CB(1)1318/98-99(04)

Bills Committee on
Revenue Bill 1999

Administration's Response to Concerns
raised by Members at the meeting on 4 May 1999

Annex A

(a) The prosecution figures for parking and moving offences broken down by region/district since 1994 are at Annex A. We have the following observations on these figures -

(i) The reduction in the total number of fixed penalty prosecutions has been due to the drastic decrease in the prosecution of parking contraventions. From 1994 to 1998, there has been a 41.9% reduction in the number of tickets issued in respect of parking offences, whereas the corresponding decrease for moving offences is only 9.5%. As explained at previous meetings, the decreased number of prosecutions has been partly due to the flexible prosecution policy of the Police, particularly in respect of illegal parking where obstruction to the traffic flow is not caused. An analysis of the prosecution figures on parking offences by hour in January to May 1997 (Annex AA) shows that the Selective Traffic Enforcement Policy of the Police affects the number of tickets issued during different times of the day. In Annex B, we have identified the top ten black spots of illegal parking where traffic congestion is serious throughout most part of the day. We consider that the current fixed penalty levels are not sufficient to have deterrent effect on these and other problematic areas.

Annex AA

Annex B

(ii) Despite the flexible prosecution policy of the Police, there are some districts where the number of fixed penalty tickets issued for moving offences has been steadily rising, in particular the Central, Western and Sham Shui Po. Furthermore, the number of tickets issued by the Traffic Unit of the respective Regions have not been significantly reduced, but in some cases have even increased drastically, e.g. Kowloon West. More importantly, however, the number of verbal warnings issued by the Police has been steadily increasing as shown in Annex BB. Under normal circumstances, these offences should have otherwise been prosecuted. Therefore, there is strong indication that the total number of offences committed has been rising and the number of traffic offences detected in certain areas have actually worsed over the years.

Annex BB

(b) Adjusting the levels of fixed penalties for traffic offences in line with inflation aims at maintaining the general deterrent effect of the penalties. Whether the deterrent effect for a particular offence should be further increased to achieve a specific policy objective by raising the level of its fixed penalty should be pursued separately by the relevant policy bureaux. They should be considered outside the context of the Revenue Bill 1999.

(c)& (d) As explained by the Financial Secretary in his 1999-2000 Budget, we need to introduce some revenue-raising measures to enable the Government to restore its finances to a healthier state in the medium term and to afford the relief measures we have proposed to help Hong Kong on its road to economic recovery. All the revenue-raising measures proposed in the Budget are made on a highly selective basis to minimise the impact on the community as the other option of raising revenue by widening the tax base would affect more people more seriously.

As far as the proposed increases in on-street parking meter charges and the tunnel tolls for Cross-Harbour Tunnel and Lion Rock Tunnel are concerned, they are measures which aim at raising additional revenue. We estimate that the increase in on-street parking meter charges would bring in additional revenue of $190 million in 1999-2000 and those for Cross-Harbour Tunnel and Lion Rock Tunnel tolls would bring in additional revenue of $180 million in 1999-2000. When considering the magnitude of such increases, we took into account our aim of raising additional revenue and the affordability of those who would be affected.

The increase in on-street parking meter charges could also help achieve the objective of maintaining a 15% availability of parking spaces. The improved on-street parking situation will reduce the need for vehicles to wait or circulate around for spaces, thus minimising unnecessary traffic movement or congestion in the areas. It is also to be noted that the proposed increase from $2 to $4 per 15 minutes is for the maximum charge only. In practice, Transport Department will continue to adjust the charges in response to demand and it may not charge the maximum rate at all metered spaces at the same time.

As regards Members’ concern about the knock-on effect of the increase on carpark charges, it is to be noted that even with the increase, the charges for using on-street parking spaces are still competitive with the charges of most off-street car parks. The parking

Annex C charges of Government multi-storey car parks in the past years are set out in Annex C. In monetary terms, the maximum charge of $16 per hour for on-street parking is still below those currently imposed by off-street car parks in busy areas. Furthermore, the on-street metered spaces are particularly attractive and convenient for short-term parking and cater for those drivers who wish to avoid the access inconvenience in the use of multi-storey carparks. Since the increase of parking meter charges, Transport Department has conducted a survey on the parking fees of about 520 carparks run by 15 major carpark operators in Hong Kong. Only one of these 520 carparks has increased its charges since that date. Lastly, the Administration has not conducted any research on overseas experience in respect of parking. In 1995, Transport Department conducted a Parking Demand Study aimed at estimating the future parking demand on a territory basis. However, the study has not made any comparison between the charges of off-street parking and those of on-street parking.

Apart from raising additional revenue, the increases in the Cross-Harbour Tunnel tolls and the Lion Rock Tunnel toll also have a traffic management effect. Despite the availability of other tunnels, the utilisation of both Cross-Harbour Tunnel and Lion Rock Tunnel far exceeds their design daily capacity and this over-utilisation has caused traffic congestion in the vicinity of the Tunnels. The last toll increase of the Cross-Harbour Tunnel was in 1984 and that of the Lion Rock Tunnel was in 1990. The proposed toll increases would encourage drivers to switch to use other tunnels, thus improving traffic conditions and reducing congestion around the tunnel areas.

