

Stamp Duties (Amendment) Bill

Bill No. /2011.

Read the first time on 2011.

A BILL

i n t i t u l e d

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. —(1) This Act may be cited as the Stamp Duties (Amendment) Act 2011 and shall, with the exception of sections 2, 3, 4(a), (b), (c) and (d), 5, 6, 7(a) and (b), 8, 12, 13 and 15, come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

(2) Sections 2, 3, 4(b), (c) and (d), 6, 7(a) and (b), 8, 12, 13 and 15 shall be deemed to have come into operation on 19th February 2011.

(3) Section 4(a) shall be deemed to have come into operation on 20th February 2010.

(4) Section 5 shall be deemed to have come into operation on 1st April 2010.

(5) Sections 1, 7(c) and (d), 9, 10, 11 and 14 shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 12

2. Section 12 of the Stamp Duties Act (referred to in this Act as the principal Act) is amended by deleting paragraph (b).

New section 12A

3. The principal Act is amended by inserting, immediately after section 12, the following section:

“Instrument exempt from duty if its original is stamped, etc.

12A. An instrument (whether it is the original or a duplicate or counterpart of an instrument) made on or after 19th February 2011 shall be exempt from duty if the original or a duplicate or counterpart (as the case may be) of that instrument has been duly stamped.”.

Amendment of section 15

4. Section 15 of the principal Act is amended —

- (a) by inserting, immediately after the words “Articles 3(a)” in subsection (1), the words “(b), (ba), (bb)”;
- (b) by inserting, immediately after subsection (1), the following subsection:

5 “(1A) If it is shown to the satisfaction of the Commissioner that the prescribed conditions have been fulfilled, then ad valorem stamp duty under Articles 3(a), (b), (ba), (bb) and (c) and 9(c) in the First Schedule shall not be chargeable on any instrument made on or after
10 19th February 2011 for the purposes of or in connection with the conversion of a private company to a limited liability partnership under section 21 of the Limited Liability Partnerships Act 2005 (Act 5 of 2005).”;

- (c) by deleting the words “which the Commissioner was satisfied would not occur in allowing the relief, does occur” in subsection (3)(b) and substituting the words “has occurred”; and

- (d) by inserting, immediately after the definition of “limited liability partnership” in subsection (4), the following
20 definition:

 ““private company” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);”.

Amendment of section 15A

5. Section 15A of the principal Act is amended —

- 25 (a) by inserting, immediately after subsection (2), the following subsection:

 “(2A) No instrument referred to in subsection (1) shall be deemed to be duly stamped unless —

- 30 (a) it is stamped with the duty to which it would but for this section be liable; or

- (b) the acquiring company has brought it to the Commissioner under section 37 and —

(i) the Commissioner has certified under section 38 that the instrument is not chargeable with duty to the extent provided in this section; and

5 (ii) any duty chargeable on the instrument has been paid.”;

(b) by deleting paragraph (b) of subsection (3);

(c) by deleting sub-paragraph (ii) of subsection (3)(c) and substituting the following sub-paragraph:

10 “(ii) the date of the acquisition does not fall within the financial year of the acquiring company in which the acquisition referred to in paragraph (a) occurs;”;

15 (d) by deleting the words “relevant financial year of the acquisition referred to in paragraph (c)” in subsection (3)(d) and substituting the words “qualifying period in which the acquisition referred to in paragraph (a) or (c), as the case may be, occurs.”;

20 (e) by deleting subsections (4), (5) and (6) and substituting the following subsection:

“(4) For the purposes of subsection (3), the qualifying period shall be determined as follows:

25 (a) the qualifying period shall, in the first instance, be the financial year of the acquiring company in which the acquisition referred to in subsection (3)(a) or (c), as the case may be, occurs;

30 (b) following the end of the financial year of the acquiring company referred to in paragraph (a), in place of the period referred to in that paragraph, the acquiring company may make an election, in such form and manner and within such time as the Commissioner may specify, for the qualifying period to be a prescribed period

