

LEGISLATIVE COUNCIL BRIEF

Further Measures to Address the Overheated Property Market

INTRODUCTION

At the meeting of the Executive Council on 26 October 2012, the Council ADVISED and the Chief Executive ORDERED that the Stamp Duty Ordinance (Cap.117) be amended to implement the following proposals –

- (a) to adjust the duty rates and to extend the holding period in respect of the Special Stamp Duty (“SSD”), as follows -
 - (i) 20% if the property has been held for six months or less;
 - (ii) 15% if the property has been held for more than six months but for 12 months or less;
 - (iii) 10% if the property has been held for more than 12 months but for 24 months or less; and
 - (iv) 10% if the property has been held for more than 24 months but for 36 months or less;
- (b) to introduce a Buyer’s Stamp Duty (“BSD”) on residential properties acquired by any person except a Hong Kong Permanent Resident (“HKPR”). BSD is to be charged at a flat rate of 15% on all residential properties, on top of the existing stamp duty and SSD, if applicable; and
- (c) to introduce a mechanism whereby SSD and BSD rates can be revised by means of subsidiary legislation.

JUSTIFICATIONS

The Exuberant Property Market

2. The Government has been monitoring the development of the private residential property market closely and remains vigilant on the

risk of a property bubble. Since 2010, the Government has been responding to the situation through the introduction of long, medium and short-term measures in four areas, namely, increasing land supply; combating speculative activities; enhancing the transparency of property transactions; and preventing excessive expansion in mortgage lending, with a view to ensuring the healthy and stable development of the property market. Specifically, these measures include setting the annual average target for the supply capacity of land for provision of about 20 000 private residential flats, the introduction of SSD, the enactment of the Residential Properties (First-hand Sale) Ordinance, and issuing guidelines to banks to strengthen risk management in respect of their property mortgage lending business. The Government has undertaken to introduce further measures as and when necessary.

3. As a result of the various measures introduced, market transparency in property transactions has improved; the number of additional housing unit will increase over the next few years compared with the recent past; the several rounds of macro-prudential measures by the Hong Kong Monetary Authority have helped strengthen the resilience of the banking sector against potential volatility in the property market. Another clear impact of the measures introduced so far is that short-term speculative activities have dramatically reduced. Figures from the Inland Revenue Department (“IRD”) suggest that, following the introduction of SSD in November 2010 (as subsequently implemented after the enactment of the enabling legislation for SSD in June 2011), there was a significant reduction in the number of confirmor and short term resale cases¹ of 42.5% in 2011 as compared with 2010, and the reduction has continued into 2012. In the first nine months of 2012, confirmor and short-term resale cases within 24 months accounted for only 9.6% of the total number of sale and purchase agreements, much less than the corresponding 18.6% for 2011 and the long-term (1998 - 2010) average at 15.4%.

4. While speculation has declined significantly, the current property boom is clearly fuelled by the abundant liquidity and low interest rates. Overall flat prices have risen by 20% during the first nine months of 2012, culminating so far at a hefty increase of 107% over the 2008 trough. By September 2012, overall flat prices have surpassed the 1997 peak by 26%. The exuberant state of the property market was evident in all segments of the market, but particularly at the mass market end. Prices of mass market flats (i.e. flats smaller than 70 square metres

¹ Some of the short-term resale transactions are not subject to SSD, as the property concerned was acquired before 20 November 2010.

in saleable area) have increased by a cumulative 34% since November 2010 when SSD was introduced, far higher than the 18% increase for large flats over the same period. When compared with the trough in 2008, prices of large flats were 79% higher. Prices of mass market flats have surged even more, by 111%.

5. With flat prices rising markedly beyond income growth, the affordability ratio² deteriorated from 31.7% in the fourth quarter of 2008 to around 50% in the third quarter of 2012, close to its long term average of 50.4%. If interest rates were to rise by even three percentage points, the affordability ratio would soar to around 65%, way exceeding the long-term average. The latest trends of selected indicators regarding the residential property market are shown at **Annex A**.

6. The continued surge in property prices despite the current global and local economic slowdown is a cause for concern. With the latest round of quantitative easing in the major advanced economies, the exceptionally low interest environment will be extended for an even longer period. There are already signs of renewed funds inflow into Hong Kong lately. Coupled with market expectation that flat supply cannot be increased by any significant extent in the near term, flat prices are likely to continue to rise out of line with income, thereby precipitating a further build up of exuberance in the housing market. If left undeterred, property prices would deviate even farther away from economic fundamentals, and the ensuing adjustments could be very painful.