(e) The statistics on residential property transactions which would have been affected by the adjustment of stamp duty rates are set out in Annex D. **Annex D**

An information paper providing an analysis of the proposed arrangements in respect of the deferral of stamp duty payment for the agreement for sale of residential property until the assignment of the property concerned is at Annex E. **Annex E**

(f) An information paper setting out the background for providing the concessions in respect of stock borrowing and lending activities with an analysis of the proposed arrangements is at Annex F. **Annex F**

Annex G In addition, a summary table setting out the analysis of the proposed arrangements in respect of deemed execution of contract notes are at Annex G.

Finance Bureau
FIN CR 7/2201/98
May 1999

Annex A

Prosecution Figures of Fixed Penalty Moving Offences for the year 1994-1998

Region	District	No. of Tickets Issued				
		1994	1995	1996	1997	1998
HKI	T HKI	65,092	72,705	73,778	70,368	61,007
	EU HKI	3,345	2,447	1,373	678	469
	C	21,211	21,295	19,972	25,919	22,002
	WCH	9,603	11,251	11,720	9,857	7,574
	W	8,906	9,900	10,847	10,802	9,280
	E	11,707	10,551	10,679	9,784	6,273
	T HQ I	1,623	520	500	419	262
	Total :	121,487	128,669	128,869	127,827	106,867
KE	T KE	70,960	74,202	100,080	88,221	57,297
	EU KE	894	968	544	356	327
	AP	2,645	2,317	3,525	3,686	1,489
	WTS	13,852	13,439	12,487	11,909	9,193
	KT	10,889	8,195	7,049	6,687	5,070
	SMP	5,572	5,276	4,849	4,773	3,922
	T HQ E	703	368	330	316	139
	Total:	105,515	104,583	128,864	115,948	77,437
KW	T KW	48,554	54,129	56,499	50,950	62,740
	EU KW	642	453	385	551	1,405
	YT	16,120	15,874	16,317	14,152	12,504
	MK	7,898	6,290	7,069	11,892	7,676
	SSPO	11,296	13,466	13,776	12,363	11,486
	KC	20,269	18,969	19,691	18,203	15,748
	T HQ W	3,130	541	514	347	234
	Total:	107,909	109,722	114,251	108,458	111,793
NTN	T NTN	89,507	88,656	90,344	92,632	86,878
	EU NTN			589	343	112
	TP	7,840	6,576	5,181	5,432	5,211
	BOR	7,946	8,208	6,835	5,708	3,901
	YL	7,856	7,170	7,590	7,896	5,623
	TM	9,350	9,451	9,740	10,651	8,248
	T HQ N	1,735	590	692	735	255
	Total:	124,234	120,651	120,971	123,397	110,228
NTS	T NTS	100,173	83,754	84,674	96,136	109,889
	EU NTS	3,898	2,452	952	1,528	1,583
	ST	11,092	8,126	8,486	6,858	6,456
	TW	11,298	10,840	8,660	566	5,658
	KWC	12,225	11,658	11,829	10,368	9,812
	LT			709	1,884	3,008
	CLK					142
	T HQ S	1,307	411	365	316	272
	Total:	139,993	117,241	115,675	122,756	136,820
MARINE	M	1,274	2,132			
	Grand Total :	600,412	582,998	608,630	598,386	543,145