(which must be a period within which the acquisition referred to in subsection (3)(a) or (c), as the case may be, occurs); and

5 (c) where the acquiring company claims an allowance under section 37L of the Income Tax Act (Cap. 134) in connection with the acquisition referred to in subsection (3)(a) or (c), as the case may be, then, whether or not an election was made under paragraph (b), the qualifying period shall, in place of the period referred to in 10 paragraph (a) or (b) (as the case may be), be the same period as that for which acquisitions are qualifying acquisitions for the purposes of its claim under section 37L of the Income Tax Act.”;

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(f) by deleting subsection (7) and substituting the following subsection:

20 “(7) Subject to subsection (8) and the rules made under subsection (18), the maximum amount of relief from duty to be allowed under subsection (1) with respect to the qualifying acquisitions of ordinary shares in all target companies by an acquiring company and all its acquiring subsidiaries, as the case may be, in a financial year of the acquiring company shall be \$200,000; and for this 25 purpose, where subsection (4)(b) or (c) applies, the qualifying acquisitions shall be deemed to have occurred in the financial year of the acquiring company in which the qualifying acquisition referred to in subsection (3)(a) or (c), as the case may be, falls.”;

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30 (g) by deleting the words “where the financial year of the company by which the stamp duty is payable exceeds 12 months” in subsection (8) and substituting the words “where the qualifying period is the financial year of the acquiring company and the financial year exceeds 12 35 months”;

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(h) by deleting subsection (11) and substituting the following subsections:

5 “(11) Where an acquiring company or an acquiring subsidiary has paid ad valorem stamp duty on a qualifying acquisition of ordinary shares in a target company (referred to in this subsection as a relevant qualifying acquisition), the acquiring company may apply under section 75 for a refund of the duty so paid in relation to the relevant qualifying acquisition; and
10 section 75 shall apply with the following modifications:

(a) where the qualifying period is the period referred to in subsection (4)(a), the reference to the date of the overpayment in section 75(2) shall be read as a reference to —

15 (i) the date of the relevant qualifying acquisition; or

(ii) the date of the acquisition referred to in subsection (3)(a) or (c) (as the case may be) that occurred in the same qualifying period as the relevant qualifying acquisition,
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whichever is the later;

(b) where the qualifying period is the period referred to in subsection (4)(b), the reference to the date of the overpayment in section 75(2) shall be read as a reference to the last day of the financial year that is replaced by the prescribed period elected under subsection (4)(b);
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(c) where the qualifying period is the period referred to in subsection (4)(c), the reference to the date of the overpayment in section 75(2) shall be read as a reference to the date of lodgment of the return of income by the acquiring company under section 37L(6) of the Income Tax Act (Cap. 134).
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(11A) Where, as a result of the application of subsection (4)(b) or (c), a qualifying acquisition ceases to be a qualifying acquisition, the ad valorem stamp duty on the instrument for the acquisition shall be payable to the Commissioner in such manner and within such time after such cessation as the Commissioner may specify, together with interest referred to in subsection (13), by —

- (a) in the case where the ordinary shares in the target company are acquired by the acquiring company, the acquiring company; and
- (b) in the case where the ordinary shares in the target company are acquired by the acquiring subsidiary, the acquiring company and the acquiring subsidiary, on a joint and several basis, and shall be recoverable as a debt due to the Government.”;

(i) by inserting, immediately after the words “Where any claim” in subsection (12), the words “by an acquiring company”;

(j) by deleting subsection (13) and substituting the following subsection:

“(13) Interest referred to in this section shall accrue as follows:

- (a) in the case of subsection (11A), on the amount of duty referred to therein at the rate of 6% per annum after the expiry of the period in which the duty must be paid to the Commissioner; and
- (b) in the case of subsection (12), on the amount of relief referred to therein at the rate of 6% per annum —
 - (i) if the instrument is executed by any person in Singapore, from the date of its execution; or

