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Stamp Duties (Amendment) Bill

Bill No. 30/2018.

Read the first time on 6 August 2018.

A BILL

intituled

An Act to amend the Stamp Duties Act (Chapter 312 of the 2006 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Stamp Duties (Amendment) Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Repeal and re-enactment of section 6B

2. Section 6B of the Stamp Duties Act (called in this Act the principal Act) is repealed and the following section substituted therefor:

“E-Stamping system

10 **6B.**—(1) The computer service known as the E-Stamping system and established under section 6B as in force immediately before the date of commencement of section 2 of the Stamp Duties (Amendment) Act 2018, may be used for the purposes mentioned in subsection (2).

15 (2) The purposes are to enable any person, in accordance with the arrangements made under this section —

(a) to do the following without the need to present the instrument concerned to the Commissioner or a proper officer in charge of the stamp office:

20 (i) obtain an assessment of stamp duty (and any penalty) on an instrument;

(ii) pay stamp duty (and any penalty) on the instrument by electronic funds transfer in accordance with the assessment;

25 (iii) stamp the instrument by attaching a stamp certificate to it or (in the case of an electronic instrument within the meaning of section 59) obtaining a stamp certificate for it, which bears an authorisation number issued for the instrument and such other particulars as are
30 determined by the Commissioner; and

(b) to apply to the Commissioner for the adjudication of an instrument under section 37 and to obtain a certificate of adjudication from the Commissioner under section 38.

(3) The Commissioner may —

(a) determine the information and particulars that may be electronically transmitted under the E-Stamping system, including the form and manner they are to be transmitted;

(b) determine the procedure for use of the E-Stamping system, including the procedure in circumstances where there is a breakdown or an interruption in the computer service; and

(c) generally do such other things for the better provision of the computer service.”.

Amendment of section 9

3. Section 9(1) of the principal Act is amended —

(a) by inserting the word “and” at the end of paragraph (b); and

(b) by deleting paragraph (c).

Amendment of section 15

4. Section 15 of the principal Act is amended —

(a) by inserting, immediately after the words “section 23” in subsection (1AA), the words “, except where it is executed for the purposes of or in connection with a matter in subsection (1)(c)”;

(b) by inserting, immediately after subsection (1B), the following subsection:

“(1C) If it is shown to the satisfaction of the Commissioner that the prescribed conditions have been fulfilled, then ad valorem stamp duty under Article 3(bg) in the First Schedule is not chargeable on

any instrument executed on or after 11 March 2017 for the purposes of or in connection with —

- (a) the transfer of the undertaking or shares in respect of a scheme for the reconstruction of any company or companies, or the amalgamation of companies;
- (b) the transfer, conveyance or assignment of any beneficial interest in any asset between such entities that are associated in such manner as may be prescribed;
- (c) the conversion of a firm to a limited liability partnership under section 20 of the Limited Liability Partnerships Act (Cap. 163A); or
- (d) the conversion of a private company to a limited liability partnership under section 21 of the Limited Liability Partnerships Act.”.

Amendment of section 37

5. Section 37 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

“(1) Where —

- (a) any instrument (whether executed or not and whether previously stamped or not) is brought to the Commissioner; or
- (b) a copy of any instrument (whether executed or not and whether previously stamped or not) is sent to the Commissioner using the E-Stamping system or other means approved by the Commissioner,

and the person bringing or sending it applies to the Commissioner for adjudication on whether the instrument is chargeable with duty and (if so) the amount chargeable, the Commissioner must adjudicate and assess the duty with which, in the Commissioner’s judgment, the instrument is chargeable.”.

New Part VIIIA

6. The principal Act is amended by inserting, immediately after section 58, the following Part:

“PART VIIIA

APPLICATION OF ACT TO ELECTRONIC INSTRUMENTS

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Interpretation of this Part

59.—(1) In this Part —

“electronic” and “electronic record” have the meanings given by section 2(1) of the Electronic Transactions Act (Cap. 88);

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Example

Anything sent by e-mail, SMS or any Internet-based messaging service is an electronic record.

