

LEGISLATIVE COUNCIL BRIEF

Stamp Duty Ordinance (Cap. 117)

STAMP DUTY (AMENDMENT) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 21 September 1999, the Council **ADVISED** and the Chief Executive **ORDERED** that the Stamp Duty (Amendment) Bill 1999 as set out in *Annex A* should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

Rationalising the fee for Adjudication Service

2. Adjudication is a process prescribed under the Stamp Duty Ordinance (the Ordinance) whereby the Collector of Stamp Duty (Commissioner of Inland Revenue) shall, if required, give an opinion on whether a relevant document is chargeable to stamp duty and assess the amount of stamp duty, if any, chargeable on such an instrument.

3. There are two categories of adjudication : mandatory and voluntary. Under the Ordinance, adjudication is mandatory under certain circumstances for revenue protection purposes. Such cases mainly involve transactions where the value of the property under consideration could not be ascertained from the documents themselves, e.g. transfer of property as a gift, or where exemption from stamp duty is claimed, e.g. transfer of property between associated companies. For these cases, the documents involved are not, for the purpose of the Ordinance, duly stamped until they have been adjudicated. In 1998-99, the revenue estimated to be collected from stamp duty assessed through mandatory adjudication amounted to \$63.8 million.

4. A voluntary adjudication is one which is requested by a person of his own volition for the Collector to ascertain whether stamp duty is chargeable on an executed instrument and if so, the amount. The most common form of instrument submitted for voluntary adjudication is a declaration of trust. A genuine declaration of trust is not chargeable to stamp duty. However, if the Collector considers that the declaration involves a transfer of the beneficial interest in the property, he will assess the instrument to stamp duty. In many cases, voluntary adjudication has led to the assessment and collection of stamp duty. In 1998-99, the revenue estimated to be collected from stamp duty assessed through voluntary adjudication amounted to \$12.1 million.

5. At present, a nominal fee of \$20 is charged for the provision of adjudication service. No distinction is drawn between whether the adjudication is mandatory or voluntary. Mandatory adjudication cases and voluntary adjudication cases represented around 15% and 85% respectively of the total number of 83,705 adjudication cases in 1998-99.

6. In early 1995, the Director of Audit completed an audit review on the adjudication services provided and recommended that the adjudication fee should be charged on a full cost recovery basis. When the review report was considered by the Public Accounts Committee (PAC) of the Legislative Council in 1995, the Administration accepted that the adjudication fee should be a cost-related charge and that the level of fee should reflect the full cost involved. However, we argued that as mandatory adjudication was conducted fundamentally for revenue protection purposes, it would be inequitable to charge a fee. As for voluntary adjudication, it was no different in nature from other normal government services and the fee charged should recover the full cost. The PAC accepted this argument. We therefore propose to amend the Ordinance to revise the fee to the cost recovery level, which is estimated to be \$50 at 1998-99 price levels, and to abolish the fee charged for mandatory adjudication.

7. In April 1996, we introduced the same proposal into the previous Legislative Council as part of the Stamp Duty (Amendment)(No.2) Bill 1996 after it was endorsed by the former Executive Council on 12 March

1996. However, there was insufficient time for the Bill to be processed and it lapsed after 30 June 1997.

Transfer of Powers

8. At present, section 63 of the Ordinance empowers the Chief Executive in Council to make regulations to:

- (a) specify transactions or dealings in respect of Hong Kong stock that constitute jobbing business which is exempted from ad valorem stamp duty on stock transaction under the Ordinance;
- (b) prescribe the procedure for stamping contract notes made and executed in respect of any jobbing business;
- (c) amend the Second Schedule to the Ordinance which relates to licensing and the use of franking machines; and
- (d) amend the Fourth Schedule to specify the modes of transactions in, as well as the types of, Hong Kong stocks qualifying for stamp duty exemption under Section 19(1D).

The opportunity is taken in this exercise to transfer such powers which do not involve major policy considerations to the Financial Secretary in order to streamline the operation of the Chief Executive in Council.

THE BILL

9. **Clause 2** adds a new definition of “adjudication fee” and amends the existing definition of “stamp”. **Clause 3** stipulates that requests for voluntary adjudication would be subject to an adjudication fee and provides for refund where the fee is inadvertently paid (including those cases which were initially treated as voluntary adjudication but are finally found to be cases within the type of mandatory adjudication), and that the Financial Secretary has the power to amend the fee. **Clause 4** transfers the regulation-making powers under section 63 of the Ordinance to the Financial Secretary. **Clause 5** adds the Fifth Schedule which sets out the

amount of adjudication fee payable.