- (ii) if the instrument is executed outside Singapore, from the date the instrument is first received in Singapore.”;
- (k) by deleting the words “subsection (12)” in subsection (15) and substituting the words “subsection (11A) or (12)”;
- (l) by deleting the words “subsection (14)” in subsection (15) and substituting the words “subsection (11A) or (14), as the case may be”;
- (m) by deleting the words “subsection (12)” in subsection (17) and substituting the words “subsections (11A) and (12)”;
- (n) by deleting the words “the company claiming relief has made an election under subsection (4)(b)” in subsection (18)(a) and substituting the words “subsection (4)(b) or (c) applies”;
- (o) by deleting paragraph (b) of subsection (18) and substituting the following paragraph:
- “(b) prescribing the conditions precedent and conditions subsequent for the purpose of claiming relief from duty on any instrument under this section;” and
- (p) by deleting the word “from” in subsection (20)(b) and substituting the word “in”.

Amendment of section 19

6. Section 19 of the principal Act is amended by deleting subsection (4).

Amendment of section 22

7. Section 22 of the principal Act is amended —
- (a) by deleting the words “shall be chargeable with a duty of \$10” in subsection (3) and substituting the words “shall, if made on or after 19th February 2011, be exempt from duty”;

- (b) by deleting the words “shall be chargeable with a duty of \$10” in subsection (5) and substituting the words “shall, if made on or after 19th February 2011, be exempt from duty”;
- 5 (c) by deleting the words “Strata Titles Board” wherever they occur in subsections (6)(g) and (7)(a)(iii) and substituting in each case the words “Strata Titles Board or the High Court, as the case may be,”; and
- 10 (d) by deleting the words “by whom the instrument was solely or first executed” in subsection (7)(a) and substituting the words “who paid or is liable to pay the duty”.

Amendment of section 30

8. Section 30 of the principal Act is amended —

- (a) by deleting the words “duly stamped” in subsection (2);
- 15 (b) by inserting, immediately after the word “duty” in subsection (2), the words “, and the transfer, if made on or after 19th February 2011, shall also be exempt from duty”; and
- (c) by deleting subsection (3).

Amendment of section 51

9. Section 51 of the principal Act is amended —

- (a) by deleting the words “person in charge of a public office, except a police officer” in subsection (1) and substituting the words “public officer or officer of a statutory body”; and
- 25 (b) by inserting immediately after subsection (1) the following subsection:
 - “(1A) Subsection (1) does not apply to —
 - (a) a police officer; or

- (b) such other public officer or officer of a statutory body as the Minister may by order published in the *Gazette* exempt from that subsection.”.

Amendment of section 66

5 **10.** Section 66 of the principal Act is amended —

- (a) by re-numbering the section as subsection (1); and
 (b) by inserting immediately thereafter the following subsection:

10 “(2) Subsection (1) does not apply to such person as the Minister may by order published in the *Gazette* exempt from that subsection.”.

Amendment of section 74

11. Section 74 of the principal Act is amended —

- 15 (a) by inserting, immediately after subsection (2), the following subsection:

“(2A) The Minister may, in any particular case, in his discretion and at any time waive in whole or in part any condition imposed under subsection (1).”; and

- 20 (a) by inserting, immediately after subsection (3), the following subsection:

“(3A) Subsection (3) does not apply to any condition which has been, or to the extent that it has been, waived in the person’s case under subsection (2A).”.

Amendment of First Schedule

25 **12.** The First Schedule to the principal Act is amended —

- (a) by deleting paragraphs (f), (g)(ii) and (i) of Article 3, and inserting immediately after paragraph (h) of that Article the following words:

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Exemption:

In a case where the conveyance, assignment or transfer is effected by more than one instrument and one instrument has been duly stamped, each other instrument.

”;

(b) by deleting Article 5;

(c) by deleting paragraphs (d) and (e) of Article 8;

(d) by deleting the item of exemption at the end of Article 8 and substituting the following words:

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Exemptions:

1. Any lease or agreement for a lease referred to in paragraph (a) or (c) executed on or after 1st April 2003 where the average rent and other consideration calculated for a whole year does not exceed \$1,000.
2. Any lease or agreement for a lease executed on or after 19th February 2011 in pursuance of a duly stamped agreement, or another duly stamped agreement, for the same.

