

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
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2 May 2003

Mr Law Kam-sang
Clerk to Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Fax: 2877 9600)

Dear Mr Law,

Bills Committee on Stamp Duty (Amendment) Bill 2002

Follow up to the third meeting on 22 April 2003

Thank you for your letter of 23 April 2003.

The Administration's response to the issues raised during the third meeting of the Bills Committee on 22 April 2003 is set out below:-

- (a) **Whether only data relevant to stamp duty need be provided in the stamp certificate.**

The stamp certificate needs to contain sufficient information to link it up with the instrument. Our current plan is to show the date and nature of instrument, name and capacity of parties, property address, solicitor's name, etc. in the stamp certificate. If only stamp duty data (e.g. amount of consideration and stamp duty paid) is shown on the

certificate, it may be freely attached to any instrument and cannot serve as prima facie evidence of stamping for a particular instrument.

- (b) **Whether the term “error” in the bill should be defined to exclude undercharge of stamp duty if the information contained in the stamp certificate corresponds with the information contained in the instrument stamped.**

We have stated that the meaning of the term “error” in the proposed section 18J(1)(c) does not include insufficiently stamped cases as the latter does not involve any error. While we think the construction is adequately clear, we agree with Members that the term can be further clarified to avoid any doubt. To address Members’ concern, we are prepared to propose a Committee Stage Amendment (CSA) to clarify the meaning of “error” by excluding insufficiently stamped cases (i.e. cases under section 13(4) of the Stamp Duty Ordinance (Cap. 117) (the Ordinance)).

Members also raised a concern about the proposed power of the Collector to cancel a stamp certificate unilaterally in situation where the interested parties have not received notification (due to address changes, etc.). We have emphasized that the power to rectify an error through cancelling and re-issue of a stamp certificate is not intended to extend the duty recovery period specified in section 4(5) of the Ordinance, but to provide a means of rectifying the error for the benefits of duty payers. To address Members’ concern, we are prepared to amend the proposed section 18J(1)(c) to the effect that the power of the Collector to cancel a stamp certificate for error cases could only be exercised **upon request**. As such, if a person finds that a stamp certificate contains an error, he can request the Collector to rectify the error on supporting evidence provided by him. If the Collector is satisfied that there is indeed an error, the Collector will cancel the original stamp certificate and issue a new one to him. However, if there is underpayment (but not undervaluation) of stamp duty involved, the Collector will inform the applicant. If the applicant does not pay the balance of stamp duty payable, the Collector will not cancel the original certificate or issue a new and correct one until he receives the shortfall. In cases where the

Collector identifies a possible error in the stamp certificate, he will seek clarification with the interested parties and invite them to make a request under section 18J(1)(c). The Collector will not cancel the stamp certificate if no request is received. If the Collector is of the opinion that stamp duty of the instrument has been insufficiently stamped, he will adjudicate the instrument and recover the shortfall under the existing sections 4 and 13 of the Ordinance. We believe the above amendments will address Members' concern.

- (c) **Whether the relevant information system in the Land Registry could be enhanced to indicate that a stamp certificate in respect of an instrument has been cancelled.**

This proposal arises from the concern about the difficulty in notifying interested parties of cancellation of stamp certificates. With the proposed CSAs of sections 18I and 18J, the stamp certificates will only be cancelled on request. There will therefore not be any problem in notifying the interested party of the cancellation.

- (d) **Whether clause 18J(1)(d) need be amended so that the Collector of Stamp Revenue shall not cancel a stamp certificate if satisfactory explanations are provided for failure to comply with section 18I(1) of the Stamp Duty Ordinance.**

To address Members' concern about the cancellation of stamp certificate without the relevant parties' knowledge, we are prepared to amend the proposed section 18I(2)(b) to the effect of withdrawing the sanction of cancellation of the stamp certificate in section 18I(1) for non-compliance cases. To ensure compliance of the requirement about submission of original instrument or evidence for inspection, which is very important under the nearly automatic electronic stamping process, we propose to impose a Level 2 penalty (currently \$5,000) instead. This penalty shall be recoverable by the Collector as a civil debt due to the Government. Before imposing this penalty, the person will have a chance of submitting representations to the Collector under section 58A. The proposed penalty level is in line with the existing penalty provisions for non-compliance of various

acts under sections 15(2), 19(15), 37 and 45(7) of the Ordinance.

- (e) **Whether the Collector of Stamp Revenue's power to request inspection of an instrument under section 18I(1) in order to ascertain the stamp duty liability should be limited to within 6 years from the expiration of the time for stamping the instrument, or within a definite period of time after an application for stamping an instrument is made under section 18F, whichever is the later.**

In view of Members' concern, we are prepared to move a CSA to limit the Collector's power of inspection with respect to cases where stamp certificates have been issued under section 18I(1) to 6 years from the expiration of the time for stamping the instruments. This is consistent with the time limit for recovering stamp duty under section 4(5) of the Ordinance.

The relevant CSAs the Administration is prepared to move are provided at the Appendix.

Yours sincerely,

(Miss Erica Ng)

for Secretary for Financial Services and the Treasury

Encl.