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Panel on Housing

Meeting on 5 December 2016

**Background brief on
Measures to address the overheated residential property market
prepared by the Legislative Council Secretariat**

Purpose

This paper provides background information on the Administration's measures to address the overheated residential property market, and gives a summary of the views and concerns expressed by Members on the subject.

Background

2. In the past few years, the tight local housing demand-supply balance, coupled with ultra-low interest rates and abundant liquidity under the loose global monetary environment, have seen the local property market out of line with economic fundamentals, with heightened risk of a bubble. To address the demand-supply imbalance, the Administration has, on the one hand, put forward initiatives to increase land supply for new housing through short, medium and long-term means; and on the other hand, introduced several rounds of demand-side management measures, including Special Stamp Duty ("SSD") (in November 2010 and October 2012), Buyer's Stamp Duty ("BSD") (in October 2012) and a doubled ad valorem stamp duty ("DSD") (in February 2013). These measures aim to address the overheated property market, combat speculative activities, ensure healthy and stable development of the property

market, and accord priority to the home ownership needs of Hong Kong permanent residents ("HKPR")¹ in the midst of the present tight housing supply.

3. The demand-side management measures rolled out since November 2010 include:

- (a) SSD² in November 2010 on transactions of residential property acquired on or after 20 November 2010 and resold within 24 months after acquisition;
- (b) an enhancement of SSD in October 2012³ to adjust upward the duty rates and to extend the property holding period in respect of SSD⁴;
- (c) a 15% BSD³ in October 2012 on all residential properties acquired by any person (including companies) except a HKPR acting on

¹ Under Section 29A of the Stamp Duty Ordinance (Cap. 117), a HKPR means a person:

- (a) who holds a valid permanent identity card; or
- (b) who does not hold a valid permanent identity card but
 - (i) is, under regulation 25(e) of the Registration of Persons Regulations (Cap. 177 sub. leg. A), not required to register or apply for the issue of an identity card or for the renewal of an identity card under the Registration of Persons Ordinance (Cap. 177) and those Regulations; and
 - (ii) is entitled to be issued with a permanent identity card if he or she makes an application to the registration officer as defined by section 1A(1) of that Ordinance for that purpose.

² The Stamp Duty (Amendment) Ordinance 2011 (No. 14 of 2011) was enacted in June 2011 to impose a SSD on residential property transactions acquired on or after 20 November 2010. SSD payable was calculated at the following regressive rates for different holding periods:

- (a) 15% of the amount or value of the consideration if the residential property has been held for six months or less;
- (b) 10% of the amount or value of the consideration if the residential property has been held for more than six months but for 12 months or less; and
- (c) 5% of the amount or value of the consideration if the residential property has been held for more than 12 months but for 24 months or less.

³ The Stamp Duty (Amendment) Ordinance 2014 was enacted in February 2014 to enhance SSD and to impose BSD on non-HKPRs. Both measures apply to residential properties acquired on or after 27 October 2012.

⁴ The duty rates and the holding period in respect of SSD have been adjusted as follows:

- (a) 20% of the amount or value of the consideration if the residential property has been held for six months or less;
- (b) 15% of the amount or value of the consideration if the residential property has been held for more than six months but for 12 months or less; and
- (c) 10% of the amount or value of the consideration if the residential property has been held for more than 12 months but for 36 months or less.

his/her own behalf in the acquisition of the property, on top of the existing ad valorem stamp duty and SSD, if applicable; and

- (d) DSD ⁵ in February 2013 on residential and non-residential properties acquired by an individual or a company except a HKPR acting on his/her own behalf and does not own any other residential property in Hong Kong at the time of acquisition.

4. Under the demand-side management measures, in acquiring a residential property, a HKPR buyer is exempted from paying BSD, as well as the ad valorem stamp duty at the higher rates (i.e. DSD) if he/she is not a beneficial owner of any other residential property in Hong Kong at that time.

Property market situation since the introduction of the demand-side management measures

Short-term resale transactions

5. One major objective of introducing SSD is to curb speculative activities in the form of short-term resale transactions. Between the introduction of SSD on 20 November 2010 and end December 2014, there were a total of 3 885 residential property transactions subject to SSD. According to statistics from the Inland Revenue Department ("IRD"), the monthly average of short-term resale, comprising confirmor transactions⁶ and resale within 24 months after assignment, decreased from 2 661 cases (or 20.0% of the total transactions) during the period from January to November 2010 (i.e. the period before the introduction of SSD) to 1 195 cases (or 14.8% of the total transactions) during

⁵ The Stamp Duty (Amendment) (No. 2) Ordinance 2014 was enacted in July 2014 to impose a higher rate of ad valorem stamp duty on certain instruments dealing with residential and non-residential properties acquired on or after 23 February 2013, as follows:

Property consideration or market value (whichever is the higher)	Doubled ad valorem stamp duty rate
Up to \$2,000,000	1.50%
\$2,000,001 to \$3,000,000	3.00%
\$3,000,001 to \$4,000,000	4.50%
\$4,000,001 to \$6,000,000	6.00%
\$6,000,001 to \$20,000,000	7.50%
\$20,000,001 and above	8.50%

⁶ Confirmor transaction refers to the resale (or known as sub-sale) from a confirmor to a sub-purchaser and such resale occurs before execution of assignment.

the period from December 2010 to October 2012 (i.e. after the introduction of SSD but before the introduction of enhanced SSD), and further to 127 cases (or 2.4% of the total transactions) during the period from November 2012 to December 2014 (i.e. after the introduction of enhanced SSD).⁷ In the third quarter of 2016, short-term resale accounted for 0.3% of total residential property transactions, well below the monthly average of 20.0% in January to November 2010.

Purchases by non-local buyers

6. BSD aims to accord priority to the housing needs of HKPR in the midst of the tight housing supply. According to the Administration, the measure has the effect of curbing external demands. Between the introduction of BSD on 27 October 2012 and end December 2014, there were a total of 6 077 residential property transactions subject to BSD. Purchases by non-local individuals and non-local companies have shrunk to 115 cases per month (or 2.1% of the total transactions) during the period from November 2012 to December 2014, which were lower than the monthly average of 365 cases (or 4.5% of the total transactions) in January to October 2012, immediately before the introduction of BSD. In the third quarter of 2016, non-local individual and non-local company buyers accounted for 1.5% of total residential property transactions.

Property transactions and prices related to DSD

7. DSD raises the transaction costs for buyers who have already acquired one or more residential properties and for all buyers of non-residential properties. Compared with the period from January 2009 to February 2013 (i.e. before the introduction of DSD), the monthly average of sale and purchase agreements for residential properties received by the Land Registry decreased by 44% from 8 568 to 4 822 cases during March 2013 to June 2015. This was below the long-term monthly average of 7 740 cases during the period from 1995 to 2014. The monthly average rate of increase for overall flat prices decreased from 1.7% during the period from January 2009 to February 2013 to 0.8% during the period from March 2013 to June 2015. As regards the non-residential property market, there were around 650 transactions per month of office space, retail shop and flatted factory space combined during the first half of 2015, as compared with the monthly average of 620 transactions throughout 2014.

⁷ With the enhancement of the SSD measure on 27 October 2012, holding period within which residential property transactions are subject to SSD was extended from 24 months to 36 months. As at end December 2014, there were five SSD cases that involved resale within 24 to 36 months.

Hong Kong Monetary Authority's seventh round of macro-prudential measures

8. According to the Administration⁸, having cooled off in 2013 and early 2014 after the introduction of SSD, BSD and DSD, the residential property market revived in April 2014. Overall flat prices in June 2015 have risen by 8% over December 2014. During January to July 2015, the monthly average of sale and purchase agreements for residential properties received by the Land Registry was around 5 380, representing a rise of 9% over a year earlier. To strengthen banks' risk management and resilience, the Hong Kong Monetary Authority ("HKMA") announced the seventh round of macro-prudential measures on property mortgage in late February 2015. This included, among others, lowering the maximum loan-to-value ("LTV") ratio for self-use residential properties with value below HK\$7 million by a maximum of 10 percentage points.⁹

Members' views and concerns

9. The Panel on Housing ("the Panel") and the Panel on Financial Affairs were briefed on the proposals pertaining to the Stamp Duty (Amendment) Bill 2012 (i.e. SSD and BSD in October 2012) and the Stamp Duty (Amendment) Bill 2013 (i.e. DSD in February 2013) at the respective joint meetings held on 2 November 2012 and 26 March 2013. Bills Committees have been formed in January and April 2013 to study the two Bills respectively. After the enactment of the relevant Amendment Ordinances, the Administration have conducted a review of SSD, BSD and DSD, and reported the review outcomes to the relevant Panels.¹⁰ At various Council meetings, Members have raised questions on the demand management measures and related issues (hyperlinked in the

⁸ [LC Paper No. CB\(1\)1183/14-15\(01\)](#)

⁹ For example, the maximum LTV ratio applicable to properties with value at HK\$6 million or below and subject to the LTV cap of 70% will be lowered to 60%.

¹⁰ The Administration briefed the Panel on the outcome of the review of SSD and BSD at the meeting on 2 March 2015, and reported the outcome of the review of DSD through an information paper submitted to the Panel on Financial Affairs ([LC Paper No. CB\(1\)1183/14-15\(01\)](#)).

