

**Bills Committee on Stamp Duty (Amendment) Bill 2002**

**The Administration's Response and Follow-up Actions  
on Issues Arising from the Discussion at the Meeting on 9 May 2003**

The Administration's response to the following issues raised during the Bills Committee's meeting on 9 May 2003 is set out below:-

**(a) To check with the Land Registry whether the cancellation of a stamp certificate for an instrument in respect of the sale of a property may be registered in the Land Registry**

We have discussed this issue with the Land Registry. At present, under section 15 of the Stamp Duty Ordinance (Cap. 117) (the SDO) instruments chargeable with stamp duty must be stamped before being accepted for registration by the Land Registry under the Land Registration Ordinance (Cap. 128) (the LRO). This arrangement is made for protection of stamp revenue. Currently, after an instrument has been registered at the Land Registry, the lodging party is not required to lodge the instrument for registration again if the stamp is cancelled (i.e. after stamp duty is refunded) or if the instrument bears new stamps (i.e. after payment of further duty). Similarly, under the proposed system, the stamp certificate is itself not an instrument affecting land for the purposes of registration under the LRO and thus is not registrable. Accordingly, neither the cancellation notice of a stamp certificate nor a new stamp certificate is itself registrable.

In fact, under our revised proposal, a stamp certificate will be cancelled only under the following two circumstances –

i. Where the stamp duty etc. paid has been refunded [proposed s. 18J(1)(a) and (b)]

The instrument is either not chargeable with stamp duty or attracts a lesser duty leading to the refund. In the latter case, a new stamp certificate will be issued denoting the revised duty.

ii. Where the stamp certificate contains any error [proposed s. 18J(1)(c)]

The Collector will only cancel a stamp certificate upon request by a person who has shown to the Collector's satisfaction that the certificate

contains an error. The Collector will at the same time issue a new stamp certificate to rectify the error.

In both cases, it seems unlikely that a subsequent purchaser of the property involved will be exposed to stamp duty liabilities due to the cancellation of a previous stamp certificate in respect of the instrument. Also, for the sake of his own interest, the person who requests for partial refund or rectification of an error in a stamp certificate will attach the new stamp certificate to the instrument. Thus, in practice, an original instrument should always be accompanied with the most updated stamp certificate as evidence of stamping. It is also possible to check the status of stamp certificates via the Certificate Checking System of the Stamp Office. It is therefore not necessary to indicate the status of the stamp certificate in the Land Registry's system.

**(b) To look into the feasibility of amending the Bill to allow reasonable defence before the proposed penalty for non-compliance of section 18I(1) is imposed and to consider the provision of a channel for appeal**

We have adopted Members' suggestion to introduce "reasonable excuse" as a defence for non-compliance of section 18I(1). The draft Committee Stage Amendments have been revised accordingly.

With regard to the provision of a channel of appeal, we are of the view that there are already sufficient avenues for duty payers to challenge the Collector's decision under the current proposal and an additional special appeal mechanism is not recommended. If a person is aggrieved by the Collector's decision to impose penalty, he may either apply for judicial review against her decision or dispute the liability (on the ground of having a reasonable excuse) to pay such penalty in any civil proceedings instituted by the Collector for the recovery thereof.

**(c) Reason for the time limit of two years stipulated in the existing section 49 within which the Collector may cancel and allow as spoiled the stamp misused**

The existing two-year time limit for refund applications under the SDO was modelled on the repealed Stamp Duties Management Ordinance (Cap. 121) enacted in 1911, which, in turn, was based on the Stamp Duties Management Act

1891 of UK that is still in force. We consider it appropriate to maintain this time limit.

- (d) Members' request that the Secretary for Financial Services and the Treasury give an undertaking in the speech for the resumption of second reading debate of the Bill that the Administration will consult the industry before extending the proposed system to stock transactions**

The Secretary for Financial Services and the Treasury will give an undertaking in the speech for resumption of second reading debate of the Bill that the securities industry will be duly consulted if the proposed new electronic stamping system is to be extended to stock transactions in future.

- (e) Members' request to provide, at a later stage, a list of instruments that Part IIA applies but applications for stamping cannot be made without presenting instruments and that the Administration indicate clearly the instruments not to be covered by the proposed system in its publicity efforts**

We will provide a list of instruments to which Part IIA applies but applications for stamping of which cannot be made without presenting the instruments. In publicising the new system, we will also indicate clearly the instruments not to be covered.

Financial Services and the Treasury Bureau  
May 2003