

Chapter:	117	STAMP DUTY ORDINANCE	Gazette Number	Version Date
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		Long title		30/06/1997
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To consolidate and amend the law relating to stamp duty.

[1 July 1981] *L.N. 173 of 1981*

(Originally 31 of 1981)

Section:	1	Short title		30/06/1997
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PART I

PRELIMINARY

This Ordinance may be cited as the Stamp Duty Ordinance.

Section:	2	Interpretation	L.N. 82 of 2004	02/08/2004
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- (1) In this Ordinance, unless the context otherwise requires-
- "adhesive stamp" (黏貼印花) has the meaning assigned to it by section 5(3);
- "adjudication fee" (裁定費) means the adjudication fee prescribed in the Fifth Schedule; (Added 5 of 2000 s. 2)
- "assessment" (評稅) means an assessment made by the Collector under section 13 as to the amount of stamp duty chargeable on an instrument, and "assessed" (評定) has the corresponding meaning;
- "authorized ATS provider" (認可自動化交易服務提供者) means a person authorized under Part III of the Securities and Futures Ordinance (Cap 571) to provide automated trading services within the meaning of Part 2 of Schedule 5 to that Ordinance; (Added 5 of 2002 s. 407)
- "bearer instrument" (不記名文書) means any instrument to bearer by delivery of which any stock can be transferred, but does not include an instrument relating to stock which consists of a loan expressed in terms other than in the currency of Hong Kong except to the extent that the loan is repayable, or may at the option of any person be repaid, in the currency of Hong Kong; (Amended 77 of 1981 s. 2)
- "chargeable" (可予徵收、徵收) means chargeable under this Ordinance;
- "Collector" (署長) means the Collector of Stamp Revenue appointed under section 3;
- "contract note" (成交單據) means a contract note required to be made and executed under section 19(1);
- "conveyance" (轉易契) means every instrument (including a surrender) and every decree or order of any court whereby any immovable property is transferred to or vested in any person;
- "conveyance on sale" (售賣轉易契) means every conveyance whereby any immovable property, upon the sale thereof, is transferred to or vested in a purchaser or any other person on his behalf or by his direction, and includes a foreclosure order;
- "duly stamped" (加蓋適當印花), in relation to an instrument, means duly stamped under this Ordinance in respect of the stamp duty chargeable on such instrument;
- "exchange participant" (交易所參與者) means an exchange participant within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571); (Added 12 of 2000 s. 23. Amended 5 of 2002 s. 407)
- "executed" and "execution" (簽立), in relation to an instrument not under seal, mean signed and signature respectively;
- "foreclosure order" (止贖令) means every order or decree for, or having the effect of an order for, foreclosure;
- "Hong Kong bearer instrument" (香港不記名文書) means a bearer instrument issued-
- (a) in Hong Kong; or
 - (b) elsewhere by or on behalf of a body corporate formed, or an unincorporated body of persons

established, in Hong Kong;

"Hong Kong stock" (香港證券) means stock the transfer of which is required to be registered in Hong Kong;

"instrument" (文書) includes every written document;

"instrument of transfer" (轉讓文書) means an instrument by means of which any Hong Kong stock is transferred, and includes a letter of renunciation;

"Japanese House Registration Office" (日本房屋登錄所) means the office in which during the Japanese occupation of Hong Kong were kept the registers or records of houses and buildings and documents relating thereto;

"jobbing business" (證券經銷業務) means any business carried on by an exchange participant which is specified as jobbing business by regulations made under section 63; (Amended 12 of 2000 s. 23)

"lease" (租約) does not include mortgage by demise;

"loan capital" (借貸資本) means any debenture, debenture stock, corporation stock or funded debt (by whatever name known) issued by any body, whether corporate or unincorporate, or any capital raised by any such body, being capital which is borrowed or has the character of borrowed money, but does not include any such investment which-

- (a) carries a right of conversion into stock or to the acquisition of any stock; or
- (b) carries or has carried a right to interest the amount of which-
 - (i) exceeds a reasonable commercial return on the nominal amount of the capital; or
 - (ii) falls or has fallen to be determined to any extent by reference to the results of, or of any part of, a business or to the value of any property; or
- (c) carries a right on repayment to an amount which exceeds the nominal amount of the capital and is not reasonably comparable with what is generally repayable in respect of a similar nominal amount of capital under the terms of issue of loan capital listed on a recognized stock market; (Amended 77 of 1981 s. 2; 67 of 1989 s. 2; 5 of 2002 s. 407)

"recognized exchange company" (認可交易所) means a company recognized under section 19(2) of the Securities and Futures Ordinance (Cap 571) as an exchange company for operating a stock market; (Added 5 of 2002 s. 407)

"recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571); (Added 5 of 2002 s. 407)

"stamp" (印花) means any of the following-

- (a) an adhesive stamp;
- (b) a stamp (other than an adhesive stamp) used or intended for use for denoting the payment or remission of stamp duty, or the payment or remission of any penalty, or the payment of an adjudication fee, payable under this Ordinance or the fact that any instrument has been presented for adjudication or that it is not chargeable with stamp duty or is duly stamped; (Amended 5 of 2000 s. 2)
- (c) any mark made or indication given by a stamp referred to in paragraph (b);
- (d) an imprint on a contract note to which an agreement under section 5A relates of the amount of the stamp duty chargeable thereon together with an imprint made under section 5(2A)(b) on such note; (Added 85 of 1991 s. 2. Amended L.N. 90 of 1999 and 44 of 1999 s. 13)

"stamp certificate" (印花證明書) means a certificate issued by the Collector under Part IIA; (Added 21 of 2003 s. 2)

"stamp duty" (印花稅) means stamp duty chargeable under this Ordinance;

"stamped" (加蓋印花、加蓋), in relation to an instrument, means-

- (a) the instrument has been stamped by means of a stamp under this Ordinance; or
- (b) a stamp certificate has been issued in respect of the instrument by the Collector under Part IIA, in so far as the stamp certificate has not been cancelled under that Part; (Replaced 21 of 2003 s. 2)

"stock" (證券) means any of the following investments-

- (a) any shares, stocks, debentures, loan stocks, funds, bonds or notes of or issued by any body, whether corporate or unincorporate, or any government or local government authority, or any other similar investment of any description;
- (b) any units under a unit trust scheme;
- (c) any right, option or interest in or in respect of any stock referred to in paragraph (a) or (b), other than any such right, option or interest under an employees' share purchase or share option scheme, (Replaced 36 of 1992 s. 2)

but, except for the purposes of section 22, does not include any loan capital, or any bill of exchange or promissory note, or any certificate of deposit within the meaning of section 2 of the Inland Revenue Ordinance (Cap 112) or any Exchange Fund debt instrument or Hong Kong dollar denominated multilateral agency debt instrument within the meaning of that Ordinance, or any bond issued under the Loans Ordinance (Cap 61), or any debentures, loan stocks, funds, bonds or notes denominated otherwise than in the currency of Hong Kong except to the extent that the same shall be redeemable, or may at the option of any person be redeemed, in the currency of Hong Kong; (Amended 77 of 1981 s. 2; 29 of 1984 s. 2; 10 of 1990 s. 2; 43 of 1991 s. 2; 49 of 1991 s. 2; 18 of 1992 s. 2)

"time for stamping" (加蓋印花期限), in relation to an instrument, has the meaning assigned to it by section 4(2);

"unit" (單位) and "unit trust scheme" (單位信託計劃) have the meanings assigned thereto respectively by section 30.

(Amended 67 of 1989 s. 2; 12 of 2000 s. 23; 5 of 2002 s. 407)

(2) Where it is provided in any other Ordinance that stamp duty shall not be payable in respect of any instrument, such instrument shall not be chargeable with stamp duty under this Ordinance.

(3) Where it is provided in this Ordinance that an instrument shall not be duly stamped unless any condition specified in that provision is fulfilled, the fulfilment of that condition shall not affect the application to that instrument of any other such provision of this Ordinance whereby any other condition is required to be fulfilled in respect of that instrument.

(4) Until Part IV comes into operation, the definition of "stock" (證券) in subsection (1) shall be construed as if paragraph (b) and references thereto in that definition were omitted.

Section:	3	Collector of Stamp Revenue and assistant collectors	12 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made-see 12 of 1999 s. 3

(1) There shall be a Collector of Stamp Revenue who shall be appointed by the Chief Executive, and such number of assistant collectors as the Chief Executive may appoint for the purposes of this Ordinance. (Amended 12 of 1999 s. 3)

(2) The office of the Collector shall be at such place as the Collector may determine.

(3) A reference in any provision in this Ordinance to the Collector shall, in relation to the exercise of any function conferred by that provision on the Collector, include a reference to any assistant collector who is for the time being authorized in writing by the Collector to exercise such function.

(4) Any person appointed under section 2 of the Stamp Ordinance (Cap 117 1978 Ed.) as Collector of Stamp Revenue or assistant collector and holding such office immediately before the commencement of this Ordinance shall be deemed to be appointed under this section as Collector of Stamp Revenue or assistant collector, as the case may be.

Section:	4	Charging of, liability for, and recovery of stamp duty	L.N. 267 of 2003	13/02/2004
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PART II

CHARGING AND STAMPING OF INSTRUMENTS

(1) Subject to this Ordinance, every instrument, wherever executed, specified in the First Schedule shall be chargeable with the stamp duty specified in respect thereof in that Schedule, and the headings, notes and explanations in that Schedule shall have effect accordingly.

(2) Subject to this Ordinance, the time for stamping any instrument shall be the point of time or, as the case may be, the period of time specified in respect thereof in the First Schedule; and where it is provided in that Schedule that the point of time for stamping any instrument is to be before execution, such provision shall not be construed as prohibiting the stamping of such instrument after execution.

(3) If any instrument chargeable with stamp duty is not duly stamped, the person or persons respectively specified in section 13(10), 19 or 20 or the First Schedule as being liable for stamping such instrument, and any person who uses such instrument, shall be liable, or jointly and severally liable, as the case may be, civilly to the Collector for the payment of the stamp duty and any penalty payable under section 9, and may be proceeded against without reference to any civil liability of such person inter se for the payment thereof.

(3A) A contract note which is stamped in accordance with section 5(2A) shall, if the amount of the stamp duty imprinted on the note has not been paid to the Collector in the manner provided by an agreement entered into under section 5A, be deemed for the purposes of subsection (3) to be an instrument chargeable with stamp duty which is not duly stamped. (Added 85 of 1991 s. 3)

(4) If a contract note is not made and executed as required by section 19(1), the person specified in the First Schedule as being liable for stamping such note shall be liable civilly to the Collector for the payment of the stamp duty chargeable thereon and any penalty payable under section 9.

(5) No action shall be brought by virtue of subsection (3) or (4) or section 45(5A)(c) for the recovery of any stamp duty with respect to any instrument more than 6 years from the expiration of the time for stamping such instrument. (Amended 43 of 1991 s. 3)

(6) Notwithstanding anything in this section, the Collector may agree to accept payment of any stamp duty or penalty by instalments.

(7) The return required by section 45(2) of the Companies Ordinance (Cap 32) to be delivered to the Registrar of Companies for registration in respect of any contract mentioned in subsection (1)(b) of that section which is not reduced to writing shall be chargeable with the same stamp duty as would have been payable if the contract had been reduced to writing, and subsections (2), (3), (5) and (6) of this section shall apply to the return as they apply to any such contract in writing. (Amended 28 of 2003 s. 128)

(8) Where, after the commencement of this Ordinance, any immovable property or Hong Kong stock is transferred to or vested in any person by virtue of any Ordinance, whether commencing before or after this Ordinance, such person shall within 30 days after the commencement of the Ordinance or the date of vesting, whichever is the later, cause an authentic copy of the Ordinance (including any subsidiary legislation giving effect to the vesting) to be stamped with the stamp duty chargeable on a conveyance or transfer of immovable property or Hong Kong stock as the case may be; and such person shall, for the purposes of subsection (3), be the person liable for stamping with respect to such copy.

Section:	5	Methods of stamping and denoting	L.N. 82 of 2004	02/08/2004
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(1) Subject to this section and section 9, where an instrument chargeable with stamp duty is presented to the Collector for stamping, the Collector may, upon payment of the stamp duty-

- (a) stamp such instrument or cause it to be stamped-
 - (i) by means of a franking machine with the amount of stamp duty paid and the date of stamping; or
 - (ii) by means of a stamp approved by the Collector with the words "Stamp Office Hong Kong" or "香港印花稅署" and the date of stamping, and shall at the same time record on the instrument, as close as possible to the date so stamped, the amount of stamp duty paid together with his signature; or
- (b) where the instrument is an instrument to which Part IIA applies, instead of stamping it in the manner as provided in paragraph (a), issue a stamp certificate in respect of the instrument. (Replaced 21 of 2003 s. 3)

(1A) A stamp certificate shall not be issued under subsection (1)(b) in respect of the instrument notwithstanding that it is an instrument to which Part IIA applies if, at the time when the instrument is presented to the Collector, it is accompanied by a written request to the Collector for stamping it in the manner as provided in subsection (1)(a). (Added 21 of 2003 s. 3)

(2) Any instrument chargeable with stamp duty under head 2(1) in the First Schedule may be stamped by means of an adhesive stamp by any person authorized in that behalf by the Collector who purchases such stamp at the office of the Collector.

