



香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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Room 1403, World-Wide House, 19 Des Voeux Road Central, Hong Kong.
Tel: 2826 0111 Fax: 2845 2521

12 March 2003

Your ref: CB1/BC/2/02

Mr. Law Kam-sang
Clerk to Bills Committee
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr. Law

Bills Committee on Stamp Duty (Amendment) Bill 2002

We refer to your letter of 3 March and as requested would like to offer our comments on the captioned Bill as follows:

We generally welcome and support Government's initiative to modernise the stamping process for instruments relating to property transfers so as to improve efficiency and provide a speedier and more convenient service to the public. We have a number of comments on the practical implementation of the proposal.

Persons interested in Certificate of Stamping

1. Apart from the immediate parties to the transaction, the following persons would be interested in ensuring that an instrument has been duly stamped or endorsed:
 - (i) the Land Registry (under sections 15(2) and (3) of the Stamp Duty Ordinance, the Land Registry cannot accept an instrument for registration unless the instrument is duly stamped or endorsed);
 - (ii) a vendor having the obligation to show good title and a purchaser interested in obtaining good title in a subsequent transaction.

Land Registry

2. In order to preserve priority from the date of an instrument, the instrument must be registered within one month of its execution.



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However, an instrument cannot be registered unless it is duly stamped or endorsed by the Collector of Stamp Revenue. Instruments relating to property transfers are required to be stamped within 30 days of execution. Because of the time it takes for an instrument to be stamped or endorsed by the Collector, instruments are occasionally registered outside the one-month period, thus resulting in loss of priority. To avoid loss of priority, instruments would have to be submitted to the Stamp Office for stamping or endorsement way before the expiration of the one-month period for registration to allow time for processing by the Stamp Office. Sometimes delays do occur due to no fault of the parties (for example, typhoon, rainstorm warning or delay in processing by the Stamp Office), resulting in loss of priority nonetheless.

3. Our view is that a party should not suffer a loss of priority: -
 - (i) in the case of an instrument submitted for registration within one month of execution, if stamp duty is paid or the instrument is submitted for endorsement before the expiration of the 30-day period for stamping;
 - (ii) in the case of an instrument submitted for registration outside the one-month period, if stamp duty is paid or the instrument is submitted for endorsement and penalty, if any, is paid not later than the date when the instrument is submitted for registration.

4. With the introduction of electronic certificates of stamping or endorsement, it should be feasible to introduce the following:
 - (i) it shall not be necessary for an instrument to be stamped or endorsed before it can be submitted for registration in the Land Registry;
 - (ii) data on stamped or endorsed instruments are to be available on-line by the Stamp Office computer to the Land Registry computer so that the Land Registry computer would automatically seek confirmation from the Stamp Office computer as to whether an instrument submitted for registration has been stamped or endorsed;
 - (iii) an instrument submitted for registration within one month of its execution will not be stopped from or rejected for registration if stamp duty has been paid or the instrument is submitted for endorsement before the expiration of the 30-day period for stamping;



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- (iv) instruments submitted for registration outside the one-month period will not be stopped from or rejected for registration if stamp duty has been paid or the instrument is submitted for endorsement and penalty, if any, is paid not later than the date when the instrument is submitted for registration.

Payment of stamp duty and proof of title

5. A vendor would usually have the obligation to show that the instruments by which he derived title have been duly stamped. Experience has shown that where a certificate of payment or endorsement is not annexed to the instrument or included in the bundle of title deeds, the vendor could face considerable difficulties. Examples are: -
- (i) A Deed of Gift was submitted for adjudication. The instrument itself and the copy recorded in the Land Registry merely show that the document was being adjudicated. The relevant certificate cannot be located as the firm of solicitors who prepared the Deed of Gift are no longer practising or the file cannot be located. In the absence of a certificate of payment or endorsement that the instrument has been adjudicated and duly stamped the vendor is not able to show good title.
- (ii) A similar situation where an Assignment was submitted for adjudication as a transfer between associated companies under section 45 of the Stamp Duty Ordinance and the certificate of stamping or endorsement that the instrument is not chargeable to stamp duty is not annexed to the Assignment or included in the bundle of title deeds.
6. When certificates of stamping or endorsement become a norm rather than an exception, this problem would be aggravated. We note from your LegCo Brief (FIN 4/2306/00) paragraph 26(g) that the Administration proposes that if a stamp certificate is lost, a user may apply for a certified copy of the certificate at a prescribed fee. We are of the view that the most efficient and convenient way of dealing with the problem would be for the Land Registry computer records to contain a note, open to public search, to the effect that the instrument has been stamped or endorsed, together with a Stamp Office reference so that for those cases where adjudication is pending or payment of stamp duty is deferred or withheld pending appeal, inquiry can be made with the Stamp Office for a quick response.



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7. During phase 1 of the proposal when electronic certificates of stamping or endorsement are not yet available and the certificates are still issued in hard copy form, data and confirmation on whether a certificate has been issued in respect of an instrument should be:
- (i) made readily available to the parties of the instrument and their representatives, to anyone who has an interest in the property affected by the instrument, and to members of the public if the instrument has been submitted to the Land Registry for registration;
 - (ii) made available within a short period of time upon request either free of payment or subject to a small fee.

We trust the foregoing has set out clearly our views on the subject Bill and we would therefore not take up your offer of sending a representative to the Bills Committee meeting on 20 March.

Yours sincerely

Louis Loong
Secretary General