“electronic instrument” means —

(a) an electronic record, or a combination of an electronic record and a physical document, mentioned in section 60A(1)(a) or (b); or

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(b) an electronic record mentioned in section 60A(2);

“electronic signature” means any electronic method used to identify a person and to indicate the person’s intention in respect of the information contained in an electronic record.

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(2) In this Part, a stamp certificate or certificate of adjudication is duly issued for an electronic instrument if it is issued by the Commissioner for the electronic instrument —

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(a) using the E-Stamping system in accordance with the provisions of this Act; or

(b) in such other manner as the Commissioner may determine.

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Application

60. This Part applies to electronic instruments that are executed, in accordance with section 60C, on or after the date of commencement of section 6 of the Stamp Duties (Amendment) Act 2018.

Electronic instruments treated as instruments

60A.—(1) For the purposes of this Act, a reference to an instrument or a description of instrument that effects a transaction includes —

(a) an electronic record that effects, or an electronic record and a physical document that together effect, the same transaction, whether directly or indirectly; and

(b) if the same transaction is effected whether directly or indirectly by a verbal communication and an electronic record, the electronic record but only if the transaction is concluded by means of the electronic record.

(2) For the purposes of this Act, a reference to an instrument or a description of instrument that is evidence of, or that signifies any matter includes, in a case where the transaction concerned is effected by electronic means and there is no physical document that evidences or signifies such matter, any electronic record that evidences or signifies the same matter.

Application of Act to electronic instruments

60B. This Act applies in relation to an electronic instrument subject to the modifications set out in sections 60C to 60F and such other modifications as may be prescribed by rules under section 60H(2).

Execution of electronic instruments

60C.—(1) An electronic instrument that is an electronic record is treated as executed or signed when an electronic signature is applied to it.

(2) An electronic instrument that comprises an electronic record and a physical document is treated as executed or signed —

- (a) if the transaction is concluded by means of an electronic record, when an electronic signature is applied to the electronic record; or
- (b) if the transaction is concluded by means of a physical document, when the physical document is signed.

(3) In a case in subsection (1) or (2)(a), the time when and the place where the signing party does an act that results in the application of the electronic signature to the electronic record are treated respectively as the time and place of the execution or signing of the electronic instrument.

Examples

1. *A* sends an e-mail from a place in Malaysia offering to sell property to *B*. *B* sends an e-mail from a place in Singapore accepting *A*'s offer. If a contract is concluded by means of the second e-mail, the electronic instrument comprising the 2 e-mails is treated as executed in Singapore, and at the time *B* sends the second e-mail.

2. *A* makes an offer to sell property on an Internet website. *B*, using a computer in a place in Singapore, transmits to the computer hosting the website *B*'s acceptance of *A*'s offer. If a contract is thereby concluded, the electronic instrument comprising the electronic records of the offer and acceptance is treated as executed in Singapore and at the time *B* transmits *B*'s acceptance.

(4) In a case in subsection (2)(b), the time when and the place where the signing party signs the physical document are treated respectively as the time and place of the execution or signing of the electronic instrument.

(5) The reference in subsection (3) to the signing party includes a person authorised by the signing party to apply the electronic signature on the signing party's behalf, but excludes a person that merely provides any facility for the application of the electronic signature, such as an online intermediary.

Meaning of “duly stamped” and denoting of duties for electronic instruments

60D.—(1) An electronic instrument is duly stamped if a stamp certificate is duly issued for it.

(2) All duties chargeable on an electronic instrument are paid and denoted by the due issue of a stamp certificate for it.

No double duty

60E. If there is more than one copy of an electronic instrument and any one of them has been duly stamped, then the other copy or copies is or are exempt from duty.

Other modifications of Act for electronic instruments

60F.—(1) A reference in this Act to the attachment or impression of a stamp certificate or certificate of adjudication to or on an instrument is, in the case of an electronic instrument, a reference to the due issue of such a certificate for the instrument.

