

A BILL

To Amend the Stamp Duty Ordinance to introduce an alternative way of stamping certain instruments chargeable with stamp duty by issuing a stamp certificate, and to provide for related matters.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Stamp Duty (Amendment) Ordinance 2002.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

2. Interpretation

Section 2(1) of the Stamp Duty Ordinance (Cap. 117) is amended---

(a) by repealing the definition of "stamped" and substituting---

"stamped" (加蓋印花、加蓋), in relation to an instrument, means---

(a) the instrument has been stamped by means of a stamp under this Ordinance; or

(b) a stamp certificate has been issued in respect of the instrument by the Collector under Part IIA, in so far as the stamp certificate has not been cancelled under that Part;"

(b) by adding---

"stamp certificate" (印花證明書) means a certificate issued by the Collector under Part IIA;"

3. Methods of stamping and denoting

Section 5 is amended---

(a) by repealing subsection (1) and substituting---

"(1) Subject to this section and section 9, where an instrument chargeable with stamp duty is presented to the Collector for stamping, the Collector may, upon payment of the stamp duty---

(a) stamp such instrument or cause it to be stamped---

(i) by means of a franking machine with the amount of stamp duty paid and the date of stamping; or

(ii) by means of a stamp approved by the Collector with the words "Stamp Office Hong Kong" or "香港印花稅署" and the date of stamping, and shall at the same time record on the instrument, as close as possible to the date so stamped, the amount of stamp duty paid together with his signature; or

(b) where the instrument is an instrument to which Part IIA applies, instead of stamping it in the manner as provided in paragraph (a), issue a stamp certificate in respect of the instrument.";

(b) by adding---

"(1A) A stamp certificate shall not be issued under subsection (1)(b) in respect of the instrument notwithstanding that it is an instrument to which Part IIA applies if, at the time when the instrument is presented to the Collector, it is accompanied by a written request to the Collector for stamping it in the manner as provided in subsection (1)(a).";

(c) in subsection (6), by repealing "both the instruments, be denoted upon the first-mentioned instrument" and substituting "evidence to his satisfaction that such duty has been paid, be denoted upon the first-mentioned instrument or the stamp certificate issued in respect of the first-mentioned instrument".

4. Duplicates and counterparts

Section 8 is amended by repealing everything after "duly stamped" and substituting---

"unless---

(a) it is stamped as an original instrument;

(b) there is denoted on it payment of the stamp duty paid in respect of the original instrument of which it is the duplicate or counterpart; or

(c) there is denoted on a stamp certificate issued for the duplicate or counterpart payment of the stamp duty paid in respect of the original instrument of which it is the duplicate or counterpart.".

5. Adjudication of stamp duty by Collector

Section 13 is amended---

(a) in subsection (1C), by adding "or the stamp certificate" before "denoting";

(b) by repealing subsections (2) and (3) and substituting---

"(2) Any instrument in respect of which---

(a) the adjudication fee is paid under subsection (1) shall be stamped with a stamp or by way of a stamp certificate denoting the payment of the fee;

(b) the adjudication fee is not payable under subsection (1B) shall be stamped with a stamp or by way of a stamp certificate denoting that the instrument has been presented for adjudication.

(3) If the Collector is of opinion that the instrument---

(a) is not chargeable with stamp duty, it may, subject to subsection (4), be stamped with a stamp or by way of a stamp certificate denoting that the instrument is not chargeable with stamp duty;

(b) is chargeable with stamp duty, he shall assess the stamp duty payable, and, subject to subsection (7), where the instrument is stamped under section 5 with a stamp or under section 18E(1) by way of a stamp certificate denoting payment of the stamp duty so assessed, the instrument may also be stamped with a stamp or by way of a stamp certificate denoting that it is duly stamped.";

(c) in subsection (6), by adding "or by way of a stamp certificate" before "denoting";

(d) in subsection (10), by adding "or on any stamp certificate issued for the instrument," before "in respect of which".

6. Appeal against assessment

Section 14(1C) is amended by adding "or, where applicable, issue a stamp certificate in respect of the instrument," before "to that effect".

7. Non-admissibility, etc. of instruments

not duly stamped

Section 15(3)(a) is amended by repealing "or 13(2)" and substituting

", 13(2) or 18E(1)".

8. Presentation of copies of instruments, etc.

Section 18B is amended---

(a) in subsection (2), by repealing everything after "stamped," and substituting "issue a stamp certificate in respect of the instrument under Part IIA.";

(b) by repealing subsection (3).

9. Part added

The following is added---

"PART IIA

Stamping by Way of Stamp Certificates

18C. Interpretation

In this Part, unless the context otherwise requires---

"electronic record" (電子紀錄) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap.

553);
"record" (紀錄) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);
"send" (送交) includes deliver or transmit by electronic means.

