

**財經事務及庫務局
(庫務科)**

香港下亞厘畢道
中區政府合署

**FINANCIAL SERVICES AND THE
TREASURY BUREAU
(The Treasury Branch)**

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Legal Service Division
Legislative Council Secretariat
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 26 March 2003. The Administration's response to your question is set out in the ensuing paragraphs.

As explained in our previous correspondence, if the consideration stated in the instrument matches that on the stamp certificate, the stamp certificate will not be considered as containing an error for the purpose of the proposed section 18J merely because the instrument should have attracted more stamp duty (e.g. the consideration on the instrument is substantially lower than the market value). There is neither error in the process of application nor issuance of the stamp certificate involved. This is considered as a case of "insufficiently stamped" rather than an error as the stamp certificate was accurately made in accordance with the information available at the time of stamping, and the additional duty only arises subsequently. There is thus no need to cancel the stamp certificates under the proposed section 18J(1). There are already clear provisions under the existing system to deal with this type of cases through adjudication by the Collector under section 13 and recovery under sections 4(3) and (5) of the Stamp Duty Ordinance (Cap. 117) (the Ordinance). This will

continue to be the case under the new system. Since there is no need to cancel the stamp certificates in such cases under the proposed section 18J(1), the proposed section 18J does not apply at all. It therefore follows that the proposed section 18J(5) must necessarily refer to undercharge cases due to errors, such as those caused by mistakes in stating the correct consideration or miscalculating the stamp duty amount etc., and unrelated to insufficiently stamped cases explained above. We therefore consider that the Bill as currently drafted is adequately clear and reflects our policy intention.

Currently, for a typical sale and purchase of property, the instrument will be initially stamped in accordance with the stated consideration. The Stamp Office will then refer the case to the Rating and Valuation Department for post-stamping valuation review. If the value of the property is found to be substantially higher than the stated consideration, the Collector of Stamp Revenue (“the Collector”) will adjudicate the instrument under section 13 of the Ordinance and issue an assessment demanding payment of the stamp duty undercharged. The assessment is normally issued to the executing parties of the instrument i.e. the purchaser and/or the vendor, where appropriate. If the duty is overdue, recovery actions will be taken against these parties within the statutory time limit of six years under sections 4(3) and (5) of the Ordinance.

It is not the practice of the Stamp Office to initiate recovery actions against the new purchaser or the intervening owners in cases where the property has changed hands prior to recovery actions under section 4(3) of the Ordinance. It is because the Collector does not consider the new purchaser or the intervening owners (i.e. not the executing parties of the instrument concerned) as a prima facie “user” of the instrument merely because he is in possession of the instrument and might, in the course of disposition of the property, have used it for the purpose of establishing his title. To allege that he is a user for the purpose of invoking section 4(3) of the Ordinance, the burden of proof lies on the Collector and there are practical difficulties in adducing proof that such person did in fact use the instrument or when he did use it.

Finally we would like to reiterate that the persons liable to the payment of stamp duty of an instrument under section 4(3) of the Ordinance will remain the same no matter whether the instrument is stamped under the existing or new system. Difference in the stamping method will not alter a person’s liability to stamp duty.

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

cc.	Secretary for Justice	(Attn.: Ms Lonnie NG)
		(Attn.: Mr M Y CHEUNG)
	Commissioner of Inland Revenue	(Attn.: Miss Mary WONG)