(2) A reference in this Act to a stamp certificate or certificate of adjudication that is attached to an instrument is, in the case of an electronic instrument, a reference to such a certificate that is duly issued for the instrument.

(3) In this Act, an electronic instrument that is executed outside Singapore is received in Singapore if —

- (a) it is retrieved or accessed by a person in Singapore;
- (b) an electronic copy of it is stored on a device (including a computer) and brought into Singapore; or
- (c) an electronic copy of it is stored on a computer in Singapore.

Examples

1. *A* and *B* effect outside Singapore a transaction by means of electronic records. The electronic records are saved on a server in a country outside Singapore. *B* downloads a copy of the electronic record in Singapore. The electronic instrument comprising those electronic records, having been retrieved by a person in Singapore, is received in Singapore.

2. *A* and *B* effect outside Singapore a transaction by means of electronic records. The electronic records are stored on a server in a country outside Singapore. *B* uses an electronic device to view a copy of those electronic records in Singapore. The electronic instrument comprising those electronic records, having been accessed by a person in Singapore, is received in Singapore.

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3. *A* and *B* effect outside Singapore a transaction by means of electronic records. The electronic records are stored on a server in Singapore. The electronic instrument comprising those electronic records, having been stored on a computer in Singapore, is received in Singapore.

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(4) A reference in section 25(2) and (3) to the time a lease is presented for stamping is, if the lease is an electronic instrument, a reference to the time it is sent to the Commissioner for adjudication in accordance with section 37.

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(5) A reference in section 38(1) and (3) to the attachment of a certificate of adjudication to an instrument is to be disregarded in the case of an electronic instrument that is an electronic record.

(6) Sections 51, 52(3) and 53 do not apply to an electronic instrument.

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Exempt electronic records and transactions

60G. Sections 60B to 60F do not apply to any electronic record, or to any transaction effected (whether wholly or partly) by electronic means, that is prescribed by rules made under section 60H(1) as an exempt record or exempt transaction.

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Rules

60H.—(1) The Minister may make rules —

(a) to prescribe anything that is authorised to be prescribed under this Part; and

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(b) to provide that any electronic record of a particular description is an electronic record that is evidence of or that signifies a particular transaction or matter for the purposes of section 60A(2).

(2) For a period of 2 years starting on the date of commencement of section 6 of the Stamp Duties (Amendment) Act 2018, the Minister may make rules to prescribe further modifications to the provisions of this Act in their application to electronic instruments.”.

Amendment of section 63

7. Section 63 of the principal Act is amended by deleting paragraph (b) and substituting the following paragraph:

“(b) not being a person authorised under section 9(1) or an employee of such person, represents himself to be such a person; or”.

Amendment of section 64

8. Section 64 of the principal Act is amended by inserting, immediately after paragraph (a), the following paragraph:

“(aa) falsifies any part of a stamp certificate or certificate of adjudication;”.

Amendment of section 74

9. Section 74 of the principal Act is amended —

(a) by inserting, immediately after subsection (1), the following subsection:

“(1A) The Minister may impose a condition under subsection (1) that a person who fails to comply with any condition imposed under that subsection, must pay interest on any amount recoverable under subsection (3) for the following period:

(a) in a case where duty was paid on the instrument and then refunded, the period starting on the date on which the refund was made and ending on the expiry of the one month period mentioned in subsection (4) or earlier;

(b) in any other case, the period starting on —

(i) the date of execution of the instrument, if it is executed in Singapore; or

(ii) the date the instrument is first received in Singapore, if it is executed outside Singapore, 5

and ending on the expiry of the one month period mentioned in subsection (4) or earlier.”; and 10

(b) by inserting, immediately after the word “reduced” in subsection (3), the words “, together with any interest that the person is to pay under a condition mentioned in subsection (1A),”.