Annex A

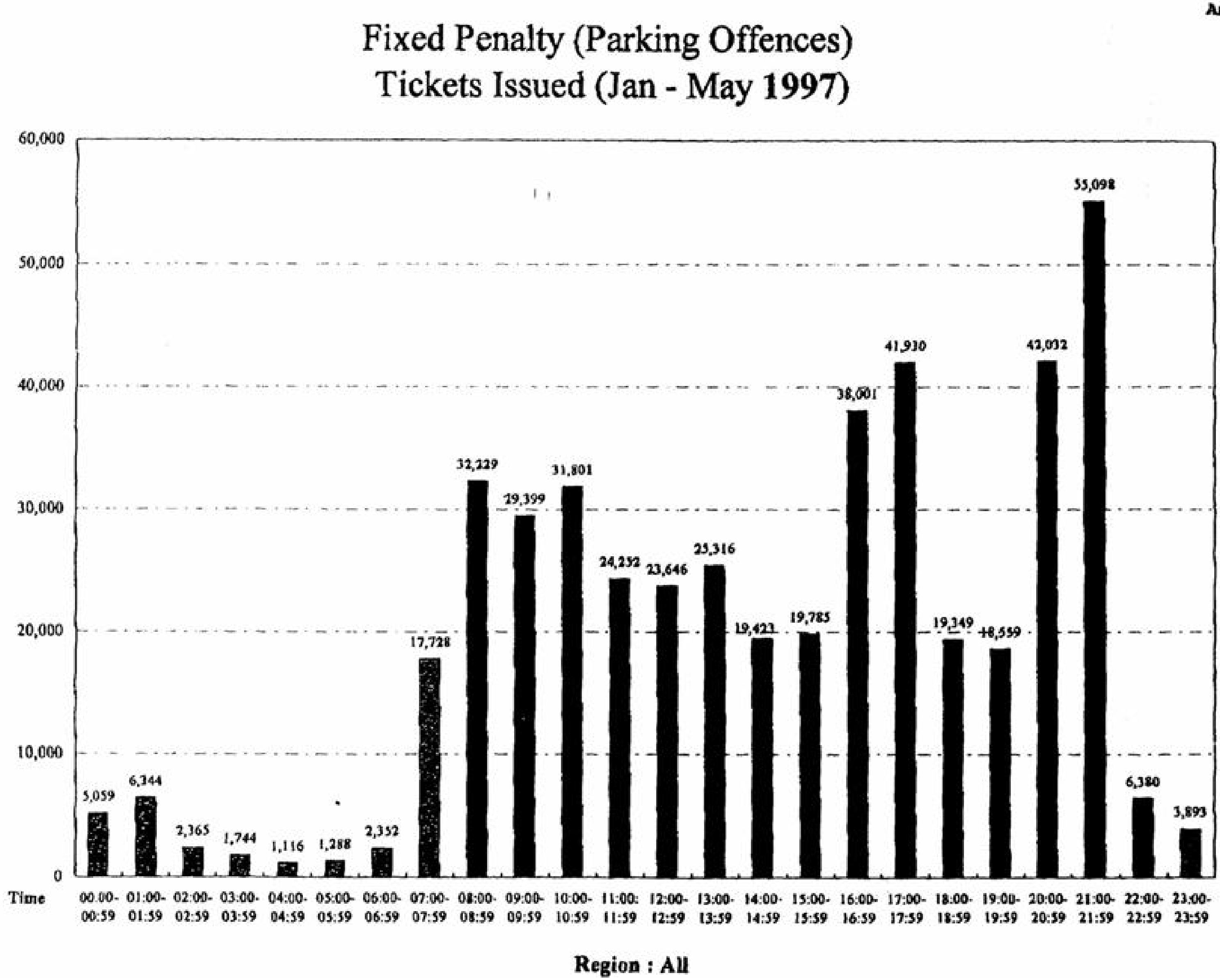
Prosecution Figures of Fixed Penalty Parking Contraventions for the year 1994 - 1998

Region	District	No. of Tickets Issued				
		1994	1995	1996	1997	1998
HKI	T HKI	12,123	16,401	8,627	6,984	3,924
	EU HKI	1,679	905	488	160	104
	C	99,373	85,348	68,230	72,268	55,753
	W	103,756	87,493	73,422	73,386	54,972
	WCH	146,874	151,524	129,986	112,797	84,867
	E	128,337	118,726	104,178	91,930	65,424
	Total	**492,142**	**460,397**	**384,931**	**357,525**	**265,044**
KE	TK E	4,173	4,026	2,186	2,434	1,905
	EU KE	62	39	53	30	14
	AP	1,146	1,448	1,722	2,111	664
	WTS	112,843	92,874	82,131	68,706	53,601
	KT	85,038	67,687	72,240	78,149	78,185
	SMP	106,611	83,862	52,574	48,631	39,577
	Total	**309,873**	**249,936**	**210,906**	**200,061**	**173,946**
KW	T KW	7,955	6,574	5,272	2,851	1,264
	EU KW	233	114	87	99	65
	YT	186,608	179,215	172,008	150,511	105,989
	MK	135,847	129,246	139,413	145,026	109,196
	SSPO	126,140	141,684	137,410	117,138	96,073
	KC	160,656	172,968	155,886	130,972	87,459
	Total	**617,439**	**629,801**	**610,076**	**546,597**	**400,046**
NTN	T NTN	1,241	1,466	820	1,350	1,244
	EU NTN	-	-	17	38	15
	TP	103,795	90,932	77,641	93,575	80,744
	BOR	1,818	1,256	1,231	894	909
	YL	81,280	75,264	71,577	67,614	57,941
	TM	77,556	86,261	78,945	71,584	45,784
	Total	**265,690**	**255,179**	**230,231**	**235,055**	**186,637**
NTS	T NTS	3,056	2,541	2,180	1,556	935
	EU NTS	58	31	4	8	1
	ST	141,791	124,699	99,474	79,188	60,724
	TW	152,344	115,371	78,973	73,004	64,407
	KWC	94,375	83,983	84,867	66,361	52,760
	LT	-	-	102	2,461	1,657
	CLK	-	-	-	-	153
	Total	**391,624**	**362,625**	**265,600**	**222,578**	**180,637**
MARINE	M	338	445	-	-	-
	Grand Total	2,077,106	1,922,383	1,701,744	1,561,816	1,206,310

Index for abbreviation

AP	Kai Tak Airport	啓德機場
BOR	Border	邊界
C	Central	中環
CLK	Chek Lap Kok	赤鱲角
EU	Emergency Unit	緊急組
E	Eastern	東區
HKI	Hong Kong Island	港島
KC	Kowloon City	九龍城
KE	Kowloon East	九龍東
KT	Kwun Tong	官塘
KW	Kowloon West	九龍西
KWC	Kwai Chung	葵涌
LT	Lantau	大嶼山
MK	Mongkok	旺角
NTS	New Territories South	新界南
NTN	New Territories North	新界北
SMP	Sau Mau Ping	秀茂坪
SSPO	Shamshuipo	深水埗
ST	Sha Tin	沙田
T	Traffic Unit	交通部
TP	Tai Po	大埔
TM	Tuen Mun	屯門
TW	Tsuen Wan	荃灣
W	Western	西區
WCH	Wanchai	灣仔
WTS	Wong Tai Sin	黃大仙
YL	Yuen Long	元朗
YT	Yau Tsim	油尖

