

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

**Summary of views submitted by organizations/individuals on the  
Stamp Duty (Amendment) (No. 2) Bill 2010**

**Government's Response to Written Submissions on the Bill and Response by the Administration**

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**(A) General Comments**

Organizations/Individuals	Comments/Issues	Government's Response
The Hong Kong Association of Banks <i>(LC Paper No. CB(1)983/10-11(02))</i>	Supports the objective of SSD.	Noted.
Hong Kong Chamber of Professional Property Consultants Ltd <i>(LC Paper No. CB(1)950/10-11(01))</i>	Supports the implementation of SSD.	
Mr. David WEBB <i>(LC Paper No. CB(1)1037/10-11(01))</i> <i>(LC Paper No. CB(1)1218/10-11(01))</i> <i>(LC Paper No. CB(1)1536/10-11(01))</i>	Against SSD.	
Century 21 Goodwin Property Consultants <i>(LC Paper No. CB(1)964/10-11(01))</i>	Supports the introduction of SSD.	
The Real Estate Developers Association of Hong Kong  <i>(LC Paper No. CB(1)991/10-11(01))</i>	Supports the objectives of SSD.	

**(B) To clarify the terms “acquire”, “dispose of” and other relevant terms as well as the application of SSD in various situations**

Organization	Comments/Issues	Government’s Response
<p><i>Chu &amp; Lau Solicitors &amp; Notaries</i> (LC Paper No. CB(1)964/10-11(03))</p>	<p>To clarify –</p> <ul style="list-style-type: none"> <li>(i) the meaning of “acquiring” a property;</li> <li>(ii) IRD’s interpretation of a legal binding agreement, and a specifically enforceable agreement, for the sale and purchase of property;</li> <li>(iii) definition for “legal ownership” and “equitable ownership” of a property under the Bill and Stamp Duty Ordinance.</li> </ul>	<p>The Administration has come up with draft Committee Stage Amendments (CSAs) to set out the original proposal in more explicit terms as to how the dates of acquisition or disposal of ownership for the purpose of charging of SSD should be determined.</p> <p>Premised on the principle that a person “acquires” or “disposes of” a property when equitable ownership or legal ownership of the property is passed, we proposed in the CSAs that the acquisition and disposal dates of a property will be based on the signing date of the chargeable agreement for sale, or if no such chargeable agreement exists, the signing date of conveyance (i.e. Assignment). Chargeable agreement as currently defined</p>

<p><i>The Hong Kong Association of Banks</i> (LC Paper No. CB(1)983/10-11(02))</p>	<p>Making drafting changes to clarify –</p> <ul style="list-style-type: none"> <li>(i) when a property is “acquired” and “disposed of”;</li> <li>(ii) definition of “equitable interest”.</li> </ul>	<p>in the Stamp Duty Ordinance (Cap. 117) (SDO) includes the Provisional Agreement for Sale and Purchase (PASP) and the Agreement for Sale and Purchase (ASP). When there is more than one chargeable agreement for sale in a transaction, the signing date of the earliest agreement will be taken as the date of acquisition or disposal of the property.</p>
<p><i>The Law Society of Hong Kong</i> (LC Paper No. CB(1)983/10-11(01))</p>	<p>The new legislation should clearly define when a person has “acquired” and “disposed of” his property. It is proposed that the date of any agreement signed between the parties for the sale and purchase of immovable property, whether provisional or formal, be taken as the date of “acquisition” and “disposal” of a property.</p>	<p>We have further clarified in the draft CSAs that, for the purpose of the determination of the date of acquisition or disposal, chargeable agreements include those “agreements for sale” as defined in section 29A of the existing SDO, except instruments which have conferred a person with an option to purchase a property as defined under paragraph (b) of section 29A(1) of SDO.</p>
<p><i>The Real Estate Developers Association of Hong Kong</i> (LC Paper No. CB(1)991/10-11(01))</p>	<p>To provide for a more precise definition in the Bill to clarify what constitutes an “acquisition” and a “disposal”.</p>	<p>In gist, under the CSAs, when there is a signed PASP, the signing date of the PASP, other than an instrument which confers an option to purchase or a right of pre-emption, will be the date of acquisition or disposal of the property for the purpose of calculating the holding period of the residential property. We understand this applies to the majority of PASPs used in the market.</p> <p>The reason that we propose to exclude an instrument which confers an option to purchase or a right of</p>