Miscellaneous amendments

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10. The principal Act is amended —

(a) by deleting the words “established under section 6B” in the definition of “E-Stamping system” in section 2 and substituting the words “mentioned in section 6B(1)”;

(b) by deleting the definition of “registered person” in section 2; 20

(c) by deleting the word “registered” wherever it appears in sections 6C(2), 6D(2) and (3) and 46(3);

(d) by deleting the words “Every registered person shall, for the purposes of the E-Stamping system, open” in section 6D(1) and substituting the words “A person using the E-Stamping system may maintain”; and 25

(e) by inserting, immediately after the words “brought to” in section 38(1), the words “, or a copy of which sent to,”.

Validation of sums paid as duty for transaction effected by electronic means without instrument

5 **11.**—(1) This section applies to any sum purportedly paid, collected or recovered as duty before the date of commencement of section 6 in relation to a transaction that is effected whether wholly or partly by an electronic record or is evidenced by an electronic record.

10 (2) Such payment, collection or recovery is taken to have been validly made as if section 6 were in force at the material time, and no legal proceedings may be instituted on or after 6 August 2018 on account of such payment, collection or recovery.

(3) In subsection (1), “electronic record” has the meaning given by section 2(1) of the Electronic Transactions Act (Cap. 88).

Validation of sum paid as interest on sum payable for breach of condition of remission

15 **12.**—(1) This section applies to any sum purportedly paid, collected or recovered before the date of commencement of section 9 as interest on an amount that is recoverable for the breach of a condition for the reduction or remission of any duty on an instrument, being interest that is imposed under another condition for such reduction or
20 remission.

(2) Such payment, collection or recovery is taken to have been validly made as if section 9 were in force at the material time, and no legal proceedings may be instituted on or after 6 August 2018 on account of such payment, collection or recovery.

EXPLANATORY STATEMENT

This Bill seeks to amend the Stamp Duties Act (Cap. 312) principally to apply the Act to an electronic record that wholly or partly effects a transaction, or evidences a matter, that is the same as a transaction or matter effected or evidenced by an instrument chargeable with duty.

The Bill also makes other amendments to the Act such as —

- (a) removing the requirement that a person must be registered to use the E-Stamping system;

- (b) providing for relief from duty under section 15 for an instrument chargeable with the additional conveyance duty under section 23, if the instrument is for the conversion of a firm to a limited liability partnership; and
- (c) enabling the Minister to impose a condition for the remission or refund of duty that a person who breaches another condition for the remission or refund must pay interest on the amount recoverable for the breach.

Clause 1 relates to the short title and commencement.

Clause 2 repeals and re-enacts section 6B (E-Stamping system) —

- (a) to provide that the E-Stamping system established under the repealed section may also be used to apply for the adjudication of an instrument and to obtain a certificate of adjudication; and
- (b) to omit the requirement for a person to be registered before the person may use the system.

Clause 3 amends section 9 (Composition of duty) to remove one of the conditions to which an order of the Commissioner of Stamp Duties (the Commissioner) authorising a person to compound the duty payable on 2 or more instruments is subject. The condition is that the person must endorse on each instrument the words “Stamp Duty Paid” and other particulars.

Clause 4 amends section 15 (Relief from ad valorem stamp duty) —

- (a) to provide that the relief from stamp duty provided by that section applies to an instrument chargeable with any duty under section 23 (Duty on conveyance of equity interests in property-holding entities), but only if it is executed for the conversion of a firm to a limited liability partnership; and
- (b) to allow relief from duty under Article 3(bg) in the First Schedule (Seller’s stamp duty chargeable on property acquired on or after 11 March 2017) to be given for an instrument that is executed for or in connection with certain purposes. These are the same purposes in relation to which an instrument may be given relief from other duties under section 15(1B).

Clause 5 amends section 37 (Mode of adjudication as to proper stamp duty) to allow an application for adjudication by the Commissioner to be done by sending a copy of the instrument to the Commissioner using the E-Stamping system or other means approved by the Commissioner.

Clause 6 inserts a new Part VIIIA, comprising the new sections 59 to 60H.