7. With property price apparently entering into an upward spiral and given their potential dire consequences for our macro economic and financial sector stability, we consider it necessary to introduce further measures on the demand side to prevent even further exuberance in the housing market which may pose significant risks to our macro economic and financial sector stability, to ensure the healthy and stable development of the property market, which is crucial to the sustainable development of Hong Kong as a whole, and to accord priority to HKPR buyers over non-HKPR buyers under the current property market situation.

² The ratio of mortgage payment for a 45-square metre flat to median income of households (excluding those living in public housing), for a tenure of 20 years at the prevailing mortgage rate.

THE PROPOSALS

Adjustments to the existing SSD

8. SSD applies to residential properties acquired on or after 20 November 2010 and disposed of within 24 months after acquisition. Between the implementation of SSD on 20 November 2010 and end September 2012, there had been a total of 1 140 transactions subject to SSD, involving a total of around \$200 million. SSD has been effective in curbing short-term speculative activities, as evidenced by figures set out in paragraph 3 above. However, there are signs that the effect of SSD diminishes beyond the first year after acquisition. The numbers of SSD cases are shown in the table at **Annex B**.

9. In view of the continued exuberant state of the property market, we have reviewed the SSD³. We consider that there is a need to further enhance the SSD with a view to strengthening its effectiveness to combat speculative activities. In the first nine months of 2012, on average there were a total of 15 cases per month for resale within 12 months (including confirmor transactions) which were subject to SSD. During the same period, the monthly average number of transactions for resale between 12 to 24 months subject to SSD was higher, at 102 cases. Moreover, the number of such cases has been rising in recent months, from 83 in March 2012 to 218 in September 2012 as properties bought in the early months after the introduction of SSD reach the end of the first year of the higher SSD rates. Figures on transactions involving confirmor and short-term resale cases at **Annex C** also suggest that while short-term speculative demand has diminished following the introduction of SSD in November 2010, there is a significantly large number of resale cases taking place between 12 and 24 months. This is due largely to the substantial rise in prices which effectively discount the 5% penalty and, of course, the non-applicability of SSD because the concerned properties were acquired before November 2010. Given the current tight supply, we see a need to provide a stronger disincentive for speculators and short-term investors. Accordingly, we propose to enhance the SSD by increasing the respective rates for the existing holding periods, and lengthening the holding period within which residential property transactions will be subject to SSD. Comparison of the existing and the proposed adjustments to the SSD regime are listed below -

³ The Administration undertook to review SSD once every 24 months after the enactment of the Stamp Duty (Amendment) Ordinance 2011, or as circumstances require.

Holding period	SSD rates for properties acquired between 20 November 2010 and 26 October 2012	Proposed SSD rates for properties acquired on or after 27 October 2012
6 months or less	15%	20%
More than 6 months but for 12 months or less	10%	15%
More than 12 months but for 24 months or less	5%	10%
More than 24 months but for 36 months or less	N/A	10%

Introduction of BSD

10. There are concerns that the share of residential property market transactions taken up by non-local buyers⁴ is on a general uptrend, with estimates suggesting that this has risen

- (a) from 3.1% of all transactions in residential properties in 2008 to 3.9% in 2009, 4.5% in 2010, and 6.5% in 2011 (4.5% in the first nine months of 2012); and
- (b) from 5.7% of transactions in the primary market in 2008 to 7.2% in 2009, 13.7% in 2010, and 19.5% in 2011⁵ (and 13.5% in the first nine months of 2012).

More details are at **Annex D**.

11. In light of the increasing share of residential flat supply taken up by non-local buyers and the fact that the demand-supply balance in the property market will remain tight in the near future, coupled with the ramifications of the persistent low interest rate environment resulting from QE3, we need to consider measures to ensure that the housing demand from local buyers will be accorded priority amidst the tight

⁴ Proxied as non-Hong Kong Identity (HKID) card holders, as we can only distinguish transactions involving buyers who provided information on their ID cards, but do not have information on the Hong Kong permanent residence status of buyers under the present stamp duty collection arrangement.

⁵ The shares will be even higher if purchases by non-permanent residents who hold an HKID card are included.

supply in the residential property market, to prevent further exuberance in the housing market which may pose significant risks to our macro economic and financial sector stability, and to ensure the healthy and stable development of the private residential property market which is crucial to the sustainable development of Hong Kong as a whole.

12. Accordingly, we propose to introduce BSD for residential properties acquired by any person⁶ (including companies), except a HKPR. The definition of HKPR as stipulated under the Immigration Ordinance (Cap. 115) is at **Annex E**. We are not subjecting HKPRs to the BSD because HKPR status is only accorded to individuals who can demonstrate a close connection with Hong Kong – which is an appropriate basis for the Government to accord priority to their housing demand amid the tight supply of residential flats.

