



**INLAND REVENUE AND STAMP DUTY LEGISLATION
(ALTERNATIVE BOND SCHEMES)
(AMENDMENT) BILL 2012**

LAW SOCIETY'S SUBMISSIONS

The Law Society has reviewed the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes)(Amendment) Bill 2012 (“the Bill”) and has the following comments:

A. Schedule 17A Part II

1. Clause 4(4) specified alternative bond scheme

It is difficult to ascertain the meaning of the phrase “*material time*”.

We suggest the clause be reviewed and clarification be provided.

2. Clause 6(2)(a)(ii)

The clause provides:

“The replaced asset is destroyed or lost during the specified term with or without any remains, and the bond-issuer acquires the replacing asset from a person using –

.....

(B) any insurance money and other compensation of any description arising in respect of the destruction or loss.”

We note the word “and” should be replaced by “or” in sub-paragraph B. This tracks the drafting in Clause 10(9)(b)(i) which states:

“any insurance money or other compensation of any description arising in respect of the destruction or loss, in whole or in part, of an asset that is the specified asset (the asset or part destroyed or lost is referred to as the previous asset)”.

3. Clause 10(3) C

The words “exchange or replacement” should be included.

4. Clause 12(1)(a) “the reasonable commercial return condition”

The Law Society highlighted the issue of ascertaining a **reasonable commercial return** in its submissions dated 5 June 2012.¹

We note that regard should be paid to matters such as the returns of similar products, but query whether adjustments would be permitted for other matters, such as the rate of inflation? In reality, a reasonable commercial return condition can only be ascertained by economists after the fact. We note pricing of most of these deals only happens in the latter stages, on road shows and so forth, and so query how legal advisers can provide legal advice on this clause.

The issuer must notify the Commissioner of Inland Revenue if a scheme does not satisfy the reasonable commercial return condition, but it is the Commissioner who determines the reasonable commercial return. The contents of this clause and Clause 13(2) are circular.

The Bill fails to provide any guidance on *the reasonable commercial return*, nor is there any indication the Commissioner of the Inland Revenue will provide guidance.

Will the Commissioner provide an advanced ruling on whether a Qualified Bond Arrangement has complied with the reasonable commercial return condition?

5. Clause 15(c) Hong Kong Connection Condition

We suggest inserting the words “*wholly or partly*” before “*are marketed in Hong Kong;*”

B. Part 4 Amendments to Stamp Duty Ordinance – Parts VA

6. Clause 47D(1)

We repeat our comments in paragraph 5 above.

¹ See Law Society’s response to Question 7 paragraphs 4.1, 4.2, 4.3 and 4.4

7. Clause 47F Relief on transactions under qualified investment arrangement

We note the payment of security for Stamp Duty could be a disincentive for such transactions as there is no indication of the amount of security or the length of time it will be held by the Collector.

We note the money could be set aside via an undertaking which could be given to the Collector or to a solicitor. Could the security be achieved by registering a 1st Charge over the assets? Will a Practice Note be issued?

The Law Society of Hong Kong

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