<p><i>Hong Kong Institute of Estate Agents</i> (LC Paper No. CB(1)1063/10-11(01))</p>	<p>IRD's interpretation on the date on which a purchaser acquires the equitable ownership or legal ownership may impact on the livelihood if its effect is spilled over to the interpretation of the estate agency agreement.</p>	<p>pre-emption is that, according to legal advice, in such cases, "equitable ownership" does not pass from the vendor to the purchaser upon the granting of such an option or a right of pre-emption. In other words, the purchaser is not considered under the Bill as having "acquired" the property. Under such circumstances, the date of signing of the ASP or, if there is no ASP, the signing date of the Assignment will be the date of acquisition or disposal of the property.</p> <p>We consider that the proposed CSAs have made clear how the acquisition and disposal dates in the existing Bill are to be determined and addressed the concerns of the stakeholders.</p>
<p><i>Property Agents Association</i> (LC Paper No. CB(1)950/10-11(02))</p>	<p>Estate agents are unable to ascertain the date of an enforceable agreement from the Land Registry. The Government should issue guidelines for the trade to follow.</p>	
<p><i>Office of Hon. Albert W. Y. CHAN, Legislative Councillor</i> (LC Paper No. CB(1)1121/10-11(01))</p>	<p>Some purchasers have already signed PASPs before the Government announced the introduction of SSD, the Government should consider whether these transactions should be subject to SSD.</p>	

<p><i>Association of Chartered Certified Accountants Hong Kong</i> (LC Paper No. CB(1)964/10-11(02))</p>	<p>Suggest a transitional arrangement for SSD to be imposed on provisional agreements entered into before 20 November 2010.</p>	
<p><i>Office of Hon. Albert W. Y. CHAN, Legislative Councillor</i> (LC Paper No. CB(1)1121/10-11(01))</p>	<p>SSD should not be chargeable for PASPs signed on or before 19 November 2010, regardless of whether there is a “must-buy-must-sell” clause in the PASP.</p>	

**(C) To provide for more exemptions under SSD**

Organization	Comments/Issues	Government's Response
<p><i>Association of Chartered Certified Accountants Hong Kong</i> <i>(LC Paper No. CB(1)964/10-11(02))</i></p>	<p>To exempt from SSD disposal of property that has been used for the residence of the buyer by a mortgagee by means of a foreclosure order.</p>	<p>Under the current Bill, we have proposed to grant exemptions to the disposal of residential properties acquired on or after 20 November 2010 and resold within 24 months or less under various specific circumstances, namely nomination of a close relative (i.e. spouse, parent or child) to take up the assignment of the property, sale or transfer of the property to a close relative, transfer between associated companies, sale of property due to bankruptcy/involuntary winding up, and sale of property to the Government. In addition, while the current Bill does not provide for exemptions to transactions of residential properties which are acquired on or after 20 November 2010 by a beneficiary of a deceased person and resold within 24 months or less, the Bill provides a concession that, for the purpose of counting the holding period of the property, the date of acquisition of the property by the deceased person will be deemed to be the date on which the beneficiary acquires the property.</p> <p>Members, deputations, professional and related trade associations have suggested various additional exemptions under different circumstances. We consider that it is very</p>



		<p>important that the law should be clear and without ambiguity, and that any exemptions to be considered have to be fair and measurable in an objective manner, and the types of exemptions should be clearly set out in the Bill. Exemptions on a case by case basis in the light of individual or personal circumstances such as financial hardship will not be practicable for implementation, and will likely create loopholes for speculators to circumvent the SSD, thereby undermining its effectiveness.</p> <p>That said, we note that many of the stakeholders have made the point that involuntary sale of properties should be exempted as far as possible. Having carefully taken into account all the considerations, we have proposed further exemptions under the following circumstances in the CSAs, namely : -</p> <ul style="list-style-type: none"> <li>(i) involuntary sale or transfer of property made by or pursuant to a court order (including a foreclosure order obtained by a mortgagee or receiver referred to in subparagraph (ii) below, but does not include a Compulsory Sale Order granted under LCSRO).</li> <li>(ii) involuntary sale of mortgaged properties in various forms by 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 for the purpose of enforcing the mortgage.</li> </ul>
<p><i>Chu &amp; Lau Solicitors &amp; Notaries (LC Paper No. CB(1)964/10-11(03))</i></p>	<p>To exempt acquisition of a property pursuant to a provisional agreement entered into before 20 November 2010 from SSD.</p>	

