

Stamp Duty (Amendment) (No.2) Bill 2017**Government's response to comments expressed by and written submissions received from deputations/individuals**

Comments / issues raised	Organisation / individual	Government's response
Tightening exemption arrangement for Hong Kong permanent residents under the New Residential Stamp Duty regime		
<p>1. Agree with the Government's tightening of the exemption arrangement provided for Hong Kong permanent residents (HKPRs) under the New Residential Stamp Duty (NRSD) regime to prevent buyers from avoiding the payment of NRSD through acquisition of multiple residential properties under a single instrument</p>	<p>Democratic Alliance for the Betterment and Progress of Hong Kong</p> <p>Hong Kong Property Agencies Association</p> <p>Consumer Council</p> <p>The Hong Kong Institute of Surveyors</p> <p>Joint Council of Estate Agents Associations</p> <p>Hong Kong Real Estate Agencies General Association</p> <p>Civic Party</p>	<ul style="list-style-type: none"> • Comments are noted.
<p>2. The Government should avoid creating loopholes when tightening the</p>	<p>Democratic Alliance for the Betterment and Progress of Hong Kong</p>	<ul style="list-style-type: none"> • Comments are noted. • The ratio of transactions involving acquisition of multiple residential properties under a single instrument to the total

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exemption arrangement		transactions has fallen from about 2.5% and 2.7% in March and April 2017 respectively to 0.1% in December. This illustrates that tightening the exemption arrangement has effectively reduced such transactions.
3. Propose providing exemption arrangement for special cases, including property with a roof, existing adjoining units, etc.	Hong Kong Property Agencies Association Joint Council of Estate Agents Associations	<ul style="list-style-type: none"> To minimise the impact on genuine end-users and for the avoidance of doubt, the Bill sets out some common examples which the Inland Revenue Department (IRD) has encountered and hitherto considered to be a “single residential property” in administering the partial refund mechanism for HKPRs. These include a unit and a roof situated immediately above the unit; a unit and an adjacent garden; and a unit that became a single unit following the demolition of the walls, or any part of the walls, separating two adjoining units as shown by the documents set out in the Bill.
4. Definition of “single residential property” in the Stamp Duty (Amendment) (No.2) Bill (the Bill) is not clear enough and may bring uncertainty to buyers	The Hong Kong Conveyancing and Property Law Association Limited	<ul style="list-style-type: none"> While it should be easy to determine in most cases what constitutes a “single residential property”, there are cases which require detailed consideration based on their own facts. Given the distinctions in each and every case, we consider it difficult to propose a precise and exhaustive definition for a “single residential property”. We consider it more appropriate to allow IRD to determine whether the property concerned is a “single residential property” by taking into account circumstances of each

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		<p>individual cases and making reference to relevant documents, including building plans, deeds of mutual covenant, occupation permits, and any other document that IRD considers relevant.</p> <ul style="list-style-type: none"> • To facilitate the public's understanding of what constitute a "single residential property", apart from the proposed legislative amendments, IRD will set out some examples for illustration in its interpretation and practice notes.
<p>5. Propose retaining the existing exemption arrangement under the Doubled ad valorem Stamp Duty (DSD) regime provided for HKPRs who have not owned any other residential property</p>	<p>Hong Kong Institute of Real Estate Administrators</p>	<ul style="list-style-type: none"> • Having regard to the Government's policy of according priority to the home ownership needs of HKPRs who do not own any residential property in Hong Kong, the following exemption arrangement is provided for under the NRSD measure: acquisition of a single residential property under a single instrument by a HKPR who is acting on his own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition is exempted from NRSD and will continue to be subject to the lower ad valorem stamp duty (AVD) rates at Scale 2.
Policy objectives and effectiveness of demand-side management measures		
<p>6. The demand-side management measures have reduced the supply of secondary residential</p>	<p>Federation of International SME Hong Kong Chamber of Professional Property</p>	<ul style="list-style-type: none"> • The demand-side management measures aim to stabilise the property market by redressing the demand-supply imbalance and alleviating market exuberance through increasing the cost of property acquisition and curbing the demand of some

