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Paper for the House Committee meeting on 21 May 2021

**Report of the Bills Committee on
Revenue (Stamp Duty) Bill 2021**

Purpose

This paper reports on the deliberations of the Bills Committee on Revenue (Stamp Duty) Bill 2021 ("the Bills Committee").

Background

2. The rate of stamp duty on stock transfers is prescribed under Head 2(1)(A) of the First Schedule to the Stamp Duty Ordinance (Cap. 117) ("SDO"). Currently, both the buyers and sellers are required to pay stamp duty at 0.1% (each side) of the amount of consideration or its value. According to the Administration, stamp duty on stock transfers has been an important source of government revenue over the past decade, contributing \$20 billion to \$37 billion each year.

3. As explained by the Administration, the combined results of the COVID-19 pandemic and economic downturn, coupled with the launch of counter-cyclical measures to support the public and businesses, have led to fiscal deficit in the Government in the financial years of 2019-2020 and 2020-2021. The latest Medium Range Forecast also projects a deficit for five consecutive years from 2021-2022 in the Operating Account. The mounting pressure on public finance necessitates measures to contain government expenditure and increase government revenue.

4. The 2020-2021 Budget highlighted the need to consider revising tax rates and seeking new revenue sources to address the fiscal needs in the short to medium term. In the 2021-2022 Budget, the Financial Secretary announced the proposal of raising the rate of stamp duty on stock transfers

from the current 0.1% to 0.13% of the consideration or value of each transaction payable by buyers and sellers respectively.

The Revenue (Stamp Duty) Bill 2021

5. The Revenue (Stamp Duty) Bill 2021, which was gazetted on 5 March 2021 and received its First Reading at the Legislative Council ("LegCo") meeting of 17 March 2021, seeks to amend SDO to give effect to the proposal in the 2021-2022 Budget to increase the rate of stamp duty on certain instruments in respect of Hong Kong stock.

Provisions of the Bill

6. The main provisions of the Bill are as follows:
- (a) clause 1 sets out the short title and provides that the Bill, if passed, will come into operation on 1 August 2021; and
 - (b) clause 2 and clause 3 amend head 2(1)(A) and (3)(A) in the First Schedule to SDO to increase the rate of stamp duty –
 - (i) chargeable on a contract note for the sale or purchase of any Hong Kong stock (not being jobbing business¹) – from 0.1% to 0.13%; and
 - (ii) chargeable on a transfer operating as a voluntary disposition inter vivos or made for the purpose of effectuating a transaction whereby the beneficial interest in Hong Kong stock passes otherwise than on sale and purchase – from 0.2% to 0.26%.

The Bills Committee

7. At the House Committee meeting on 19 March 2021, Members agreed to form a Bills Committee to scrutinize the Bill. Hon CHUNG Kwok-pan was elected as Chairman of the Bills Committee. The membership list of the

¹ Under section 2(1) of Cap. 117, "jobbing business" means any business carried on by an exchange participant which is specified as jobbing business by the Stamp Duty (Jobbing Business) (Options Market Makers) Regulation (Cap. 117A).

Bills Committee is in **Appendix I**. The Bills Committee has held two meetings with the Administration.

8. The Bills Committee has invited written views from the public on the Bill and received six written submissions. A list of the organizations/individuals which/who have given written views to the Bills Committee is in **Appendix II**. At the request of the Bills Committee, the Administration has provided a consolidated written response [LC Paper No. CB(1)788/20-21(07)] to the written submissions.

Deliberations of the Bills Committee

9. Some members of the Bills Committee support the proposal to raise the rate of stamp duty on stock transfers under the Bill while some members have opposing views against it. Mr Christopher CHEUNG has expressed strong opposition to the proposal and requested the Administration to withdraw the Bill. During the course of scrutiny, the Bills Committee has examined the policy objective of the Bill, the impact of the Bill on Hong Kong's competitiveness as an international financial centre, the stock market and business of the small and medium-sized securities brokers. Members' suggestions of imposing the proposed new rate of stamp duty on only one side of transactions and introducing a "sunset clause" in the Bill have also been discussed. The major deliberations of the Bills Committee are set out in the ensuing paragraphs.

Policy objective

10. The Administration has advised that in the past year, government expenditure had grown substantially to combat the epidemic and roll out relief measures, which resulted in the fiscal reserves dropping sharply in two years from the equivalent of 23 months of government expenditure to 13 months. The policy objective of the Bill is to increase government revenue to address the fiscal needs of the Government in the short to medium term. Having struck a balance between increasing government revenue and sustaining financial market development, as well as the need to maintain Hong Kong as an international financial centre, the Administration has decided to raise the rate of stamp duty on stock transfers from 0.1% to 0.13% of the consideration or value of each transaction payable by buyers and sellers respectively.

11. Members note that the proposed increase in the rate of stamp duty on stock transfers effective from 1 August 2021 under the Bill will bring about an

additional \$8 billion revenue in the eight months in the financial year of 2021-2022 and a full-year financial implications of \$12 billion.