(2A) Notwithstanding subsection (2), a contract note to which an agreement under section 5A relates may be stamped by any person authorized in that behalf by the Collector by imprinting in such manner as the Collector may think fit on the contract note-

- (a) the amount of the stamp duty chargeable thereon; and
- (b) a note to the effect that the amount of the stamp duty referred to in paragraph (a) has been or will be paid through a recognized exchange company or an authorized ATS provider under the agreement. (Replaced L.N. 90 of 1999 and 44 of 1999 s. 14. Amended 5 of 2002 s. 407)

(2B) Subject to section 4(3A), a contract note stamped in accordance with subsection (2A) shall be treated as duly stamped with the amount of the stamp duty imprinted thereon, and within the time for stamping such note. (Added 85 of 1991 s. 4)

(2C) Any person who with intent to defraud the Government-

- (a) imprints on a contract note the matters described in subsection (2A)(a) and (b) without authorization from the Collector for the purposes of subsection (2A); or
- (b) imprints on a contract note any matter, as a matter described in subsection (2A)(a) or (b), which is false in a material particular,

commits an offence. (Replaced L.N. 90 of 1999 and 44 of 1999 s. 14)

(3) Adhesive stamps used for the purposes of subsection (2) shall be of such kinds and in such denominations as the Collector may determine.

(4) Subject to section 7, any instrument chargeable with stamp duty under head 2(4) in the First Schedule may be stamped by means of a franking machine by any person to whom a licence in respect of such machine is issued under that section.

(5) In respect of any Hong Kong bearer instrument, the following shall apply-

- (a) such instrument shall, before being issued, be produced to the Collector together with such particulars in writing in respect of the instrument as the Collector may require, and such instrument shall be duly stamped if it is stamped with a particular stamp approved by the Collector denoting that it has been so produced; and
- (b) within 2 months of the date on which such instrument is issued, or such longer time as the Collector may allow, a statement in writing containing the date of issue and such further particulars as the Collector may require in respect of such instrument shall be delivered to the Collector, and the stamp duty chargeable on such instrument shall be paid to the Collector on delivery of that statement or within such longer time as the Collector may allow,

and if default is made in complying with paragraph (a) or (b) in respect of such instrument, or if any particulars so produced or delivered in respect of such instrument are false in any material respect, the person or persons respectively specified in head 3 in the First Schedule as being liable for stamping such instrument shall incur a penalty of 10 times the amount of the stamp duty chargeable on such instrument which shall be recoverable by the Collector as a civil debt due to the Government. (Amended 12 of 1999 s. 3)

(6) Where the stamp duty chargeable on an instrument depends in any manner upon the stamp duty paid in respect of another instrument, the payment of the last-mentioned stamp duty shall, upon application to the Collector and production of evidence to his satisfaction that such duty has been paid, be denoted upon the first-mentioned instrument or the stamp certificate issued in respect of the first-mentioned instrument in such manner as the Collector thinks fit. (Amended 21 of 2003 s. 3)

(7) If an instrument is presented to the Collector for stamping and the Collector, acting under section 12, requires to be furnished with an abstract of the instrument or with some evidence, then unless such an abstract or that evidence is furnished as required the Collector-

- (a) may refuse to stamp the instrument; or
- (b) may stamp the instrument subject to such conditions as he sees fit. (Added 8 of 1992 s. 2)

Section:	5A	Collection agreement with recognized exchange company or authorized ATS provider	L.N. 12 of 2003	01/04/2003
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(1) The Collector may enter into an agreement with a recognized exchange company or an authorized ATS provider for the collection, in accordance with the provisions of this Ordinance and such agreement, of the stamp duty chargeable under head 2(1) in the First Schedule on such contract notes as may be specified in the agreement.

(2) An agreement under this section shall provide-

- (a) for every contract note to which the agreement relates to bear on its face an imprint of the amount of the stamp duty chargeable on such note;
- (b) for the delivery to the Collector, by the recognized exchange company or authorized ATS provider, of periodical accounts in respect of contract notes to which the agreement relates, giving such particulars with respect thereto as may be specified in the agreement; and
- (c) for the payment to the Collector, by the recognized exchange company or authorized ATS provider and on the delivery of any such account, of the aggregate amount of the stamp duty chargeable as mentioned in subsection (1) on contract notes to which the agreement relates during the period to which the account relates,

and any such agreement may contain such other terms and conditions as the Collector thinks fit.

(3) If default is made in delivering any account required by an agreement under this section, or in paying any

amount in accordance with such an agreement, the recognized exchange company or authorized ATS provider shall be liable to penalty of \$5000 for each day during which the default continues, and, in addition, every amount payable under such an agreement shall bear interest at the rate of 3 cents per \$100 or part thereof per day, from the due date for delivery of the account by reference to which it is payable until the actual date of payment. (Amended 70 of 1994 s. 2)

(4) The penalty and interest under subsection (3) shall be recoverable as a civil debt due to the Government. (Amended 12 of 1999 s. 3)

(Added 85 of 1991 s. 5. Amended 5 of 2002 s. 407)

Section:	6	Cancellation of adhesive stamps		30/06/1997
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(1) Every adhesive stamp used to denote the payment of stamp duty under section 5(2) shall be cancelled forthwith by the person affixing it in such manner as to render it incapable of being used again for any revenue purpose.

(2) An instrument stamped by means of an adhesive stamp shall not be duly stamped unless the adhesive stamp is cancelled as required by subsection (1).

Section:	7	Licensing and use of franking machines		30/06/1997
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(1) The Collector may issue a licence to any person in the form in Part 1 of the Second Schedule authorizing such person to use a franking machine for the purpose of stamping any instrument under section 5(4).

(2) No person shall use a franking machine for the purpose of stamping any instrument under section 5(4)-

(a) without a licence; or

(b) otherwise than in accordance with the conditions set out in Part 1 of the Second Schedule or such additional or other conditions as the Collector may impose in respect of such licence; or

(c) unless at the time it stamps such instrument the machine stamps the date of stamping thereon.

(3) The general provisions in Part 2 of the Second Schedule shall have effect in relation to every licence and licensed franking machine.

(4) No person other than the Collector or an authorized officer shall break or in any way interfere with any seal affixed to a licensed franking machine for the purposes of this section by the Collector or an authorized officer.

(5) The Collector may cancel a licence at any time if there are reasonable grounds for believing that-

(a) any person has used the licensed franking machine in contravention of subsection (2)(b) or (c) or has broken or interfered with any seal affixed thereto in contravention of subsection (4); or

(b) the licensed franking machine is capable of making an imperfect stamp; or

(c) the licensed franking machine has not been used for a period of not less than 6 months.

(6) Any person who contravenes subsection (2) or (4) commits an offence.

(7) Whenever in any prosecution for an offence against subsection (2) it is proved that the accused had in his possession a franking machine, it shall be presumed unless the contrary is proved that such machine was used for the purpose of stamping an instrument under section 5(4).

(8) Any franking machine in respect of which an offence is committed against subsection (2) shall, upon application by the Collector to a magistrate, be forfeited whether or not any person is convicted in respect of such offence.

(9) In this section-

"authorized officer" (獲授權人員) means a public officer authorized in writing by the Collector for the purposes of this section;

"licence" (牌照) means a licence issued by the Collector under subsection (1), and "licensed" (已有牌照) shall be construed accordingly.

Section:	8	Duplicates and counterparts	L.N. 82 of 2004	02/08/2004
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The duplicate or counterpart of an instrument chargeable with stamp duty shall not be duly stamped unless- (Amended 21 of 2003 s. 4)

(a) it is stamped as an original instrument;

(b) there is denoted on it payment of the stamp duty paid in respect of the original instrument of which it is

- the duplicate or counterpart; or
- (c) there is denoted on a stamp certificate issued for the duplicate or counterpart payment of the stamp duty paid in respect of the original instrument of which it is the duplicate or counterpart.
- (Amended 21 of 2003 s. 4)

Section:	9	Late stamping		30/06/1997
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(1) Except in the case of an instrument to which section 5(5) or 13(7)(a) applies, any instrument chargeable with stamp duty which is not stamped before or within the time for stamping such instrument shall not be stamped except by the Collector upon payment of the stamp duty and a penalty of whichever of the following amounts applies- (Amended 77 of 1981 s. 4)

- (a) if the instrument is so stamped not later than 1 month after the time for stamping, the penalty shall be double the amount of the stamp duty;
- (b) if the instrument is so stamped later than 1 month but not later than 2 months after the time for stamping, the penalty shall be 4 times the amount of the stamp duty;
- (c) in any other case, the penalty shall be 10 times the amount of the stamp duty.

(2) The Collector may remit the whole or any part of any penalty payable under subsection (1).

(3) The payment or remission of a penalty payable under this section in respect of any instrument may be denoted thereon by the Collector in such manner as he thinks fit.

Section:	10	How instruments to be written, charged and stamped		30/06/1997
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(1) Every instrument chargeable with stamp duty shall be so written that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

(2) Every instrument chargeable with stamp duty containing or relating to several distinct matters shall be separately and distinctly charged, as if it were a separate instrument, with stamp duty in respect of each of the matters.

(3) Every instrument chargeable with stamp duty shall be separately and distinctly stamped with the stamp duty chargeable thereon.

(4) Subject to section 16(1), an instrument made for any consideration by reference to which it is chargeable with stamp duty, and also for any further or other valuable consideration or considerations, shall be separately and distinctly charged, as if it were a separate instrument, with stamp duty in respect of each of the considerations.

Section:	11	Facts and circumstances affecting stamp duty to be set forth	L.N. 214 of 1998	01/05/1998
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(1) All the facts and circumstances affecting the liability of any instrument to stamp duty, or the amount of the stamp duty chargeable on an instrument, are to be fully and truly set forth in the instrument.

(2) Any person who with intent to defraud the Government-

(a) executes any instrument in which all the said facts and circumstances are not fully and truly set forth; or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all the said facts and circumstances,

commits an offence.

(3) The Collector may, before the commencement of criminal proceedings, compound any offence against subsection (2).

(4) Where any of the facts and circumstances affecting the liability of any instrument to stamp duty, or the amount of the stamp duty chargeable on an instrument, are not fully and truly set forth in the instrument in accordance with subsection (1), the Collector may-

(a) refuse to stamp the instrument; or

(b) stamp the instrument subject to such conditions as he may think fit. (Added 33 of 1998 s. 2)

Section:	12	Power to call for abstract and evidence		30/06/1997
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Whenever any instrument is presented to the Collector for stamping, the Collector may require to be furnished with an abstract of the instrument and also with such evidence as he 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 the stamp duty chargeable thereon, are fully and truly set forth therein.

Section:	13	Adjudication of stamp duty by Collector	L.N. 82 of 2004	02/08/2004
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(1) In respect of any executed instrument, the Collector may, and shall if he is required by any person upon payment, subject to subsection (1B), of the adjudication fee to do so, express his opinion with reference to such instrument upon the following questions- (Amended 5 of 2000 s. 3)

- (a) whether it is chargeable with any stamp duty;
- (b) what amount of stamp duty is chargeable thereon.

(1A) The Financial Secretary may by order amend the Fifth Schedule. (Added 5 of 2000 s. 3)

(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). (Added 5 of 2000 s. 3)

(1C) Where any person has paid the adjudication fee in respect of an instrument to which subsection (1B) applies, the Collector may cancel the stamp or the stamp certificate denoting payment of the fee and refund the fee if- (Amended 21 of 2003 s. 5)

- (a) an application for this purpose is made to him not later than 2 years after the day on which the Collector expressed his opinion under subsection (1); and
- (b) the instrument is stamped under subsection (3). (Added 5 of 2000 s. 3)

(2) Any instrument in respect of which-

- (a) the adjudication fee is paid under subsection (1) shall be stamped with a stamp or by way of a stamp certificate denoting the payment of the fee;
- (b) the adjudication fee is not payable under subsection (1B) shall be stamped with a stamp or by way of a stamp certificate denoting that the instrument has been presented for adjudication. (Replaced 21 of 2003 s. 5)

(3) If the Collector is of opinion that the instrument-

- (a) is not chargeable with stamp duty, it may, subject to subsection (4), be stamped with a stamp or by way of a stamp certificate denoting that the instrument is not chargeable with stamp duty;
- (b) is chargeable with stamp duty, he shall assess the stamp duty payable, and, subject to subsection (7), where the instrument is stamped under section 5 with a stamp or under section 18E(1) by way of a stamp certificate denoting payment of the stamp duty so assessed, the instrument may also be stamped with a stamp or by way of a stamp certificate denoting that it is duly stamped. (Replaced 21 of 2003 s. 5)

(4) Subject to this section, an instrument upon which the stamp duty has been assessed by the Collector shall not, if it is not stamped or is insufficiently stamped, be stamped otherwise than in accordance with the assessment; and in the case of any instrument which in the opinion of the Collector is not chargeable with stamp duty, such instrument shall not be stamped under subsection (3)(a) unless it is stamped under subsection (2) or section 40 applies. (Amended 5 of 2000 s. 3)

(5) Section 12 shall apply in relation to an instrument in respect of which the Collector intends or is required to express his opinion under subsection (1) as it applies to an instrument presented to him for stamping, and where the Collector requires a statutory declaration to be made for the purposes of this section-

- (a) such declaration shall not be used against the person making it in any proceeding whatever except in an inquiry as to the stamp duty with which the instrument to which it relates is chargeable; and
- (b) unless such declaration is shown not to be true in any material respect, the person by whom it is made shall, on payment of the stamp duty chargeable upon the instrument, be relieved from any punishment to which he may be liable under section 11.