”;

(e) by deleting paragraphs (d) and (e) of Article 9 and the item of exemption at the end of that Article, and substituting the following words:

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Exemptions:

1. Any mortgage of stock or shares under hand only.
2. Any mortgage executed on or after 19th February 2011 in pursuance of a duly stamped agreement for the same.
3. Any security executed on or after 19th February 2011 in conjunction with the security which is duly stamped under paragraph (a).

”;

(f) by deleting Article 10;

(g) by deleting paragraph (b) of Article 11, and inserting the following words immediately after paragraph (a):

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Exemption:

Any settlement executed on or after 19th February 2011 in pursuance of a duly stamped agreement for the same.

”; and

5 (h) by deleting paragraph (b) of Article 12.

Amendment of Third Schedule

13. The Third Schedule is amended —

(a) by deleting paragraph (b) of Article 1, paragraph (b) of Article 4, and Article 6; and

10 (b) by deleting the words “Article No. 3(a) to (i)” in Article 2 and substituting the words “Article No. 3(a) to (h)”.

Amendment of Fourth Schedule

14. The Fourth Schedule to the principal Act is amended by deleting item 1 and substituting the following items:

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|-----|---|---|
| 1. | A transfer of the undertaking or shares in respect of a scheme for reconstruction of company or companies, an amalgamation of companies, or a transfer, conveyance or assignment of beneficial interest in assets between associated entities, under section 15 | \$150, irrespective of whether the instrument qualifies for relief under section 15 |
| 1A. | A conversion of a firm or private company to a limited liability partnership under section 15 | \$150, irrespective of whether the instrument qualifies for relief under section 15 |
| 1B. | An acquisition of ordinary shares in a company under section 15A | \$150, irrespective of whether the instrument qualifies |

for relief under
section 15A

”.

Savings

5 **15.**—(1) For the avoidance of doubt and without prejudice to section 16 of the Interpretation Act (Cap. 1), the amendments in sections 3, 6, 7(*a*) and (*b*), 8, 12 and 13 of this Act do not apply in relation to any instrument made or executed before 19th February 2011, and accordingly —

10 (a) if the instrument is chargeable with duty under the principal Act in force immediately before that date (referred to in this subsection as the old law), it shall remain chargeable with the duty with which it is chargeable under the old law; and

(b) the duty shall be payable by the person liable to pay the duty under the old law.

15 (2) Without prejudice to section 12 of the principal Act, the duplicate or counterpart of an instrument made or executed before 19th February 2011 and chargeable with duty shall be deemed duly stamped if it appears from the stamp certificate for the instrument that the instrument is a duplicate or counterpart.

20 (3) For the avoidance of doubt, the amendment in section 12(*f*) is without prejudice to any liability of an instrument of partition to duty under any other Article of the First Schedule to the principal Act.

EXPLANATORY STATEMENT

This Bill amends the Stamp Duties Act (Cap. 312) mainly for the following purposes:

- (a) to remove most fixed and nominal stamp duties currently imposed by the Act;
- (b) to fine-tune the procedure for granting stamp duty relief for share transfers made in the course of mergers and acquisitions;

- (c) to provide for stamp duty relief for instruments relating to the conversion of a private company to a limited liability partnership, as well as relief from seller's stamp duty for instruments relating to an amalgamation, reconstruction or conversion to a limited liability partnership; and
- (d) to amend various provisions dealing with the administration and enforcement of the Act.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 12 (Counterparts) by deleting paragraph (b), which deems a duplicate or counterpart of an instrument to be duly stamped if the stamp certificate indicates that it is a duplicate or counterpart. This is because a duplicate or counterpart of an instrument made on or after 19th February 2011 will be exempt from duty unless it is the first instrument to be stamped, in which case it must be stamped as an original instrument under section 12(a).

Clause 3 inserts a new section 12A to provide that an instrument made on or after 19th February 2011 need not be stamped if the original or a duplicate or counterpart of that instrument has already been duly stamped.