<p><i>PricewaterhouseCoopers Ltd (LC Paper No. CB(1)983/10-11(03))</i></p>	<p>Exemptions for disposal of properties within 24 months of acquisition for –</p> <ul style="list-style-type: none"> <li>(i) Mortgagee in possession;</li> <li>(ii) Matrimonial home in consequence to divorce.</li> </ul>	<ul style="list-style-type: none"> <li>(iii) sale or transfer of a residential property by a beneficiary whose property is inherited from a deceased person’s estate.</li> </ul> <p>The legal ownership of a property will be passed in a foreclosure order. We have proposed in the CSAs that, in the case of foreclosure order, the resale of the property by the financial institutions or the receivers to which the ownership of the property has been passed will also be exempted from SSD, though we understand that sale of mortgaged properties by foreclosure order is not common.</p>
<p><i>The Hong Kong Association of Banks (LC Paper No. CB(1)983/10-11(02))</i></p>	<p>To exempt properties disposed of upon enforcement of mortgages by licensed banks, financial institutions and mortgagees, and resale pursuant to a foreclosure order.</p>	<p>We propose not to exempt SSD in respect of the compulsory sale of properties under a Compulsory Sale Order granted under LCSRO as we cannot rule out the possibility of speculation in the transactions. When individual small owners join together to become majority owners to organise joint sales to realise the redevelopment potential of their lots, the minority owner can be individuals who have made the purchase less than 24 months before the application for compulsory sale. Exempting compulsory sale of properties under a Compulsory Sale Order granted under LCSRO may attract speculation on flats in buildings with high redevelopment potential, given that the costs of speculation will be lower for these flats as compared with other flats.</p>
<p><i>The Law Society of Hong Kong</i></p> <p><i>(LC Paper No. CB(1)983/10-11(01))</i></p> <p><i>(LC Paper No. CB(1)1143/10-11(01))</i></p>	<p>(a) To clarify the application of SSD to –</p> <ul style="list-style-type: none"> <li>(i) Conditional Agreements;</li> <li>(ii) Supplemental Agreement of Confirmatory Assignment;</li> <li>(iii) Enforcement actions by mortgagee, receiver sale, foreclosure order and equitable mortgagee;</li> <li>(iv) Court Order for sale of the property;</li> <li>(v) Sale of Properties under a Compulsory Sale Order granted under the Land (Compulsory Sale for</li> </ul>	<p>We propose not to exempt SSD in respect of the compulsory sale of properties under a Compulsory Sale Order granted under LCSRO as we cannot rule out the possibility of speculation in the transactions. When individual small owners join together to become majority owners to organise joint sales to realise the redevelopment potential of their lots, the minority owner can be individuals who have made the purchase less than 24 months before the application for compulsory sale. Exempting compulsory sale of properties under a Compulsory Sale Order granted under LCSRO may attract speculation on flats in buildings with high redevelopment potential, given that the costs of speculation will be lower for these flats as compared with other flats.</p>

