



**SUBMISSIONS OF THE LAW SOCIETY'S PROPERTY COMMITTEE ON
THE DRAFT COMMITTEE STAGE AMENDMENTS TO
THE STAMP DUTY (AMENDMENT) (NO.2) BILL 2010**

1. The Law Society's Property Committee (*"the Committee"*) has made 2 Submissions on the Stamp Duty (Amendment) (No. 2) Bill 2010 to the LegCo's Bills Committee on 4 and 21 January 2011 respectively. Copies of the 2 Submissions are attached at **Appendix A and B**. (*please refer to LC Paper Nos. CB(1)983/10-11(01) and CB(1)1143/10-11(01) respectively*)

Meanings of "acquired" and "disposed of"

2. The Committee has raised concern on, inter alia, the meanings of the 2 important terms of *"acquired"* and *"disposed of"* under the Bill. In response to such concern, the Administration put forward draft Committee Stage Amendments (*"CSAs"*) to clarify the meanings of the 2 terms and consulted the Law Society's views on the proposed CSAs. A joint meeting was held between representatives of the Administration and members of the Committee on 18 March 2011 to discuss the draft CSAs. Copy of the draft CSA is attached at **Appendix C**. (*please refer to LC Paper No. CB(1)1536/10-11(03)*)
3. In gist, instead of relying on the test of *"passing of the equitable or legal ownership of the property"*, the CSAs proposed to amend the Bill by defining the time that a person has *"acquired"* and *"disposed"* of the property for the purpose of Special Stamp Duty by reference to the date on which he has *"made a chargeable agreement for sale (other than an instrument referred to in paragraph (b) of the definition of agreement for sale in section 29A(1))"* for the *"purchase"* and *"sale"* of the property respectively.
4. Section 29A(1) defines *"agreement for sale"* as:
 - "(a) an instrument in which a person contracts to sell or purchase immovable property;*
 - (b) an instrument in which a person confers, or has conferred on him,*

option or a right to purchase immovable property or a right of pre-emption in respect of immovable property, other than a specified option or right;

(c)”

5. The Committee generally welcomes the proposed changes in the definitions of “acquire” and “disposes of” by making reference to “chargeable agreement for sale” but expressed concern on the proposal to exclude “an instrument in which a person confers, or has conferred on him, an option or a right to purchase immovable property or a right of pre-emption in respect of immovable property, other than a specified option or right” provided in paragraph (b) of the definition of “agreement for sale” in Section 29A(1) from being considered as a “chargeable agreement for sale” for the purpose of Special Stamp Duty.
6. The Administration explained that they have excluded the paragraph (b) type of instruments as they considered that there would be no passing of legal or equitable ownership in a property under an instrument conferring “an option or a right to purchase immovable property or a right of pre-emption in respect of immovable property”.
7. The Committee has expressed reservation to the Administration on the proposed exclusion of paragraph (b) for the following reasons:
 - (a) depending on the terms of the instrument, equitable ownership of the property could have passed under an instrument conferring “an option or a right to purchase immovable property or a right of pre-emption in respect of immovable property”; and
 - (b) paragraphs (a) and (b) of the definition of “agreement for sale” in Section 29A(1) are not mutually exclusive, e.g. a provisional agreement could come under paragraph (a) as “an instrument in which a person contracts to sell or purchase immovable property” and under paragraph (b) as “an instrument in which a person confers, or has conferred on him, a right to purchase immovable property”: should then a provisional agreement be considered as a “chargeable agreement for sale” for the purpose of Special Stamp Duty under paragraph (a) or not under paragraph (b)?
8. The Committee understands that the Administration would further revise the draft CSAs to take into consideration its above concern and reserves the right to

make further comments on the revised CSAs.

Other Concerns

9. The Committee also understands that the Administration is considering its other concerns on the Bill as stated in the 2 Submissions in Appendix A and B hereof and also reserves its rights to make further comments on these issues.

**The Law Society of Hong Kong
The Property Committee
22 March 2011**