

**THE HONG KONG CONVEYANCING &  
PROPERTY LAW ASSOCIATION LIMITED**

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Ms Becky Yu

Clerk to Bills Committee

Bills Committee on the

Stamp Duty (Amendment)(No.2) Bill 2010

Legislative Council Secretariat

Legislative Council Building

8 Jackson Road

Central, Hong Kong

Dear Ms Yu,

**Comments on Stamp Duty (Amendment) (No.2) Bill 2010**

Our Association was formed in 1996 and our members are all solicitors in Hong Kong. Our main objective is to foster and to promote awareness by the general public and especially among those in the legal profession of the conveyancing and property law and practice in Hong Kong. The submissions dated 4 January 2011 from the Law Society's Property Committee well represent the major concerns of the legal profession in relation to the Bill to which we are in full agreement.

In addition, we would highlight the unfairness to genuine home buyers and long term investors in the proposal in the Bill that they are to be liable for the Special Stamp Duty (SSD) which may defeat the major objective of SSD.

1. We note that the objective of SSD introduced by the Government on 19 November 2010 on top of existing Ad Valorem Stamp Duty (AVSD) is to curb short-term speculative activities in the local residential property market and it is

said that genuine home buyers and long term investors would not be affected. Given that objective, we would submit that only vendors should be liable for SSD and there is no convincing reason why buyers should take the burden as well as proposed in the Bill. Leaving it to buyers to sort out the liability for SSD with vendors is totally unsatisfactory and defeats the whole purpose of SSD.

2. The Government should be well aware that at present, AVSD is payable by buyers in the majority of cases despite Stamp Duty Ordinance (Cap.117) provides that all parties and all other persons executing should be liable. It is proposed in the Bill that the same parties are liable for SSD.
3. If buyers are made liable for SSD as well as vendors, market forces may sooner or later affect genuine home buyers and long term investors as well, such that they may have to bear part or even all of the applicable SSD (on top of AVSD). That would represent an artificial increase in residential home prices to the extent of 15% by the Government, making it even more difficult for genuine home buyers and long term investors.
4. The Government claims that solicitors should be able to help protect buyers in this regard. Again, the Government should be well aware that normally, buyers are asked to sign preliminary agreements for sale and purchase at estate agents level. If a provisional agreement for sale and purchase signed by the parties provides that all stamp duty (which includes SSD by definition in the Bill) in respect of the transaction shall be borne by the buyer solely, there is nothing the buyer's solicitors can do to alter the situation for the buyer in the formal agreement for sale and purchase.
5. Even if a provisional agreement for sale and purchase signed by the parties provides that AVSD shall be borne by the buyer and SSD shall be borne by the vendor, there must be some express clause in the provisional agreement to allow the buyer's solicitors to pay the SSD directly from the balance of purchase price, otherwise the buyer's solicitors will not be able to insert corresponding clause for the buyer in the formal agreement for sale and purchase. Given the numerous estate agencies in Hong Kong of varying standards, it would be wishful thinking to expect all of them to be able to follow this closely on their own for the protection of buyers as some of them are also agent for the vendors as well.
6. Further difficulties are created for the buyers in the case of inadequate consideration as stated in a transaction leading to additional SSD assessed to be payable, and late or non-payment of SSD affecting registration of agreements for sale and purchase.
7. The absurd scenarios of the proposal in the Bill could be that unwary buyers would suffer unnecessary loss and damage of having to bear SSD to ensure proper and timely registration of their own purchases, whilst the vendors go

untraceable after successfully concluding their short-term speculation, and the revenue stands to receive the hard-earned monies of genuine home buyers and long term investors to the extent of 15% on property value, further widening the gap between the rich and the poor.

8. For the above reasons, we take the view that there is good chance that the proposals in the Bill will not achieve the objective of curbing short-term speculative activities at all. We would submit that if the Government is determined in curbing short-term speculative activities on residential property market, the Bill should be amended such that only vendors should be liable for SSD, preferably attaching personal liability to directors and/or shareholders of corporate owners, and that late or non-payment of SSD would not affect the normal stamping and registration of the relevant agreements and assignments so long as AVSD is paid as usual.

Yours faithfully,



Anthony Shin

President

The Conveyancing & Property Law Association Limited