13. The proposed BSD would be charged on top of the existing stamp duty⁷ and SSD, if applicable and would be payable by the person who acquires the residential property. We propose pitching the BSD at 15%, based on the stated consideration for the transactions or market value of all residential property transactions, whichever is higher, as we consider that such a level of rate could produce a conspicuous and more lasting impact. The same BSD rate would apply regardless of the value or the holding period of the residential property concerned.

14. Having made reference to the existing SSD regime, our current thinking is to propose to grant exemptions to BSD under the following circumstances -

- (a) acquisition of a residential property by a HKPR jointly with a close relative or close relatives (i.e. spouse, parents, children, brothers and sisters) who is/are not HKPR;

⁶ As defined in the Interpretation and General Clauses Ordinance (Cap.1), a “person” includes any public body and any body of persons, corporate or unincorporated.

⁷ The existing ad valorem stamp duty rates on transactions for both residential and non-residential properties are as follows -

Property consideration	Rate
Up to \$2,000,000	\$100
\$2,000,001 to \$3,000,000	1.50%
\$3,000,001 to \$4,000,000	2.25%
\$4,000,001 to \$6,000,000	3.00%
\$6,000,001 to \$20,000,000	3.75%
\$20,000,001 and above	4.25%

Note: There is marginal relief among different value bands.

- (b) transfer of a residential property to a close relative who is not a HKPR, or to close relatives jointly one or more of whom not being HKPR;
- (c) nomination of a close relative(s) who is/are not HKPR to take up the assignment of a residential property;
- (d) addition /deletion of name(s) of a person(s) who is/are not HKPR to a chargeable agreement for sale or a conveyance on sale in respect of a residential property if the person(s) is/are a close relative(s) of the original purchaser(s);
- (e) acquisition or transfer of a residential property by a court order or pursuant to a court order, which includes a foreclosure order obtained by the mortgagee whether or not it falls under the definition of a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap. 112);
- (f) acquisition or transfer of a mortgaged residential property in various forms by or to a mortgagee which is a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap. 112), or by a receiver appointed by such a mortgagee;
- (g) acquisition or transfer of a residential property in respect of which the chargeable document is made relates solely to the estate of a deceased person;
- (h) acquisition or transfer of a residential property by or to a body corporate from another associated body corporate;
- (i) acquisition of residential properties (including bare sites) for the construction of a prescribed number of residential properties after demolishing the residential properties, if any, acquired and the properties are to be completed and put up for sales within a specified period of time after acquisition of the first residential property concerned (the BSD exempted will be recouped if the conditions were not fulfilled);
- (j) acquisition of residential properties by persons to replace residential properties which are sold pursuant to redevelopment projects pursued by the Urban Renewal Authority or are resumed under the Lands Resumption Ordinance (Cap. 124);

- (k) acquisition or transfer of residential properties by or to the Government ; and
- (l) gift of residential properties to charitable institutions exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112).

Implementation of the proposals

15. We propose that these measures should take effect on the day immediately following the announcement on 26 October 2012, so that all residential properties acquired on or after 27 October 2012 would be subject to the new SSD regime and BSD upon the enactment of the new legislation. As far as SSD is concerned, before the new legislation is enacted, the existing SSD holding periods and rates should continue to apply, and cases chargeable with SSD should pay the existing SSD accordingly. However, IRD will record all the residential property transactions between 27 October 2012 and the date on which the new law comes into effect, and demand notes for the SSD underpaid / BSD will be issued after the new legislation is enacted. We will draw the attention of the public, the Consulates-General, the Chambers of Commerce, the Estate Agents Authority, the Law Society of Hong Kong, the Real Estate Developers Association of Hong Kong, the Long Term Housing Strategy Steering Committee and the major estate agency associations etc to the new arrangements once a public announcement on the proposals is made. We also propose to introduce a mechanism whereby SSD and BSD rates can be revised by means of subsidiary legislation subject to LegCo's negative vetting, so that further changes to these rates in future can be made in a timely manner as and when necessary.

Supply-side Measures

16. Apart from the above proposed measures on demand side management, since the fundamental issue of the housing problem lies with land supply, we will continue with our efforts to increase land and flat supply to tackle the problem at source. Since 2010, the Government has sought through the Steering Committee on Housing Land Supply chaired by the Financial Secretary to coordinate and spearhead efforts in expanding land resources for housing development. These include releasing suitable industrial land, "Government, Institution or Community" ("G/IC") sites, other government sites and green belt areas

for housing development. As a result of these efforts, the supply of residential flats for the next 3-4 years has increased to some 65 000 units.

17. In August / September 2012, the Government also announced a basket of short and medium-term measures to address the fundamental issue of land and flat supply, including switching the rent-to-buy scheme to direct sale for the first batch of flats under My Home Purchase Plan, selling 830 unsold Home Ownership Scheme flats early next year, releasing 36 G/IC and government sites for residential use, exploring measures to facilitate revitalization of industrial buildings for transitional residential use, and introducing the “Hong Kong property for Hong Kong people” policy to be piloted at two sites in Kai Tak Development Area.