(6) Every instrument stamped under this section with a stamp or by way of a stamp certificate denoting that it is not chargeable with stamp duty or that it is duly stamped shall be admissible in evidence and available for all purposes notwithstanding any objection relating to stamp duty. (Amended 21 of 2003 s. 5)

(7) Where in respect of any instrument which is not stamped the Collector is required by any person under this section before or within the time for stamping such instrument to express his opinion under subsection (1) and such instrument is in the opinion of the Collector chargeable with stamp duty, the instrument-

- (a) may be stamped upon payment of the stamp duty if the stamp duty is paid not later than the time for stamping such instrument or the expiration of a period of 1 month from the date on which the

assessment of the stamp duty is made, whichever is the later; or

- (b) if the stamp duty is not so paid, may be so stamped thereafter upon payment of the stamp duty and a penalty calculated under section 9 and, for that purpose, section 9 shall apply in relation to the stamping of such instrument as it applies in relation to the stamping of an instrument chargeable with stamp duty which is not stamped before or within the time for stamping such instrument.

(8) Where notice of an assessment of the stamp duty chargeable on any instrument is, within 7 days from the date on which the assessment is made, served by post on any person who required the Collector to express his opinion with reference thereto under subsection (1) or who is liable for stamping such instrument, such assessment shall, after the expiration of a period of 1 month from that date, be final and conclusive for all purposes as against such person except if and to the extent that an appeal made against it under section 14 succeeds. (Amended 36 of 1994 s. 2)

(9) If, within a period of 1 month from the date on which an assessment is made of the stamp duty chargeable on any instrument, it appears to the Collector that the amount of the stamp duty so assessed is excessive, he may cancel such assessment and make such other assessment in substitution therefor as he may deem proper; and any reference in this Ordinance to an assessment shall be construed as including a reference to an assessment as so substituted.

(10) Where the payment of stamp duty is denoted on any instrument chargeable with stamp duty or on any stamp certificate issued for the instrument, in respect of which the Collector expresses or is required to express his opinion under subsection (1) and the amount of the payment so denoted is less than the amount assessed by the Collector, then, without prejudice to the liability of any person for the payment of the difference between the amount of the stamp duty so denoted and the assessment, the instrument shall be chargeable, unless it is stamped in respect of the difference not later than 1 month from the date on which the assessment is made, with additional stamp duty of an amount equal to interest on the amount of the difference at the rate of 4 cents per \$100 or part thereof per day in respect of the period beginning on the expiration of a period of 1 month from that date and ending on the date of the payment of such additional stamp duty; and the person or persons liable for stamping such instrument in respect of the stamp duty so assessed shall be the person or persons liable for stamping it in respect of such additional stamp duty. (Amended 21 of 2003 s. 5)

(11) The Collector may remit, wholly or in part, any additional stamp duty payable under subsection (10).

Section:	14	Appeal against assessment	L.N. 82 of 2004	02/08/2004
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- (1) Any person who is dissatisfied with the assessment of the Collector under section 13 may-
 - (a) within a period of 1 month from the date on which the assessment is made or within such further period as the court may allow under subsection (5B);
 - (b) subject to any order of the court under subsection (1B), on payment of the stamp duty in conformity therewith or, where payment of the stamp duty or any part thereof is allowed to be postponed under subsection (1A), on payment of the part (if any) of the stamp duty the payment of which is not thus allowed to be postponed; and
 - (c) by notice served on the Registrar,

appeal against the assessment to the court and may for that purpose require the Collector to state and sign a case setting forth the question upon which his opinion was required and the assessment made by him. (Amended 33 of 1998 s. 3)

(1A)Where-

- (a) an application in writing made for the purposes of this subsection by the person liable for payment of the stamp duty payable under an assessment of the Collector under section 13 is received by the Collector within 14 days from the date on which the assessment is made;
- (b) the person has stated in the application that he proposes to bring an appeal against the assessment under subsection (1); and
- (c) security to the satisfaction of the Collector has been given for the payment of the stamp duty that will, by reason of the exercise of the power by the Collector under this subsection, be postponed,

the Collector may, by notice in writing served on the person, allow payment of the stamp duty payable under the assessment to be postponed for such period, to such extent and on such terms as the Collector may think fit. (Added 33 of 1998 s. 3)

(1B)Where the court, on an application made by the person intending to serve a notice under subsection (1), is satisfied that it would impose hardship on the person to require him to pay the stamp duty or the part of the stamp duty, as the case may be, under subsection (1)(b), it may by order allow the appeal to which the notice relates to be

brought-

- (a) without payment of the stamp duty or the part of the stamp duty, as the case may be, under subsection (1)(b), or only on payment of such part of the stamp duty or the part of the stamp duty, as the case may be, as the court may consider reasonable in the circumstances of the case; and
- (b) on security being given to the satisfaction of the court for the payment of the stamp duty or the part of the stamp duty, as the case may be, that would, apart from this subsection, have to be paid before the appeal can be brought under subsection (1). (Added 33 of 1998 s. 3)

(1C) Where-

- (a) an appeal is brought under subsection (1) against an assessment made of the stamp duty chargeable on any instrument;
- (b) (i) the Collector has under subsection (1A) allowed payment of the stamp duty or any part of the stamp duty payable under the assessment to be postponed; or
(ii) the court has under subsection (1B) by order allowed an appeal to be brought in the circumstances specified in that subsection; and
- (c) the part of the stamp duty (if any) that still has to be paid before the appeal can be brought under subsection (1) notwithstanding the postponement or the order of the court, as the case may be, has been paid,

the Collector shall endorse the instrument or, where applicable, issue a stamp certificate in respect of the instrument, to that effect in such manner as he may think fit. (Added 33 of 1998 s. 3. Amended 21 of 2003 s. 6)

(2) The Collector shall upon being required to state and sign a case under subsection (1) state and sign the case and deliver the same to the person by whom it is required and the case may, within 7 days thereafter and after service thereof upon the Secretary for Justice, be set down by such person for hearing. (Amended L.N. 362 of 1997; 33 of 1998 s. 3)

(3) Upon the hearing of the case the court shall determine the question submitted, and, if the instrument in question is in the opinion of the court chargeable with any stamp duty, the court shall assess the stamp duty chargeable thereon.

(4) If the amount of the stamp duty assessed by the court is less than the assessment of the Collector, the excess of stamp duty paid shall be ordered by the court to be repaid together with any excess of penalty paid under section 9 in respect thereof.

(5) If in the opinion of the court the assessment of the Collector is not excessive, the court shall make an order confirming that assessment.

(5A) The court may appoint a member of the Lands Tribunal to sit and assist it in any proceedings or part of any proceedings under this section; but the decision in the appeal shall be the decision of the court alone. (Added 43 of 1984 s. 2)

(5B) Where the court, on an application made by a person who is dissatisfied with an assessment of the Collector under section 13, is satisfied that the person was prevented by illness or absence from Hong Kong or other reasonable cause from bringing an appeal within a period of 1 month from the date on which the assessment is made in accordance with subsection (1), the court may by order allow the appeal to be brought within such further period as it may consider appropriate. (Added 33 of 1998 s. 3)

(6) In this section-

"court" (法庭) means the District Court;

"Registrar" (司法常務官) means the Registrar of the District Court. (Added 33 of 1998 s. 3. Amended 28 of 2000 s. 47)

Section:	15	Non-admissibility, etc. of instruments not duly stamped	L.N. 82 of 2004	02/08/2004
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(1) Subject to subsection (1A), no instrument chargeable with stamp duty shall be received in evidence in any proceedings whatsoever except-

- (a) criminal proceedings;
- (b) civil proceedings by the Collector to recover stamp duty or any penalty payable under this Ordinance, or be available for any other purpose whatsoever, unless such instrument is duly stamped. (Amended 33 of 1998 s. 4)

(1A) Notwithstanding anything in subsection (1), an instrument which is not duly stamped may be received in evidence in civil proceedings before a court if-

- (a) the court so orders upon the personal undertaking of a solicitor to cause-

- (i) such instrument to be stamped in respect of the stamp duty chargeable thereon; and
- (ii) any penalty payable under section 9 in respect thereof to be paid; or

(b) the instrument is endorsed by the Collector under section 14(1C). (Added 33 of 1998 s. 4)

(2) Subject to subsection (3), no instrument chargeable with stamp duty shall be acted upon, filed or registered by any public officer or body corporate unless such instrument is duly stamped or is endorsed by the Collector under section 14(1C); and any such public officer who or body corporate which fails to comply with this subsection shall incur a penalty at level 2 which shall be recoverable by the Collector as a civil debt due to the Government. (Amended 70 of 1994 s. 3; L.N. 338 of 1995; 33 of 1998 s. 4; 12 of 1999 s. 3)

(3) Subsection (2) does not apply in relation to the registration of-

* (a) an instrument under the Land Registration Ordinance (Cap 128) if the instrument is stamped under section 5(1), 13(2) or 18E(1), or is an agreement for sale that either contains a statement to the effect that it relates to non-residential property within the meaning of section 29A(1) or is endorsed under section 29C(13)(a); or (Amended 8 of 1992 s. 3; L.N. 90 of 1999 and 44 of 1999 s. 15; 21 of 2003 s. 7)

(b) an instrument of transfer if the instrument is stamped under section 13(2), but the registration does not affect the question of whether the instrument is duly stamped. (Replaced 43 of 1991 s. 4)

(4) If a public officer is empowered or required by law to act upon, file or register a duplicate or copy of any instrument, and if the original of such instrument would require to be duly stamped if acted upon, filed or registered by such public officer, it shall be lawful for such public officer to call for the production of the original instrument, or for evidence to his satisfaction that it is duly stamped, and no public officer shall act upon, file or register any such duplicate or copy without production of the original instrument duly stamped or of evidence as aforesaid.

Note:

* **The amendments made by L.N. 90 of 1999 and Ord. No. 44 of 1999 to section 15(3)(a) shall only apply to an agreement for sale, or an unwritten sale agreement, as defined in section 29A(1), if the relevant date within the meaning of section 29B(3) is, in so far as such agreement for sale or unwritten sale agreement (as the case may be) is concerned, on or after 1 April 1999.**

Section:	16	Provisions relating to certain leases etc.	30/06/1997
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(1) A lease or agreement for a lease shall not be charged with stamp duty in respect of any penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease of or agreement relating to the same subject matter.

(2) An agreement for a lease shall be chargeable with stamp duty as a lease made for the term and consideration mentioned in the agreement.

Section:	17	Instrument increasing rent to be chargeable as a lease	30/06/1997
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An instrument whereby the rent reserved by any other instrument chargeable with stamp duty and duly stamped as a lease is increased shall be chargeable with stamp duty as if it were a lease but in respect only of the additional rent thereby made payable, but this section shall not apply to an instrument made solely for the purpose of giving notice of any such increase in compliance with any Ordinance.

Section:	18	Calculation of stamp duty as regards foreign currency	30/06/1997
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(1) Where stamp duty falls to be calculated in respect of any instrument by reference to a sum of money expressed in a currency other than Hong Kong dollars, there shall, for the purpose of such calculation, be substituted for that sum of money its equivalent expressed in Hong Kong dollars at the rate of exchange prevailing on the date of the instrument.

(2) For the purposes of this section "rate of exchange" (匯率), in relation to any instrument referred to in subsection (1), means the buying rate for the currency in question, as determined by the Monetary Authority, for telegraphic transfers at the commencement of business on the date of the instrument or, if that date is a Sunday or a general holiday, on the business day immediately preceding that date. (Amended 82 of 1992 s. 10)

Section:	18A	Fraction of \$1 reckoned as \$1	L.N. 237 of 1998	01/07/1998
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Where any monies payable to the Collector or the Government under this Ordinance, whether by way of stamp duty, additional stamp duty, penalty, interest or otherwise, fall to be calculated under this Ordinance, any fraction of \$1 included in such monies shall be reckoned as \$1.

(Added 33 of 1998 s. 5)

Section:	18B	Presentation of copies of instruments, etc.	L.N. 82 of 2004	02/08/2004
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(1) In this Ordinance, any reference to an instrument as one being or required to be presented or tendered to the Collector for stamping shall be construed as including a reference to a copy of the instrument if it is shown to the satisfaction of the Collector that it is impracticable in the circumstances of the case that the instrument be or be required to be so presented or tendered (as the case may be).

(2) Where a copy of an instrument chargeable with stamp duty is presented to the Collector for stamping pursuant to subsection (1), the Collector may, where he is required or empowered under this Ordinance to stamp the instrument or cause it to be stamped, issue a stamp certificate in respect of the instrument under Part IIA. (Amended 21 of 2003 s. 8)

(3) (Repealed 21 of 2003 s. 8)

(4) In this section, a reference to a copy, in relation to an instrument, shall be construed as a reference to a copy which is shown to the satisfaction of the Collector as a true copy of the instrument.

(Added 44 of 1999 s. 16)

Section:	18C	Interpretation	L.N. 82 of 2004	02/08/2004
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PART IIA

STAMPING BY WAY OF STAMP CERTIFICATES

In this Part, unless the context otherwise requires-

"electronic record" (電子紀錄) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap 553);

"record" (紀錄) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap 553);

"send" (送交) includes deliver or transmit by electronic means.

