

財經事務及庫務局
(庫務科)

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Legislative Council Building
8 Jackson Road, Central
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(Fax: 2877 5029)

Dear Ms LAI,

Stamp Duty (Amendment) Bill 2002

Thank you for your letter of 9 December 2002. The Administration's response to your questions is set out in the ensuing paragraphs.

2. Under the new section 18J, the Collector may cancel stamp certificates under various circumstances specified in subsection (1). In view of the variety of situations which may arise leading to the cancellation of a stamp certificate, it is impracticable to set a statutory time limit for the Collector to exercise this power.

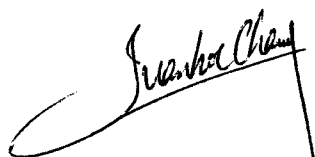
3. Before exercising the authority to cancel a stamp certificate, the Collector will duly consider all relevant circumstances of the case. The fact that a new purchaser has relied on a stamp certificate as evidence of stamp duty paid is one of the factors to be considered by the Collector, but not a conclusive one. If the stamp certificate was wrongly issued because of material error (e.g. incorrect address of property) in the previous application form for stamping, the original instrument is in fact not properly stamped because the contents of the stamp certificate and the original instrument will not match. The stamp certificate should be cancelled and replaced by a new one upon due payment of the correct amount of stamp duty.

4. If a stamp certificate in relation to an instrument is cancelled, the instrument is not stamped under the new definition of "stamped" in section 2(1) of the Ordinance. All the persons set out in section 4(3) of the Ordinance shall then be liable, or jointly and severally liable, civilly to the Collector for the payment of the stamp duty concerned. The new purchaser, not being a party to the instrument, shall not be liable unless he uses such instrument, then he becomes one of the liable persons by virtue of section 4(3) of the existing Ordinance. Similar situation may also happen under the conventional system where an instrument has been stamped and returned to the applicant and the cheque for payment of stamp duty is subsequently found to be dishonoured. Although the stamp is not available for cancellation physically, it is in fact invalid and the instrument is not stamped.

5. As explained above, an instrument is not "stamped" if the related stamp certificate has been cancelled by the Collector under the new Part IIA of the Ordinance. Thus it is not admissible under section 15 of the Ordinance unless the instrument is subsequently duly stamped.

6. I hope the above helps to clarify the issues related to the Amendment Bill. Please feel free to contact me if you have any questions related to this reply.

Yours sincerely,



(Ivanhoe Chang)

for Secretary for Financial Services and the Treasury

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