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properties, thus pushing up property prices and rents	<p>Consultants Limited</p> <p>Hong Kong Real Estate Agencies General Association</p> <p>Hong Kong Property Agencies Association</p> <p>Liberal Party</p>	<p>groups of buyers (e.g. short-term speculators, non-local buyers and those who already owned residential property). The demand-side management measures will not reduce the actual housing supply, and exemption arrangements have been provided to cater for the home ownership needs of HKPRs who do not own any residential property in Hong Kong.</p> <ul style="list-style-type: none"> • Just like the overall flat price and transaction volume, secondary residential property transaction volume is subject to influence of various factors, including property prices, supply of first-hand private residential properties, global and local economic outlook, the pace of United States (US) interest rate normalisation, international liquidity, demand-side management measures introduced by the Government in response to the overheated property market (e.g. the introduction and enhancement of the Special Stamp Duty (SSD) in November 2010 and October 2012 respectively), and a series of property mortgage supervisory measures introduced by the Hong Kong Monetary Authority (HKMA), etc. SSD aims to combat short-term speculative activities, and naturally reduces transaction volume when short-term speculators are driven out of the market. • Since 2013, the number of annual secondary transactions has approximately maintained at around 40 000. The number

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		<p>of secondary transactions in 2017 is around 43 000.</p> <ul style="list-style-type: none"> • We believe that local buyers with genuine home ownership needs will eventually benefit from these measures when most speculators, investors and non-local buyers are driven out of the property market.
<p>7. The demand-side management measures have not curbed or reduced property prices / are ineffective / not the right cure / not the fundamental solution / will compromise the healthy development of Hong Kong's economy and property market in the long run</p>	<p>Hong Kong Real Estate Agencies General Association</p> <p>Hong Kong Property Agencies Association</p> <p>Joint Council of Estate Agents Associations</p> <p>Liberal Party</p> <p>Civic Party</p>	<ul style="list-style-type: none"> • In view of the continuous increase in property prices, the Government has proactively adopted a supply-led strategy by continuing to increase land and housing supply to address the demand-supply imbalance at source in the long run. • The various demand-side management measures are introduced by the Government to combat specific types of investment demands in a targeted manner in response to the different signs of exuberance of the property market. In sum, SSD aims to lower the incentive for short-term speculative activities; the Buyer's Stamp Duty (BSD) aims to reduce the demand of non-HKPRs to purchase residential properties; DSD previously introduced and the NRSD measure currently rolled out aim to reduce the demand of residential property owners to purchase more properties; whereas the series of supervisory measures on property mortgages introduced by HKMA aim to strengthen the banks' risk management ability and resilience in order to reduce damage to the banks and the overall economy in case of significant adjustments to property prices.

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		<ul style="list-style-type: none"> Data show that the various demand-side management measures have achieved the intended objectives and effectively reduced speculative activities, external demand and investment demand. The market development will still depend on increase in supply in future and changes in many other external and local factors, including global and local economic outlook, the pace of US interest rate normalisation, international liquidity, etc. The Government will continue to be vigilant and closely monitor the movement of the property market and the ever-changing external environment with reference to a series of indicators (including property prices, home purchase affordability ratio, transaction volume, supply of private flats, changes in local and external economic factors, etc.).
<p>8. NRSD increases the cost for owners to replace their properties</p>	<p>Hong Kong Chamber of Professional Property Consultants Limited</p> <p>Hong Kong Real Estate Agencies General Association</p> <p>Joint Council of Estate Agents Associations</p>	<ul style="list-style-type: none"> If a HKPR replaces his residential property by disposing of his only original property before acquiring a new one, the acquisition of the new residential property will be subject to the lower AVD rates at Scale 2. For those who replace their residential properties by acquiring a new property before disposing of the only original one, under the existing mechanism, a HKPR who acquires a new residential property to replace his only original residential property will be subject to NRSD in the first instance, but he may apply to IRD within the statutory