	<p>Redevelopment) Ordinance, Cap. 545;</p> <p>(vi) Divorce Cases;</p> <p>(vii) Acquisition of property under a will, the law of intestacy or right of survivorship.</p> <p>(b) Objects to the proposed arrangements under the new Section 29DA(8) of the Stamp Duty Ordinance to regard the date on which the deceased person acquired the property as the date of acquisition for the purpose of SSD in the case of subsequent resale by a stamp duty payer who has acquired the property under a will, the law of intestacy or right of survivorship.</p> <p>(c) SSD should not be applicable to inheritance and survivorship cases with no speculation element whatsoever being involved;</p> <p>(d) SSD should not be payable for any types of enforcement actions taken by the Mortgagee.</p>	<p>For a genuine minority owner who has unknowingly purchased a property less than 24 months before the lot is put to compulsory sale, and before an application for compulsory sale is even filed with the Lands Tribunal, such that no public channel (such as through the Land Registry records, the notices posted at the subject building on the lot, or through newspaper publications) is available for the genuine minority owners to ascertain whether the lot is a target of compulsory sale application, he will have an opportunity to make representation to the Lands Tribunal on the draft conditions of sale to be prescribed in the compulsory sale order to be granted (the majority owner is required to submit such a draft to the Lands Tribunal for a decision during the hearing of the application for compulsory sale), including any representation on who should pay the SSD. The proposed amendments to SDO to introduce SSD will not affect the power of the Lands Tribunal under section 4(6)(a)(i) of LCSRO to give directions which include such directions as to the settling of the conditions of sale.</p>
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<p><i>Hong Kong Chamber of Professional Property Consultants Ltd</i> (LC Paper No. CB(1)950/10-11(01))</p>	<p>To review and enhance the policy by consider granting exemptions to those who signed PASPs two weeks before the announcement of SSD on 19 November 2010.</p> <p>To provide for exemptions for those who may need to resell their properties within two years due to urgent matters.</p>	
<p><i>The Real Estate Developers Association of Hong Kong</i> (LC Paper No. CB(1)991/10-11(01))</p>	<p>(a) Expand scope of exemption for homeowners and genuine investors against unforeseen adverse circumstances, and provide an appeal mechanism;</p> <p>(b) Exemption for properties disposed of by mortgagee, chargee, receiver appointed by mortgagee, sub-sale under equitable mortgage or resale after foreclosure order;</p> <p>(c) SSD not to apply to –</p> <ul style="list-style-type: none"> <li>(i) bare sites;</li> <li>(ii) disposal of units in an existing old building for redevelopment;</li> <li>(iii) disposal of new units in a new development by a developer;</li> </ul> <p>(d) For units acquired by a party pursuant to a joint development agreement, SSD will not apply in</p>	

	<p>the subsequent disposal of the units by that party;</p> <ul style="list-style-type: none"><li>(e) For intra-group transfer, SSD will not apply;</li><li>(f) SSD should not apply to provisional agreements for sale and purchase signed prior to 20 November 2010.</li></ul>	
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**(D) To seek clarification on who is liable for the payment of Special Stamp Duty (SSD)**

Organization	Comments/Issues	Government's Response
<p><i>Association of Chartered Certified Accountants Hong Kong</i> (LC Paper No. CB(1)964/10-11(02))</p>	<p>To stipulate clearly that the seller is liable for SSD in the Bill.</p>	<p>Stamp duty is a levy on instrument. Under the present Stamp Duty Ordinance (SDO), all the parties executing a chargeable instrument are jointly and severally liable to pay the stamp duty. This applies to the purchase and sale of properties and the leasing of properties. It is one of the fundamentals of the Hong Kong stamp duty regime and we consider that it should be upheld. The market is also familiar with such practice.</p> <p>In the case of SSD, there are many choices in the residential property market, and buyers will make comparison before making a decision. We consider that for transactions on properties which have been held for shorter than 24 months, buyers and sellers will negotiate on which side should pay the stamp duty. While it has been the market practice for buyers to pay the current ad valorem stamp duty, this may not necessarily be the case upon the implementation of the SSD given that buyers can choose to buy properties which have been held for more than 24 months instead.</p>
<p><i>PricewaterhouseCoopers Ltd</i> (LC Paper No. CB(1)983/10-11(03))</p>	<p>Sellers should be liable for payment of SSD and that should be clearly stipulated in the Bill.</p>	
<p><i>The Hong Kong Association of Banks</i> (LC Paper No. CB(1)983/10-11(02))</p>	<p>To stipulate payment of SSD by Vendor (excluding Exempted Persons).</p>	

<p><i>The Hong Kong Conveyancing &amp; Property Law Association Limited (LC Paper No. CB(1)1121/10-11(02))</i></p>	<p>The Bill should be amended 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.</p>	<p>Under SDO, an instrument has to be duly stamped in order to be registered with the Land Registry. Even if we specify that the SSD is to be borne by the sellers, if the sellers do not pay the SSD, the buyers will have to pay the SSD in order to have the instrument registered with the Land Registry for protection of title. Therefore, specifying that the SSD should be borne by the sellers alone will not have much practical effect from the point of view of protecting the buyers. We consider there is merit in upholding the existing principle of holding all parties executing a chargeable instrument jointly and severally liable, given that this has worked well in practice and that it allows flexibility in response to market conditions.</p>
<p><i>Property Agents Association (LC Paper No. CB(1)950/10-11(02))</i></p>	<p>To stipulate payment of SSD by a certain party, and to issue guidelines to the estate agents.</p>	