(Part IIA added 21 of 2003 s. 9)

Section:	18D	Application of this Part	L.N. 82 of 2004	02/08/2004
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This Part shall apply to an instrument chargeable with stamp duty under heads 1, 2 and 4 in the First Schedule.

(Part IIA added 21 of 2003 s. 9)

Section:	18E	Stamping by way of stamp certificates	L.N. 82 of 2004	02/08/2004
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(1) Subject to section 5(1A), the Collector may, for the purpose of stamping any instrument to which this Part applies, issue a stamp certificate in respect of the instrument, whether or not the instrument is presented to the Collector for stamping.

(2) A stamp certificate may be issued in paper form or in the form of an electronic record.

(3) The Collector may issue a stamp certificate-

(a) to denote the payment or remission of stamp duty;

(b) to denote the payment or remission of any penalty payable under this Ordinance;

(c) to denote the payment of an adjudication fee payable under this Ordinance;

(d) to denote the fact that an instrument has been presented for adjudication;

(e) to denote that an instrument is not chargeable with stamp duty;

(f) to denote that an instrument is duly stamped; or

(g) to denote or endorse any particulars or matter which the Collector is required or empowered to denote

or endorse under this Ordinance.

(4) The Collector shall keep a record of any stamp certificate issued by him and, in so far as the stamp certificate is not cancelled under section 18J, retain the record for a period of not less than 15 years after the day of issue.

(Part IIA added 21 of 2003 s. 9)

Section:	18F	Application for stamping without presenting instruments	L.N. 82 of 2004	02/08/2004
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(1) A person may, in respect of an instrument to which this Part applies and being an instrument specified by the Collector, apply to the Collector for stamping the instrument without presenting it.

(2) An application under subsection (1) shall-

(a) be made in such form as may be specified by the Collector;

(b) be signed by the applicant and sent to the Collector, in such manner as the Collector may determine; and

(c) in a case where stamp duty or penalty (if any) is payable, be accompanied by payment of the stamp duty or penalty (if any).

(3) For the purposes of subsection (1), an instrument to be specified by the Collector-

(a) shall be specified by notice published in the Gazette; and

(b) may be specified by reference to a class or description of instruments.

(4) A notice under subsection (3) is subsidiary legislation.

(Part IIA added 21 of 2003 s. 9)

Section:	18G	Approval of application made under section 18F	L.N. 82 of 2004	02/08/2004
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If the Collector is satisfied that-

(a) an application has been made in respect of an instrument specified under section 18F(3); and

(b) section 18F(2) has been complied with,

the Collector may approve the application for stamping made under section 18F and, in respect of the instrument, issue and send to the applicant a stamp certificate.

(Part IIA added 21 of 2003 s. 9)

Section:	18H	Refusal of application made under section 18F	L.N. 82 of 2004	02/08/2004
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(1) If the Collector is not satisfied that section 18G(a) or (b) has been complied with, the Collector may refuse to approve the application for stamping made under section 18F.

(2) Where the Collector refuses the application, the Collector shall notify the applicant of the decision and the reasons of refusal.

(3) Where the application is refused for failing to comply with section 18G(a), the applicant may present the instrument to the Collector for stamping under section 5(1)(a).

(4) Where the application is refused for failing to comply with section 18G(b), the applicant may, after complying with section 18G(b), make a new application to the Collector under section 18F.

(Part IIA added 21 of 2003 s. 9)

Section:	18I	Power of Collector to inspect instrument or evidence	L.N. 82 of 2004	02/08/2004
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(1) Without prejudice to the generality of sections 18G and 18H, the Collector may, at any time after an application for stamping an instrument is made under section 18F, require the applicant or any other person, who possesses or controls the following instrument or evidence, to present to the Collector for inspection for the purposes of this Ordinance-

(a) the instrument; or

(b) 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.

(2) The power of the Collector under subsection (1) shall not, in the case where a stamp certificate has been

issued, be exercised more than 6 years from the expiration of the time for stamping the instrument.

- (3) Unless the instrument or evidence as provided under subsection (1) is presented-
- (a) in the case where a stamp certificate has not been issued, the Collector may-
 - (i) refuse to issue a stamp certificate in respect of the instrument; or
 - (ii) issue a stamp certificate in respect of the instrument subject to such conditions as he sees fit; or
 - (b) in the case where a stamp certificate has been issued, the person who, without reasonable excuse, fails to comply with subsection (1) shall incur a penalty at level 2 which shall be recoverable by the Collector as a civil debt due to the Government.

(Part IIA added 21 of 2003 s. 9)

Section:	18J	Power of Collector to cancel stamp certificates	L.N. 82 of 2004	02/08/2004
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- (1) The Collector shall cancel a stamp certificate if-
- (a) the stamp duty, penalty or adjudication fee (if any) paid in respect of an instrument to which the stamp certificate relates has been returned, repaid or refunded under this Ordinance;
 - (b) an allowance has been made in respect of the stamp certificate under this Ordinance; or
 - (c) requested by any person who has shown to the satisfaction of the Collector that the stamp certificate contains any error.
- (2) For the purposes of subsection (1)(c), an error contained in a stamp certificate does not include a case where upon the assessment of the stamp duty of an instrument by the Collector under section 13, the instrument is found to be insufficiently stamped.
- (3) Where a stamp certificate is cancelled under subsection (1), the Collector shall-
- (a) send to any of the following persons a notice in writing of the cancellation-
 - (i) the person who has claimed a refund or an allowance; or
 - (ii) the person who has made the request for cancellation of the stamp certificate; and
 - (b) cancel the record of the stamp certificate kept in respect of the instrument.
- (4) Where a stamp certificate is cancelled under subsection (1)(a) or (b) for overpayment of stamp duty, the Collector may issue a new stamp certificate denoting the payment of stamp duty chargeable on the instrument.
- (5) Where a stamp certificate is cancelled under subsection (1)(c), the Collector may issue a new stamp certificate to rectify the error.
- (6) Where a stamp certificate is cancelled under subsection (1)(c) for any error which results in 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.

(Part IIA added 21 of 2003 s. 9)

Section:	19	Contract notes, etc. in respect of sale and purchase of Hong Kong stock	L.N. 82 of 2004	02/08/2004
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PART III

ANCILLARY PROVISIONS RELATING TO PART II AND PART IIA

(Amended 21 of 2003 s. 10)

- (1) Subject to this section, any person who effects any sale or purchase of Hong Kong stock as principal or agent shall- (Amended 77 of 1981 s. 5)
- (a) forthwith make and execute a contract note;
 - (b) cause the note to be stamped under head 2(1) or (2) in the First Schedule or, in the case of a note to which section 45 applies, under section 13(2)- (Amended 43 of 1991 s. 5)
 - (i) in the case of a sale or purchase effected in Hong Kong, not later than 2 days thereafter;
 - (ii) in any other case, not later than 30 days thereafter;
 - (c) if he is the agent, transmit the stamped note to his principal; (Amended 43 of 1991 s. 5)
 - (d) cause an endorsement to be made on the instrument of transfer of the stock, or cause a stamp certificate to be issued in respect of the instrument, to the effect that- (Amended 21 of 2003 s. 11)
 - (i) stamp duty has been paid on the contract note under head 2(1) or (2) in the First Schedule; or
 - (ii) in the case of a contract note to which section 45 applies, the contract note has been stamped

under section 13(2). (Replaced 43 of 1991 s. 5)

(1A) Subsection (1) shall not apply to a sale or purchase of a unit under a unit trust scheme-

- (a) where the sale or purchase is effected by extinguishing such unit; or
- (b) where the sale or purchase of the unit is effected by the managers under the unit trust scheme and their power to effect such sale or purchase arises-
 - (i) from the transfer to them of that or some other unit within the immediately preceding 2 months; or
 - (ii) otherwise than from a previous transfer to them of that or some other unit. (Added 77 of 1981 s. 5)

(1B) It shall not be obligatory for an endorsement to be made under subsection (1)(d) where, at the time of the sale or purchase of Hong Kong stock-

- (a) the instrument of transfer of such stock is in the custody of a recognized clearing house in accordance with the rules of the clearing house; or
- (b) the Hong Kong stock is registered in the name of a recognized clearing house or its nominee. (Added 40 of 1992 s. 2)

(1C) Subsection (1) shall not apply to a sale or purchase of Hong Kong stock effected under a market contract. (Added 68 of 1992 s. 20)

(1D)(a) Subsection (1) shall not apply to any sale or purchase of Hong Kong stock specified as an exempted transaction in the Fourth Schedule.

- (b) Any transfer made for the purpose of effectuating any sale or purchase of Hong Kong stock specified as an exempted transaction in the Fourth Schedule shall not be chargeable with stamp duty under head 2(4) in the First Schedule. (Added 33 of 1998 s. 6)

(1E)(a) Subject to paragraph (c), in the case of a transaction whereby the beneficial interest in Hong Kong stock passes otherwise than on sale and purchase, where the transaction-

- (i) is not effectuated by way of a transfer chargeable with stamp duty under head 2(3) in the First Schedule, but is effectuated by any other means, whether by electronic means or by means of an entry in any recording or book-keeping system or otherwise; and
- (ii) is effectuated whether under or through a recognized clearing house or any other person or organization,

the transaction shall, for the purposes of this Ordinance, be deemed to be a sale and purchase of Hong Kong stock.

(b) For the purposes of this section and head 2(1) in the First Schedule, in a transaction which is deemed to be a sale and purchase of Hong Kong stock under paragraph (a)-

- (i) the person disposing of the stock in the transaction shall be deemed to be the person effecting the sale in the sale and purchase;
- (ii) the person acquiring the stock in the transaction shall be deemed to be the person effecting the purchase in the sale and purchase;
- (iii) where the person maintaining the record of the transaction is not the principal effecting the sale and purchase, the person shall, save in the case of a recognized clearing house, be deemed to be the agent effecting the sale and purchase; and
- (iv) the value of the stock in the transaction shall be deemed to be the amount or value of the consideration for the sale and purchase.

(c) Paragraph (a) shall not apply to a transaction of the kind referred to in that paragraph where the transaction would, if it were effectuated by way of a transfer chargeable with stamp duty under head 2(3) in the First Schedule, be a transfer of the kind referred to in section 27(5). (Added 33 of 1998 s. 6)

(1F) For the purposes of subsection (1), where-

- (a) any sale or purchase of Hong Kong stock is effected by an exchange participant, whether as principal or agent;
- (b) the contract note required to be made under subsection (1) in respect of the sale or purchase is one to which an agreement under section 5A relates; and
- (c) the contract note is made by the exchange participant,

the contract note shall, whether or not it has been executed by the exchange participant, be regarded as having been so executed. (Added L.N. 90 of 1999 and 44 of 1999 s. 17. Amended 12 of 2000 s. 23)

(2) A contract note required to be made under subsection (1) shall state the following-

- (a) whether the person effecting the sale or purchase of the Hong Kong stock is acting as principal or agent and, if as agent, the name of his principal;
- (b) the date of the transaction and of the making of the contract note;
- (c) the quantity and description of such Hong Kong stock;
- (d) the price per unit of such Hong Kong stock and the amount of the consideration or, in the case of an exchange, particulars of the property for which such Hong Kong stock is exchanged; and
- (e) the date of settlement.

(3) No agent or other person shall have any legal claim to any charge for brokerage, commission or agency with reference to the sale or purchase of any Hong Kong stock if he fails to comply with the provisions of this section.

(4) The stamp duty paid in respect of a contract note may be added to any charge for brokerage or agency and shall be recoverable as part of such charge.

(5) Where a contract note relates to the sale or purchase of more than one description of Hong Kong stock, the note shall be deemed to be as many contract notes as there are descriptions of Hong Kong stock sold or purchased.

(6) If in the case of a sale or purchase of any Hong Kong stock effected by a person who is not resident in Hong Kong, the stamp duty specified in head 2(1) in the First Schedule is not paid, there shall be charged on the instrument of transfer, in addition to the stamp duty otherwise chargeable thereon, stamp duty equal to the amount of the stamp duty so payable in respect of such sale or purchase; and in respect of stamp duty charged on an instrument of transfer under this subsection, the transferee shall be the person liable for stamping such instrument and the time for stamping it shall be 30 days after execution thereof.

(7) Where any instrument of transfer is stamped under subsection (6), the Collector shall endorse the instrument, or issue a stamp certificate in respect of the instrument, to that effect in such manner as he may think fit. (Amended 21 of 2003 s. 11)

(8) An instrument of transfer of any Hong Kong stock shall not be duly stamped unless-

- (a) it is endorsed under subsection (1)(d) or (7) in respect of both sale and purchase; (Amended 40 of 1992 s. 2)
- (b) it is endorsed by the Collector in such manner as he may think fit to the effect that-
 - (i) stamp duty has been paid in respect thereof under head 2(3) in the First Schedule; or
 - (ii) no stamp duty is chargeable thereon under subsection (6) or head 2(1) or 2(3) in the First Schedule; or (Amended 43 of 1991 s. 5; 40 of 1992 s. 2)
- (c) the Hong Kong stock is transferred to a recognized clearing house, or its nominee, in accordance with the rules of the clearing house. (Added 40 of 1992 s. 2)

(9) An endorsement under subsection (1) in respect of stamp duty paid-

- (a) under head 2(1) in the First Schedule may be made by the Collector or any person authorized by the Collector in that behalf;
- (b) under head 2(2) in the First Schedule shall be made by the Collector,

in such manner as the Collector may think fit.