Annex AA


Fixed Penalty (Parking Offences)
Tickets Issued (Jan - May 1997)
60,000
50,000
40,000
30,000
20,000
10,000
0
Time
5,059
6,344
2,365
1,744
1,116
1,288
2,352
17,728
32,229
29,399
31,801
24,252
23,646
25,316
19,423
19,785
38,001
41,930
19,349
18,559
42,032
55,098
6,380
3,893
00:00-00:59
01:00-01:59
02:00-02:59
03:00-03:59
04:00-04:59
05:00-05:59
06:00-06:59
07:00-07:59
08:00-08:59
09:00-09:59
10:00-10:59
11:00-11:59
12:00-12:59
13:00-13:59
14:00-14:59
15:00-15:59
16:00-16:59
17:00-17:59
18:00-18:59
19:00-19:59
20:00-20:59
21:00-21:59
22:00-22:59
23:00-23:59
Region : All

Annex B

Top-ten Black Spots of Illegal Parking & Traffic Congestion

Kowloon Region

Canton Road near Peking Road, Salisbury Road (YT)	1300 hr - 1900 hr
Carnarvon Road j/o Kimberley Road (YT)	1300 hr - 1900 hr
Portland Street (between Bute St and Dundas St) (MK)	1300 hr - 2400 hr
Fa Yuen Street (between Mong Kok Rd and Nelson St) (MK)	1300 hr - 2400 hr

NT Region

Tsuen Wan Market Street (TW)	0900 hr - 2400 hr
Tai Pa Street (TW)	1900 hr - 2200 hr
Hop Choi Street (YL)	0900 hr - 1900 hr

HK Island Region

Wyndham Street (C)	0900 hr - 1700 hr
Lockhart Road (WCH)	0900 hr - 1700 hr
Thomson Road (WCH)	0900 hr - 1700 hr

Annex E

Bills Committee on Revenue Bill 1999

Deferral of Stamp Duty Payment for the Agreement for Sale of Residential Property

Information Paper

PURPOSE

This paper explains the proposal announced in the 1999-2000 Budget to defer the stamp duty payment for the agreement for sale of residential property until the assignment of the property concerned.

BACKGROUND AND ARGUMENTS

2. Before 30 January 1992, stamp duty on all immovable properties was payable on the assignment of properties. The measure to charge stamp duty on agreements for sale of residential property was introduced in 1992 as one of a series of measures to curb speculation on residential property. Under the arrangement, where two or more agreements are concluded in respect of the same property prior to assignment, each agreement is chargeable to stamp duty. A nominal stamp duty in the amount of $100 is then charged on the assignment ultimately executed in completion of the sale, as the full *ad valorem* stamp duty has been paid on the agreement for sale. These provisions are set out in Part IIIA of the Stamp Duty Ordinance (the Ordinance).

3. Under the original terms of the measure, the provisions would expire by midnight of 31 December 1993 unless they were extended by a resolution of the Legislative Council. By resolutions made in November 1993, December 1995 and November 1997 by the legislature, the provisions were extended by two years consecutively on each occasion. The last resolution extended the provisions until 31 December 1999.

4. The provisions on the one hand increase the cost to the property speculators in the case of intermediate resales, while on the other hand they ought to have no significant adverse effect on the genuine home-buyers, except insofar as they have to pay stamp duty somewhat earlier. Although we cannot gauge precisely the effectiveness of the stamp duty provisions towards the dampening of property speculation in the past years as there have been other factors and measures at play in parallel, we are convinced that the provisions constitute an essential element in helping to moderate speculative activities in the residential property market. The provisions also allow the Inland Revenue Department (IRD) to gather information which facilitates the early and efficient detection of cases of property speculation and to make assessments of profits tax accordingly.

Modified Scheme

5. With seven years of experience of operating the provisions, we consider that such provisions could be improved in order to enable genuine home buyers not to have to pay stamp duty until the assignment of property, while maintaining their anti-speculation and information-collection functions. We propose to modify the scheme as follows -

(a) Subject to paragraphs (b) and (c) below, the stamp duty payable on an agreement for sale will be deferred until the happening of the following events (whichever is the earlier) -

  (i) an assignment of the property in question is made in pursuance of the agreement entered into; or

  (ii) the property is resold or otherwise disposed of by the purchaser, whether by means of a sub-sale or a nomination, or through an arrangement such that the agreement is cancelled, annulled, rescinded or not performed and replaced by a new agreement made between the vendor and a sub-purchaser introduced by the purchaser or made under the direction of or upon the request of the purchaser.

(b) The modified scheme will be restricted to agreements which, if implemented, would be implemented by an assignment of the property in question.