18D. Application of this Part
This Part shall apply to an instrument chargeable with stamp duty under heads 1, 2 and 4 in the First Schedule.

18E. Stamping by way of stamp certificates

(1) Subject to section 5(1A), the Collector may, for the purpose of stamping any instrument to which this Part applies, issue a stamp certificate in respect of the instrument, whether or not the instrument is presented to the Collector for stamping.

(2) A stamp certificate may be issued in paper form or in the form of an electronic record.

(3) The Collector may issue a stamp certificate---

- (a) to denote the payment or remission of stamp duty;
- (b) to denote the payment or remission of any penalty payable under this Ordinance;
- (c) to denote the payment of an adjudication fee payable under this Ordinance;
- (d) to denote the fact that an instrument has been presented for adjudication;
- (e) to denote that an instrument is not chargeable with stamp duty;
- (f) to denote that an instrument is duly stamped; or
- (g) to denote or endorse any particulars or matter which the Collector is required or empowered to denote or endorse under this Ordinance.

(4) The Collector shall keep a record of any stamp certificate issued by him and, in so far as the stamp certificate is not cancelled under section 18J, retain the record for a period of not less than 15 years after the day of issue.

18F. Application for stamping without presenting instruments

(1) A person may, in respect of an instrument to which this Part applies and being an instrument specified by the Collector, apply to the Collector for stamping the instrument without presenting it.

(2) An application under subsection (1) shall---

- (a) be made in such form as may be specified by the Collector;
- (b) be signed by the applicant and sent to the Collector, in such manner as the Collector may determine; and
- (c) in a case where stamp duty or penalty (if any) is payable, be accompanied by payment of the stamp duty or penalty (if any).

(3) For the purposes of subsection (1), an instrument to be specified by the Collector---

- (a) shall be specified by notice published in the Gazette; and
- (b) may be specified by reference to a class or description of instruments.

(4) A notice under subsection (3) is subsidiary legislation.

18G. Approval of application made under section 18F

If the Collector is satisfied that---

- (a) an application has been made in respect of an instrument specified under section 18F(3); and
 - (b) section 18F(2) has been complied with,
- the Collector may approve the application for stamping made under section 18F and, in respect of the instrument, issue and send to the applicant a stamp certificate.

18H. Refusal of application made under section 18F

(1) If the Collector is not satisfied that section 18G(a) or (b) has been complied with, the Collector may refuse to approve the application for stamping made under section 18F.

(2) Where the Collector refuses the application, the Collector shall notify the applicant of the decision and the reasons of refusal.

(3) Where the application is refused for failing to comply with section 18G(a), the applicant may present the instrument to the Collector for stamping under section 5(1)(a).

(4) Where the application is refused for failing to comply with section 18G(b), the applicant may, after complying with section 18G(b), make a new application to the Collector under section 18F.

18I. Power of Collector to inspect instrument or evidence

(1) Without prejudice to the generality of sections 18G and 18H, the Collector may, at any time after an application for stamping an instrument is made under section 18F, require the applicant or any other person, who possesses or controls the following instrument or evidence, to present to the Collector for inspection for the purposes of this Ordinance---

- (a) the instrument; or
- (b) such evidence as the Collector may deem necessary in order to show to his satisfaction whether all the facts and circumstances affecting the liability of the instrument to stamp duty, or the amount of stamp duty chargeable on the instrument, are fully and truly set forth in the instrument.

(2) Unless the instrument or evidence as provided under subsection (1) is presented---

(a) in the case where a stamp certificate has not been issued, the Collector may---

- (i) refuse to issue a stamp certificate in respect of the instrument; or
- (ii) issue a stamp certificate in respect of the instrument subject to such conditions as he sees fit; or

(b) in the case where a stamp certificate has been issued,

the Collector shall cancel the stamp certificate under section 18J(1)(d).

18J. Power of Collector to cancel stamp certificates

(1) The Collector shall cancel a stamp certificate if---

- (a) the stamp duty, penalty or adjudication fee (if any) paid in respect of an instrument to which the stamp certificate relates has been returned, repaid or refunded under this Ordinance;
- (b) an allowance has been made in respect of the stamp certificate under this Ordinance;
- (c) the stamp certificate is subsequently found to contain any error; or
- (d) there is a failure to comply with section 18I(1).

(2) Where a stamp certificate is cancelled under subsection (1), the Collector shall---

- (a) send to any one or more of the following persons a notice in writing of the cancellation---
 - (i) the person who has claimed a refund or an allowance;
 - (ii) where practicable, the parties who executed the instrument to which the stamp certificate relates or the person who paid the stamp duty to which the stamp certificate relates; or
 - (iii) the person who failed to comply with section 18I(1); and
- (b) cancel the record of the stamp certificate kept in respect of the instrument.