(9A) An endorsement under subsection (1)(d)(ii) shall be made by the Collector in such manner as he thinks fit. (Added 43 of 1991 s. 5)

(10) Any person who makes an endorsement for the purposes of subsection (1)(d) which is false in a material particular commits an offence.

(10A) In relation to a sale or purchase of a unit under a unit trust scheme other than a sale or purchase referred to in subsection (1A), the obligations imposed by this section (other than subsection (1)(c)) and head 2(1) in the First Schedule on any person other than the managers under the unit trust scheme shall be carried out by the managers in addition to any obligation so imposed on them, and for that purpose subsection (2)(a) shall not apply. (Added 77 of 1981 s. 5)

(11) Subject to subsections (12), (12A) and (13), nothing in this section shall apply to-

- (a) a stock borrowing; or
- (b) a stock return. (Replaced 67 of 1989 s. 3)

(12) Where, in respect of a stock borrowing-

- (a) the borrower ceases to be required to make a stock return in accordance with the stock borrowing and lending agreement to which the stock borrowing relates, in respect of the borrowed stock or part thereof or its reasonable equivalent (other than that which is the subject of the stock return referred to in paragraph (c)), pursuant to the stock borrowing and lending agreement or to any other agreement reached with the lender of the borrowed stock (whether by settlement or otherwise); (Replaced L.N. 90 of 1999 and 44 of 1999 s. 17)

- (b) the borrowed stock or part thereof or its reasonable equivalent was used for a purpose other than a specified purpose; or (Amended L.N. 90 of 1999 and 44 of 1999 s. 17)
- (c) the borrower fails to comply with any demand made by the lender of the borrowed stock under the stock borrowing and lending agreement to which the stock borrowing relates to make a stock return in respect of the borrowed stock or part thereof or its reasonable equivalent,

such stock borrowing shall, for the purposes of this Ordinance, be deemed to be a sale and a purchase of-

- (i) where paragraph (a) applies, the borrowed stock or part thereof, or the reasonable equivalent, which is the subject of the stock return the borrower ceases to be required to make as described in that paragraph;
- (ii) where paragraph (b) applies, the borrowed stock or part thereof which, or the borrowed stock or part thereof the reasonable equivalent of which, was used for a purpose other than a specified purpose as described in that paragraph; or
- (iii) where paragraph (c) applies, the borrowed stock or part thereof, or the reasonable equivalent, which is the subject of the stock return referred to in that paragraph. (Amended L.N. 90 of 1999 and 44 of 1999 s. 17)

(12AA) This Ordinance, except subsection (1)(d), shall apply to the sale and purchase referred to in subsection (12) as if that sale and purchase were effected in Hong Kong-

- (a) by the borrower who obtained the relevant borrowed stock;
- (b) on the specified day; and
- (c) for a consideration calculated at the previous closing price of Hong Kong stock of the same description as the stock which is the subject of the sale and purchase or, if there is more than one description of the stock, at their respective previous closing prices as quoted on the relevant recognized stock market. (Added L.N. 90 of 1999 and 44 of 1999 s. 17. Amended 5 of 2002 s. 407)

(12A) Subsection (11) shall not apply to any stock borrowing or stock return, unless-

- (a) an executed copy of the stock borrowing and lending agreement under which the stock borrowing and stock return are provided for, or a copy of the stock borrowing and lending agreement which is shown to the satisfaction of the Collector as a true copy thereof;
- (b) such fee as may be specified by the Financial Secretary for the purposes of this subsection by notice in the Gazette; and
- (c) such other documents, and such particulars and information as the Collector may require,

are provided by the borrower to the Collector at any time after the stock borrowing and lending agreement is executed but before the expiry of 30 days after the stock borrowing is effected. (Replaced L.N. 90 of 1999 and 44 of 1999 s. 17)

(13) A borrower who has effected any stock borrowings under a stock borrowing and lending agreement, an executed copy of which has been provided to the Collector in accordance with subsection (12A), shall- (Amended 33 of 1998 s. 6)

- (a) keep a book in such form;
- (b) enter in such book, in respect of such stock borrowings and any stock returns made in respect of such stock borrowings, such particulars; and
- (c) furnish to the Collector a return-
 - (i) in such form;
 - (ii) containing such particulars in respect of such book; and
 - (iii) at such times,

as the Collector may require. (Added 67 of 1989 s. 3)

(14) A borrower who, with intent to defraud the Government of any stamp duty, causes or allows-

- (a) an entry to be made in a book kept under subsection (13)(a); or
- (b) any particular to be furnished in a return made to the Collector under subsection (13)(c),

which he knows or has reasonable grounds for believing to be false or misleading in a material respect commits an offence. (Replaced 70 of 1994 s. 4)

(15) A borrower who fails to comply with the requirements of subsection (13) shall incur a penalty at level 2 which shall be recoverable by the Collector as a civil debt due to the Government. (Replaced 70 of 1994 s. 4. Amended L.N. 338 of 1995; 12 of 1999 s. 3)

(16) In this section-

"allotment" (分配), in relation to units under a unit trust scheme, means the issue of such units;

- "borrowed stock" (被借用證券), in relation to a stock borrowing, means any Hong Kong stock obtained by a borrower under such stock borrowing; (Replaced 70 of 1994 s. 4)
- "borrower" (借用人), means a person who is eligible to obtain Hong Kong stock under a stock borrowing and lending agreement; (Added 70 of 1994 s. 4. Amended 33 of 1998 s. 6)
- "lender" (借出人) means a person who is eligible to lend Hong Kong stock under a stock borrowing and lending agreement; (Added 70 of 1994 s. 4. Amended 33 of 1998 s. 6)
- "market contract" (市場合約) means a market contract within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571); (Added 68 of 1992 s. 20. Amended 62 of 1995 s. 12; 5 of 2002 s. 407)
- "previous closing price" (先前收市價格), in relation to Hong Kong stock, means the previous closing price of such Hong Kong stock as determined in accordance with the rules and practices of the recognized exchange company that operates the relevant stock market; (Amended 5 of 2002 s. 407)
- "reasonable equivalent" (合理對等項目), in relation to any stock obtained pursuant to the provisions referred to in paragraph (a)(i)(A) or (b)(i)(A) of the definition of "stock borrowing and lending agreement", means any stock or monies which, in the opinion of the Collector, can, as a result of the occurrence of a relevant event, be reasonably and fairly be regarded as the equivalent of the stock so obtained; (Added L.N. 90 of 1999 and 44 of 1999 s. 17)
- "recognized clearing house" (認可結算所) means a recognized clearing house within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571); (Replaced 68 of 1992 s. 20. Amended 62 of 1995 s. 12; 5 of 2002 s. 407)
- "relevant event" (有關事件), in relation to any stock obtained pursuant to the provisions referred to in paragraph (a)(i)(A) or (b)(i)(A) of the definition of "stock borrowing and lending agreement", means-
- (a) the exercise of any of the powers conferred by section 53(1)(a) to (d) of the Companies Ordinance (Cap 32); or
 - (b) any other event,
- which, in the opinion of the Collector, makes any requirement to return stock of the same quantity and description as the stock so obtained either impracticable or inappropriate; (Added L.N. 90 of 1999 and 44 of 1999 s. 17)
- "rules" (規章), in relation to a recognized clearing house and a recognized exchange company, has the same meaning as it has in relation to those bodies in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571); (Replaced 5 of 2002 s. 407)
- "sale or purchase" (售賣或購買) includes any disposal or acquisition (other than an allotment) for valuable consideration, and exchange, and any transaction in respect of which an instrument is deemed by virtue of section 30(3), (4) or (5) to be a transfer by way of sale, and any reference to "sale" (售賣) or "purchase" (購買) shall be construed accordingly;
- "specified day" (指明日期), in relation to a stock borrowing, means-
- (a) where subsection (12)(a) applies, the day on which the borrower ceases to be required to make a stock return as described in that subsection;
 - (b) where subsection (12)(b) applies, the day on which the borrowed stock referred to in that subsection was obtained under the stock borrowing and lending agreement to which the stock borrowing relates; or
 - (c) where subsection (12)(c) applies, the day on which the borrower fails to comply with any demand as described in that subsection; (Replaced L.N. 90 of 1999 and 44 of 1999 s. 17)
- "specified payment" (指明付款), in relation to any stock, means a payment of an amount equivalent to the amount of any dividend, interest and other distribution payable in respect of the stock or its reasonable equivalent or both by the issuer of the stock or its reasonable equivalent or by any other person to the holder of the stock or its reasonable equivalent during the period after the stock is obtained pursuant to the provisions referred to in paragraph (a)(i)(A) or (b)(i)(A) of the definition of "stock borrowing and lending agreement" and before a return or delivery is required to be made in accordance with the provisions referred to in paragraph (a)(i)(B) or (b)(i)(B) of that definition; (Added L.N. 90 of 1999 and 44 of 1999 s. 17)
- "specified purpose" (指明用途), in relation to the borrowing of stock by any person, means-
- (a) the settling of a sale of Hong Kong stock wherever effected, whether by the person himself or another

person;

- (b) the settling of a future sale of Hong Kong stock, whether agreed or not when such borrowing is effected and whether by the person himself or another person;
- (c) the replacement, in whole or in part, of Hong Kong stock obtained by the person under another stock borrowing;
- (d) the on-lending of the stock borrowed to another person who effects a stock borrowing in respect of such stock on-lent; or
- (e) such other purpose as the Collector may, in writing, allow either generally or in any particular case; (Added 70 of 1994 s. 4. Amended 33 of 1998 s. 6)

"stock borrowing" (證券借用) means the obtaining by a borrower from a lender, under a stock borrowing and lending agreement, of Hong Kong stock the sale and purchase of which in Hong Kong are subject to the rules and practices of the recognized exchange company that operates the relevant stock market, whether the Hong Kong stock is so obtained- (Amended L.N. 90 of 1999 and 44 of 1999 s. 17; 5 of 2002 s. 407)

- (a) directly from the lender; or
- (b) indirectly under or through a recognized clearing house and in accordance with the rules of that recognized clearing house which constitute the stock borrowing and lending agreement; (Replaced 70 of 1994 s. 4. Amended 33 of 1998 s. 6)

"stock borrowing and lending agreement" (證券借用及借出協議) means-

- (a) an agreement which-
 - (i) contains-
 - (A) provisions providing for the obtaining of any stock by a person from any other person;
 - (B) provisions requiring-
 - (I) the return of stock of the same quantity and description as the stock obtained pursuant to the provisions referred to in sub-subparagraph (A); or
 - (II) the delivery of the reasonable equivalent of the stock so obtained; and
 - (C) provisions which-
 - (I) require a specified payment to be made by the person by whom the stock is obtained pursuant to the provisions referred to in sub-subparagraph (A) to the person from whom the stock is obtained pursuant to the provisions; or
 - (II) provide for an arrangement which, in the opinion of the Collector, can be regarded as a fair and proper alternative to the requirement to make the specified payment; and
 - (ii) does not, in the opinion of the Collector, have the effect of reducing the risk of loss or opportunity for gain, in respect of the stock, of the person from whom the stock is obtained pursuant to the provisions referred to in subparagraph (i)(A); or
- (b) the rules of a recognized clearing house which-
 - (i) contain the following provisions approved by the Collector-
 - (A) provisions providing for the obtaining of any stock by a participant of the clearing system of the recognized clearing house from any other participant of such clearing system;
 - (B) provisions requiring-
 - (I) the return of stock of the same quantity and description as the stock obtained pursuant to the provisions referred to in sub-subparagraph (A); or
 - (II) the delivery of the reasonable equivalent of the stock so obtained; and
 - (C) provisions which-
 - (I) require a specified payment to be made by the participant by whom the stock is obtained pursuant to the provisions referred to in sub-subparagraph (A) to the participant from whom the stock is obtained pursuant to the provisions; or
 - (II) provide for an arrangement which, in the opinion of the Collector, can be regarded as a fair and proper alternative to the requirement to make the specified payment;
 - (ii) do not, in the opinion of the Collector, have the effect of reducing the risk of loss or opportunity for gain, in respect of the stock, of the person from whom the stock is obtained pursuant to the provisions referred to in subparagraph (i)(A); and
 - (iii) are subscribed to by participants of the clearing system of the recognized clearing house as a precondition for their obtaining of any stock within the meaning of subparagraph (i)(A); (Replaced L.N. 90 of 1999 and 44 of 1999 s. 17)

"stock return" (證券交還), in relation to a stock borrowing, means a transaction by which a borrower, in accordance with the stock borrowing and lending agreement to which the stock borrowing relates-

- (a) returns any stock which is of the same description as the borrowed stock (other than that which is the subject of a sale and purchase referred to in subsection (12)); or
- (b) delivers any reasonable equivalent of the borrowed stock (other than that which is the subject of a sale and purchase referred to in subsection (12)),

whether or not the return or delivery is made- (Amended L.N. 90 of 1999 and 44 of 1999 s. 17)

- (i) directly to the lender; or
- (ii) indirectly under or through a recognized clearing house and in accordance with the rules of that recognized clearing house which constitute the stock borrowing and lending agreement; (Replaced 70 of 1994 s. 4. Amended 33 of 1998 s. 6)

"transaction" (交易), in relation to a stock return, includes the return by a borrower to a lender of a lesser quantity of stock than that obtained by him on the day that the borrowed stock was so obtained. (Added 70 of 1994 s. 4)

(Amended 70 of 1994 s. 4)

Section:	19A	Refund of stamp duty in respect of sale and purchase of units under unit trust schemes	L.N. 82 of 2004	02/08/2004
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(1) Where stamp duty is paid under head 2(1) in the First Schedule in respect of a sale or purchase of a unit under a unit trust scheme effected by the managers under such scheme, the stamp duty shall be refunded to the managers upon application to the Collector under subsection (2) if the managers and trustees under such scheme, before the expiration of 2 months from the date on which the sale or purchase is effected, jointly certify that-

- (a) the certificate, if any, in respect of the unit has been cancelled;
- (b) as a consequence of the sale or purchase, a proportionate part of the trust property has been realized, and the trust property diminished accordingly; and
- (c) the unit is extinguished and the managers have no power to transfer any other unit in lieu thereof.