(c) Deferral of stamp duty payment will only be allowed where -

  (i) the vendor in the agreement is the registered owner of the immovable property (hence no question of any intermediate sale); or

  (ii) the instrument(s) through which the vendor has acquired the right or interest in the immovable property are duly stamped with the applicable stamp duty. Otherwise, deferral of stamp duty for the current agreement will not be allowed.

(d) Upon the occurrence of the events mentioned in paragraph (a), the deferred stamp duty will have to be paid within -

  (i) 30 days after the event referred to in paragraph (a)(i); or

  (ii) 7 days after the event referred to in paragraph (a)(ii). This shorter timing is to facilitate the stamping of the second agreement.

In all circumstances, the deferred period is limited to 3 years after the relevant date of the agreement, i.e. the date when the agreement for sale and purchase is first reached between the parties. This is to avoid the possible abuse of the deferral scheme by an agreement which is left uncompleted for a prolonged period of time.

(e) In recognition of the possible abuse of the deferral scheme by the property speculators who may make use of shelf companies as a tool to evade the payment of stamp duty chargeable on the confirmor agreement (the company may quickly distribute all the available cash and assets soon after the sub-sale of the property to avoid the action to be taken by IRD to recover the stamp duty on the confirmor agreement which is previously deferred), an agreement with a corporate purchaser will only be allowed to defer payment of stamp duty upon the provision of a banker's undertaking to secure the duty involved.

(f) To facilitate the registration of an agreement for sale for which the stamp duty payment has been deferred, IRD will denote a "stamp duty deferred" stamp on such agreement (which has still to be submitted to IRD within 30 days after execution as required at present). The agreement may then be presented to the Land Registry for registration.

(g) Where an agreement for sale is subsequently cancelled, annulled, or rescinded or is for any reason not performed *except* in the circumstances mentioned in paragraph (a)(ii) above, such an agreement will be exempt from stamp duty. This new provision will relieve say a purchaser who fails to obtain a bank mortgage or who fails to complete the transaction due to unexpected financial difficulties.

(h) The modified scheme will be a permanent feature in the Ordinance.

Merits of the Modified Scheme

6. The modified scheme would allow full stamp duty payable on the purchase of residential property to be deferred until the assignment of the property is executed. Thus, it would be easier for a genuine home purchaser to cope with the initial outlay when buying a property. However, full stamp duty will continue to be payable on an agreement for sale under the modified scheme when the purchaser in the agreement sub-sells the property. Thus, the proposed measure will maintain the charge of stamp duty on the speculative sub-sale of property by a confirmor. The effect of levying duty on the speculators and to increase their cost in property speculation is retained.

7. Following the Asian financial turmoil and the economic downturn in Hong Kong, we note that speculative activities in the property market have largely subsided in the past 18 months as the incentive for speculation at times of falling property prices is low. Nevertheless, we believe that there is a need to maintain a measure which will have the effect of adding the cost to the speculators should speculative activities revive. At the same time we are mindful that the measure should not affect or cause great inconvenience to the genuine buyers. The modified scheme achieves this dual purpose.

8. In addition, the modified scheme is able to remedy the deficiency of the existing provisions which impose the stamp duty charge on all agreements, whether or not they are subsequently cancelled or rescinded. Hence, it can relieve the hardship to an unfortunate property buyer who fails to complete the purchase owing to reasons beyond his control, or the risk and uncertainty to the intended property developer in the course of a re-development project (due to the failure to obtain approval for a change in user of land or to reach agreement with the Government on the amount of land premiums payable within a certain period of time).

9. A summary table setting out the existing provisions in the Ordinance and the

Appendix effect of the proposed amendments to it is at the Appendix.

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FIN CR 7/2201/98
May 1999

Appendix

Proposed Amendments to the Stamp Duty Ordinance
Deferred Payment of Stamp Duty on Chargeable Agreements
[Clauses 15, 18 - 20, 21(b)(ii) - (iv)]

Clause in the Bill	Provisions in the Stamp Duty Ordinance Amended	Provisions Before Amendment	Effect of the Amendments
Clause 15	Section 15(3)(a)	This section provides for the circumstances under which an instrument under the Land Registration Ordinance (Cap. 128) can be registered by the Land Registry notwithstanding that the instrument is not duly stamped.	The amendment is to make a chargeable agreement which is approved for deferring payment of stamp duty and is endorsed by IRD to such effect to be acceptable by the Land Registry of registration though it is not yet duly stamped.
Clause 18(a)	Section 29C(1)	Section 29C(1) provides that an agreement for sale of residential property is chargeable to stamp duty even if the agreement is cancelled, annulled, or rescinded or is for any other reason not performed.	In order to relieve the uncompleted agreements from stamp duty, this section is proposed to be deleted. A more specific mechanism of dealing with the uncompleted agreements is provided for under the proposed new sections 29C(5A) and (5B).
Clause 18(b)	Addition of new sections 29C(5A) and (5B)	New provisions.	The new subsection (5A) is proposed to be added to provide exemption to the agreements which are cancelled or not completed, e.g. a purchaser who fails to secure a bank mortgage or who fails to complete the transaction due to unexpected financial difficulties. The exemption however does not cover the agreement which is not completed by reason of an arrangement for sub-sale or disposal of the property by the purchaser of the subject agreement