Appendix).¹¹ The major views and concerns expressed by Members on the measures are summarized in the ensuing paragraphs.

Effectiveness of stamp duty measures

10. When receiving the Administration's briefing on the outcomes of the review of SSD and BSD at the Panel meeting on 2 March 2015, members in general shared the concern that while transaction volume and speculation had reduced following implementation of SSD and BSD, property prices continued to soar. In particular, there were renewed signs of exuberance in the residential property market since April 2014. Some members urged the Administration to introduce additional measures to bring the property price to a level that was affordable to the general public. There were also suggestions that the Administration should grant rent subsidy to needy private housing tenants from its stamp duty revenue.

11. The Administration advised that empirical data showed that SSD and BSD had helped stabilize the residential property market by combating speculative activities and curbing external demands respectively. The recent pick-up in the property market suggested that the risks of a housing market bubble were still prominent. In view of the potential risks of global financial volatilities coupled with the tight demand-supply balance, it was necessary to keep SSD and BSD in place for the time being. The Administration would consider adjusting existing measures or introducing new ones as and when circumstances warranted. As regards the suggestion of using public revenue to provide rent subsidy, as indicated in the Long Term Housing Strategy Report on Public Consultation, any rent assistance introduced in a tight supply market would be counter-productive, as the subsidy would most likely lead to upward pressure on rental levels, thereby partially or even wholly offsetting the benefits to the tenants by passing the windfall to the landlords.

¹¹ Issues covered in the questions included revenues from SSD, BSD and DSD, whether the Administration had reviewed if the demand-side management measures had weakened Hong Kong's competitiveness, whether the Administration had formulated any plans to withdraw or relax part of these measures, and whether measures would be introduced to further restrict non-local residents in purchasing residential properties in Hong Kong, etc.

Impact of Buyers' Stamp Duty on genuine home buyers/sellers and business environment

12. Given that BSD would apply to residential properties acquired by companies (irrespective of whether these companies were held by HKPR or otherwise), there were concerns that the proposed measures might indiscriminately affect genuine home buyers, such as HKPR home-buyers acquiring residential properties in the name of companies, and overseas companies purchasing residential properties in Hong Kong for use as staff quarters. Some members were worried that the measures 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, which might adversely affect investment by overseas companies in Hong Kong. There were also suggestions that the Administration should grant exemptions from BSD for company buyers whose directors were solely HKPRs, and for genuine home-buyers who sold their properties to meet their emergency needs.

13. According to the Administration, exempting local companies from BSD might lead to tax evasion as property transfer to non-HKPRs could be effected through a transfer of company shares which was not BSD-chargeable. Also, exemptions based on personal circumstances would deviate fundamentally from the operation of the present taxation system and render the BSD regime too complicated to operate effectively to achieve the desired results. The Administration pointed out that whilst it was understandable that the BSD might bring about inconvenience to foreign companies and increase their investment cost, the measure was warranted at the current unusual time to stabilize the property market.

14. Panel members had raised concern that a Hong Kong company owned by another company incorporated overseas (such as a British Virgin Islands company) might circumvent stamp duty and profit tax by effecting property transaction through the transfer of shares of the overseas company. According to the Administration¹², effecting property transfers through transfers of shares of overseas companies involved risks such as uncertainties with respect to other assets and liabilities of the relevant overseas companies as well as the Hong Kong companies which hold the properties. It was believed that the general public would not disregard such possible hidden risks and acquire properties through such means.

¹² [LC Paper No. CB\(1\)827/14-15\(02\)](#)

Ad valorem stamp duty refund mechanism for owners having acquired a new residential property before disposing of the original property

15. In order to cater for the situation where HKPRs might own more than one residential property during the transitional period in the process of acquiring a new property for replacement of the original one, there was a mechanism for HKPRs to file DSD refund applications to IRD. Under the mechanism, a six-month timeframe was set for HKPR purchasers/transferees having acquired a new residential property to dispose of their original property. In response to a question raised at a Council meeting in May 2016 on whether the timeframe would be relaxed to 12 months, the Administration advised that it had no intention to relax the six-month timeframe under the DSD regime.

Impact of the Hong Kong Monetary Authority's macro-prudential measures

16. Concerns had been raised about the seventh round of macro-prudential measures implemented by HKMA in late February 2015. Some Members considered that lowering the maximum LTV by 10% would disrupt the home acquisition plans of some genuine home buyers due to the raised down payment, as well as create further hurdles to young adults and younger families on acquiring their own homes. Taking in view that the sandwich class people, who were ineligible for public rental housing and not able to afford accommodation in the private market, were most affected by the measure to lower the maximum LTV ratio, some Members suggested that the Administration should increase the production of subsidized sale flats.

