

**Bills Committee on
Revenue Bill 1999**

**Administration's Response to Concerns
raised by members at the meeting of 8 June 1999**

**Deferred payment of stamp duty chargeable
on an agreement for sale of residential property**

- (a) The comparison of the amount and percentages of outstanding additional stamp duty and outstanding profits tax arising from property transactions owed by individuals and companies is as follows-

	Individuals		Companies		Total Amount
	Amount	Percentage	Amount	Percentage	
Total additional stamp duty outstanding as at 10.6.99	\$11.1m	37.4%	\$18.6m	62.6%	\$29.7m
Total profits tax relating to property transactions (due on or before 31.3.98) which was outstanding as at 31.3.99	\$108m	19.9%	\$434m	80.1%	\$542m

- (b) The Administration accepts the views of the Bills Committee that express provisions in the Stamp Duty Ordinance should be provided to allow, under reasonable circumstances, the presentation of copies of instruments chargeable to stamp duty for stamping. The proposed committee stage amendments and the relevant explanatory notes are set out in the Annex.

Annex

- (c) The Administration accepts the views of the Bills Committee that the law should provide that the reasons for refusing an application for deferred payment of stamp duty in the notice of decision should be given. The proposed committee stage amendments and the relevant explanatory notes are also set out in the Annex.

Annex

Finance Bureau
FIN CR 7/2201/98
June 1999

**Committee Stage Amendments
to the Revenue Bill 1999**

Explanatory Notes

Proposed Amendments	Purpose
<p>Add new section 18B by adding new clause 15A to the Bill</p>	<p>Section 5(1) of the Stamp Duty Ordinance requires every instrument chargeable with stamp duty to be presented to the Collector of Stamp Revenue (the Collector) for stamping. Section 9 provides that any such instrument which is not stamped within the time for stamping shall attract a penalty. Despite these provisions, the standing practice of the Inland Revenue Department (IRD) is to accept payments of stamp duty in the absence of the relevant instruments. Some Members of the Bills Committee expressed at the meeting held on 8 June 1999 that it would be desirable to reflect such practice in law. The purpose of this new section is to give legal recognition to the presentation of a copy of an instrument for stamping under reasonable circumstances instead of presenting the original instrument.</p> <p><i>New section 18B(1)</i></p> <p>This section provides that where it is shown to the satisfaction of the Collector that it is impracticable in the circumstances of the case that the instrument be presented, a copy of the instrument may be presented for stamping instead. For example, where an agreement for sale and purchase of a residential property which has been endorsed by the Collector under the proposed section 29C(13)(a) has been submitted to the Land Registry for registration but the property is sub-sold during the process of registration, the purchaser may present a copy of the agreement for stamping within 7 days of the sub-sale and there will be no question of penalty.</p> <p>The proposed new section will apply to other instruments which are impracticable to be presented for stamping. Also, it applies to an</p>

Proposed Amendments	Purpose
	<p>instrument which <i>is required to be presented</i> for stamping [e.g. section 5(1)] as well as to an instrument which <i>is presented</i> for stamping [e.g. sections 5(7) and 12) or which <i>is tendered</i> for stamping [see section 62]. Furthermore, the presentation of a copy of an instrument for stamping is to be allowed in reasonable circumstances only and not to be taken as a general rule. Therefore, the Collector has to be satisfied that it is impracticable in the circumstances of the case that the instrument be so presented.</p> <p><i>New section 18B(2)</i> This section provides that where a copy of an instrument is presented for stamping pursuant to section 18B(1), the Collector may stamp and issue a certificate in respect of the instrument to the person who presents the copy of the instrument as if the certificate were the instrument. The form of the certificate will be determined by the Collector from time to time.</p> <p><i>New section 18B(3)</i> This section empowers the Collector to record or denote any particulars or matter on a certificate in the same manner as he would record or denote on the instrument itself [e.g. to record the date of stamping and the amount of the stamp duty paid (section 5(1))].</p> <p>Besides, the new section deems the instrument to have been stamped in the same manner and in the same amount as the certificate has been stamped. Therefore, the stamping process of the instrument is perfected by attaching the certificate to the instrument without the need to re-present the instrument to IRD for stamping once available.</p> <p><i>New section 18B(4)</i> This section provides that a copy of an instrument for the purposes of new section 18B shall be a</p>

Proposed Amendments	Purpose
	certified copy. Normally, a copy certified by the handling solicitor, the mortgagee bank, or a party to the transaction will be acceptable to IRD.
Amend proposed section 19(12A)(a) in clause 16(d)	The proposed section 19(12A)(a) requires the borrower to provide, as a condition to the registration of a stock borrowing and lending agreement, an “executed copy” of the agreement to IRD. We note that stock borrowing and lending agreements are normally executed in duplicate only, one copy being kept by the lender and the other by the borrower. Besides, such agreements usually relate to international stock borrowing activities and not confined to the Hong Kong market and many of them have already been executed a long time ago. As such, IRD in practice is prepared to accept certified copies of executed agreements for registration purposes. In view of the concerns of Members of the Bills Committee on the need to stipulate in law the practice to accept copies of instruments, we propose to amend the section to reflect clearly the arrangement. The proposed amendments will allow a borrower to provide either an executed copy of the stock borrowing and lending agreement or a certified copy of the agreement. Normally, a copy certified by the borrower or his representing solicitor will be accepted by IRD.
Amend proposed section 29C(13)(b) in clause 18(d)	In response to the concerns of members, the proposed section 29C(13)(b) is proposed to be amended by requiring IRD to set out the reasons for refusing an application for deferred payment of stamp duty in the notice of decision.

REVENUE BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Treasury

Clause

Amendment Proposed

New

By adding -

“15A. Section added

The following is added -

**“18B. Presentation of copies of
instruments, etc.**

(1) In this Ordinance, any reference to an instrument as one being or required to be presented or tendered to the Collector for stamping shall be construed as including a reference to a copy of the instrument if it is shown to the satisfaction of the Collector that it is impracticable in the circumstances of the case that the instrument be or be required to be so presented or tendered (as the case may be).

(2) Where a copy of an instrument

chargeable with stamp duty is presented to the Collector for stamping pursuant to subsection (1), the Collector may, where he is required or empowered under this Ordinance to stamp the instrument or cause it to be stamped, stamp a certificate issued by him, in such form as he may from time to time determine, in respect of the instrument or cause such a certificate to be stamped (as the case may be) as if the certificate were the instrument.

(3) Where the Collector stamps a certificate issued in respect of an instrument, or causes such a certificate to be stamped, pursuant to subsection (2) -

(a) the instrument shall, for the purposes of this Ordinance, be deemed to have been stamped in the same manner and with the same amount as the certificate has been stamped; and

(b) (i) the Collector may, where he is required or empowered under this Ordinance to

record or denote
any particulars or
matter on the
instrument, record
or denote (as the
case may be) such
particulars or
matter on the
certificate; and

(ii) where any
particulars or
matter has been
recorded or
denoted on the
certificate pursuant
to subparagraph (i),
such particulars or
matter shall, for the
purposes of this
Ordinance, be
deemed to have
been recorded or
denoted (as the
case may be) on
the instrument.

(4) In this section, a reference to a copy,
in relation to an instrument, shall be construed as a
reference to a

copy which is shown to the satisfaction of the Collector as a true copy of the instrument.”.”.

16(d) In the proposed section 19(12A) (a), by adding”, or a copy of the stock borrowing and lending agreement which is shown to the satisfaction of the Collector as a true copy thereof” after “provided for”.

18(d) In the proposed section 29C(13) (b), by adding”, and the reasons for the decision,” after “decision”.