Clause in the Bill	Provisions in the Stamp Duty Ordinance Amended	Provisions Before Amendment	Effect of the Amendments
			[subsection (5A)(b)]. The proposed subsection (5B) is to make provision for the refund of stamp duty previously paid on the chargeable agreement which can be exempted under subsection (5A). The refund will be effected upon application made within 2 years from the cancellation of the agreement (or 2 years from the agreed completion date of the agreement if the agreement has otherwise not been performed), and upon the submission of sufficient evidence in support of the application.
Clause 18(c)	Section 29C(6) to be repealed	This section makes allowance for the stamp duty paid on the agreement which is rescinded by the purchaser on the ground that the vendor is unable to prove his title in accordance with the agreement.	As an exemption is now proposed to be given to all uncompleted agreements other than those involved in sub-sale or disposal of property by the purchaser, the existing section is no more required and hence proposed to be repealed.
Clause 18(d)	New sections added - Section 29C(11)-(15)	Under the existing provisions, the time for stamping a chargeable agreement is governed by item B of head 1(1A) in the First Schedule - which is, in general but subject to Note 2 of the subhead, 30 days after the relevant date of the agreement (which means the date of execution of the agreement, or if the agreement is preceded by agreements made by the same parties	The new provisions under subsection (11) - (15) introduce a scheme of deferring payment of stamp duty on the chargeable agreements. Subsection (11) – Paragraph (a) of this subsection provides for the time for stamping the agreement which has been approved for deferring payment of stamp duty. Paragraph (b) specifies the

Clause in the Bill	Provisions in the Stamp Duty Ordinance Amended	Provisions Before Amendment	Effect of the Amendments
		and on the same terms, the date of the earliest of such agreements).	“specified events” [which are mainly scenarios or arrangement of sub-sale or disposal of property] which will trigger the earlier due date for stamping the chargeable agreement. Subsection (12) - This subsection specifies the application procedures and the conditions for granting the deferred payment. Subsection (13) - This subsection provides for the response of IRD upon receipt of an application for deferring payment of stamp duty. He may either endorse the agreement signifying his approval of the deferment or reject the application. Subsection (14) - The subsection specifies the requirements of a banker’s undertaking which is required under subsection (12)(c) in support of an application for deferring payment of stamp duty on an agreement with a corporate purchaser. Subsection (15) - This subsection provides authority for IRD to demand payment of stamp duty on an agreement with a corporate purchaser which

Clause in the Bill	Provisions in the Stamp Duty Ordinance Amended	Provisions Before Amendment	Effect of the Amendments
			is secured by a banker's undertaking which will expire before the normal time for stamping such agreement under subsection (11)(a) becomes due.
Clause 19(a)	Sections 29D(2)(b)(ii)	The existing section provides that in the case where a conveyance on sale of residential property is executed in conformity with a chargeable agreement and the agreement is not stamped, the conveyance on sale is chargeable to *ad valorem* stamp duty under head 1(1) in the First Schedule. For the purposes of calculating the time for stamping, the conveyance on sale is deemed to have been executed on the relevant date of the chargeable agreement.	The existing provision is unclear as to whether or not in determining the stamp duty rate applicable for stamping the conveyance, the duty rate prevailing on the "relevant date" of the chargeable agreement should be adopted. The amendment to this subsection is to remove this uncertainty (i.e. the relevant date shall be used in determining the stamp duty rate to be applied).
Clause 19(b)	Section 29D(4)(b) and (5)(b)	There are presently minor drafting defects in sections 29D(4)(b) and 29D(5)(b) such that less than the proper amount of stamp duty would be charged under certain special circumstances.	The proposed amendment is to remove the defects by repealing subsections 29D(4)(b)(ii) and (iii) and (5)(b)(ii) and (iii).
Clause 20	Section 29I	Section 29I provides that the law relating to the stamping of chargeable agreements will expire at midnight of 31 December 1999 unless extended by the LegCo by resolution.	It is proposed to repeal this section to make the scheme of stamping agreement for sale of residential property a continuing feature in the Ordinance.

Clause in the Bill	Provisions in the Stamp Duty Ordinance Amended	Provisions Before Amendment	Effect of the Amendments
Clause 21(b)(ii)	Item (B) in head 1(1A) in the First Schedule	This item provides for the time for stamping a chargeable agreement.	Consequential amendment to implement the deferred payment scheme.
Clause 21(b)(iii)	Note 2 to head 1(1A) in the First Schedule	This note provides for the stamping treatment in the cases where within the first 14 days of stamping, an agreement for sale is superseded by another agreement made between the same parties and on the same terms. In such case, the first agreement is discharged from stamp duty liability and the second agreement has to be stamped within 30 days after *its* execution.	The proposed amendment to the note is a consequential amendment for the deferred payment scheme. It also proposes to add a provision to specify that the second agreement should be stamped according to the stamp duty rates prevailing on the "relevant date", i.e. the date of the first agreement.
Clause 21(b)(iv)	Note 3 to head 1(1A) in the First Schedule	This note provides for the stamping of agreements made by the same parties and on the same terms but their dates of execution are more than 14 days apart.	The amendment is consequential to the deferred payment scheme. The amended note also set the time for stamping the agreement which is subject to a fixed duty of $100 to be 30 days after its execution [instead of 30 days after the "relevant date", i.e. the date of the earliest agreement] so as to avoid the imposition of penalty for late stamping on the formal agreement which is executed 30 days after the preceding agreement which has been stamped *ad valorem* in time.