**(E) To clarify if the SSD is in conformity with the Basic Law**

Organization	Comments/Issues	Government's Response
<p><i>Mr. David WEBB</i> <i>(LC Paper No. CB(1)822/10-11(03))</i> <i>(LC Paper No. CB(1)1037/10-11(01))</i></p>	<p>SSD may contravene the Basic law – Article 105 of the Basic Law states that “The HKSAR shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property...”. The exercise of that right should not carry a penalty such as the SSD.</p> <p>SSD is against the Basic Law Article 105 which promises the right to acquire and dispose of property, including real estate. Implicitly, that right must be exercisable without penalty.</p> <p>The case of Weson Investment Ltd v Commissioner of Inland Revenue cited by the Government has little relevance and SSD is not a legitimate tax with a proper purpose.</p>	<p>The Administration has set out its position in Paper CB(1) 1125/10-11(01) .</p>



*Momentum 107 (LC  
Paper No.  
CB(1)950/10-11(03))*

Imposing SSD may contravene Article 107 of the Basic Law, and will affect the simple and low tax rate regime of Hong Kong.

BL 107 provides for the principles to be followed by the HKSAR in drawing up its budgets. It has no application to the present measure to curb speculation in residential properties. The collection of the Special Stamp Duty is consistent with BL 107.

<b>(F) Retrospective effect of the legislation</b>		
Organization	Comments/Issues	Government's Response
<i>The Law Society of Hong Kong</i> (LC Paper No. CB(1)983/10-11(01))	Question on the constitutionality of making the SSD legislation retrospective and have reservation on whether it is appropriate for SSD to apply to resale transactions retrospectively given the confusion to the market on the exact meanings of “acquired” and “dispose of”.	There is a need to send a clear message to the market to deter speculative activities, and to avoid inadvertently creating a situation whereby people are encouraged to speculate during the period prior to the enactment of the legislation. The Financial Secretary made public on 19 November 2010 that the SSD would come into effect on 20 November 2010, subject to the passage of the Stamp Duty (Amendment) (No. 2) Bill 2010 (the Bill) which will take effect retrospectively from 20 November 2010. The public is well aware of the effective date of the SSD as announced, and buyers and sellers have already taken into account the SSD when considering flat sale/purchase or otherwise on or after 20 November 2011. Repealing or amending the commencement date will only cause confusion and undermine the clear message of the Government's determination to curb speculation.
<i>The Law Society of Hong Kong</i> (LC Paper No. CB(1)1143/10-11(01))	Objects to the proposal to make payment of SSD retrospective given the prejudicial effect retrospective legislation has on the purchasers and the lack of legal basis for the purchasers' solicitors in practice to require appropriate provisions to be included in the formal agreement for the protection of their clients.	
3. <i>The Hong Kong Association of Banks</i> (LC Paper No. CB(1)983/10-11(02))	Opposes the inclusion of clause 1(2) of the Bill which provides for retrospective effect from 20 November 2010.	

**(G) The effectiveness of SSD in curbing speculation in residential properties**

Organization	Comments/Issues	Government's Response
<p><i>Association of Chartered Certified Accountants Hong Kong</i> (LC Paper No. CB(1)964/10-11(02))</p>	<p>As the Bill only covers residential properties, effective measures taken will shift speculation to non-residential properties.</p>	<p>The measures have shown effect in curbing short-term speculative activities. In January 2011, there were about 150 confirmor cases, which was over 50% lower than the average of about 320 confirmor cases in the first 11 months in 2010.</p>
<p><i>Century 21 Goodwin Property Consultants</i> (LC Paper No. CB(1)964/10-11(01))</p>	<p>The SSD has successful forced speculators out of the market, but there was no obvious decrease in flat price in different districts.</p>	
<p><i>Hong Kong Chamber of Professional Property Consultants Ltd</i> (LC Paper No. CB(1)950/10-11(01))</p>	<p>The new measure not only affected speculators, but also home buyers and grassroots; it has not increased the proportion of homebuyers and grassroots in the market.</p>	<p>SSD aims to increase the cost of property speculation, so that speculators would re-think before engaging in speculative activities. It should not affect genuine home buyers who will not normally sell their properties within a short period of time.</p> <p>The transactions of commercial/industrial premises or retail premises are commercial activities. Part of the latest measures of the Hong Kong Monetary Authority announced on 19 November 2010 on tightening the loan-to-value (LTV) ratio of mortgage lending cover commercial/industrial premises or retail premises. Specifically, the maximum LTV ratio for all non-owner-occupied residential properties, properties held by a company and industrial and commercial properties has been lowered to 50%, regardless of property values.</p>
<p><i>Momentum 107</i> (LC Paper No. CB(1)950/10-11(03))</p>	<p>The introduction of SSD will cause the hot money to go into the stock market, leading to more serious bubbles. Increasing stamp duty will affect the home purchase by the middle-class, and affect their living standards.</p>	