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		<p>time limit¹ for a partial refund of the AVD paid upon proof that his only original property has been disposed of within 12 months from the date of executing the assignment of the new residential property. The amount to be refunded is the stamp duty paid at the new rate of 15% in excess of that computed at Scale 2 rates.</p> <ul style="list-style-type: none"> It is noted that bridging loans are currently provided by local banks for customers replacing their properties to cater for their financial needs during property replacement, such as making down payments for the new property, paying renovation costs and stamp duties, etc.
<p>9. NRSD makes it more difficult for first-time home buyers to attain home ownership</p>	<p>Hong Kong Chamber of Professional Property Consultants Limited</p> <p>Hong Kong Real Estate Agencies General Association</p>	<ul style="list-style-type: none"> Having regard to the Government's policy of according priority to the home ownership needs of HKPRs who do not own any residential property in Hong Kong, the following exemption arrangement is provided for under the NRSD measure: acquisition of a single residential property under a single instrument by a HKPR who is acting on his/her own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition is exempted from NRSD and will continue to be subject to the lower AVD rates at Scale 2. Therefore, NRSD will not increase the cost for people to acquire their first residential

¹ There is a general time limit for claiming refunds, which is within two years from the date of executing the agreement for sale and purchase for acquisition of the new residential property or not later than two months after the date of executing the assignment for the disposal of the original residential property, whichever is the later.

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		property.
<p>10. Suggest relaxing the prudential supervisory measures on property mortgage loans implemented by HKMA, so that residential properties of \$6 million or below are also eligible for mortgage at a loan-to-value ratio of 70%</p>	<p>Hong Kong Chamber of Professional Property Consultants Limited</p> <p>Hong Kong Property Agencies Association</p> <p>Joint Council of Estate Agents Associations</p> <p>Estate Agent Association</p>	<ul style="list-style-type: none"> • Since the outbreak of the global financial crisis in 2008-09, many major economies in the world have introduced “quantitative easing” monetary policies. Hong Kong has been experiencing an abnormal macro financial environment in the past few years where interest rate was at an extremely low level. • To maintain banking stability, HKMA has introduced eight rounds of countercyclical macroprudential measures since October 2009 to strengthen the resilience of banks and borrowers to cope with any impact of a fall in property prices. • HKMA will continue to closely monitor the situation of Hong Kong property and mortgage market, and take appropriate measures when necessary to ensure banking stability.
<p>11. The Government should consider withdrawing demand-side management measures in phases at appropriate juncture</p>	<p>Hong Kong Chamber of Professional Property Consultants Limited</p> <p>Federation of International SME</p> <p>Liberal Party</p>	<ul style="list-style-type: none"> • Since the property prices remain at a high level and have shown no signs of downward adjustment, it is necessary for the Government maintain various demand-side management measures in midst of the current demand-supply imbalance to guard against further increase in the risks of a housing bubble and to ensure healthy and steady development of the property market. The Government has no intention to

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		withdraw any demand-side management measure at the moment.
Other exemption arrangements under the NRSD regime		
12. Propose extending the “time limit for property replacement” for partial refund of AVD paid from six months to nine or 12 months	Hong Kong Property Agencies Association Joint Council of Estate Agents Associations Estate Agent Association Hong Kong Institute of Real Estate Administrators Consumer Council	<ul style="list-style-type: none"> The Stamp Duty (Amendment) Ordinance 2018 (the Amendment Ordinance), which implements the NRSD measure, was published in the Gazette on 19 January 2018 and is deemed to take effect from 5 November 2016. According to the amended Stamp Duty Ordinance (SDO), the statutory time limit for disposal of the original property under the AVD refund mechanism (commonly known as “time limit for property replacement”) is 12 months.
13. Propose that the partial refund of AVD paid under the NRSD regime be allowed for HKPRs who acquire a new residential property to replace all their existing residential properties so as to increase supply in the secondary market	Estate Agent Association	<ul style="list-style-type: none"> The refund mechanism for owners who replace properties by acquiring a new residential property before disposing of their original one is in line with the Government's policy objectives of introducing demand-side management measures to accord priority to the home ownership needs of HKPRs and to step up management on housing demand from buyers who have already owned residential properties. Hence, the refund mechanism is only applicable to cases where one residential property is acquired to replace the only and original residential property.