Annex F

Bills Committee on Revenue Bill 1999

Stamp Duty
Stock Borrowing and Lending Relief

Information Paper

PURPOSE

This paper explains the proposals announced in the 1999-2000 Budget to relax the requirement for the stamp duty relief scheme for stock borrowing and lending (SBL) activities.

BACKGROUND AND ARGUMENTS

2. The stamp duty relief scheme for SBL activities was introduced in 1991 to promote a stock borrowing and lending market in Hong Kong. Under the scheme, any person who participates in the stock borrowing business can apply for the relief and the stocks borrowed could be used for a range of specified purposes, including covering short-sales of the relevant stocks in the stock market, on-lending etc. To qualify for the relief, the transaction concerned has to satisfy the following criteria-

- the stock borrowed has to be returned within 12 months from the date of borrowing;

- the borrower has to execute a SBL agreement with the lender in advance of the stock borrowing transaction and to file a copy of the agreement with the Inland Revenue Department (IRD);

- the borrower has to maintain a ledger containing details of each borrowing transaction and stock return; and

- the borrower has to submit to IRD at the end of each half year a return of the stock borrowing and stock return transactions.

3. Specific profits tax treatment is also provided under the Inland Revenue Ordinance to deal with the SBL transactions so as to disregard the profit or loss from price variances which may arise from the stock borrowing and the stock return transactions. This profits tax treatment covers transactions involving “specified securities”, i.e. securities specified by the Commissioner of Inland Revenue, which may cover all Hong Kong stocks (listed or not listed) and non-Hong Kong ones.

PROPOSALS

4. As part of a global survey initiated by the International Organisation of Securities Commissions, the Securities and Futures Commission conducted a sample survey on securities borrowing and lending in Hong Kong in May 1998. Respondents to the survey generally felt that the rules relating to the stamp duty relief constituted an administrative burden for the borrowers, especially for the offshore borrowers who did not have a local presence. The respondents also claimed that the requirement for signing a specific agreement in the context of Hong Kong stocks in advance of the transaction occurring was burdensome and a hindrance to business. They also considered the one-year restriction on borrowing period too restrictive.

5. In the preparation for the 1999-2000 Budget, we also received views that we should simplify the various requirements associated with the stamp duty relief for SBL activities. In particular, it was claimed that the one-year rule required substantial resources in its compliance and was not in line with the practice in other major markets such as the United States and the United Kingdom. It was proposed that the following features should replace the one-year rule -

(a) the agreement provided for the return to the transferor of identical securities;

(b) the agreement required that payments be made to the transferor in amounts equivalent to all distributions that the owner of the securities would be entitled to receive during the period that the loan is outstanding; and

(c) the agreement did not reduce the lender's risk of loss or opportunity for gain from the transferred securities.

6. The amendment is consistent with the Government's policy to facilitate the development of a local stock lending and borrowing market. This also responds to complaints in the market that there is not a level playing field due to an under-developed domestic stock lending and borrowing market and the lack of access of some local market participants to overseas lenders. As also pointed out in the Report on Financial Market Review published by the Financial Services Bureau in April 1998, the Hong Kong Securities Clearing Company ("HKSCC") will also introduce its central stock lending and borrowing scheme later this year. The Scheme will go in a considerable way to address the problem of lack of access to the stock lending and borrowing market perceived by local brokers and investors. The removal of the 12-month rule is pre-requisite to the HKSCC scheme, which adopts a novation model and delinks borrowers and lenders in a stock lending and borrowing transaction.

7. We are aware of concerns that the relaxation of the stamp duty relief may encourage short-selling and thereby contribute to excessive market volalities. In our view, short-selling activities are regular and common market activities and therefore should continue to be allowed. However, the Government also recognises

that the regulation and enforcement of short selling activities have room for improvement and in fact proposed a series of measures under the 30-point programme on the securities and futures markets announced in September 1998. These measures include the reintroduction of the "tick rule" by the Stock Exchange of Hong Kong ("SEHK") in September 1998, more critical periodic review by the SEHK on shares permitted for short sales, increases in the maximum penalty for illegal short-selling from $10,000 and imprisonment of 6 months to $100,000 and imprisonment of 2 years as well as criminalisation of unreported short selling activities. Separately, stricter enforcement of the "T+2" settlement rule under the HKSCC will also reduce the scope of abuse by "naked" short selling activities. We believe a more developed local stock lending and borrowing market and better regulated short selling activities are both supportive to the objective of a vibrant, efficient and fair market place for securities trading.

8. In addition, it was pointed out that the existing legislation was unclear as to whether a simple inadvertent failure to register the stock lending agreement would result in a monetary fine only or would also affect the entitlement to the stamp duty exemption.

9. The existing framework on allowing relief and reporting requirements has worked well in providing control over possible abuses. The one-year rule is intended for anti-avoidance purposes, i.e. to prevent true sales of Hong Kong stock to be disguised as stock borrowing transactions. However, after four years of observation and monitoring, the IRD is satisfied that such avoidance has not been apparent and for those cases where the one-year rule was found breached, they were inadvertent cases. There is hence the scope to relax the one-year rule to facilitate the market.