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

- (a) to provide for relief from stamp duty for a conveyance, assignment or transfer on sale of property, or the transfer, assignment or disposition of any mortgage or debenture, carried out in the course of converting a private company to a limited liability partnership;
- (b) to provide for relief from seller's stamp duty for a conveyance, assignment or transfer on sale of immovable property, carried out in the course of a reconstruction or amalgamation, a transfer of assets between associated entities, or the conversion of a firm or private company to a limited liability partnership; and
- (c) to provide that duty for which relief was previously granted may be recovered once a prescribed matter occurs, without the Commissioner having to be satisfied at the time the relief was granted that the matter would not occur.

Clause 5 makes various amendments to section 15A (Relief from ad valorem stamp duty for acquisition of shares of companies).

Clause 5(a) inserts a new subsection (2A) to replace the existing subsection (11) (which is being deleted under clause 5(h)) to provide for the circumstances in which an instrument to which section 15A applies will be regarded as duly stamped. In particular, the subsection clarifies that only the acquiring company may bring the instrument to the Commissioner of Stamp Duties (the Commissioner) for adjudication under section 37, even where it is the acquiring subsidiary that acquired the ordinary shares in the target company.

Clause 5(b) deletes paragraph (b) of subsection (3) as this is to be provided for under paragraph (d) of subsection (3).

Clause 5(c) amends subsection (3)(c)(ii) to clarify that the reference is to the financial year of the acquiring company.

Clause 5(d) amends subsection (3)(d) to remove the concept of “a relevant financial year of the acquiring company” and substituting this with that of “a qualifying period”.

Clause 5(e) deletes subsections (4), (5) and (6) and substitutes a new subsection (4) to define the concept of a qualifying period for the purpose of determining the acquisitions of shares in a target company that qualify for the relief under section 15A.

Clause 5(f) deletes and substitutes subsection (7). The new subsection (7) clarifies that the maximum amount of relief of \$200,000 under section 15A is applicable in respect of acquisitions by both an acquiring company and its acquiring subsidiary of ordinary shares in all target companies, and is based on acquisitions in the financial year of the acquiring company. Where the applicable qualifying period is not a financial year of the acquiring company, the new subsection (7) provides that the qualifying acquisitions in the qualifying period are deemed to be qualifying acquisitions in the financial year of the acquiring company in which an acquisition referred to in subsection (3)(a) or (c) occurs.

Clause 5(g) makes a consequential amendment to subsection (8) arising from the amendment *vide* clause 5(d).

Clause 5(h) deletes subsection (11) and substitutes new subsections (11) and (11A). The new subsection (11) provides that refunds in respect of ad valorem stamp duty paid on qualifying acquisitions entitled to the relief under section 15A may be made pursuant to section 75 with some modifications. In particular, the new subsection (11) provides that it is that acquiring company that may apply for the refund (even in respect of acquisitions by its acquiring subsidiary). The new subsection (11A) provides for payment of ad valorem stamp duty on acquisitions previously allowed the relief and which subsequently become chargeable to duty as a result of a change in the qualifying period.

Clause 5(i) makes a consequential amendment to subsection (12) in light of the new subsection (2A) inserted *vide* clause 5(a) (which clarifies that only an acquiring company may make a claim for relief from duty under section 15A through adjudication under section 37).

Clause 5(j) amends subsection (13) to take into account the additional reference to interest in the new subsection (11A) inserted *vide* clause 5(h).

Clause 5(k), (l) and (m) make consequential amendments to subsections (15) and (17) arising from the insertion of the new subsection (11A) *vide* clause 5(h).

Clause 5(*n*) makes a consequential amendment to subsection (18)(*a*) arising from the new subsection (4) inserted vide clause 5(*e*).

Clause 5(*o*) amends subsection (18)(*b*) by deleting the references to the acquiring company, acquiring subsidiary and target company as it is intended that the conditions precedent or conditions subsequent to be prescribed will apply to entities other than these 3.