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		<ul style="list-style-type: none"> The Government considers that in view of the continued market exuberance and housing demand-supply imbalance, the refund mechanism should not be relaxed.
<p>14. Propose that owners replacing properties be allowed to pay NRSD by instalments</p>	<p>Hong Kong Property Agencies Association Joint Council of Estate Agents Associations</p>	<ul style="list-style-type: none"> We consider the suggestion infeasible. Under SDO, both buyers and sellers shall, within 30 days after executing a chargeable instrument, present the instrument concerned to IRD for stamping and pay AVD at the applicable rate. Late payment of stamp duty is subject to a fine. The suggestion amounts to allowing deferred payment of partial stamp duty, and will have a fundamental impact on the levying system of stamp duty. The pre-sale period of some uncompleted residential properties can be as long as 30 months. In other words, under the existing refund mechanism, it is possible that persons replacing their properties may only dispose of their original properties 42 months after the date of executing the agreement for sale and purchase of the new property. If the above suggestion is accepted, it may invite some owners without genuine intention to dispose of their original property to take advantage of the arrangement to acquire a new residential property under the guise of property replacement and defer payment of NRSD for as long as three and a half years. This will significantly undermine the effectiveness of the new measure.

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<p>15. The buyer should be liable for paying additional AVD if he is exempted from NRSD based on his statutory declaration and it is subsequently found that the statutory declaration is incorrect</p>	<p>Hong Kong Institute of Real Estate Administrators</p>	<ul style="list-style-type: none"> • The suggestion is already the existing arrangement under the DSD and NRSD regimes. • Under section 29DH of SDO, if AVD on an agreement for sale and purchase or a conveyance on sale for a residential property has been charged at Scale 2 rates based on a statutory declaration made by the buyer or transferee and the declaration is subsequently found to be incorrect, only the buyer or transferee under the instrument concerned is civilly liable to the Collector of Stamp Revenue for the payment of the specified amount (i.e. the difference between the AVD paid and the AVD computed at Scale 1 rates).
Other issues		
<p>16. Increasing land and housing supply is the solution to address housing demand-supply imbalance at source</p>	<p>Liberal Party Hong Kong Property Agencies Association Joint Council of Estate Agents Associations Hong Kong Real Estate Agencies General Association</p>	<ul style="list-style-type: none"> • The Government has been committed to increasing the public and private housing supply and has adopted a multi-pronged approach to identify sites to meet the housing needs of the community in the long run. The Government will continue to adopt a multi-pronged approach to increase housing land supply in the short, medium and long-term by conducting land use reviews and rezoning, increasing development intensity, cultivating new development areas, reclamation on an appropriate scale, etc. The latest progress of these measures has been set out in detail in the Long Term Housing Strategy Annual Progress Report 2017.

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		<ul style="list-style-type: none"> With the Government's continuous effort in increasing housing land supply, the medium-term supply of private housing has maintained at a relatively high level. Based on the latest projection as at end-December 2017, the supply of first-hand private residential property market for the coming three to four years is about 97 000 units. The Government will continue rolling out lands for housing to ensure sufficient and stable land supply in the long term to respond to the home ownership aspirations of different social strata.
17. Increase supply of public rental housing (PRH) and subsidised sale flats (SSFs)	Civic Party Federation of International SME	<ul style="list-style-type: none"> The Hong Kong Housing Authority (HA) and Government departments will continue to maintain close liaison, and explore ways to optimise identified sites and streamline required planning and land administration procedures to achieve the public housing supply target. Where planning and infrastructure permit and environmental quality will not be compromised to an unacceptable extent, the Government will continue to optimise the development potential of available public housing sites, so as to increase and expedite public housing production. Based on the figures as at end-September 2017, the estimated total public housing production of HA and the Hong Kong Housing Society in the five-year period from 2017-18 to 2021-22 is about 100 300 units, comprising about