12. In view of the pressure on public finance, most members of the Bills Committee have expressed understanding of the rationale behind the proposal for increasing the rate of stamp duty. However, some members have expressed the views that the existing fiscal reserves of \$800 billion do not warrant an adjustment to the rate of stamp duty to increase government revenue, and that the Administration should strive to reduce government expenditure under the current fiscal condition.

Impact of the Bill

Stock market of Hong Kong

13. Some members are concerned about the effect the proposed increase in stamp duty on stock transfers will have on the stock market of Hong Kong and its status as an international financial centre. They have pointed out that the proposed increase in the rate of stamp duty will increase the transaction costs of stock trading, which will affect not only securities brokers but also millions of stock investors in Hong Kong. There is a suggestion that the Administration should instead consider introducing new taxes which will have less impact on people's livelihood, such as dividend tax, capital gains tax or estate tax.

14. The Administration has advised that stock trading activities are driven by a combination of factors, such as market conditions. Transaction costs of stock trading, comprising stamp duty and other types of levy, is only one of them. The Administration takes the view that the competitiveness of Hong Kong's securities market is premised on many unique institutional strengths including free flow of capital, internationally-aligned regulatory framework, established financial infrastructure, quality of the assets being traded as well as its connectivity with, and the enormous opportunities presented by the expanding Mainland economy. The Administration has in recent years introduced policies and measures to expand the breadth and depth of the Hong Kong stock market, including enhancing the Stock Connect schemes, allowing pre-revenue biotech and new economy companies with weighted voting rights structures to list in Hong Kong, and facilitating Greater China companies to seek secondary listing in Hong Kong. It will continue to spare no efforts in facilitating the development of the securities market in Hong Kong so as to take the financial services sector to the next level.

15. Some members have enquired about the transaction costs of stock trading in other major financial markets. The Administration has advised that in the United Kingdom, a stamp duty at 0.5% of the value of transaction is charged on the buy-side. In the United States, no stamp duty on stock transfers is levied but investors are charged a 30% dividend tax. In the Mainland, a stamp duty at 0.1% of the value of transaction is levied on the sell-side and investors are charged a 10% dividend tax. The Administration has indicated that the transaction costs structure of stock markets around the world varies. Unlike some markets which charge dividend tax and capital gains tax, Hong Kong does not charge such taxes.

Concerns on shift of stock investors' interest to other financial products/markets

16. On a member's concern that the proposed increase in stamp duty on stock transfers may cause retail investors to turn to the derivatives market, the Administration has explained that at present, the trading of derivatives under the Hong Kong Exchanges and Clearing Limited ("HKEX") is cash-settled and therefore is not subject to stamp duty. However, the nature of the products is different. For example, unlike stock investors, derivative products investors do not have rights such as dividend payment and voting rights. The secondary market price of derivatives is also affected by other factors such as the time value of the derivative products and the volatility of the underlying stocks. It is therefore not appropriate to compare the trading activities of stocks with those of derivative products.

17. A member has enquired whether investors will turn to invest in depositary receipts of Hong Kong listed companies in the stock market in the United States after the implementation of the proposed increase in the rate of stamp duty on stock transfers in Hong Kong. The Administration has responded that the trading hours of overseas stock market is one factor which investors may take into consideration when deciding which market to invest. The numerous homecoming listings of China Concept Stocks on HKEX shows that Hong Kong's stock market enjoys clear advantages over those in other jurisdictions.

Small and medium-sized securities brokers

18. Some members are concerned that the Bill will impair the business of small and medium-sized securities brokers which rely on commission as their main source of income. These securities brokers also face a difficult operating environment in competition with large securities brokers and banks. Given the contributions of the small and medium-sized securities brokers to

the development of Hong Kong's financial services sector over the years, members have enquired how the Administration would help them tide over their difficulties.

19. The Administration has advised that a Subsidy Scheme for the Securities Industry under the Anti-epidemic Fund ("AEF") was launched during May to September 2020 to provide cash subsidies to support small and medium-sized intermediaries and brokers. The Securities and Futures Commission ("SFC") has waived the annual licensing fees payable by all licensed corporations, registered institutions, responsible officers and representatives for the financial years of 2020-2021 and 2021-2022 to relieve the cost burden on the securities and futures industry. HKEX also offered \$10,000 invoice credits to each eligible exchange participant in August 2020 to provide relief to the securities industry amidst the economic downturn and global financial turmoil. Moreover, the Financial Services and the Treasury Bureau, the Hong Kong Productivity Council and the Cyberport co-organized an SME ReachOut-Fintech Development Roundtable Meeting for Securities Industry in October 2020 to facilitate the adoption of Fintech by the securities sector for upgrading and transforming their services as appropriate. The Administration undertakes to continue to work with the trade to create an operating environment conducive to the sustainable development of the industry.

20. Mr Christopher CHEUNG has argued that the measures provided by the Administration under AEF, and by SFC and HKEX are one-off and short-term. The proposed increase in the rate of stamp duty on stock transfers will however increase the transaction costs continuously and reduce the volume of stock trading, which will affect the business of securities brokers in the long run.

