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Secretary for Financial Services
and the Treasury
Financial Services and the Treasury Bureau
(Attn: Mr Ivanhoe CHANG
AS (Tsy)(R)2)
5/F, East Wing
CGO, Lower Albert Road
Central
Hong Kong

By Fax (2868 5279) and By Post

9 December 2002

Dear Mr CHANG

Stamp Duty (Amendment) Bill 2002

We are scrutinizing the legal and drafting aspects of the Bill and would be grateful for your clarification of the following points-

We note that the Bill provides for an alternative method of stamping an instrument to be specified by the Collector of Stamp Revenue ("the Collector") i.e. a stamp certificate may be issued by the Collector upon an application made in accordance with the new Part IIA.

The new section 18I(1) provides that the Collector may, **at any time after an application for stamping an instrument is made**, require for presentation to the Collector for inspection for the purposes of this Ordinance-

- (i) the instrument; or
- (ii) such evidence as the Collector may deem necessary in order to show to his satisfaction whether all the facts and circumstances affecting the liability of the instrument to stamp duty, or the amount of stamp duty chargeable on the instrument, are fully and truly set forth in the instrument.

The new section 18I(2)(b) provides that where a stamp certificate has

been issued, the Collector shall cancel the stamp certificate if there is a failure to comply with section 18I(1).

The new section 18J(1)(c) provides that the Collector shall cancel a stamp certificate if it is subsequently found to contain any error. The new section 18J(5) further provides that where a stamp certificate is cancelled under subsection (1)(c) for any error concerning an undercharge of stamp duty, the Collector may **only** issue a new stamp certificate denoting the payment of stamp duty chargeable on the instrument after payment of the undercharged stamp duty has been made.

In the light of the above provisions, it appears that the Collector may cancel a stamp certificate issued under the new Part IIA at any time and no time limit is set out in the Bill. If a transaction takes place after the stamp certificate is issued and before the Collector cancels the stamp certificate and the new purchaser of the transaction has relied on the stamp certificate as evidence that stamp duty has been duly paid for the relevant instrument, will the Collector take into account of this fact before making his decision to cancel the stamp certificate? If the persons liable for payment of stamp duty of the relevant instrument cannot be located when the stamp certificate is cancelled, will the new purchaser liable for the payment of the undercharged stamp duty? Will the instrument become non-admissible under section 15 when the stamp certificate is cancelled?

The Bill will be considered in the House Committee to be held on 13 December 2002. It is appreciated that your reply in both languages could reach us by noon, 11 December 2002.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser

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