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		75 200 PRH units and about 25 100 SSFs. The PRH production forecast by HA is 73 300 units.
18. Propose adding to land grant conditions to allow sale to first-time home buyers only	Hong Kong Property Agencies Association Joint Council of Estate Agents Associations	<ul style="list-style-type: none"> On the premise that the public housing supply will not be affected, the Government will introduce the “Starter Homes” Pilot Scheme for Hong Kong Residents (Pilot Scheme), so as to enrich the housing ladder and to provide families in different income brackets with the opportunity to become home owners. The Government's initial thinking is to incorporate provisions into the land lease to require developers to pursue mixed developments on sites owned by themselves or bought from the Government. Specifically, developers will be required to design, build and offer for sale a specified number of “Starter Homes” units in addition to private housing units, and to sell these units to target buyers who meet the eligibility criteria set by the Government. Details of the Pilot Scheme will be finalised for announcement in mid-2018.
19. Review the policy on private recreational leases in order to release urban land for housing development	Hong Kong Real Estate Agencies General Association	<ul style="list-style-type: none"> The Government has set up an inter-departmental working group to review the policy of private recreational leases. Given that the review involves the work of various bureaux and departments and that the issues in question are complex, the Government needs to study them in detail so as to work

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		<p>out a reasonable and practicable recommendation package. The Government will report the findings of the review to the Panel on Home Affairs of the Legislative Council as soon as practicable before conducting a public and stakeholder consultation.</p>
<p>20. Propose re-launching various interest-free housing loan schemes to help young people and families in need buy homes</p>	<p>Hong Kong Property Agencies Association Joint Council of Estate Agents Associations</p>	<ul style="list-style-type: none"> • In view of the current serious housing demand-supply imbalance, any form of housing loans provided by the Government in haste may backfire by fuelling housing demand and further pushing up property prices.
<p>21. Propose waiving SSD for properties sold at below purchase price (i.e. “sold at a loss”) within three years to encourage supply in the secondary market</p>	<p>Joint Council of Estate Agents Associations</p>	<ul style="list-style-type: none"> • The objective of SSD is to reduce the risk of a property bubble and ensure the healthy and stable development of the property market through combating short-term speculative activities. Whether, when and at what price an individual will sell his/her property in the market is a personal decision. The suggestion will not necessarily increase the supply in the secondary market. Prescribing that SSD is not chargeable on transactions where properties are “sold at a loss” will undermine the effectiveness of the measure.
<p>22. Propose providing tax incentives to boost supply in the secondary market</p>	<p>Hong Kong Property Agencies Association Joint Council of Estate Agents Associations</p>	<ul style="list-style-type: none"> • Whether, when and at what price an individual will sell his/her property in the market is a personal decision. The Government has no intention to provide tax incentives for owners or buyers participating in transactions of secondary

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		residential properties.
23. Propose dividing the property market into free market and housing market for the citizens	Hong Kong Property Agencies Association Joint Council of Estate Agents Associations	<ul style="list-style-type: none"> • The NRSD measure seeks to reduce the investment demand and accord priority to the home ownership needs of HKPRs who do not own any residential property in Hong Kong.
24. Pricing formula of SSFs should not benchmark on private housing prices	Joint Council of Estate Agents Associations	<ul style="list-style-type: none"> • According to the established pricing formula of Home Ownership Scheme (HOS) flats, selling prices of flats are determined by applying a discount to the assessed market values of the flats. Instead of directly adopting private flat prices, the assessed market values will be adjusted by making reference to various factors (including the bare shell condition of HOS flats, estate facilities, location, view, etc.). The assessed market values are different from the market values of private flats which are usually furnished. Affordability of eligible applicants has been taken into account by HA in determining the discount. • In general, HOS flats are sold at 30% discount from the assessed market values. The actual discount of HOS flats is even higher when comparing with the market value of first-hand private residential flats. If the selling prices of HOS flats calculated in accordance with the above discount cannot meet the affordability criteria, a higher discount can be offered under the existing mechanism.