21. The Administration has reiterated that continued efforts will be made to consolidate Hong Kong's fundamental strengths, enhance market quality, expand mutual market access and update the listing mechanism, so that Hong Kong can serve as a robust platform for connecting the Mainland and international markets. The Hong Kong stock market is expected to remain vibrant, providing ample business opportunities to the financial services sector, including the small and medium-sized securities brokers.

Levying the new rate of stamp duty on one side of transactions

22. Some members have asked the Administration to consider levying the proposed new rate of stamp duty on only one side of transactions (i.e. either buyers or sellers) or lowering the proposed increase in the rate of stamp duty.

23. The Administration has advised that the policy objective of the Bill is to increase government revenue. Levying the new rate of stamp duty on stock transfers on one side of transactions or lowering the increase in the rate will significantly undermine the objective of the Bill to increase government revenue. Besides, imposing different rates of stamp duty on stock transfers on buyers and sellers will entail a fundamental and structural change to the stamp duty regime, thereby affecting the current ecology of the stock market in Hong Kong.

Suggestion of adding a "sunset clause" to the Bill

24. Mr Christopher CHEUNG has asked the Administration to consider adding a "sunset clause" to the Bill so that the stamp duty on stock transfers will be reverted to the current rate (i.e. 0.1%) when the economy recovers. While expressing concern that the Administration may further increase the rate of stamp duty on stock transfers in the near future, some other members have opined that given the uncertain economic situation, it would not be desirable to limit the duration of the proposed increase in the rate of stamp duty on stock transfers in the legislation resulting in the lack of flexibility.

25. The Administration has responded that it does not agree to adding a "sunset clause" to the Bill. A wide range of factors, including economic, fiscal and the market situation, will have to be taken into account in determining whether any changes will need to be made to the rate of stamp duty on stock transfers in future. It will continue to strike a balance between increasing government revenue and sustaining the development of the financial market in Hong Kong.

Commencement date of the Bill

26. On the reason for setting the commencement date of the Bill on 1 August 2021, which is a public holiday, the Administration has advised that any stamp duty increase can only be implemented on a prospective basis, and the proposed commencement date on 1 August 2021 has taken into account the time required for the legislative process and the need for HKEX and the industry to make necessary adjustments to their operation systems.

27. In response to Mr Christopher CHEUNG's request for postponing the commencement date of the Bill to end of 2021 to provide more time for the industry to make adjustments to their operation systems, the Administration has affirmed its assessment that there will already be sufficient time for the

industry to make system adjustments for the new rate of stamp duty on stock transfers to take effect on 1 August 2021.

Proposed amendments to the Bill

28. The Administration will not propose any amendment to the Bill.

Amendments proposed by individual member

29. Mr Christopher CHEUNG has submitted to the Bills Committee for consideration draft amendments to the Bill (**Appendix III**) which seek to add a "sunset clause" to limit the duration of the proposed increase in the rate of stamp duty on stock transfers to one year (i.e. from 1 August 2021 to 31 July 2022) or until such time to be determined by LegCo through a resolution. The Administration's written response to the proposed amendments is set out in its paper [LC Paper No. CB(1)787/20-21(02)]. At the meeting on 23 April 2021, the Bills Committee decided not to take over and move the amendments proposed by Mr CHEUNG.

30. The Bills Committee has also noted that Mr Christopher CHEUNG intends to move other amendments to the Bill which seek to levy the new rate of stamp duty on the sell-side only and defer the commencement date of the Bill to 1 January 2022.

Resumption of the Second Reading debate

31. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill. The Administration has indicated its intention to resume the Second Reading debate on the Bill at the Council meeting of 2 June 2021.

Advice sought

32. Members are invited to note the deliberations of the Bills Committee.

Bills Committee on Revenue (Stamp Duty) Bill 2021

Membership List

Chairman Hon CHUNG Kwok-pan

Members Hon Abraham SHEK Lai-him, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon YIU Si-wing, BBS
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon CHIANG Lai-wan, SBS, JP
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai, JP
Hon LUK Chung-hung, JP
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS, JP

(Total : 12 members)

Clerk Mr Boris LAM

Legal Adviser Miss Rachel DAI

Bills Committee on Revenue (Stamp Duty) Bill 2021

Organizations/Individuals which/who have provided written views
to the Bills Committee

1. A member of the public
2. Hong Kong Securities & Futures Employees Union
3. New People's Party
4. The Taxation Institute of Hong Kong
5. Hong Kong Professionals and Senior Executives Association
6. Capital Markets Tax Committee of Asia

**Draft amendments submitted by Mr Christopher CHEUNG
to the Bills Committee on Revenue (Stamp Duty) Bill 2021**

<u>Clause</u>	<u>Amendment Proposed</u>
4(1)	the Amendment Ordinance shall expire at midnight on 31 July 2022 and the pre-amended Ordinance shall be reinstated at midnight on the same date.
4(2)	The Legislative Council may by resolution amend subsection (1) by substituting for the date specified in that subsection such date as may be specified in the resolution.