

立法會
Legislative Council

LC Paper No. LS19/02-03

**Paper for the House Committee Meeting
on 13 December 2002**

**Legal Service Division Report on
Stamp Duty (Amendment) Bill 2002**

I. SUMMARY

1. **Object of the Bill** To provide for an alternative method of stamping, allowing the use of an electronic form of application and stamp certificate.

2. **Comments**
 - (a) By the Bill, a person may submit an application in a form prescribed by the Collector of Stamp Revenue, which may be paper or electronic, for stamping of a specified document without presenting the original document.

 - (b) The Collector may issue and send to the applicant a stamp certificate, in paper form or in the form of an electronic record, as evidence of payment of stamp duty upon receipt of the application and the payment of stamp duty.

3. **Public Consultation** The Hong Kong Law Society and the real estate industry have been consulted and are supportive of the Bill.

4. **Consultation with LegCo Panel** Members of the Panel on Financial Affairs have been consulted and are generally supportive.

5. **Conclusion**
 - (a) Members are recommended to study the new scheme in greater detail.

 - (b) A query has been raised with the Administration and a response is pending.

II. REPORT

Object of the Bill

To provide for an alternative method of stamping under which-

- (a) an application may be made in paper or electronic form for stamping of a specified document without presenting the original instrument; and
- (b) a stamp certificate, in paper form or in the form of an electronic record, may be issued as evidence of payment of stamp duty.

LegCo Brief Reference

2. Members may refer to the LegCo Brief issued by the Financial Services and the Treasury Bureau on 29 November 2002 (File Ref: FIN 4/2306/00) for background information.

Date of First Reading

3. 11 December 2002.

Comments

4. Under the Stamp Duty Ordinance (Cap 117), the original instrument chargeable with stamp duty has to be presented to the Collector of Stamp Revenue ("the Collector") for stamping. The Collector shall stamp the instrument or cause it to be stamped upon payment of the requisite stamp duty.

5. The Bill provides for an alternative method of stamping under which a person may submit an application in a form prescribed by the Collector, which may be paper or electronic, for stamping of a specified document without presenting the original document. The Collector may issue and send to the applicant a stamp certificate ("the certificate"), in paper form or in the form of an electronic record, as evidence of payment of stamp duty upon receipt of the application and the payment of stamp duty.

6. The Bill empowers the Collector to require the production of the original instrument or evidence showing the liability of the instrument and the amount of stamp duty chargeable on the instrument at any time after the application and to refuse to issue a certificate or cancel an issued certificate under prescribed circumstances.

7. The instruments to be covered by the Bill shall be specified by the Collector by notice (subsidiary legislation) published in the Gazette, which may be by reference to a class or description of instruments.
8. The target implementation date for the Bill is mid-2004.

Public consultation

9. According to the LegCo Brief, the Hong Kong Law Society and the real estate industry have been consulted and are supportive of the Bill. The Hong Kong Law Society has raised concern on the difficulty of checking the authenticity of the certificate. The Inland Revenue Department will study the possibility of providing a verification service for people to ascertain the authenticity of the certificate in case of doubt.

Consultation with LegCo Panel

10. At the meeting of the Panel on Financial Affairs held on 19 July 2002, issues such as an earlier implementation date and the false information in an application were discussed. Members were generally in support of the proposal.

Conclusion

11. Although the move towards the wider use of electronic transactions in the government is relatively uncontroversial, Members may wish to study the Bill in greater detail for a better assessment of how the new scheme will work.
12. A query on the impact on subsequent transactions in the event of a cancellation of a certificate under the scheme has been raised with the Administration (please see the letter attached).

Encl

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10 December 2002

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By Fax (2868 5279) and By Post

9 December 2002

Dear Mr CHANG

Stamp Duty (Amendment) Bill 2002

We are scrutinizing the legal and drafting aspects of the Bill and would be grateful for your clarification of the following points-

We note that the Bill provides for an alternative method of stamping an instrument to be specified by the Collector of Stamp Revenue ("the Collector") i.e. a stamp certificate may be issued by the Collector upon an application made in accordance with the new Part IIA.

The new section 18I(1) provides that the Collector may, **at any time after an application for stamping an instrument is made**, require for presentation to the Collector for inspection for the purposes of this Ordinance-

- (i) the instrument; or
- (ii) 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.

The new section 18I(2)(b) provides that where a stamp certificate has been issued, the Collector shall cancel the stamp certificate if there is a failure to comply with section 18I(1).

The new section 18J(1)(c) provides that the Collector shall cancel a stamp certificate if it is subsequently found to contain any error. The new section 18J(5) further provides that 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.

In the light of the above provisions, it appears that the Collector may cancel a stamp certificate issued under the new Part IIA at any time and no time limit is set out in the Bill. If a transaction takes place after the stamp certificate is issued and before the Collector cancels the stamp certificate and the new purchaser of the transaction has relied on the stamp certificate as evidence that stamp duty has been duly paid for the relevant instrument, will the Collector take into account of this fact before making his decision to cancel the stamp certificate? If the persons liable for payment of stamp duty of the relevant instrument cannot be located when the stamp certificate is cancelled, will the new purchaser liable for the payment of the undercharged stamp duty? Will the instrument become non-admissible under section 15 when the stamp certificate is cancelled?

The Bill will be considered in the House Committee to be held on 13 December 2002. It is appreciated that your reply in both languages could reach us by noon, 11 December 2002.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser

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