(2) On an application for a refund of stamp duty under this section, the applicant shall produce to the Collector the contract notes in respect of which the stamp duty was paid or, where applicable, the stamp certificates issued in respect of the contract notes, and the joint certificate of the managers and trustees referred to in subsection (1). (Amended 21 of 2003 s. 12)

(3) In this section "trust property" (信託財產) has the meaning assigned to it by section 30.

(Added 77 of 1981 s. 6)

Section:	20	Stamp duty payable where transaction in respect of Hong Kong stock does not amount to jobbing business	L.N. 56 of 2000	06/03/2000
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Where a contract note is stamped under head 2(2) in the First Schedule but the whole or any part of the transaction to which it relates is shown thereafter not to amount to jobbing business, there shall be payable by the exchange participant effecting the sale or purchase to which the contract note relates by way of stamp duty on demand in respect of a note to be issued by the Collector- (Amended 12 of 2000 s. 23)

- (a) an amount equal to the stamp duty which would have been payable if the contract note had been stamped under head 2(1) in the First Schedule; and
- (b) an amount equal to interest on the amount referred to in paragraph (a) at the rate of 3 cents per \$100 per day in respect of the period from the date of the purchase or sale to the date of payment of that amount:

Provided that where the amount referred to in paragraph (a) includes a fraction of \$100 such fraction shall, for the purposes of determining the amount referred to in paragraph (b), be reckoned as \$100.

Section:	21	Passing on of dividends or interest on Hong Kong stock prohibited	L.N. 90 of 1999; 44 of 1999	01/04/1999
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(1) No person shall be entitled to claim, directly or indirectly, the payment of any dividend or interest or of the amount or value of any dividend or interest on any Hong Kong stock unless-

- (a) such person is the registered owner of the Hong Kong stock at the time of such claim;

- (b) such person was the registered owner of the Hong Kong stock at some time subsequent to the date on which the dividend was declared or the interest became due;
- (c) such person is entitled to be paid such dividend or interest under a declaration of trust in favour of a specified person or otherwise as a beneficiary under a trust; or
- (d) such person has lent money on the security of the Hong Kong stock and is entitled by the terms of the loan to claim such dividend or interest.

(2) No person shall demand or request or accept, directly or indirectly, payment of any dividend or interest or of the amount or value of any dividend or interest which under subsection (1) he is not entitled to claim.

(3) No person shall, directly or indirectly, pay any dividend or interest or the amount or value of any dividend or interest on any Hong Kong stock to any other person unless-

- (a) such other person is the registered owner of the Hong Kong stock;
- (b) such other person was the registered owner of the Hong Kong stock at some time subsequent to the date on which the dividend was declared or the interest became due;
- (c) such other person is entitled to be paid such dividend or interest under a declaration of trust in favour of a specified person or otherwise as a beneficiary under a trust; or
- (d) such other person has lent money on the security of the Hong Kong stock and is entitled by the terms of the loan to claim such dividend or interest.

(4) Notwithstanding anything in this section, this section shall not apply to specified payment as defined in section 19(16). (Added L.N. 90 of 1999 and 44 of 1999 s. 18)

Section:	22	Stamp duty chargeable where consideration in respect of immovable property consists of stock or security other than stock		30/06/1997
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(1) Where the consideration or any part of the consideration for a conveyance on sale consists of any stock, the conveyance shall be chargeable with stamp duty by reference to the value of the stock on the date of the conveyance.

(2) Where the consideration or any part of the consideration for a conveyance on sale consists of any security not being stock, the conveyance shall be chargeable with stamp duty by reference to the amount due on the date of the conveyance for principal and interest upon the security.

Section:	23	How consideration consisting of periodical payments to be charged		30/06/1997
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(1) In the case of a conveyance on sale or a sale or purchase of Hong Kong stock, where the consideration or any part of the consideration consists of money payable periodically for a definite period not exceeding 20 years so that the total amount to be paid can be previously ascertained, the conveyance or contract note shall be chargeable with stamp duty by reference to a consideration of such total amount.

(2) In the case of a conveyance on sale or a sale or purchase of Hong Kong stock, where the consideration or any part of the consideration consists of money payable for a definite period exceeding 20 years or in perpetuity or for any indefinite period not terminable with life, the conveyance or contract note shall be chargeable with stamp duty by reference to a consideration of an amount equal to the total amount which will or may, according to the terms of sale, be payable during the period of 20 years after the date of the conveyance or contract note.

(3) In the case of a conveyance on sale or a sale or purchase of Hong Kong stock, where the consideration or any part of the consideration consists of money payable periodically for a life or lives, the conveyance or contract note shall be chargeable with stamp duty by reference to a consideration equal to the amount which will or may, according to the terms of sale, be payable during the period of 12 years after the date of the conveyance or contract note.

Section:	24	Stamp duty chargeable where conveyance etc. is in consideration of debt etc.		30/06/1997
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(1) In the case of a conveyance on sale or any transaction whereby a beneficial interest in Hong Kong stock passes, where the conveyance or transaction is in consideration, wholly or in part, of any debt due to the transferee or is subject either certainly or contingently to the payment or transfer of any money or stock, whether or not being or constituting a charge or incumbrance upon the property or interest so conveyed or passing, the debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration by reference to which the conveyance or

contract note is chargeable with stamp duty.

(2) Where a conveyance on sale or transaction whereby a beneficial interest in any Hong Kong stock passes is in consideration wholly or in part of any debt due to the transferee and, apart from this subsection, the consideration by reference to which the conveyance or contract note would be chargeable with stamp duty would exceed the value of the property conveyed or beneficial interest passing, that consideration shall be treated as reduced to that value; and the conveyance or contract note shall not be duly stamped unless it is stamped under section 13(3).

(3) Where, by virtue of or in connection with any transaction referred to in subsection (1) whereby a beneficial interest in any shares in a body corporate passes, any liability is incurred by the transferee in respect of any indebtedness of the body corporate, the transaction shall, in addition to any other payment of money or transfer of shares to which it is subject, be deemed to be subject to the payment of an amount of money equal to the amount of such indebtedness.

Section:	25	Stamp duty chargeable in case of certain conveyances		30/06/1997
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(1) Where immovable property contracted to be sold for one consideration for the whole is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with stamp duty by reference to such distinct consideration.

(2) Where immovable property contracted to be purchased for one consideration for the whole by 2 or more persons jointly, or by any person for himself and others or wholly for others, is conveyed in parts or parcels by separate instruments to the persons by or for whom the same was purchased for distinct parts of the consideration, the conveyance of each separate part or parcel shall be chargeable with stamp duty by reference to the distinct part of the consideration therein specified.

(3) Where there are several instruments of conveyance for completing the purchaser's title to immovable property sold, the principal instrument of conveyance only shall be chargeable with stamp duty and the other instruments shall not be chargeable with stamp duty.

(4) Where a person having contracted for the purchase of any immovable property but not having obtained a conveyance thereof contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with stamp duty by reference to the consideration moving from the sub-purchaser.

(5) Where a person having contracted for the purchase of any immovable property but not having obtained a conveyance contracts to sell the whole or any part or parts thereof to any other person or persons and the property is in consequence conveyed by the original seller to different persons in parts or parcels, the conveyance of each part or parcel shall be chargeable with stamp duty by reference only to the consideration moving from the sub-purchaser thereof, without regard to the amount or value of the original consideration.

(6) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with stamp duty by reference to the consideration moving from him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same immovable property by the original seller shall not be chargeable with stamp duty.

(7) Where upon the exchange of any immovable property for any other immovable property, or upon the partition of any immovable property, any consideration is paid or given, or agreed to be paid or given, for equality, the principal or only instrument whereby the exchange or partition is effected shall, subject to section 27, be charged with the same stamp duty as a conveyance on sale for the consideration, and with that stamp duty only; and where in any such case there are several instruments for completing the title of either party, the instruments other than the principal instrument shall not be chargeable with any stamp duty.

Section:	26	Stamp duty chargeable on contracts, etc. for sale of equitable estate or interest in immovable property	L.N. 82 of 2004	02/08/2004
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(1) Any contract or agreement for the sale of any equitable estate or interest in any immovable property shall be chargeable with stamp duty as if it were an actual conveyance on sale of the estate or interest.

(2) Where stamp duty has been paid under subsection (1) and the purchaser, before having obtained a conveyance of the property, enters into a contract or agreement for the sale thereof, the contract or agreement shall be charged, if the consideration for that sale is in excess of the consideration for the original sale, with the stamp duty chargeable by reference to such excess consideration, but shall not otherwise be chargeable.

(3) Where stamp duty has been duly paid under subsection (1) or (2), the conveyance made to the purchaser or sub-purchaser, or any other person on his behalf or by his direction, shall not be chargeable with any stamp duty, and the Collector shall, upon application and production of the contract or agreement, or contracts or agreements, duly stamped, denote upon the conveyance, or issue a stamp certificate denoting, the payment of the stamp duty. (Amended 21 of 2003 s. 13)

(4) Where a conveyance made in conformity with a contract or agreement referred to in subsection (1) or (2) which has not been stamped is presented to the Collector for stamping within 6 months after the execution of the contract or agreement or such longer period as the Collector may think reasonable in the circumstances of the case, or an application for stamping is made to the Collector under section 18F in respect of the conveyance within that period or that longer period, the conveyance shall be stamped accordingly, and the contract or agreement shall thereupon cease to be chargeable with any stamp duty. (Amended 21 of 2003 s. 13)

(5) Where any contract or agreement referred to in subsection (1) or (2) is rescinded or annulled, any stamp duty paid in respect thereof shall be returned by the Collector.

Section:	27	Voluntary dispositions	L.N. 214 of 1998	01/05/1998
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(1) Any conveyance of immovable property operating as a voluntary disposition inter vivos shall be chargeable with stamp duty as a conveyance on sale, with the substitution of the value of the property conveyed for the amount or value of the consideration for the sale.

(2) In the case of an instrument of transfer operating as a voluntary disposition inter vivos of Hong Kong stock, or an instrument referred to in section 28(1) which so operates by virtue of that section, any stamp duty paid in respect of contract notes made under section 19(1) in respect of the amount or value of any consideration given by the transferee for such Hong Kong stock shall be set off against the stamp duty chargeable on such instrument of transfer.

(3) A conveyance or transfer operating as a voluntary disposition inter vivos shall not be duly stamped unless the Collector has stamped the instrument of conveyance or transfer under section 13(3)(b).

(4) Any conveyance or transfer (not being a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration) shall for the purposes of this Ordinance be deemed to be a conveyance or transfer operating as a voluntary disposition inter vivos, and (except where marriage is the consideration) the consideration for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration where the Collector is of opinion that by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the property is conveyed or transferred.

(5) Nothing in this section shall apply to a conveyance or transfer made for nominal consideration for the purpose of securing the repayment of an advance or loan or made for effectuating the appointment of a new trustee, whether the trust is expressed or implied, or under which no beneficial interest passes in the property conveyed or transferred, or made to a beneficiary by a trustee or other person in a fiduciary capacity under any trust, whether expressed or implied, and this subsection shall have effect only if the circumstances exempting the conveyance or transfer from charge under this section are set forth in the conveyance or transfer. (Amended 33 of 1998 s. 7)

(6) In this section "conveyance" (轉易契) includes any agreement for a lease or any release or renunciation of immovable property.

Section:	28	Stamp duty chargeable in case of conveyance or transfer in contemplation of sale or subject to power of revocation etc.		30/06/1997
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(1) Subject to this section, any instrument whereby property is conveyed or transferred to any person in contemplation of a sale of that property shall be treated as a conveyance or transfer operating as a voluntary disposition inter vivos of that property.

(2) If on a claim made to the Collector not later than 2 years after the making or execution of an instrument to which subsection (1) applies, it is shown to his satisfaction-

- (a) that the sale in contemplation of which the instrument was made or executed has not taken place and the property has been re-conveyed or re-transferred to the person from whom it was conveyed or transferred or to a person to whom his rights have been transmitted on death or bankruptcy; or
- (b) that the sale has taken place for a consideration which is less than the value by reference to which stamp duty was paid in respect of the instrument by virtue of this section,

the Collector shall repay the stamp duty paid by virtue of this section, in a case falling under paragraph (a), so far as it exceeds the stamp duty which would have been payable apart from this section and, in a case falling under paragraph (b), so far as it exceeds the stamp duty which would have been payable if the instrument had been stamped in accordance with subsection (1) in respect of a value equal to the consideration in question:

Provided that, in a case falling under the said paragraph (b), stamp duty shall not be repayable if it appears to the Collector that the circumstances are such that a conveyance or transfer on the sale in question would have been chargeable with stamp duty by virtue of section 27(4).