17. The Administration explained that while the HKMA's new measures would inevitably affect some of the first-time home buyers, such measures were necessary to safeguard the stability of the banking and financial systems. As the fundamental issue of the housing problem lay with land supply, the Administration would tackle the problem at source by securing an adequate supply of land for housing development in the long run.

18. In response to an oral question at the Council meeting of 25 May 2016 on whether the Administration would restore the maximum LTV ratio offered by banks to 70%, the Administration advised that HKMA had no intention to adjust the LTV ratio for banks at the moment.

Latest development

19. According to the Administration¹³, after a brief period of cooling down in late 2015 and early 2016, the residential property market staged a sharp rebound since April 2016. The reacceleration of investment demand for residential properties aggravated the already tight demand-supply imbalance, and the risk of a bubble in the market would continue to rise. On 4 November 2016, the Administration announced its proposal to introduce a new flat rate of 15% for the ad valorem stamp duty chargeable on residential property transactions with effect from 5 November 2016, in lieu of the existing DSD rates.

20. The Administration will brief members on this latest round of stamp duty measures at the Panel meeting on 5 December 2016.

Relevant papers

21. A list of relevant papers is set out in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
1 December 2016

¹³ [Legislative Council Brief](#) on "Further Measure to Address the Overheated Residential Property Market"

Special Stamp Duty and Buyer's Stamp Duty

List of relevant papers

Council/ Committee	Date of meeting	Papers
Panel on Financial Affairs and Panel on Housing	2 November 2012	Legislative Council Brief on " Further measures to Address the Overheated Property Market " issued by the Transport and Housing Bureau (with no file reference) Minutes of meeting (LC Paper No. CB(1)485/12-13)
Panel on Financial Affairs and Panel on Housing	26 March 2013	Legislative Council Brief on " New measures to Address the Overheated Property Market " issued by the Financial Services and the Treasury Bureau (with no file reference) Minutes of meeting (LC Paper No. CB(1)1615/12-13)
--	--	Legislative Council Brief on " Stamp Duty (Amendment) Bill 2012 " issued by the Transport and Housing Bureau (with no file reference)
--	--	Legislative Council Brief on " Stamp Duty (Amendment) Bill 2013 " issued by the Financial Services and the Treasury Bureau (with no file reference)
Legislative Council	19 February 2014	Report of the Bills Committee on Stamp Duty (Amendment) Bill 2012 (LC Paper No. CB(1)904/13-14)
Legislative Council	19 March 2014	Addendum to the Report of the Bills Committee on Stamp Duty (Amendment) Bill 2012 (LC Paper No. CB(1)1082/13-14)
Legislative Council	9 July 2014	Report of the Bills Committee on Stamp Duty (Amendment) Bill 2013 (LC Paper No. CB(1)1703/13-14)

Council/ Committee	Date of meeting	Papers
Panel on Housing	2 March 2015	<p>Administration's paper on "Review of Special Stamp Duty and Buyer's Stamp Duty" (LC Paper No. CB(1)575/14-15(03))</p> <p>Background brief (LC Paper No. CB(1)575/14-15(04))</p> <p>Minutes of meeting (LC Paper No. CB(1)786/14-15)</p> <p>Administration's follow-up paper (LC Paper No. CB(1)827/14-15(02))</p>
Panel on Financial Affairs	--	<p>Administration's paper on "Review of Doubled Ad Valorem Stamp Duty" (LC Paper No. CB(1)1183/14-15(01))</p>
--	--	<p>Legislative Council Brief on "Further measures to Address the Overheated Property Market" issued by the Transport and Housing Bureau (with no file reference)</p>

Hyperlinks to relevant Council Questions:

Date	Council Questions
14 November 2012	Council question raised by Dr Hon LAM Tai-fai
14 November 2012	Council question raised by Hon Kenneth LEUNG
28 November 2012	Council question raised by Dr Hon LAM Tai-fai
3 July 2013	Council question raised by Dr Hon LAM Tai-fai

Date	Council Questions
16 April 2014	<u>Council question raised by Hon James TO</u>
30 April 2014	<u>Council question raised by Hon Cyd HO</u>
17 December 2014	<u>Council question raised by Dr Hon LAM Tai-fai</u>
18 March 2015	<u>Council question raised by Hon Abraham SHEK</u>
3 June 2015	<u>Council question raised by Hon LEUNG Kwok-hung</u>
16 March 2016	<u>Council question raised by Hon Abraham SHEK</u>
25 May 2016	<u>Council question raised by Hon James TIEN</u>