a result of the ongoing efforts to increase land and flat supply, the supply of first-hand residential flats for the next three to four years would increase to some 65 000 units. Moreover, as observed, the number of occupation permits issued by the Buildings Department had increased in the recent period. STH further highlighted the package of 10 short and medium-term measures announced by CE in August 2012 to expedite the supply of subsidized and private housing units, including converting "Government, Institution or Community" and other government sites to residential use and exploring the potential of converting industrial land/building into residential use under the town planning regime and the Buildings Ordinance (Cap. 123). The Government had also launched the Long Term Housing Strategy review as part of its efforts to take forward its policy vision on housing. STH said that in parallel with the efforts to increase land and flat supply, it was also necessary to implement measures on the demand side, such as the BSD and enhanced SSD, in order to balance the demand and supply in the housing market.

46. Dr KWOK Ka-ki criticized that a supply of only 65 000 residential flats in the next three to four years could hardly make up the shortfall since 2007, not to mention the expected surge in demand in the years ahead. He observed that many Hong Kong people, including the 50 000 new couples each year amounting to some 200 000 couples in the next four years, were suffering from high rentals or undesirable living conditions because they could not afford to buy flats or rent accommodation of a better quality. He urged the Government to accelerate the housing supply to address the need of genuine home buyers, especially the new couples and first-time home buyers. Mr Vincent FANG and Mr Albert HO shared similar views about the inadequate provision of only 65 000 residential flats in the next few years and the importance to accelerate flat supply in the short and medium-term. Mr LEUNG Kwok-hung remarked that it was a policy blunder of the Government in the past of not releasing available land resources in a timely manner. To alleviate hardship of the public in acquiring flats, he urged that the Administration should consider selling subsidized residential properties under construction to first-time home buyers.

47. STH said that the Government was stepping up its efforts to increase housing supply. The provision of 65 000 residential flats in the next three to four years was a significant increase as compared to the figures of the past few years. Along with the housing and land supply measures recently announced by CE and the Long Term Housing Strategy review, the Government was reinforcing its efforts to increase flat supply in both short and long term so as to make up for the current shortfall and meet new demand. He sought the support of Members to the relevant housing initiatives when LegCo were consulted on the proposals in near future.

48. Mr CHAN Kam-lam considered that the Government should fast track the development of residential flats in the proposed North East New Territories New Development Areas (NENT NDAs) by expediting the requisite statutory procedures in respect of land zoning for housing in the NDAs before the outline development plans for the entire NENT NDAs were finalized. Mr CHAN also criticized that there was inadequate coordination between the Transport and Housing Bureau and the Development Bureau in bringing about a better interface in land development under the respective purview of the bureaux.

49. STH said that the Government had exchanged views with Members during the motion debate on NENT NDAs planning and engineering study at the Council meeting of 24 October 2012. The Government would take into account Members' views and comments received from public consultation exercise for contemplating the development of NENT NDAs, with a view to increasing the proportion of public rental housing in the overall housing development for the NDAs.

50. Mr Vincent FANG opined that instead of relying on government-initiated land sale to increase land supply for housing development, consideration should be given to provide more flexibility for developers in converting commercial or industrial properties for the provision of small to medium-sized private residential units to be offered at affordable prices to the general public, especially the first-time home buyers. On the other hand, Dr KWOK Ka-ki cautioned that the conversion of commercial/industrial buildings for housing use should be carefully taken forward lest the existing small and medium-sized enterprises operating in such buildings would be adversely affected.

51. STH said that the Government was proactively exploring measures to facilitate revitalization, conversion or re-development by owners of industrial/commercial buildings for residential use in a flexible manner. In taking these initiatives forward, the Government would give regard to a number of factors, including the location and conditions of the industrial/commercial properties in question.

52. Ir Dr LO Wai-kwok relayed the concerns of the professionals of the Government works bureaux/departments about the need to enhance the manpower resources to cope with the increasing workload arising from the housing initiatives in the near future. STH said that the Government had made necessary deployment to address the needs. PS(H) said that the Administration had sought the creation of additional positions at all levels, including directorate and professional grades, through the regular and special resources allocation exercises and would continue to seek additional resources where appropriate. Efforts had also been made to re-deploy staff and duties, and to make use of short-term contract staff or contract out services where necessary with a view to optimizing the use of existing manpower resources.

(The Chairman extended the meeting for 15 minutes up to 1:00 pm.)

Other issues

53. Dr KWOK Ka-ki referred to media reports about the selling of two residential properties by Mr Franklin LAM Fan-keung, a non-official member of the Executive Council ("ExCo"), some weeks before the announcement of the proposed measures, and commented that the public was suspicious that Mr LAM, as an ExCo member, might have benefited from insider information about the proposed measures in selling his properties in question. Dr KWOK sought clarification from the Administration on whether Mr LAM was involved in the discussion of the proposed measures before the announcement by FS on 26 October 2012. Mr LEUNG Kwok-hung commented that it was

possible that Mr LAM might have heard about the proposed measures during informal exchanges with the officials concerned.

54. STH said that as a principal official, he was involved in the discussion of the proposed measures with CE but he had not discussed the matter with Mr LAM on any occasion prior to the announcement made by the Administration. Officials involved in the discussion of the proposed measures with CE were limited to those few directly involved in the matter, i.e. STH, SFST, the permanent secretaries and some senior officials of the bureaux concerned.

55. Mr Dennis KWOK enquired when the relevant documents on the proposed further measures were provided to other ExCo members before Government's announcement on 26 October 2012. Mr Alan LEONG further asked when the discussion on the proposed measures between CE and the relevant officials commenced. SFST and STH said that information pertaining to highly sensitive issues like tax matters was treated with highest confidentiality on strictly need-to-know basis and made available only to relevant official members of ExCo during the germination stage and before submission of the proposal for approval by ExCo. In the present case, non-official members of ExCo did not receive the relevant documents until they were tabled at the special ExCo meeting held on 26 October 2012, i.e. the same day when the proposed measures were announced. SFST said that discussion on the proposed measures had commenced and evolved over time having regard to a number of policies and factors. He stressed that due to confidentiality obligation, he could not disclose further details, including when or how the discussion had started.

56. Mr Kenneth LEUNG declared that he was previously a member of the Board of the Estate Agents Authority ("EAA") but had resigned from the position recently. He pointed out that unlike the requirements imposed on financial institutions under Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615), estate agents or legal practitioners were not obliged to conduct customer due diligence in respect of the bank account and source of capital for a property transaction. While EAA had issued circulars requiring estate agents to obtain proof of identity and address of their clients, the requirement did not cover the source of capital in question. Mr LEUNG referred to the practice in some jurisdictions like the United Kingdom where estate agents or legal practitioners could not execute a property transaction unless the requirements of the respective anti-money laundering regime were complied with. He asked why the existing anti-money laundering requirements in Hong Kong were comparatively lax. The Administration took note of Mr LEUNG's concern. PS(H) said that the Transport and Housing Bureau would work out with EAA in due course the necessary guidelines for estate agents to follow when handling property

transactions subject to the proposed stamp duties as there were different arrangements for BSD and SSD.

Conclusion

57. In concluding the discussion, the Chairman urged the Administration to take into account members' views and suggestions and provide the requested information for Members' consideration when introducing the relevant Bill into LegCo.

III Any other business

58. There being no other business, the meeting ended at 1:00 pm.

Council Business Division 1
Legislative Council Secretariat
31 January 2013