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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

26 March 2003

Dear Mr CHANG

Stamp Duty (Amendment) Bill 2002

Thank you for your letter of 18 March 2003.

It appears that the legislative intent of sections 18I and 18J, as revealed in your letters to us, is that if the information set out in the stamp certificate issued by the Stamp Office corresponds with that contained in the instrument chargeable with stamp duty, the stamp certificate will not be considered as containing any "error" under section 18J(1)(c) and cancelled by the Collector of Stamp Revenue ("the Collector") if the Collector is subsequently of the view that the stamp duty paid in respect of the instrument is not sufficient. As it is ambiguous whether the Bill as presently drafted, in particular the term "error in the stamp certificate", clearly reflects your policy, please consider to amend the Bill accordingly.

You have also confirmed that in the above scenario, the Collector will only take recovery action under section 4(5) of the Ordinance within 6 years from the expiration of the time for stamping the instrument.

In response to our queries raised in our letter dated 9 December 2002 that if a transaction takes place after the stamp certificate, which is apparently in order as evidence that the stamp duty has been duly paid, is issued and before the Collector forms his view that the stamp duty paid in respect of the instrument is not sufficient, whether an innocent new purchaser, who has relied on the stamp certificate, is liable for the undercharged stamp duty, paragraph 4 of your letter dated 12 December 2002 states the Administration's position as follows:

"If the instrument is not stamped under the new definition "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 Ordinance. Unless the instrument is subsequently duly stamped, it is not admissible under section 15 of the Ordinance."

A member would like the Administration to provide further information on the current practices adopted by the Collector in recovering the undercharged stamp duty in this scenario. When will the new purchaser "uses" the instrument and becomes liable for the undercharged stamp duty? As the new purchaser has to rely on the instrument to prove his title to the property, will the Collector institute recovery action against him within the 6 years limitation period because he possesses or controls the instrument, or when he sells his property and "uses" the instrument to prove his title to the property?

In the meantime, if a series of transactions have taken place before the Collector forms his view that the stamp duty paid in respect of an instrument is not sufficient, will the intervening owners who "have used" the instrument to prove their title to the property in their sale of the property also be liable for the undercharged stamp duty?

It is appreciated that your reply, in both Chinese and English, could reach us by 7 April 2003.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser

c.c. LA
S for J (Attn: Ms Lonnie NG)
CIR (Attn: Miss Mary WONG)