The new section 59 contains definitions of terms and expressions used in the new Part.

The new section 60 provides that the new Part VIII A only applies to electronic instruments executed on or after the date of commencement of clause 6.

The new section 60A provides that a reference in the Act to an instrument or a description of instrument that effects a transaction includes —

- (a) an electronic record that effects the transaction;
- (b) an electronic record and a physical document that together effect the transaction; and
- (c) an electronic record that is used to conclude the transaction, if the transaction is effected by means of a verbal communication and an electronic record.

The new section 60A also provides that a reference in the Act to an instrument or a description of instrument that is evidence of a matter includes, in a case where there is no physical document evidencing the matter, any electronic record that evidences the matter.

The electronic record, or electronic record and physical document, described above is or are an electronic instrument for the purposes of the new Part VIII A.

The new section 60B provides that the Act applies to an electronic instrument subject to the modifications set out in the provisions of the new Part VIII A and rules under the Part.

The new section 60C provides for the circumstances in which, and the place and time at which, an electronic instrument is treated as executed or signed for the purposes of the Act. An electronic instrument that is an electronic record is treated as executed or signed when an electronic signature is applied to it. An electronic instrument that comprises a physical document and an electronic record is treated as executed or signed when the physical document is signed or an electronic signature is applied to the electronic record, as the case may be.

Where an electronic instrument is treated as executed or signed by the application of an electronic signature to it, then the time when and the place where the signing party does an act that results in the application of the electronic signature are treated as the time and place of execution or signing of the instrument.

The new section 60D provides that an electronic instrument is duly stamped when a stamp certificate is duly issued for it. Duty on an electronic instrument is paid and denoted by the due issue of a stamp certificate for it.

The new section 60E provides that where there is more than one copy of an electronic instrument and one is duly stamped, then the other or others is or are exempt from duty.

The new section 60F provides for other modifications of the Act in its application to an electronic instrument. These include the following:

- (a) an electronic instrument is received in Singapore if it is retrieved or accessed by a person in Singapore, if an electronic copy of it is stored on a device and brought into Singapore, or if an electronic copy of it is stored on a computer in Singapore;
- (b) sections 51 (Examination and impounding of instruments), 52(3) (Contract or agreement effected by correspondence of letters is duly stamped if any of the letters bears the proper stamp) and 53 (Manner of dealing with impounded instrument) do not apply to an electronic instrument.

The new section 60G disapplies the new sections 60B to 60F to an electronic record, or a transaction effected (whether wholly or partly) by electronic means, that is an exempt record or exempt transaction under rules made under the new section 60H(1).

The new section 60H allows the Minister to make rules for the purposes of the new Part VIIIA. In particular, the Minister may, for a period of 2 years starting on the date of commencement of clause 6, make rules to prescribe further modifications of the Act in its application to electronic instruments.

Clause 7 amends section 63 (Penalty for executing instruments not duly stamped, etc.) to make it an offence for a person to represent himself or herself as a person authorised to compound the payment of duty on 2 or more instruments when he or she is not so authorised.

Clause 8 amends section 64 (Penalties relating to stamp certificates, etc.) to make it an offence for a person to falsify any part of a stamp certificate or certificate of adjudication.

Clause 9 amends section 74 (Power to reduce or remit duties) to enable the Minister, when granting a reduction or remission of duty, to impose a condition that the person who breaches a condition for the reduction or remission must pay interest on the amount recoverable for the breach.

Clause 10 makes several amendments to the Act that are consequential on the removal of the requirement that a person must be a registered person to use the E-Stamping system, and on the amendment to section 37.

Clause 11 validates the payment, collection or recovery of any sum purportedly paid, collected or recovered as duty in relation to a transaction that is wholly or partly effected by an electronic record or is evidenced by such record.

Clause 12 validates the payment, collection or recovery of any sum purportedly paid, collected or recovered as interest on a sum that is recoverable for a breach of a condition for the reduction or remission of duty on an instrument.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