		While SSD is targeted at residential properties, the Government will continue to monitor the market closely and take further measures as necessary.
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<b>(H) Alternative anti-speculative measures</b>		
Organization	Comments/Issues	Government's Response
<i>Association of Chartered Certified Accountants Hong Kong</i> (LC Paper No. CB(1)964/10-11(02))	Suggests an alternative to SSD by imposing a withholding tax on the sale proceeds from the disposal of any property within 3 years of its acquisition, with a tax refund mechanism.	The SSD is applicable to the sale of residential properties within 24 months after acquisition regardless of whether the transactions generate profits, whereas profits tax only applies to transactions which generate profits. Also, profits tax is levied on the net profits (after taking into account losses, if any) accrued to an individual or company on the basis of the year of assessment. The Administration considers that the SSD, as compared with "profits tax", is a more targeted and effective measure to curb short-term speculation.  We have set out in our reply (CB(1)1125/10-11(01)) some examples to illustrate the calculation method, payment period and the amount of tax payable in terms of the SSD and a punitive profits tax at say 90%.
<i>Mr. David WEBB – 2<sup>nd</sup> submission</i> (LC Paper No. CB(1)1218/10-11(01))	Proposes a fairer, focused alternative, in the form of withholding system for profits tax.	

<b>(I) Mechanism for payment of SSD</b>		
<b>Organization</b>	<b>Comments/Issues</b>	<b>Government's Response</b>
<i>The Hong Kong Association of Banks (LC Paper No. CB(1)983/10-11(02))</i>	To introduce an adjudication mechanism to allow an instrument to be adjudicated for the amount of stamp duty payable or to ascertain whether SSD is payable in advance of a proposed transaction, prior to an instrument being executed.	It is a general principle that stamp duty is charged on instruments. The introduction of an adjudication mechanism in anticipation of upcoming transactions is not in line with the well established stamp duty principle. In particular, a proposed transaction with no exact execution date of instrument will make valuation of the property, which depends on the instrument date, impossible.
<i>Property Agents Association (LC Paper No. CB(1)950/10-11(02))</i>	The amount of SSD should be calculated based on the differences of the resale value and the original value, rather than the total consideration.	Stamp duty is a levy on instrument and applies regardless of whether the transactions generate profits or not. The proposal of calculating SSD based on the differences of the resale value and the original value will introduce a fundamental change to the stamp duty mechanism and complicate the whole regime.

<b>(J) Inclusion of a sunset clause</b>		
Organization	Comments/Issues	Government's Response
<i>Mr. David WEBB</i> (LC Paper No. CB(1)822/10-11(03))	Suggests inclusion of a “sunset” clause of say 30 June 2012.	<p>If a sunset clause is to be included in the Bill, we need to specify a date for the SSD-related provisions to lapse. It is not possible for the Administration to pre-determine a date when the SSD is deemed no longer necessary to curb speculation. The Administration intends to go through the legislative process in a normal manner to amend the legislation when SSD is considered no longer necessary.</p> <p>We will continue to closely monitor the development of the property market, and will take timely and appropriate measures as and when necessary to ensure the stable and healthy development of the market. In this regard, the Government will take into account all relevant factors, both internal and external, including the risk of a property bubble, the exuberant state of the property market in particular the mass market, the severity of short-term speculation activities, global liquidity, interest rates, and policies adopted and measures taken by other economies which may have an adverse impact on the healthy and stable development of the local property market. It is not possible for the Government to state in precise terms or set specific targets as to the circumstances under which the Government will do away with SSD. Given the volatility of the property market, the Administration will respond to</p>
<i>PricewaterhouseCoopers Ltd</i> (LC Paper No. CB(1)983/10-11(03))	Suggests a “sunset” clause be incorporated into the Bill such that the levy of SSD can be reviewed every two years.	
<i>The Real Estate Developers Association of Hong Kong</i> (LC Paper No. CB(1)991/10-11(01))	A “sunset date” of say 12 months or a review date of say 9 months from 20 November 2010.	
<i>Momentum 107</i> (LC Paper No. CB(1)950/10-11(03))	Suggest a “sunset” clause be incorporated into the Bill.	