10. We consider that it should be sufficient that a transaction which satisfies the requirements set out in paragraph 5(a) to (c) above could qualify for the stamp duty relief. Those requirements would be much simpler and less costly for all parties to administer, including the Government and the market participants. Taxation jurisdictions internationally have also found such conditions acceptable for the purpose of tax exemption for stock borrowing transactions.

11. As regards the concern that the failure, inadvertent or otherwise, to register stock lending agreements would affect the entitlement to stamp duty exemption, we have proposed to recast the relevant provisions in the Stamp Duty Ordinance to reflect that the borrower is free to register the agreement at any time he pleases but the exemption would only be effective from the date which is 30 days before the date of lodging the application for registration with the Inland Revenue Department (IRD). The retrospective period of 30 days is a concession to cater for the market practice under which the parties often start to lend/borrow stocks immediately or shortly after the agreement is executed.

Appendix 12. A summary table setting out the existing provisions in the Stamp Duty Ordinance and the effect of the proposed amendments to the Ordinance is at the Appendix.

Finance Bureau
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Appendix

Proposed Amendments to the Stamp Duty Ordinance
Stock Borrowing and Lending Relief
[Clauses 16(b) to 17]

Clause in the Bill	Provisions in the Stamp Duty Ordinance Amended	Provisions Before Amendment	Effect of the Amendments
Clauses 16(b) - (c)	Section 19(12) and adding new subsection (12AA)	This subsection provides for the uplifting of the stamp duty relief in respect of a stock borrowing transaction under the following circumstances – (a) where no stock return is made in respect of the borrowed stock; (b) where the borrowed stock or part thereof is used for a purpose other than the specified purposes defined under the Ordinance; or (c) where the borrower fails to comply with any demand made by the lender for the returning of the stock borrowed.	1. Consequent to the removal of the 12-month borrowing time limit, condition (a) is amended such that the relief will be denied where the borrower ceases to be required to make a stock return in accordance with the stock borrowing and lending agreement as a result of say a mutual agreement between the parties. 2. To provide for the treatment of the borrowed stock in the case of the occurrence of a “relevant event” which would have changed the nature of the borrowed stock. Under such circumstances, the borrowed stock will be substituted by its “reasonable equivalent” as defined. 3. To recast the existing subsection and sub-divide it into new subsections (12) and (12AA) for clarity purposes.

Clause in the Bill	Provisions in the Stamp Duty Ordinance Amended	Provisions Before Amendment	Effect of the Amendments
Clause 16(e)(i)	Section 19(16), definition of "specified day"	This definition specifies, where the stock borrowing is deemed to be a sale and purchase under section 19(12), the date on which the deemed sale and purchase is taken as being effected.	The amendment is consequential to the amendments made to section 19(12).
Clause 16(e)(ii)	Section 19(16), definition of "stock borrowing"	The existing provision provides that stock borrowing means, among others, the obtaining of stock for one or more than one specified purposes.	The condition of obtaining stock for specified purposes is removed from the definition. This is because the new section 19(12)(b) has already provided that where the borrowed stock under a stock borrowing is used for a purpose other than the specified purposes, the relief granted to the stock borrowing will be uplifted.
Clause 16(e)(iii)	Section 19(16), definition of "stock borrowing and lending agreement"	Under the existing provisions, a stock borrowing and lending agreement means an agreement which contains provisions providing for the obtaining and returning of stocks.	In removing the 12-month borrowing time limit, the following requirements are added to the content of a stock borrowing and lending agreement to prevent possible abuse - (i) that payments be made by the borrower to the lender in amounts equivalent to all distributions that the owner of the securities would be entitled to receive during the period that the loan is outstanding; and (ii) the agreement does not reduce the lender's risk of loss or opportunity for gain from the transferred securities.

Clause in the Bill	Provisions in the Stamp Duty Ordinance Amended	Provisions Before Amendment	Effect of the Amendments
Clause 16(e)(iv)	Section 19(16), definition of “stock return”	Under the existing provision, a return of the stock borrowed will only satisfy the definition of a “stock return” if the return is made within the 12-month time limit or the expiry of such longer period as may be allowed by IRD.	The amendment is to remove the 12-month time limit for the return of the borrowed stocks.
Clause 16(e)(v)	Section 19(16), adding new definitions of “reasonable equivalent”, “relevant event” and “specified payment”	No corresponding provisions.	The new definitions of “reasonable equivalent” and “relevant event” are added to make provisions for dealing with the borrowed stocks in the happening of the events which make the returning of the borrowed stock impracticable or inappropriate. “Specified payment” is defined to mean the payment of an amount equivalent to the distribution which the owner of the borrowed stock would be entitled to receive, e.g. dividends declared.
Clause 17	Section 21	Section 21 prohibits the passing on of dividends or interest in Hong Kong stock to a person who is not the registered owner of the stock.	Since it is now made a condition that the stock borrower has to make a “specified payment” to the lender, the amendment is made to avoid any inconsistency between this new requirement and section 21.