(3) Subsections (1) and (2) shall apply whether or not an instrument conveys or transfers other property in addition to the property in contemplation of the sale of which it is made or executed, but those subsections shall not affect the stamp duty chargeable in respect of that other property.

(4) For the purposes of section 27 and this section, the value of property conveyed or transferred by an instrument chargeable with stamp duty in accordance with either of those provisions shall be determined without regard to-

- (a) any power (whether or not contained in the instrument) on the exercise of which the property, or any part of or any interest in the property, may be re-vested in the person from whom it was conveyed or transferred or in any person on his behalf;
- (b) any annuity reserved out of the property or any part of it, or any life or other interest so reserved, being an interest which is subject to forfeiture,

but if on a claim made to the Collector not later than 2 years after the making or execution of the instrument it is shown to his satisfaction that any such power as is mentioned in paragraph (a) has been exercised in relation to the property and the property or any property representing it has been re-conveyed or re-transferred in whole or in part in consequence of that exercise the Collector shall repay the stamp duty paid by virtue of this subsection, in a case where the whole of such property has been so re-conveyed or re-transferred, so far as it exceeds the stamp duty which would have been payable apart from this subsection and, in any other case, so far as it exceeds the stamp duty which would have been payable if the instrument had operated to convey or transfer only such property as is not so re-conveyed or re-transferred.

Section:	29	Certificate with respect to certain conveyances on sale		30/06/1997
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(1) References in head 1(1) in the First Schedule to a conveyance on sale being certified at a particular amount mean that such conveyance on sale contains a statement certifying that the transaction effected by the instrument does not form part of a larger transaction or series of transactions in respect of which the amount or value, or aggregate amount or value, of the consideration exceeds that amount.

(2) In subsection (1) a reference to the amount or value of the consideration shall be construed-

- (a) in relation to stamp duty chargeable on a conveyance operating as a voluntary disposition inter vivos, as a reference to the value of the property conveyed;
- (b) in relation to stamp duty chargeable on a lease or agreement for a lease, as a reference to the amount or value of the consideration in money, stock or security, other than rent.

Section:	29A	Interpretation and application of Part IIIA	L.N. 214 of 1998	01/05/1998
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Remarks:

Adaptation amendments retroactively made - see 12 of 1999 s. 3

PART IIIA

AGREEMENTS TO SELL IMMOVABLE PROPERTY

(1) In this Part and the First Schedule-
"agreement for sale" (買賣協議) means-

- (a) an instrument in which a person contracts to sell or purchase immovable property;
- (b) an instrument in which a person confers, or has conferred on him, an option or a right to purchase immovable property or a right of pre-emption in respect of immovable property, other than a specified option or right;
- (c) an instrument, other than a mortgage or charge made in favour of a financial institution within the

meaning of section 2 of the Inland Revenue Ordinance (Cap 112), in which a person-

- (i) gives or is given a power of attorney expressed to be irrevocable and given to secure a proprietary interest of the donee of the power or the performance of an obligation owed to the donee, and giving the donee authority on behalf of the donor to sell or otherwise dispose of any interest of the donor in immovable property; or
- (ii) grants or is granted an authority on behalf of the grantor to sell or otherwise dispose of any interest of the grantor in immovable property, and under which consideration for that authority moves from the grantee of the authority to the grantor;
- (d) an instrument in which a declaration of trust in respect of immovable property is made, other than a declaration of trust under which no beneficial interest passes in the property subject to the declaration;
- (e) an instrument which, if implemented, would be implemented by a conveyance on sale;
- (f) an instrument which constitutes a memorandum, note, or other evidence of an unwritten sale agreement;
- (g) an instrument in which a purchaser under an instrument referred to in this definition assigns any rights under the second-mentioned instrument in respect of immovable property;
- (h) an instrument in which a purchaser under an instrument referred to in this definition makes a nomination or gives a direction that-
 - (i) transfers, or gives a power to transfer, any benefit, in respect of immovable property, of the purchaser under the second-mentioned instrument; or
 - (ii) authorizes another person to take a conveyance of immovable property that is subject to the second-mentioned instrument or to execute such a conveyance in favour of a third party, other than a nomination made, or a direction given, in favour of a person who is to be a trustee for the purchaser in respect of the property, or in favour of one, or more than one, person who is a parent, spouse or child of the purchaser (whether or not also in favour of the purchaser);

"chargeable agreement for sale" (可予徵收印花稅的買賣協議) means an agreement for sale chargeable with stamp duty under head 1(1A) in the First Schedule;

"non-residential property" (非住宅物業) means immovable property which, under the existing conditions of-

- (a) a Government lease or an agreement for a Government lease;
- (b) a deed of mutual covenant, within the meaning of section 2 of the Building Management Ordinance (Cap 344); (Amended 27 of 1993 s. 45)
- (c) an occupation permit issued under section 21 of the Buildings Ordinance (Cap 123); or
- (d) any other instrument which the Collector is satisfied effectively restricts the permitted user of the property,

may not be used, at any time during the term of the Government lease in respect of the property or during the term of the Government lease that has been agreed for in respect of the property (as is appropriate), wholly or partly for residential purposes; (Amended 12 of 1999 s. 3)

"purchaser" (購買人) includes any person who, under an agreement for sale or an unwritten sale agreement,-

- (a) contracts to purchase immovable property;
- (b) acquires-
 - (i) immovable property;
 - (ii) an option or a right to purchase immovable property or a right of pre-emption in respect of immovable property, other than a specified option or right;
 - (iii) a power or authority to sell or otherwise dispose of any interest in immovable property;
 - (iv) any right or benefit in respect of immovable property of a purchaser under an agreement for sale or an unwritten sale agreement;
 - (v) a power to transfer any such right or benefit;
 - (vi) an authority to take a conveyance of immovable property that is subject to an agreement for sale or an unwritten sale agreement; or
- (c) is named as a person in whose favour another person is authorized to execute a conveyance of immovable property;

"residential property" (住宅物業) means immovable property other than non-residential property;

"specified option or right" (指明的選擇權或權利) means an option or right to purchase, or a right of pre-emption, conferred-

- (a) by a lessor on a lessee;

(b) in a lease, or an agreement for a lease, for a fixed term of not less than 3 years; and

(c) in respect of the property subject to the lease,

and which is not exercisable within 3 years of the commencement of the lease or agreement for a lease, otherwise than by giving notice to exercise the option or right which notice does not expire within those 3 years;

"unwritten sale agreement" (非書面買賣協議) means a contract, agreement, or statement not in the form of an instrument but of such a nature that, if it were in such a form, the instrument would constitute an agreement for sale;

"vendor" (售賣人) includes any person who, under an agreement for sale or an unwritten sale agreement-

(a) contracts to sell immovable property;

(b) grants, confers, or transfers-

(i) immovable property;

(ii) an option or a right to purchase immovable property or a right of pre-emption in respect of immovable property, other than a specified option or right;

(iii) a power or authority to sell or otherwise dispose of any interest in immovable property;

(iv) any right or benefit in respect of immovable property that he has as a purchaser under an agreement for sale or an unwritten sale agreement;

(v) a power to transfer any such right or benefit;

(vi) an authority to take a conveyance of immovable property that is subject to an agreement for sale or an unwritten sale agreement; or

(c) authorizes another person to execute in favour of a third party a conveyance of immovable property that is subject to an agreement for sale or an unwritten sale agreement.

(2) An agreement for sale and an unwritten sale agreement may be enforceable or unenforceable, absolute or conditional, formal or informal, temporary or permanent, provisional or non-provisional.

(3) An agreement for sale may consist of 2 or more instruments.

(3A) For the purposes of this Part and head 1(1A) in the First Schedule, and subject to Note 5 to head 1(1A) in that Schedule, an agreement for sale, an unwritten sale agreement or a conveyance on sale is made between the same parties as a previous agreement if, but only if-

(a) the names of both of the vendor and the purchaser or, where there is more than one vendor or more than one purchaser or more than one vendor and more than one purchaser, all of them specified as such in the previous agreement are the same as those in the agreement for sale, the unwritten sale agreement or the conveyance on sale, as the case may be; and

(b) where there is more than one purchaser specified as such in the previous agreement, the property or interest to be acquired by a person as one of the purchasers under the previous agreement is the same as that to be acquired by that person under the agreement for sale, the unwritten sale agreement or the conveyance on sale, as the case may be. (Added 33 of 1998 s. 8)

(4) For the purposes of this Part and head 1(1A) in the First Schedule, an agreement for sale, an unwritten sale agreement and a conveyance on sale are made on the same terms as a previous agreement if, but only if, the agreement for sale, the unwritten sale agreement or the conveyance on sale (as the case may be) and the previous agreement-

(a) are made in respect of the same immovable property; and

(b) specify the same consideration for the conveyance on sale.

(5) Head 1(1A) in the First Schedule does not apply to an agreement for sale in respect of non-residential property.

(6) This Part and head 1(1A) in the First Schedule apply notwithstanding any provision in any other Part of this Ordinance.

(7) This Part and head 1(1A) in the First Schedule do not apply to an agreement for sale or an unwritten sale agreement-

(a) made before; or

(b) that supersedes an agreement for sale or an unwritten sale agreement made between the same parties and on the same terms before,

the commencement of the Stamp Duty (Amendment) Ordinance 1992 (8 of 1992).

(Part IIIA added 8 of 1992 s. 4)

Section:	29B	Duty to execute agreement for sale	30/06/1997
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(1) Each purchaser and vendor under an unwritten sale agreement or an agreement for sale shall, not later than 30 days after the relevant date, if he has not already done so, execute an agreement for sale containing the matters specified in subsection (5).

(2) Subsection (1) does not apply to a purchaser who, on the relevant date, does not know that the unwritten sale agreement or agreement for sale affects him.

(3) For the purposes of subsections (1) and (2), the relevant date means-

- (a) in the case of an unwritten sale agreement, the date on which that agreement was made;
- (b) in the case of an agreement for sale not preceded by an unwritten sale agreement, or an agreement for sale, made between the same parties and on the same terms, the date on which that agreement was made; and
- (c) in the case of an agreement for sale preceded by one or more than one unwritten sale agreement, or agreement for sale, made between the same parties and on the same terms, the date on which the first of such agreements was made; and

(4) If a person enters into an agreement for sale or an unwritten sale agreement as agent for a vendor or purchaser, the agent and the vendor or purchaser (as the case may be) are jointly and severally liable to comply with subsection (1).

(5) The following matters are specified for the purposes of subsection (1)-

- (a) the name and address of the vendor and of the purchaser of the immovable property;
- (b) if the vendor or purchaser is an individual, his identification number;
- (c) if the vendor or purchaser is not an individual but is registered under the Business Registration Ordinance (Cap 310), the business registration number of the vendor or purchaser;
- (d) the description and location of the immovable property;
- (e) a statement as to whether the immovable property is residential property or non-residential property, within the meanings of section 29A(1);
- (f) the date on which the agreement for sale was made;
- (g) if the agreement for sale was preceded by an unwritten sale agreement, or an agreement for sale, made between the same parties and on the same terms, the date on which the first such agreement was made;
- (h) a statement as to whether or not a date has been agreed for a conveyance on sale pursuant to the agreement for sale and, if so, that date;
- (i) a statement as to whether or not there is an agreed consideration for the conveyance on sale that is to, or may, take place pursuant to the agreement for sale and, if so, the amount or value of the consideration;
- (j) the amount or value of any other consideration which each person executing the document knows has been paid or given, or has been agreed to be paid or given, to any person for or in connection with the agreement for sale or any conveyance on sale pursuant to that agreement (excluding legal expenses), together with the name, address, and the identification number or business registration number of each person receiving or to receive such consideration, and a description of the benefit to which the consideration relates;
- (k) if the purchaser has not executed the agreement, a statement as to whether or not, to the best of the knowledge of each person executing the agreement, the purchaser knew, at the time the agreement was made, that it affected him.

(6) Any person required to execute an agreement for sale in accordance with subsection (1) who fails to do so is liable civilly to the Collector for the payment of any stamp duty chargeable on that agreement, which shall be deemed for the purposes of this subsection to be a chargeable agreement for sale, and any penalty payable under section 9; and if 2 or more persons fail to execute such an agreement each person is jointly and severally so liable.

(7) Any person liable, under subsection (6), to pay stamp duty chargeable on an agreement for sale may set off the amount (if any) of that stamp duty paid by him against any stamp duty payable by him in respect of a conveyance on sale made in pursuance of that agreement, within the meaning of section 29D(6)(d).

(8) No action shall be brought by virtue of subsection (6) for the recovery of any stamp duty with respect to any instrument more than 6 years from the expiration of the time for stamping that instrument.

(9) Any person who with intent to defraud the Government fails to comply with subsection (1) commits an offence, but the Collector may, before the commencement of criminal proceedings, compound any such offence.

(10) A failure by any person to comply with subsection (1) does not affect the validity or enforceability of an

agreement for sale or unwritten sale agreement.

