

Stamp duty on put & call options - reforms 01/01/04

Recent amendments to the Stamp Act 1921 provide that as from 1 January 2004, simultaneous put and call options will be treated as a contract to purchase property, dutiable at full conveyance rates at the time they are entered into.

New section 74B of the Stamp Act applies if, at the same time, one person (A) has a right to require another person (B) to sell property to A (call option) and B has a right to require A to purchase the property from B (put option) for a given consideration. Section 74B deems this to be an offer to sell and an offer to buy, binding the parties as if a contract for sale had been made.

Prior to the amendments, a put and call option was stamped with nominal duty (\$20.00), with full conveyance duty payable only upon the exercise of one of the options. Although the amendments do not affect the amount of duty ultimately payable, the party responsible for payment of the duty will need to ensure it has the funds available at an

earlier stage.

The amount of the conveyance duty is still calculated pursuant to Item 4 of the Second Schedule of the Act, and will be assessed on the greater of:

- ◆ the sum of the consideration paid for granting the call option plus the amount payable in the event of the option being exercised; and
- ◆ the unencumbered value of the option property, where this can be ascertained.

When the put or call option is exercised, and a contract or acquisition comes into effect, section 76B (8) allows a reduction in the



Ms Erika Heenan
Solicitor
Jackson McDonald

stamp duty payable on that instrument by the amount already paid on the put and call option. Additional stamp duty will only be payable if the value of the property has increased since the granting of the options. If both options expire without being exercised, the duty paid will be reduced to the amount of duty that would have been payable on the consideration paid for granting the call option.