

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

3 June 2013

Chairman and Members,  
Bills Committee on Stamp Duty (Amendment) Bill 2013,  
Legislative Council Complex,  
1 Legislative Council Road,  
Hong Kong.

By email : [bc\\_05\\_12@legco.gov.hk](mailto:bc_05_12@legco.gov.hk)

Dear Chairman and members,

Re : Submissions on higher ad valorem stamp duty ('Double AVD')

1. We agree with the general direction of the Administration's recent Property Initiatives, including the Buyer Stamp Duty ('**BSD**'), **Double AVD**, and *Hong Kong Property for Hong Kong People* ('**HKPHKP**'). We consider them appropriate short term measures to control the rampant Hong Kong residential property market. However we do not agree that these initiative should discriminate against non-HKPRs in favour of HKPRs when the Basic Law says they are equal before the law.
2. We have made a series of submissions on the BSD to the Bills Committee on Stamp Duty (Amendment) Bill 2012 which are equally applicable to the Double AVD and shall not repeat them. The foundation of those submissions are that :
  - a. The Basic Law pronounces fundamental rights in terms of :
    - (i) **Hong Kong residents**, meaning both **HKPRs** and **non-HKPRs** (the latter meaning Hong Kong identity card holders with no right of abode); and
    - (ii) **Other persons**, ie people who do not hold HKID;
  - b. All **Hong Kong residents** (i.e. HKPRs and non-HKPRs) are equal before the law, therefore should enjoy equal rights to property ownership;
  - c. Basic Law fundamental rights cannot be interfered with except to the extent that the **fair balance test** is satisfied, meaning :
    - (i) the interference must relate to a **legitimate aim**;
    - (ii) the interference must be **rationally connected** with that aim; and
    - (iii) the interference must be **proportionate to the aim** served.



3. We agree with the Administration that the Double AVD and the other Property Initiatives do serve a legitimate aim and so the first limb of the fair balance test is satisfied. However the Administration has failed to prove that the discrimination against non-HKPRs could satisfy the *rationality* and *proportionality* limbs of the fair balance test.
4. In particular the (dis)proportionality of the discrimination against non-HKPRs cannot be fully appreciated if the effect of the BSD, Double AVD and HKPHKP are looked at disjointly by separate bills committees. It is their cumulative effect that matters. Even if an isolated interference could be considered proportionate (which we do not agree), repeated interference may be unconstitutional.
5. It must be borne in mind that **where residents' Basic Law rights are interfered with, it is for the Administration to show that the interference is justified, not the other way round**. The Administration has so far not even attempted to justify the rationality and proportionality limbs. Their statistics are at best diversionary.
6. We urge the Committee to ask the Administration one key question - what will be the likely adverse impact (if any) on the residential property market if non-HKPRs are treated the same way as HKPRs, as the Basic Law says they should? **We believe the legitimate aim can be achieved simply by applying Double AVD and the other Property Initiatives to non-residents (Basic Law 'other persons') without adopting the discriminative measures against non-HKPRs.**
7. We recall Mr. C Y Leung, the Chief Executive, saying in his policy address : '**home ownership by the middle class is crucial to social stability**'. Why the wedge between HKPR middle class and non-HKPR middle class when they both belong here?
8. Respect for the **rule of law** begins with respect for the **Basic Law**.

Yours sincerely,

Moran Zukerman  
President