18. For the medium to longer term, we have identified more suitable sites for development including housing. These include a number of new development areas (e.g. the North East New Territories, Hung Shui Kiu and Tung Chung New Town Remaining Area), various quarry sites, Kam Tin West Rail Kam Sheung Road Station/Pat Heung Maintenance Depot and adjoining areas, and agricultural land in North District/Yuen Long currently used mainly for industrial purposes or is deserted. In addition, the Government is also exploring options for reclamation outside of Victoria Harbour and using rock caverns for relocating existing public facilities (e.g. sewage treatment works) to release sites for housing development.

LEGISLATIVE TIMETABLE

19. The Administration plans to introduce a Stamp Duty (Amendment) Bill into LegCo in January 2013.

IMPLICATIONS OF THE PROPOSALS

20. The economic, financial, civil service and sustainability implications of the proposal are set out at **Annex F**. The proposed legislative amendments will not affect the current binding effect of the Ordinance. The proposal is in conformity with the Basic Law, including provisions concerning human rights. It has no productivity and environmental implications.

21. As the proposed BSD will affect non-HKPR purchasers of residential property, the Administration is examining in detail its potential implications on Hong Kong's bilateral agreements/arrangements with other jurisdictions and will address any specific issues as necessary.

PUBLIC CONSULTATION

22. Owing to the confidentiality of the measures, no formal consultation has been carried out specifically for the proposed measures at paragraph 1 above. That said, in formulating the proposals, we have taken into account calls from the public for further measures to combat speculative activities and to ensure that the housing demand from HKPR-buyers be accorded priority amidst the tight supply in the residential property market.

PUBLICITY

23. The Financial Secretary has announced the stamp duty measures at a press conference on 26 October 2012. Press release will be issued. A spokesman will be available to answer press inquiries.

ENQUIRIES

24. Enquiries on this brief can be addressed to Mrs Vicki Kwok, Principal Assistant Secretary (Housing) (Private Housing) at 2761 5094.

Transport and Housing Bureau
October 2012

Annex A

Selected indicators of residential property market

Flat prices: year-on-year change in December (%)*				Affordability ratio [#]		Transactions [^]	
Period	Overall	Mass Market (flat size < 70 m ²)	Large flats (flat size > 160 m ²)	Period	Ratio (%)	Period	Monthly average number
2009	28.5	27.8	28.2	2009Q4	38.2	2009	9 591
2010	21.0	22.0	16.2	2010Q4	44.6	2010	11 315
2011	11.1	11.5	8.0	2011Q4	45.8	2011	7 039
Sep 2012 (vs Dec 2011)	20.0	21.1	10.6	2012Q3	50	Jan-Sep 2012	6 922
<i>Flat prices in Sep 2012 compared with:</i>				<i>Affordability ratio and transaction levels in relevant periods:</i>			
1997 Peak	25.7 (Oct-97)	26.1 (May-97)	36.1 (Oct-97)	1997Q2	93.0 (record high)	1997 Apr	22 960 (record high)
2008 Trough	107.4 (Dec-08)	110.6 (Nov-08)	79.0 (Nov-08)	2008Q4	31.7 (lowest since 2005)	2008 Nov	3 264 (record low)
2010 Nov	32.8	34.4	17.5	2010Q4	44.6	2010 Nov	13 189