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		<ul style="list-style-type: none"> If the selling prices of HOS flats are delinked from market values and determined by median income or production cost, the prices are unable to reflect the differences among HOS flats in terms of location, view, direction, floor, etc..
<p>25. Demand-side management measure should not be introduced merely because of insufficient public housing supply</p>	<p>Joint Council of Estate Agents Associations</p>	<ul style="list-style-type: none"> The current property market exuberance reflects the problem of housing demand-supply imbalance. The Government has mainly adopted a supply-led strategy by continuing to increase public and private housing supply to address the long-term housing needs of the community. The Government will adopt a multi-pronged approach and continue with land use review and rezoning, increase the development intensity, develop new development areas and moderate land reclamation, etc., in order to increase housing land supply in the short, medium and long term. The various demand-side management measures are introduced by the Government to combat specific types of investment demands in a targeted manner and alleviate the overheated property market in response to the different signs of exuberance of the property market. In sum, SSD aims to lower the incentive for short-term speculative activities; the BSD aims to reduce the demand of non-HKPRs to purchase residential properties; DSD previously introduced and the NRSD measure currently rolled out aim to reduce the demand of residential property owners to purchase more

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		<p>properties; whereas the series of supervisory measures on property mortgages introduced by HKMA aim to strengthen the banks' risk management ability and resilience in order to reduce damage to the banks and the overall economy in case of significant adjustments to property prices.</p>
<p>26. The free market principles should be upheld to maintain Hong Kong's competitiveness</p>	<p>Federation of International SME</p>	<ul style="list-style-type: none"> • The Government is determined to uphold free market principles, and fully respects market operations. Hong Kong's achievement in the realm of free economy is based on a series of institutional and policy factors, which include protection of private property, market freedom and free flow of information and capital. Hong Kong has also been ranked as the world's freest economy for the 23rd consecutive year by the Heritage Foundation. In fact, we noticed that other high-ranking economies, such as Singapore, Australia, and Canada, have also put in place similar demand-side management measures on property market. • Being a small externally-oriented economy, Hong Kong is easily affected by the general trend of economic globalisation nowadays. It is thus necessary for us to adopt demand-side management measures to alleviate the risk of a bubble in the asset market, stabilise Hong Kong's macro economy and financial system, and accord priority to the home ownership needs of HKPRs amidst the current

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		demand-supply imbalance.
27. PRH units under construction are converted by the Government to the Green Form Subsidised Home Ownership Pilot Scheme, blindly pushing the grassroots to become home owners	Civic Party	<ul style="list-style-type: none"> The Green Form Subsidised Home Ownership Scheme (GSH) helps Green Form Applicants acquire home ownership and vacate PRH units for allocation to families on the waiting list. The Chief Executive has recommended in her Policy Address to regularise GSH with a view to enhancing the housing ladder. This aligns with the major direction of the Long Term Housing Strategy and HA's established policies.
28. Hong Kong's housing policy should focus on assisting home ownership	Federation of International SME	<ul style="list-style-type: none"> The Chief Executive has promulgated in her Policy Address a housing policy with a focus on home ownership, including suggestions for HA to regularise GSH and the Scheme to Extend the Home Ownership Scheme Secondary Market to White Form Buyers; as well as introducing the "Starter Homes" Pilot Scheme for Hong Kong Residents by the Government, in order to enrich the housing ladder and to provide families in different income brackets with opportunities to become home owners.
29. The amount of premium for SSFs should be locked and discounted based on the price at the time of purchase	Federation of International SME	<ul style="list-style-type: none"> HOS / Tenants Purchase Scheme (TPS) flats are subsidised public housing. Their alienation is subject to the restrictions stipulated in the Housing Ordinance. According to the Housing Ordinance, the owner may sell, let or transfer his flat in the open market upon payment of premium to HA for the removal of alienation restrictions.

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		<p>The Schedule to the Housing Ordinance has set out in detail how to calculate the premium. These alienation restrictions (including amount of premium) have been effective. Since SSFs involve substantial public subsidy, any policy change should carefully take into account fairness and rational use of public money.</p>

Transport and Housing Bureau

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