Clause 5(*p*) makes a technical amendment to subsection (20)(*b*).

Clause 6 amends section 19 (Valuation in case of annuity) by deleting subsection (4). Subsection (4) deals with the duty payable for a provision for securing periodic payments under a conveyance on sale. The subsection is deleted both to remove the fixed duty payable thereunder, and because it is obsolete.

Clause 7 amends section 22 (Contracts, etc., to be chargeable as conveyances on sale) —

- (*a*) to remove the nominal duty payable on a conveyance or transfer pursuant to an agreement for sale for which ad valorem duty has been paid, as well as the nominal duty payable on any agreement for sale in a case where ad valorem duty has been paid on another agreement dealing with the same sale;
- (*b*) to make consequential amendments arising from the Land Titles (Strata) (Amendment) Act 2010, under which an application for an order for a collective sale may be made to the High Court; and
- (*c*) to provide that the application for a refund of ad valorem duty paid on a contract or agreement for the sale of property in a case where the instrument is rescinded or annulled on the grounds specified in subsection (6) is to be made by the person who has paid or is liable to pay the duty (instead of the person who solely or first executed the instrument).

Clause 8 amends section 30 (Certain mortgages of stock to be exempt from duty) to remove the fixed duty payable for a transfer (as a security) of registered stock or marketable security which is made redeemable or is qualified by an instrument under hand.

Clause 9 amends section 51 (Examination and impounding of instruments) —

- (*a*) to delete the words “person in charge of a public office” in subsection (1) and substituting the words “public officer or officer of a statutory office” in light of today’s practice where public services are carried out by both the Government and statutory boards; and
- (*b*) to enable the Minister to exempt any such person from the obligation of impounding an instrument that appears not to be duly stamped.

Clause 10 amends section 66 (Penalty for enrolling, etc. instrument not duly stamped) to enable the Minister to exempt any person from the obligation not to enrol or register an instrument that is not duly stamped.

Clause 11 amends section 74 (Power to reduce or remit duties) to enable the Minister to waive compliance with any condition of remission of duty.

Clause 12 removes a number of fixed and nominal duties imposed under the current First Schedule read with section 4. These include —

- (a) the nominal duty for a duplicate or counterpart of an instrument;
- (b) the nominal duty for certain instruments executed in pursuance of another instrument which has been duly stamped;
- (c) the fixed duty for a lease of any kind not mentioned in Article 8 and not otherwise specially charged with duty;
- (d) the fixed duty on an instrument of partition; and
- (e) the fixed duty on a surrender of lease otherwise than for a consideration.

The clause also exempts from duty an instrument for the transfer, assignment or conveyance of property in a case where the transaction is effected by more than one instrument and one of the other instruments has been duly stamped.

Clause 13 makes consequential amendments to the Third Schedule following the removal of the nominal duty for a counterpart or duplicate of an instrument and the fixed duty on an instrument of partition.

Clause 14 amends the Fourth Schedule to clarify that the relevant adjudication fee set out in that Schedule is payable whether or not the instrument qualifies for relief under section 15; and provides for the adjudication fees for an instrument connected with the conversion of a firm or private company to a limited liability partnership, as well as an instrument for share acquisition made in connection with a merger or acquisition under section 15A.

Clause 15 is a savings provision. It clarifies that the removal of fixed and nominal duties under this Bill does not apply to instruments made before 19th February 2011. These instruments, if chargeable with duty under the law in force before that date, will continue to be so chargeable, and the duty is payable by the person liable to pay the duty under the Act in force before that date.

The clause also provides that a duplicate or counterpart of an instrument made before that date is deemed to be duly stamped if it bears a stamp certificate indicating that it is a duplicate or counterpart, in order to preserve the effect of old section 12(b) (deleted by clause 2).

The clause further clarifies that the removal of duty for an instrument of partition will not affect its liability to duty under any other Article of the First

Schedule. Such an instrument may by its contents be subject to ad valorem duty under other Articles of the Schedule e.g. as a conveyance on sale or a gift.

EXPENDITURE OF PUBLIC MONEY

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