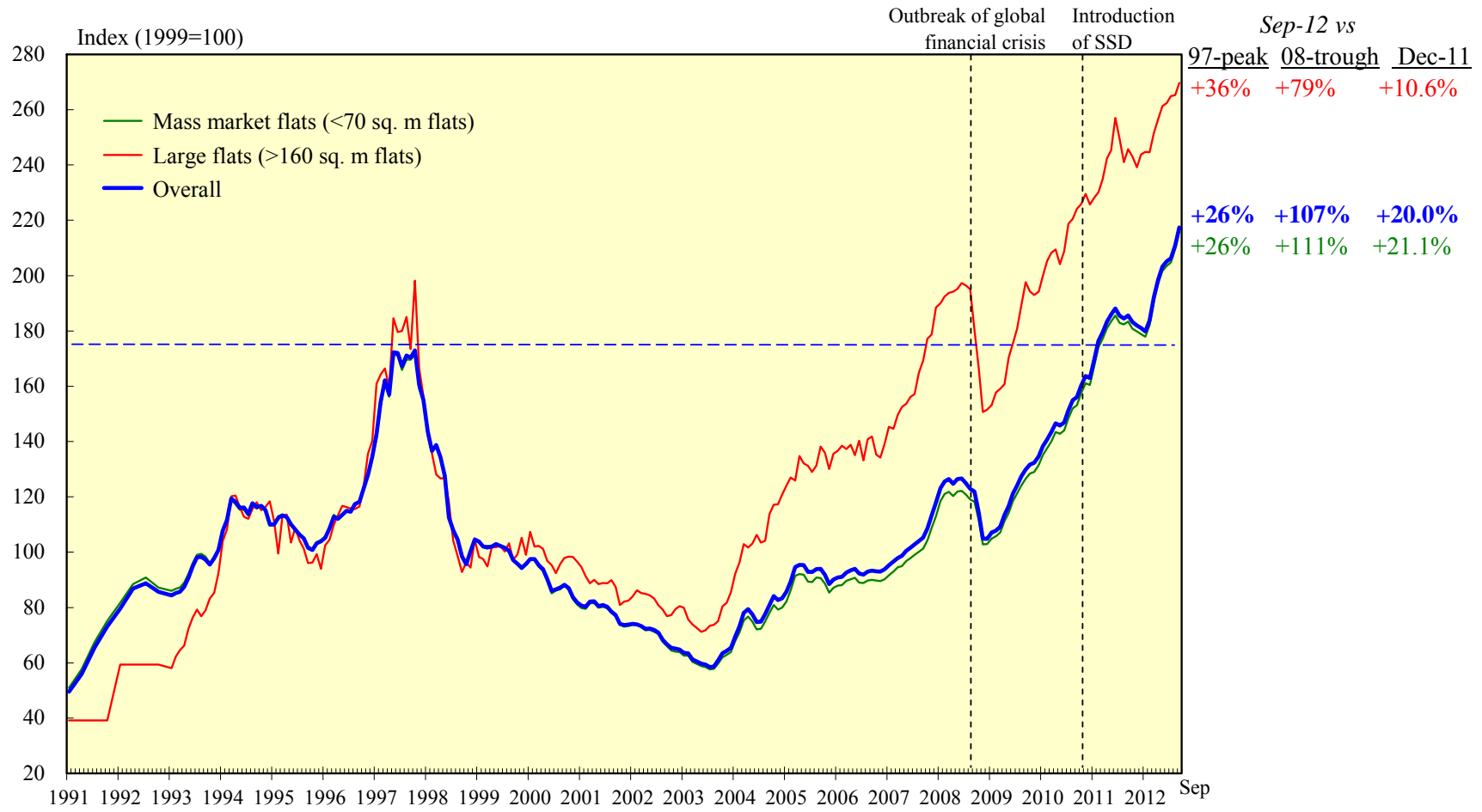
Sources:

* Rating and Valuation Department. Figures on Sep 2012 are subject to revisions.

Rating and Valuation Department.