(3) Where a stamp certificate is cancelled under subsection (1)(a) or (b) for overpayment of stamp duty, the Collector may issue a new stamp certificate denoting the payment of stamp duty chargeable on the instrument.

- (4) Where a stamp certificate is cancelled under subsection (1)(c), the Collector may, upon request or on his own initiative, issue a new stamp certificate to rectify the error.
- (5) Where a stamp certificate is cancelled under subsection (1)(c) for any error concerning an undercharge of stamp duty, the Collector may only issue a new stamp certificate denoting the payment of stamp duty chargeable on the instrument after payment of the undercharged stamp duty has been made.
- (6) Where a stamp certificate is cancelled under subsection (1)(d), the Collector may issue a new stamp certificate after the requirement under section 181(1) has been complied with."
10. Part heading amended
The heading to Part III is amended by adding "and Part IIA" at the end.
11. Contract notes, etc. in respect of sale and purchase of Hong Kong stock
Section 19 is amended---
(a) in subsection (1)(d), by adding ", or cause a stamp certificate to be issued in respect of the instrument," before "to the effect";
(b) in subsection (7), by adding ", or issue a stamp certificate in respect of the instrument," before "to that effect".
12. Refund of stamp duty in respect of sale and purchase of units under unit trust schemes
Section 19A(2) is amended by adding "or, where applicable, the stamp certificates issued in respect of the contract notes," before "and the".
13. Stamp duty chargeable on contracts, etc. for sale of equitable estate or interest in immovable property
Section 26 is amended---
(a) in subsection (3), by adding ", or issue a stamp certificate denoting," before "the payment";
(b) in subsection (4), by adding ", or an application for stamping is made to the Collector under section 18F in respect of the conveyance within that period or that longer period," before "the conveyance".
14. Chargeable agreements for sale
Section 29C is amended---
(a) in subsection (5B)(c), by repealing everything after "may" and substituting---
"cancel---"
(a) the stamp, if any, denoting payment of the monies on the agreement; or
(b) the stamp certificate, where applicable, denoting payment of the monies in respect of the agreement.";
(b) in subsection (13)(a), by adding ", or issue a stamp certificate in respect of the agreement," before "to the effect".
15. Conveyances on sale of residential property
Section 29D is amended---
(a) in subsection (1)---
(i) by adding ", or an application for stamping is made under section 18F," after "stamping";
(ii) in paragraph (b), by repealing "or 13(2)" and substituting
", 13(2) or 18E(1)";
(iii) by adding "or issue a stamp certificate in respect of the conveyance on sale" before the full stop;
(b) in subsections (2)(a), (3)(a), (b) and (c), (4)(a) and (5)(a), by repealing "or 13(2)" and substituting ", 13(2) or 18E(1)".
16. Instruments specially exempted
Section 40(2) is amended by repealing "with a stamp denoting" and substituting "to the effect".
17. Relief in case of gift to exempted institution
Section 44(3) is amended by adding "or by way of a stamp certificate," before "denoting".
18. Relief in case of conveyance from one associated body corporate to another
Section 45(3) is amended by adding "or by way of a stamp certificate," before "denoting".
19. Instruments affecting immovable property made for new Government lease or exchange to be exempt
Section 46(1) and (2) is amended by repealing "thereon a certificate" and substituting "on the instruments a certificate, or issue a stamp certificate,".
20. Instruments confirmatory of transactions during Japanese occupation to be exempt
Section 47(2) is amended by repealing "thereon a certificate" and substituting "upon the instrument a certificate, or issue a stamp certificate,".
21. Part heading amended
The heading to Part VI is amended by adding ", Etc." after "Stamps".
22. Allowance for spoiled stamps and stamp certificates rendered unfit for purpose intended
Section 48(1) is amended---
(a) by adding "or any stamp certificate rendered unfit for the purpose intended" after "stamp spoiled";
(b) in paragraph (c), by adding ", or the stamp certificate is issued in respect of," after "used for".
23. Section substituted
Section 49 is repealed and the following substituted---
"49. Allowance for stamps inadvertently used and stamp certificates inadvertently issued
(1) Subject to subsections (2) and (3), where---
(a) any person has inadvertently used a stamp for, or a stamp certificate has been inadvertently issued in respect of, an instrument chargeable with stamp duty, and the stamp duty paid was of greater value than was necessary; or
(b) any person has inadvertently used a stamp for, or a stamp certificate has been inadvertently issued in respect of, an instrument not chargeable with stamp duty,
the Collector may, upon application, cancel the stamp or the stamp certificate (as the case may be).
(2) An application under subsection (1) shall be made---
(a) within 2 years after the date of the instrument; or
(b) if it is not dated, within 2 years after its execution by the person by whom it was first or alone executed.
(3) An application under this section in respect of a stamp certificate inadvertently issued shall be made by the person who can prove to the satisfaction of the Collector that the stamp duty to which the stamp certificate relates was paid by him.
(4) If the Collector---
(a) cancels a stamp in respect of an instrument chargeable with stamp duty, he may, where the instrument is stamped with a stamp denoting payment of the stamp duty chargeable on it, allow as spoiled the stamp so used; or
(b) cancels a stamp certificate in respect of an instrument chargeable with stamp duty, he may issue a new stamp

certificate denoting payment of the stamp duty chargeable on the instrument and make an allowance for the overpayment of stamp duty.