		the changing market flexibly and swiftly, and will seek LegCo's endorsement through the legislative process to do away with SSD as and when we see the need to do so.
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<b>(K) Other Comments</b>		
Organization	Comments/Issues	Government's Response
<i>Mr. David WEBB (LC Paper No. CB(1)822/10-11(03))</i>	SSD catches short-term investors and homeowners and has negative impact on liquidity and related jobs.	SSD aims to increase the cost of property speculation, so that speculators would re-think before engaging in speculative activities. It should not affect genuine home buyers who will not normally sell their properties within a short period of time.
<i>The Law Society of Hong Kong (LC Paper No. CB(1)983/10-11(01))</i>	<p>(a) If the purchaser is made liable to pay SSD –</p> <ul style="list-style-type: none"> <li>(i) His liability should be limited to the consideration stated in the document;</li> <li>(ii) Documents stamped up to the stated consideration should be deemed to have been duly stamped save and except the vendor's personal liability to pay the additional SSD;</li> <li>(iii) There should be a time limit on the stamp duty adjudication process.</li> </ul> <p>(b) Concern on the requirement to insert further particulars in the agreement/assignment for the</p>	<p>Once a document is denoted as “duly stamped”, IRD will not be able to chase for the outstanding payment from either the seller or the buyer, including registering a charging order against the debtor's property in the Land Registry, even if it is subsequently discovered that the stated consideration is inadequate. The proposal is a fundamental departure from the existing stamp duty regime.</p> <p>In order to let the seller and seller of a transaction which involves SSD know as early as possible the total amount of SSD involved, the Stamp Office will pledge to complete adjudication cases involving SSD within 40 days after the submission of application for stamping, including issuing the assessment demanding further duty for upped value cases, i.e. cases which the Stamp Office considers the stated consideration inadequate.</p>

	purpose of SSD.	The Stamp Office has reviewed the requirement and considered that it is not necessary to require for the inclusion of those particular information in the agreement for sale/assignment, given that the information will be available in the stamping application form. The administration has proposed CSAs to set out the original proposal in more explicit terms as to how the dates of acquisition or disposal of ownership for the purpose of charging of SSD should be determined. This should have addressed the concern about possible ambiguities regarding the date of acquisition and disposal of a property.
<i>Mr. David WEBB (Follow-up paper) (LC Paper No. CB(1)1037/10-11(01)) (LC Paper No. CB(1)1218/10-11(01)) (LC Paper No. CB(1)1536/10-11(01))</i>	The principle behind SSD is interventionism. Distortive measures which discourage one class of speculation over any other should not be introduced.  The Government should abandon the SSD proposal as it is illegitimate, unconstitutional, creates too many unintended victims, and runs the risk of chaos upon a successful judicial review.	SSD is an extraordinary measure aimed at curbing speculative activities under the exuberant state of the property market so as to ensure the healthy and stable operation of the property market. Genuine home buyers and long term investors should not be affected by this measure.
<i>Century 21 Goodwin Property Consultants (LC Paper No. CB(1)964/10-11(01))</i>	The increase in flat price is a result of the effect of the financial market, but not caused by speculators.	The Government has been monitoring developments in the private residential property market closely and remains vigilant on the risks of a property bubble. In this respect, the Government has repeatedly reminded the public to