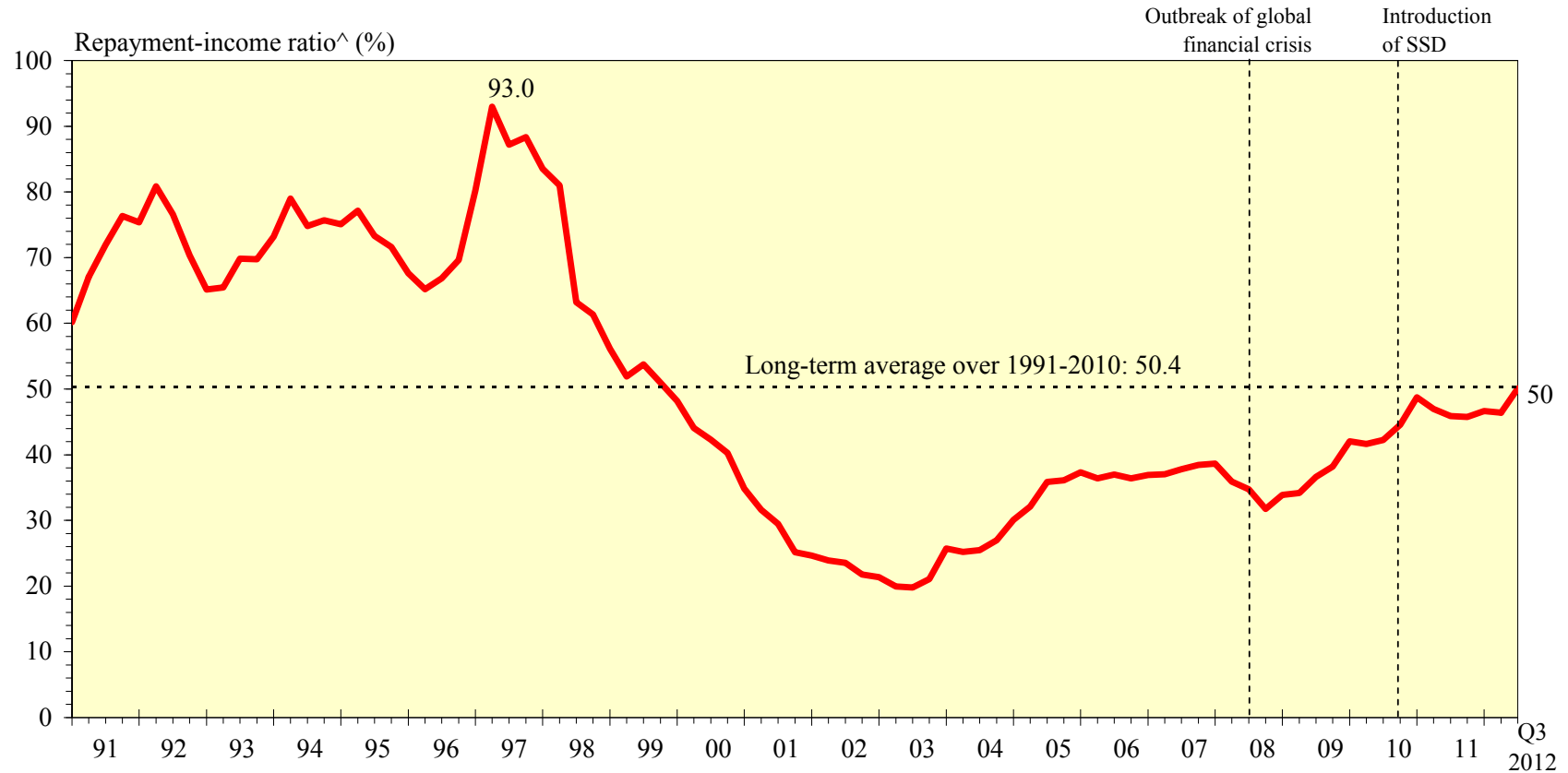
^ Land Registry.

Chart 1 : Residential property price



Source: Rating and Valuation Department.

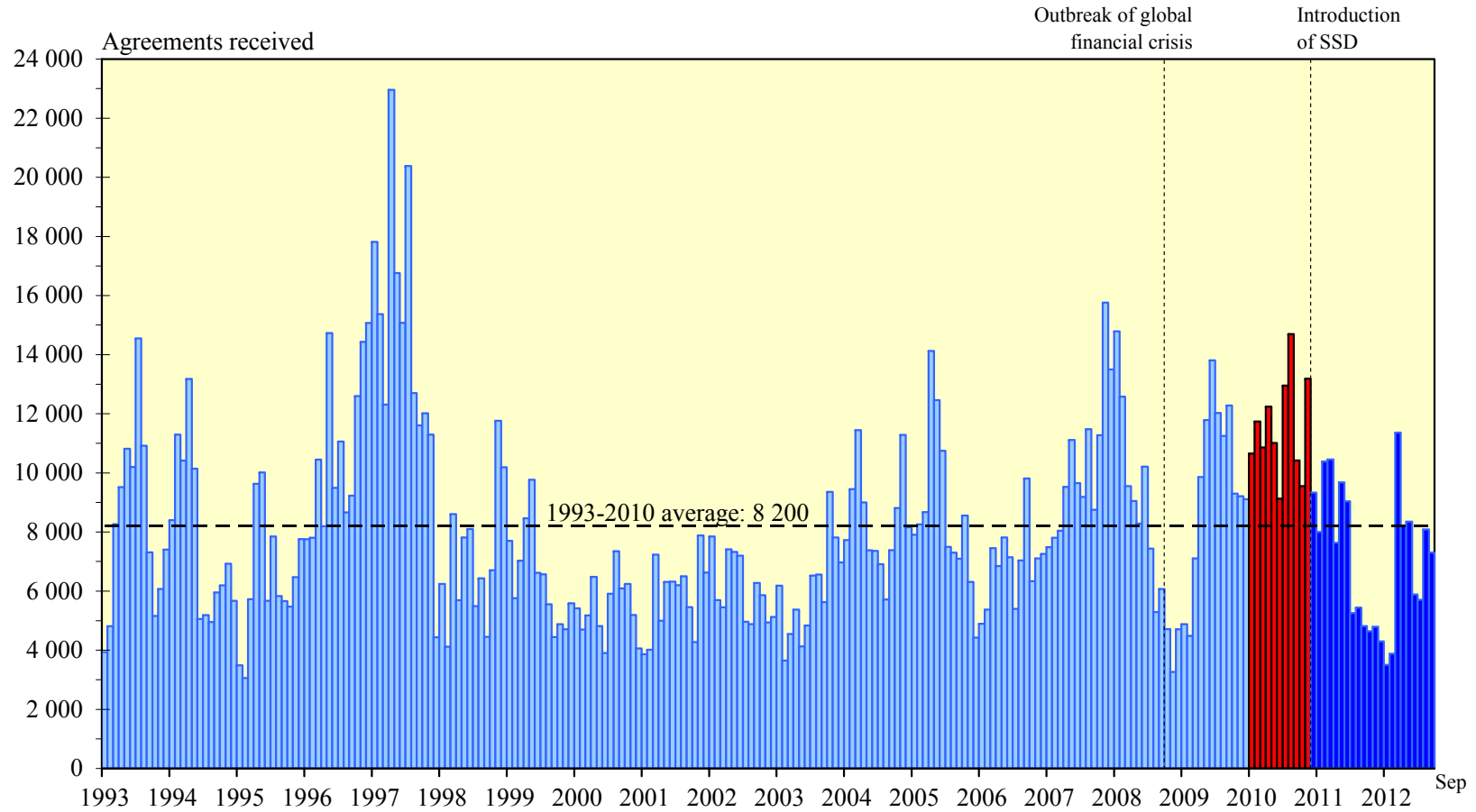
Chart 2 : Home purchase affordability ratio