(5) If the Collector---

(a) cancels a stamp in respect of an instrument not chargeable with stamp duty, he may allow as spoiled the stamp so used; or

(b) cancels a stamp certificate in respect of an instrument not chargeable with stamp duty, he may allow for the stamp duty paid.

(6) The total allowance made in respect of a stamp or stamp certificate shall not exceed the stamp duty paid for stamping the instrument.

(7) Where an allowance for the stamp duty paid has been made in full, the Collector shall cancel the stamp used for, or the stamp certificate issued in respect of, the instrument."

24. Manner of making, and time for taking up, allowance

Section 51(1) is repealed and the following substituted---

"(1) In any case in which allowance is made under this Part for a stamp, adhesive stamp or stamp certificate, the Collector may---

(a) give in lieu of the stamp, adhesive stamp or stamp certificate---

(i) money to the value of such stamp, or to the amount of stamp duty denoted on such stamp certificate;

(ii) other stamp of the same denomination or value; or

(iii) if required and the Collector thinks proper, a stamp of any other denomination to the same value or issue a stamp certificate denoting the same amount; or

(b) use a combination of any of the ways as provided under subsection (1)(a) to effect the allowance."

25. First Schedule amended

The First Schedule is amended, in head 1(1A)---

(a) in Note 2, in paragraph (b), by repealing "or 13(2)" and substituting ", 13(2) or 18E(1)";

(b) in Note 3, in paragraph (b), by repealing "or 13(2)" and substituting ", 13(2) or 18E(1)".

Explanatory Memorandum

The principal object of this Bill is to amend the Stamp Duty Ordinance (Cap. 117) to introduce an alternative system of stamping under which the Collector of Stamp Revenue ("the Collector") may issue a stamp certificate in respect of certain instruments chargeable with stamp duty. Under the conventional system of stamping, all instruments chargeable with stamp duty are required to be presented to the Collector for stamping by means of a franking machine or an approved stamp. Notwithstanding the introduction of the alternative system, the conventional stamping system continues to apply.

2. Clause 2 amends the interpretation provision to expand the definition of "stamped" to cover the issue of a stamp certificate.

3. Clause 3 amends section 5 to provide that where an instrument is presented to the Collector for stamping under the conventional system, the Collector may stamp the instrument by issuing a stamp certificate unless he receives a written request for stamping under the conventional system.

4. Clause 4 amends section 8 to take into account the introduction of a stamp certificate. Other consequential amendments related to the introduction of a stamp certificate are found in clauses 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 25.

5. Clause 8 amends section 18B(2) and repeals section 18B(3). In view of the alternative stamping system, the existing provision concerning the stamping and endorsement of a true copy of an instrument chargeable with stamp duty by way of a certificate is not necessary.

6. Clause 9 adds a new Part IIA consisting of 8 new sections on the stamping of an instrument chargeable with stamp duty by way of a stamp certificate (sections 18C to 18J)---

(a) the new section 18C brings into this Part 2 definitions from the Electronic Transactions Ordinance (Cap. 553) and expands the meaning of "send";

(b) the new section 18D defines the scope of application of this Part;

(c) the new section 18E empowers the Collector to generally issue a stamp certificate whether or not the instrument is presented to the Collector for stamping;

(d) the new section 18F introduces the application procedure for stamping an instrument specified by the Collector without presenting it;

(e) the new section 18G provides the conditions on which the Collector may approve an application made under the new section 18F;

(f) the new section 18H provides the conditions on which the Collector may refuse an application made under the new section 18F;

(g) the new section 18I empowers the Collector to inspect, in respect of an application made under the new section 18F, the original instrument or any relevant evidence, before and after a stamp certificate is issued;

(h) the new section 18J empowers the Collector to cancel a stamp certificate under certain circumstances.

7. Clause 22 amends section 48 in order that an allowance shall be made by the Collector in respect of a stamp certificate in relation to which the relevant instrument is subsequently found to be void or becomes unfit for its purpose.

8. Clause 23 repeals section 49 and replaces it with a new section 49 to add the situation where an allowance may be made in respect of a stamp certificate inadvertently issued at a greater value of stamp duty or for an instrument not chargeable with stamp duty.

9. Clause 24 amends section 51(1) to allow more flexibility in the manner of making allowance by providing for a combination of any of the ways stated under that section.