	<p>The Government may make use of this measure to cool down the property market, and should fundamentally tackle the problem at source by increasing land supply, and to further enhance “My Home Purchase Plan”.</p>	<p>carefully assess their risks and their own financial position when making a home purchase decision. In February, April, August, October and November 2010, the Government introduced various measures in four areas to ensure the healthy and stable development of the property market. The four areas include increasing land supply to tackle the problem at source, combating speculative activities, enhancing the transparency of property transactions, and preventing excessive expansion in mortgage lending.</p>
<p><i>Hong Kong Chamber of Professional Property Consultants Ltd</i> (LC Paper No. CB(1)950/10-11(01))</p>	<p>To divert the capital to assist home ownership of the grassroots.</p>	<p>To tackle the supply problem at source, the Government has set the target of making available land for an average of some 20 000 private residential flats per annum in the next 10 years. It is estimated that the housing land may reach a total of about 35,000 units in the coming year. MTRCL is going to be an important source of supply of sites for residential developments. The sites at Nam Cheong, Tsuen Wan, Tai Wai, Tin Shui Wai and Tseung Kwan O are expected to provide an estimated 14,600 units. The Government has decided to sell five residential sites by tender this year, and will impose restrictions on flat size and minimum flat numbers in the conditions of sale. The objective is to increase the supply of small and medium-sized flats.</p>
<p><i>Momentum 107</i> (LC Paper No. CB(1)950/10-11(03))</p>	<p>Suggested the Government to increase land supply, to resume regular flat sale, and to request the MTRCL and the Urban Renewal Authority to provide more residential units.</p>	<p>On public rental housing (PRH), the Government is committed to ensuring an adequate supply of land to produce on average about 15 000 PRH flats each year, and maintaining the target average waiting time for general</p>

		<p>Waiting List applicants at around 3 years.</p> <p>The Government recognizes the importance of a stable home, and is fully aware of the people’s wish to improve their quality of life and move up the social ladder through home ownership. Any form of subsidized home ownership will, however, only serve as a buffer. The approach in the long term is to tackle the problem at source and increase land supply.</p> <p>Having taken into account the views received during the Public Consultation on Subsidised Home Ownership, and the experience of the previous subsidized home ownership schemes, the Government has announced that, in collaboration with the Hong Kong Housing Society, it will introduce My Home Purchase Plan (MHPP) premised on the concept of "rent-and-buy". The MHPP will effectively target at households with the ability to pay mortgages in the long run, but who cannot immediately afford the down payment in the face of short-term property price fluctuations, and allow such potential home buyers some time to save up for their home purchase. Also, MHPP helps increase the supply of “no-frills” small and medium sized private residential flats.</p> <p>MHPP, together with Government’s commitment to address the housing needs of those low-income households who cannot afford private rental housing through the provision of PRH, measures introduced to increase land supply, the revitalization measures for the HOS Secondary Market</p>
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		the implementation details for the Shatin project as soon as possible.
<i>Momentum 107 (LC Paper No. CB(1)950/10-11(03))</i>	To exempt the upper loan-to-value ratio of self-occupied properties.	<p>As mortgage lending accounts for more than 30% of the banks' total loans in Hong Kong, the quality of mortgage loans is crucial to the stability of the banking system. The HKMA has always been closely monitoring the development of the property and mortgage lending markets, and will introduce appropriate prudential measures as necessary to safeguard banking stability.</p> <p>In order to protect banking stability, the HKMA has introduced a series of counter-cyclical prudential supervisory measures since October 2009 to tighten banks' underwriting criteria for mortgage loans and strengthen the risk management standards of banks. These measures include:</p> <ul style="list-style-type: none"> <li>(i) as announced on 19 November 2010, lowering the maximum LTV ratio for residential properties with a value at or above \$12 million from 60% to 50%;</li> <li>(ii) as announced on 19 November 2010, lowering the maximum LTV ratio for residential properties with a value at or above \$8 million and below \$12 million from 70% to 60%, but the maximum loan amount will be capped at \$6 million;</li> <li>(iii) as announced on 19 November 2010, maintaining the maximum LTV ratio for residential properties with a value below \$8 million at 70%, but the maximum loan</li> </ul>

		<p>amount will be capped at \$4.8 million (i.e. a flat with an assessed value at or below \$6.8 million may enjoy a maximum LTV ratio of 70%.</p> <p>Guidelines had been issued to banks requiring them to take into account all the outstanding loans and debts held by mortgage loan applicants. As first-time home buyers (who are likely to be owner-occupiers of the property) do not have other outstanding mortgage loans, they will likely be more favourably assessed by banks on their debt repayment capability.</p> <p>Moreover, as long as an application meets the relevant eligibility criteria, a borrower can apply for a mortgage loan of up to 90% loan-to-value ratio under the Mortgage Insurance Programme of the Hong Kong Mortgage Corporation, with a maximum loan amount of \$6.12 million (Note: The cap of the value of property is \$6.8 million). In other words, homebuyers may only need to pay 10% of the property price for down payment.</p>
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