Note : (^) The ratio of mortgage payment for a 45m² flat (assuming 70% loan-to-value ratio and tenor of 20 years) to median income of households (excluding those living in public housing).

Source: Rating and Valuation Department.

Chart 3 : Residential property transactions



Source: Land Registry

SSD Cases

Holding Period	Jan – Sep 2012	2011
≤ 6 months	36	35
>6 months ≤ 12 months	102	45
>12 months ≤ 24 months	921	1
Total (As % of total transactions)	1 059 1.5%	81 0.08%
Total cases involving confirmor and resale within 24 months (SSD + non-SSD, all inclusive) (As % of total transactions)	6 757 9.6%*	17 831 18.6%

* The long term average (1998-2010) for transactions involving resale within 24 months is 15.4% of all transactions.

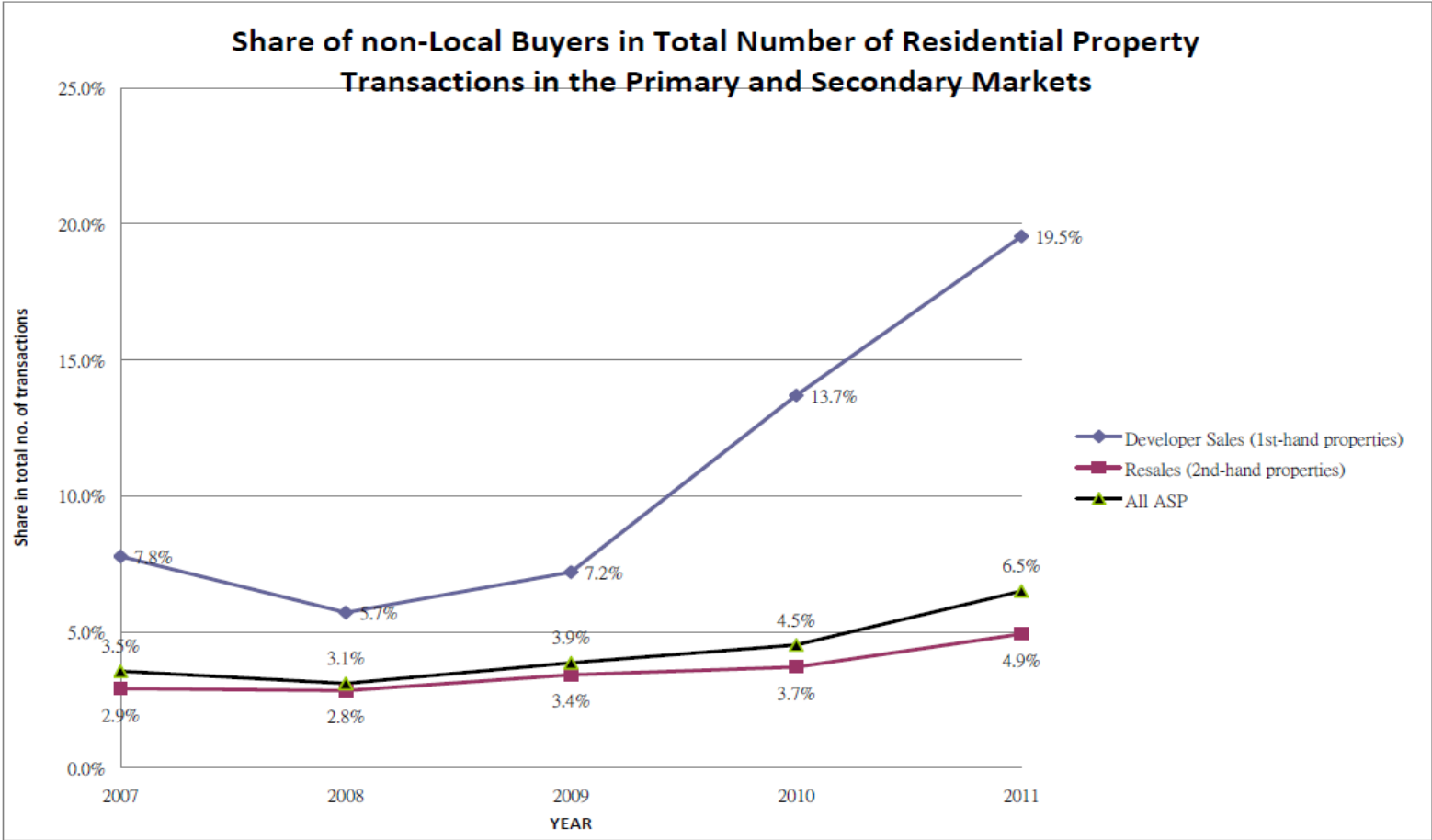
Transactions involving Confirmor and Short-term Resale Cases

