

立法會秘書處法律事務部的信頭

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Finance Bureau  
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Central Government Offices  
Hong Kong

**By Fax and By Hand**  
Fax no.: 2868 5279  
No .of pages: 13

(Attn : Miss Amy Tse  
Principal Assistant Secretary  
for the Treasury (Revenue))

Dear Miss Tse,

**Revenue Bill 1999**

I refer to the paper prepared by your Bureau in May 1999 setting out the Administration's response to concerns raised by Members at the meeting on 13 May 1999 (LC Paper No. CB(1) 1377/98-99(02)). Annex A of the paper provides the justifications for requiring a corporate purchaser to submit a banker's undertaking for the purpose of applying for deferred payment of stamp duty chargeable on an agreement for sale of residential property.

Paragraphs 9 and 10

2. It is stated in paragraph 10 that the conveyance on sale executed in conformity with the third agreement is only chargeable under section 29D(2)(a) to a fixed stamp duty of \$100 if the third agreement is stamped. It is not necessary for the conveyance solicitor to ensure that all three agreements are duly stamped in order to have the conveyance on sale stamped at the fixed duty. Please explain why a different policy is adopted when considering application for deferring payment of stamp duty in respect of the sub-sale agreements. Under the new section 29C(12) proposed in clause 18 of the Bill, security has to be given where it is not proved to the satisfaction of the Collector that all the instruments through which the vendor acquired his right or interest in or title to the proposed are duly stamped.

3. What is the Administration's policy regarding a sub-sale that occurs where an agreement has been endorsed by the Collector under the new section 29C(13) and is in the course of registration with the Land Registry? Would the Administration impose a penalty for late stamping pursuant to section 9 of the Ordinance since the new section 29C(11) prescribes that the time for stamping the agreement is within 7 days after the occurrence of the specified event? Would the policy be different in the case of a body corporate since a banker's undertaking has been given by way of security? Has the Administration considered making express provision in the Bill?

4. The Administration asserts that there is no direct obligation on the conveyance solicitor to ensure that all other agreements are stamped before proceeding with the conveyancing. This may be true to the extent that a failure to stamp an instrument chargeable with stamp duty does not go to title. However, it is a matter of conveyancing since a document which is unstamped may not be used by a vendor to prove good title. I enclose the judgment of *Town Bright Industries Ltd v Bermuda Trust (Hong Kong) Ltd & Another* [1998] 2 HKC 445 and would draw your attention to the part relating to the issue of stamp duty on pages 456 to 458. I believe that it has all along been the usual conveyancing practice for solicitors to insist on stamping of the agreements from which their clients derive title to the property.

Paragraph 11

5. The Administration is of the view that the agreement for sale of property is not by itself a deed of title to the property. In the case of *Chen & Another v Lord Energy Ltd* [1999] 1 HKLRD 205 (extracts enclosed), the Hong Kong Court of Final Appeal held that when an instrument which was properly registrable was registered against property and it was not apparent from a land search that the document had ceased to affect the property, it should prima facie be treated as part of the title deeds which a vendor should make available to the purchaser. The Court emphasised that on this approach, the matter may be displaced on examination. Hence, a purchaser is entitled to require the production of an agreement for sale for proof of title in order to ascertain at least whether any interest, power or obligation has been created thereunder that would survive completion.

6. I would take this opportunity to comment on your reply to my letter of 16 April 1999 on the Public Revenue Protection (Revenue) Order 1999 issued in April 1999 (LC Paper CB(1)1196/98-99(03)).

Item 7(c) What does the Administration mean by “normal circumstances” where an undertaking valid for a period of not less than one year will be acceptable. What would be the acceptable period in other circumstances?

Item 7(e) Would the Administration consider specifying in the Bill (a) the time within which the Collector will process the application, and (b) the duty of the Collector to set out reasons for refusal of application in the notice of decision?

Item 7(f) Is the Collector exercising the power to remit the whole or any part of the penalty under section 9(2) of the Stamp Duty Ordinance when allowing 7 days for the applicant to arrange for payment of stamp duty after the issue of a rejection notice despite the statutory time for payment has elapsed? Would the Administration consider amending section 9 to make provision for remittance in connection with the application for deferring payment of stamp duty?

I shall be grateful if you would let me have your reply on or before 5 June 1999 to facilitate the Bills Committee to discuss this issue at the next meeting on 8 June 1999.

Yours sincerely,

(Bernice Wong)  
Assistant Legal Adviser

Encl

c.c. D of J (Attn. Ms Sherman Chan, SALD)

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