



Our ref. : [2013] HKIEA P1(a)

15 March 2013

Chairman and Members,
Bills Committee on the Stamp Duty (Amendment) Bill 2012,
Legislative Council Complex,
1 Legislative Council Road, Hong Kong.

By email : bc_01_12@legco.gov.hk

Dear Chairman and Members,

Re : Reply to the Administration's reply on the proposed Buyer Stamp Duty ('BSD')

The Administration, in page 13 of its reply (LC Paper No. CB(1)692/12-13(01)) to our submissions of 5.2.2013 (LC Paper No. CB(1)536/12-13(10)), said :

'We consider that the BSD is constitutional and, being a legitimate taxation, is governed by Article 108 instead of by Article 105 of the Basic Law...'

Even assuming, for the sake of argument, that the Administration is correct on this point, Article 108 (in *Basic Law* Chapter V : Economy) says :

'...The Hong Kong SAR shall...enact laws on its own concerning types of taxes, tax rates, tax reductions, allowances and exemptions, and other matters of taxation'.

There is nothing in the *Basic Law* that would permit the Administration, when enacting laws on taxation, to derogate from the ***fundamental rights*** enshrined in *Basic Law* Chapter III, in particular Article 25 which says :

'All Hong Kong residents [ie HKPR and non-HKPR] shall be equal before the law'. (emphasis & [] added)

BSD infringes the Article 25 protection for non-HKPR. The Administration's reply is notable in its silence on Articles 24 and 25. The assertion *'The proposed exemption for HKPR buyers pursues the legitimate aim of meeting the housing needs of HKPRs who have a close connection with Hong Kong'* sounds hollow given that non-HKPRs have just as much housing needs and close connection with Hong Kong as HKPRs. And not to forget that the CE acknowledged in his policy address that ***'home ownership by the middle class is crucial to social stability'*** - non-HKPRs may well drink as much coffee and watch as many French movies as HKPR do!

Yours sincerely,

Moran Zukerman
President