	2009	2010	2011	2012 (Jan to Sep)
Confirmor (held less than 24 months)	3622 -	3 543 (-2.2%)	708 (-80.0%)	69 N/A
Confirmor (held more than 24 months)	428 -	175 (-59.1%)	175 (0.00%)	178 N/A
Resale within 6 months	5 339 -	9 147 (71.3%)	2 617 (-71.4%)	63 N/A
Resale between 6 and 12 months	2 998 -	7 719 (157.5%)	4 857 (-37.1%) ⁸	114 N/A
Resale between 12 and 24 months	12 286 -	10 744 (-12.6%)	9 649 (-10.2%) ⁹	6 511 N/A

Note: Within brackets are the year-on-year changes.

⁸ Given that only residential properties acquired on or after 20 November 2010 are subject to SSD, the impact of SSD on resale within 6 to 12 months has been reflected in transaction statistics fully only since November 2011.

⁹ Given that only residential properties acquired on or after 20 November 2010 are subject to SSD, the impact of SSD on resale within 12 to 24 months will be reflected in transaction statistics fully only after November 2012.



Definition of Permanent Resident of the Hong Kong Special Administrative Region under the Immigration Ordinance (Cap. 115)

Permanent resident of Hong Kong shall include a person who is within one of the following categories -

- (a) A Chinese citizen born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region.
- (b) A Chinese citizen who has ordinarily resided in Hong Kong for a continuous period of not less than 7 years before or after the establishment of the Hong Kong Special Administrative Region.
- (c) A person of Chinese nationality born outside Hong Kong before or after the establishment of the Hong Kong Special Administrative Region to a parent who, at the time of birth of that person, was a Chinese citizen falling within category (a) or (b).
- (d) A person not of Chinese nationality who has entered Hong Kong with a valid travel document, has ordinarily resided in Hong Kong for a continuous period of not less than 7 years and has taken Hong Kong as his place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region.
- (e) A person under 21 years of age born in Hong Kong to a parent who is a permanent resident of the Hong Kong Special Administrative Region in category (d) before or after the establishment of the Hong Kong Special Administrative Region if at the time of his birth or at any later time before he attains 21 years of age, one of his parents has the right of abode in Hong Kong.
- (f) A person other than those residents in categories (a) to (e), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.

Implications of the Proposal

Financial implications

The proposed adjustments to the existing SSD and the introduction of BSD are not intended to be revenue-generating measures to meet fiscal or budgetary objectives, although they are expected to bring about additional revenue to the Government. The amount of additional revenue is uncertain as it depends on the number and value of the transactions caught by the new measures.

Civil service implications

Additional workload and administrative cost arising from the measures will be absorbed within the existing resources of relevant departments as far as possible.

Economic implications

The enhancement of SSD would further increase the cost of speculation and it is expected that a significant portion of such transactions would vanish after the announcement, especially resale cases at the shorter end. The BSD should be effective in reducing demand from non-HKPR buyers, thereby according priority to meeting the housing needs of HKPRs under the current tight demand/supply balance in the housing market. Taken together, the proposals should help forestall a further build up of exuberance in the property market in the midst of global liquidity glut and exceptionally low interest rates, thereby safeguarding overall macroeconomic and financial stability of Hong Kong.

Sustainability implications

The measures aim to ensure the healthy and stable development of the property market, which is crucial to the sustainable development of Hong Kong as a whole.