LEGISLATIVE TIMETABLE

10. The legislative timetable for the Bill is -

| | |
|--|-------------------|
| Publication in the Gazette | 30 September 1999 |
| First Reading and commencement of Second Reading debate | 13 October 1999 |
| Resumption of Second Reading debate, committee stage and Third Reading | to be notified |

HUMAN RIGHTS IMPLICATIONS

11. The Department of Justice advises that the resolution has no human rights implications.

BINDING EFFECT OF THE LEGISLATION

12. The Bill will not affect the binding effect of the existing provisions of the Ordinance and its subsidiary legislation.

FINANCIAL AND STAFFING IMPLICATIONS

13. Assuming that the full cost recovery fee for voluntary adjudication service is charged with effect from December 1999, the revenue to be received within 1999-2000 would increase by \$650,000. The revenue forgone as a result of not charging a fee for mandatory adjudication service would be about \$100,000 in 1999-2000.

ECONOMIC IMPLICATIONS

14. There are no significant economic implications.

PUBLIC CONSULTATION

15. The charging proposal for adjudication service was endorsed by the PAC.

PUBLICITY

16. We will issue a press release on 30 September 1999.

ENQUIRIES

17. In case of enquiries about this Brief, please contact Ms Esther Leung, Principal Assistant Secretary for the Treasury (Revenue), at 2810 2370.

Finance Bureau
FIN CR 6/2306/91 Pt. 14
29 September 1999

A BILL

To

Amend the Stamp Duty Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Stamp Duty (Amendment) Ordinance 1999.

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

2. Interpretation

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

(a) in the definition of “stamp”, in paragraph (b), by adding “has been presented for adjudication or that it” after “any instrument”;

(b) by adding -

““adjudication fee”(裁定費) means the adjudication fee prescribed in the Fifth Schedule;”.

3. Adjudication of stamp duty by Collector

Section 13 is amended -

(a) in subsection (1), by repealing “of an adjudication fee of \$20” and substituting”, subject to subsection (1B), of the adjudication fee”;

(b) by adding -

“(1A) The Financial Secretary may by order amend the Fifth Schedule.

(1B) The adjudication fee shall not be payable in respect of an instrument where it is provided for under section 24(2), 27(3), 29F(2), 29H(3), 44(3) or 45(3) or under Note 4 to head 1(1) or Note 3 to head 2(3) in the First Schedule that the instrument shall not be duly stamped unless it is stamped under subsection (3).

(1C) Where any person has paid the adjudication fee in respect of an instrument to which subsection (1B) applies, the Collector may, on application made not later than 2 years after the Collector has expressed his opinion under subsection (1), and upon the instrument, if chargeable with stamp duty, being stamped with a stamp denoting payment of the stamp duty chargeable thereon, cancel the stamp denoting payment of the fee and refund the amount of the fee.”;

(c) by repealing subsection (2) and substituting -

“(2) Any instrument in respect of which -

(a) the adjudication fee is paid under subsection (1) shall be stamped with a stamp approved by the Collector

denoting the payment thereof;

(b) the adjudication fee is not payable under subsection (1B) shall be stamped with a stamp approved by the Collector denoting that it has been presented for adjudication.”;

(d) in subsection (4), by repealing “with the stamp denoting payment of the adjudication fee”.

4. Regulations

Section 63 is amended by repealing “Chief Executive in Council” and substituting “Financial Secretary”.

5. Schedule added

The following is added –

“FIFTH SCHEDULE

[ss. 2 & 13]

ADJUDICATION FEE

\$50”.

Explanatory Memorandum

The purpose of this Bill is to amend the Stamp Duty Ordinance (Cap. 117) to -

(a) simplify the procedure for amending the amount of the adjudication fee payable for the Collector of Stamp Revenue expressing his opinion on whether an executed

instrument is chargeable with stamp duty or the amount of stamp duty chargeable on the instrument (clauses 2 (b) and 3(a), new section 13 (1A) at clause 3(b) and the new Fifth Schedule at clause 5);

- (b) specify the instruments in respect of which the adjudication fee is not payable (new section 13(1B) and (1C) at clause 3(b));
- (c) transfer from the Chief Executive in Council to the Financial Secretary the power to make regulations under section 63 (clause 4); and
- (d) make amendments consequential to the amendments referred to in paragraphs (a) and (b) (clauses 2 (a) and 3(c) and (d)).