(11) In this section, "identification number" (身分證件號碼) in relation to a person means-

- (a) the number of any identity card issued to him under the Registration of Persons Ordinance (Cap 177);
- (b) if no such card has been issued to him, the number of any travel document, certificate of identity, or document of identity (within the meanings of section 2(1) of the Immigration Ordinance (Cap 115)) issued to him;
- (c) if no such document or certificate has been issued to him, the number of any other document that establishes his identity to the satisfaction of the Collector,

but no such number is complete unless the relevant document is described.

(Part IIIA added 8 of 1992 s. 4)

Section:	29C	Chargeable agreements for sale	L.N. 18 of 2010; 16 of 2010	01/04/2010
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Remarks:

The various amendments made by L.N. 90 of 1999 and Ord. No. 44 of 1999 to this section shall only apply to an agreement for sale, or an unwritten sale agreement, as defined in section 29A(1), if the relevant date within the meaning of section 29B(3) is, in so far as such agreement for sale or unwritten sale agreement (as the case may be) is concerned, on or after 1 April 1999.

(1) (Repealed L.N. 90 of 1999 and 44 of 1999 s. 19)

(2) An agreement for sale to which head 1(1A) in the First Schedule applies is chargeable with stamp duty even if-

- (a) it does not contain the matters specified in section 29B(5); or
- (b) it has not been executed by all persons who are required by section 29B(1) to execute it,

or both, but the Collector may refuse to stamp a chargeable agreement for sale that does not contain those matters or has not been so executed.

(3) For the avoidance of doubt, it is hereby declared that if-

- (a) a chargeable agreement for sale is made in respect of immovable property; and
- (b) another chargeable agreement for sale is made in respect of all or any part of the property (whether by the vendor or purchaser under the first-mentioned agreement, or both) before a conveyance on sale of the property or that part of the property is made in pursuance of the first-mentioned agreement,

then (subject to the notes to head 1(1A) in the First Schedule and to section 29F) each agreement is chargeable with stamp duty by reference to the consideration for the agreement.

(4) The principle in subsection (3) applies, with necessary modifications, if there is a series of more than 2 chargeable agreements for sale in respect of the same, or any part of the same, immovable property; for example-

- (a) if a purchaser under a chargeable agreement for sale makes a chargeable agreement for a sub-sale, and the sub-purchaser makes a further chargeable agreement for a sub-sale; or
- (b) if a chargeable agreement for sale is cancelled and replaced by a chargeable agreement for sale made by the vendor and a second purchaser, and that other agreement is cancelled and replaced by a chargeable agreement for sale made by the vendor and a third purchaser,

then (subject to the notes to head 1(1A) in the First Schedule and to section 29F) each agreement is chargeable with stamp duty by reference to the consideration for the agreement.

(5) If-

- (a) a chargeable agreement for sale is made in respect of immovable property; and
- (b) another chargeable agreement for sale is made in respect of all or any part of the property (whether by the vendor or purchaser under the first-mentioned agreement, or both) before a conveyance on sale of the property or that part of the property is made in pursuance of the first-mentioned agreement; and
- (c) under the second-mentioned agreement-
 - (i) the purchasers are a person named in the first-mentioned agreement as a purchaser and another person who is not so named; or
 - (ii) the purchaser is one, or the purchasers are some, (but not all) of the persons named in the first-mentioned agreement as the purchasers,

the second-mentioned agreement shall be chargeable with stamp duty as if it were a conveyance on sale executed in pursuance of the first-mentioned agreement for sale and section 29D(4) or (5) (as is appropriate) shall apply

accordingly.

- (5A)(a) Notwithstanding any other provisions of this Part, an agreement for sale to which head 1(1A) in the First Schedule would, apart from this subsection, apply shall, subject to paragraph (b), not be regarded as an agreement for sale to which that head applies if the agreement is cancelled, annulled or rescinded or is otherwise not performed.
- (b) Where an agreement for sale described in paragraph (a) is cancelled, annulled or rescinded or is otherwise not performed by reason of the occurrence of a specified event described in subsection (11)(b)(ii) or (iii), the agreement shall, notwithstanding paragraph (a), continue to be regarded as an agreement for sale to which head 1(1A) in the First Schedule applies. (Added L.N. 90 of 1999 and 44 of 1999 s. 19)
- (5B)(a) Subject to paragraph (b), if any monies have been paid under this Ordinance, whether by way of stamp duty, additional stamp duty or penalty, in respect of an agreement for sale as an agreement for sale to which head 1(1A) in the First Schedule applies, but the agreement is under subsection (5A)(a) not regarded as an agreement for sale to which that head applies, the Collector shall refund the monies paid.
- (b) In relation to an agreement for sale described in paragraph (a), no monies shall be refunded under paragraph (a) unless-
 - (i) an application has been made to the Collector-
 - (A) where the agreement has been cancelled, annulled or rescinded, within 2 years after the agreement has been cancelled, annulled or rescinded, as the case may be; or
 - (B) where the agreement has otherwise not been performed, within 2 years after the date agreed under the agreement as the date of completion of the sale and purchase, or (in its absence) the date of conveyance, of the immovable property subject to the agreement (whether the date is determined by reference to the happening of an event or otherwise); and
 - (ii) such evidence, by statutory declaration or otherwise, in support of the application as the Collector may require has been produced to the Collector.
- (c) Where any monies paid in respect of an agreement for sale are refunded under paragraph (a), the Collector may cancel- (Amended 21 of 2003 s. 14)
 - (a) the stamp, if any, denoting payment of the monies on the agreement; or
 - (b) the stamp certificate, where applicable, denoting payment of the monies in respect of the agreement. (Added L.N. 90 of 1999 and 44 of 1999 s. 19. Amended 21 of 2003 s. 14)
- (6) (Repealed L.N. 90 of 1999 and 44 of 1999 s. 19)
- (7) Where a chargeable agreement for sale consists of 2 or more instruments, the principal instrument only shall be chargeable with stamp duty and the other instruments shall not be chargeable with stamp duty.
- (8) For the purposes of this Ordinance, the consideration for an agreement for sale shall be deemed to be the aggregate of the amounts and values referred to in section 29B(5)(i) and (j).
- (9) For the purpose of ascertaining the manner in which a chargeable agreement for sale is chargeable with stamp duty, sections 22, 23 and 24 shall operate as if any reference in those sections-
 - (a) to a conveyance on sale were a reference to a chargeable agreement for sale;
 - (b) to a transferee were a reference to the purchaser under a chargeable agreement for sale;
 - (c) to the property conveyed were a reference to the immovable property subject to a chargeable agreement for sale.
- (10) Where under a chargeable agreement for sale-
 - (a) the exchange of any immovable property for any other immovable property; or
 - (b) the partition of an immovable property,is agreed to, and any consideration is paid or given, or agreed to be paid or given, for equality, the agreement for sale shall, subject to section 29F, be charged with the same stamp duty as a chargeable agreement for sale for the consideration, and with that stamp duty only.
- (11) (a) Subject to subsection (12), the time for stamping a chargeable agreement for sale which, if implemented, would be implemented by a conveyance on sale shall be-
 - (i) subject to subparagraphs (ii) and (iii), not later than 3 years after the relevant date within the meaning of section 29B(3);
 - (ii) subject to subparagraph (iii), where, within 3 years after such relevant date, a conveyance on sale is made in conformity with or in pursuance of the agreement, not later than 30 days after the conveyance on sale is made, or 3 years after such relevant date, whichever is of the earlier date;

- (iii) where, before a conveyance on sale is made in conformity with or in pursuance of the agreement but within 3 years after such relevant date, there is occurrence of a specified event described in paragraph (b)(i), (ii) or (iii), not later than 7 days after the occurrence of the specified event, or 3 years after such relevant date, whichever is of the earlier date.
- (b) In relation to an agreement for sale ("first agreement") made in respect of immovable property, there is occurrence of a specified event where-
 - (i) another agreement for sale is made for a sub-sale of the property or any part of the property by the purchaser under the first agreement;
 - (ii) another agreement for sale is made by the purchaser under the first agreement in which the purchaser makes a nomination or gives a direction that-
 - (A) transfers, or gives a power to transfer, any benefit of the purchaser in respect of the property or any part of the property under the first agreement; or
 - (B) authorizes another person to take a conveyance of the property or any part of the property or to execute such a conveyance in favour of a third party, other than a nomination made, or a direction given, in favour of a person who is to be a trustee for the purchaser in respect of the property or the part of the property, as the case may be, or in favour of a person who is a parent, spouse or child of the purchaser, whether or not also in favour of the purchaser; or
 - (iii) another agreement for sale is made for the sale of the property or any part of the property-
 - (A) between the vendor under the first agreement and a party introduced, directly or indirectly, to the vendor by the purchaser under the first agreement; or
 - (B) under the direction of or upon the request of the purchaser. (Added L.N. 90 of 1999 and 44 of 1999 s. 19)

*(12) Subsection (11) shall not apply to a chargeable agreement for sale made in respect of immovable property unless-

- (a) an application in a form specified by the Collector has been made to the Collector by a person liable for stamping the agreement within 30 days after the date on which the agreement was made; (Amended L.N. 18 of 2010 and 16 of 2010 s. 3)
- (b) it is proved to the satisfaction of the Collector that-
 - (i) the vendor under the agreement is registered in the Land Registry as the owner of the property; or
 - (ii) (A) all the instruments through which the vendor acquired, from the person who is registered in the Land Registry as the owner of the property, his right or interest in or title to the property are, in so far as they are chargeable with stamp duty, duly stamped; or
 - (B) where it is not proved to the satisfaction of the Collector that all the instruments referred to in sub-subparagraph (A) are duly stamped within the meaning of that sub-subparagraph, security to the satisfaction of the Collector has been given for the payment of the stamp duty chargeable on the instruments in so far as they are not so duly stamped; and (Added L.N. 90 of 1999 and 44 of 1999 s. 19. Amended L.N. 18 of 2010 and 16 of 2010 s. 3) (***See Note 2 for the text of this subsection added by L.N. 90 of 1999, which expired and ceased to be in force upon 44 of 1999 becoming law.**)
- (c) the amount or value of the consideration for the agreement does not exceed \$20000000. (Added L.N. 18 of 2010 and 16 of 2010 s. 3)

*(13) On an application made to the Collector under subsection (12)(a) in respect of a chargeable agreement for sale which, if implemented, would be implemented by a conveyance on sale-

- (a) if the requirements set out in subsection (12)(b) and (c) are satisfied, the Collector must endorse the agreement, or issue a stamp certificate in respect of the agreement, to the effect that subsection (11) applies to the agreement in such manner as he may think fit; (Amended 21 of 2003 s. 14; L.N. 18 of 2010 and 16 of 2010 s. 3)
- (b) if the requirements set out in subsection (12)(b) and (c) are not satisfied, the Collector must issue a notice in writing of the decision, and the reasons for the decision, to the person making the application. (Added L.N. 90 of 1999 and 44 of 1999 s. 19. Amended L.N. 18 of 2010 and 16 of 2010 s. 3) (***See Note 2 for the text of this subsection added by L.N. 90 of 1999, which expired and ceased to be in force upon 44 of 1999 becoming law.**)

*(14)-(15) (***See Note 2 for the text of these two subsections added by L.N. 90 of 1999, which expired and**

Notes:

1. The Revenue Ordinance 1999 (44 of 1999) contains the following transitional provision:

"44. Transitional

- (1) Subject to subsection (2), nothing in this Ordinance affects-
- (a) the operation of the specified section of the Order at any time before the day on which this Ordinance is published in the Gazette#;
 - (b) anything duly done or suffered under or pursuant to any of the provisions of the specified section of the Order at any time before the day on which this Ordinance is published in the Gazette#.
- (2) (a) Where a body corporate has given a banker's undertaking by way of security for the payment of the stamp duty chargeable on an agreement pursuant to any of the provisions of the specified section of the Order at any time before the day on which this Ordinance is published in the Gazette#, the body corporate may, notwithstanding the provisions of the undertaking, by written notice to the Collector demand that the undertaking be returned to it.
- (b) Where a body corporate makes a demand in respect of a banker's undertaking under paragraph (a), upon receipt by the Collector of the notice of the demand-
- (i) the undertaking shall be deemed to be discharged; and
 - (ii) the Collector shall forthwith return the undertaking to the body corporate.
- (3) In this section, a reference to the specified section of the Order means section 29C(12), (13), (14) and (15) proposed to be added to the Stamp Duty Ordinance (Cap 117) by virtue of the operation of clause 18(d) of the Bill set out in the Schedule to the Public Revenue Protection (Revenue) Order 1999 (L.N. 90 of 1999) pursuant to section 2 of that Order."

(#Date of publication in the Gazette: 16 July 1999)

2. The following is the text of section 29C(12), (13), (14) and (15) added by L.N. 90 of 1999 (i.e. "the specified section of the Order" referred to in the transitional provision at Note 1).

- "(12) Subsection (11) shall not apply to a chargeable agreement for sale made in respect of immovable property unless-
- (a) an application in a form specified by the Collector has been made to the Collector by a person liable for stamping the agreement within 30 days after the date on which the agreement was made;
 - (b) it is proved to the satisfaction of the Collector that-
- (i) the vendor under the agreement is registered in the Land Registry as the owner of the property; or
 - (ii) (A) all the instruments through which the vendor acquired, from the person who is registered in the Land Registry as the owner of the property, his right or interest in or title to the property are, in so far as they are chargeable with stamp duty, duly stamped; or
 - (B) where it is not proved to the satisfaction of the Collector that all the instruments referred to in sub-subparagraph (A) are duly stamped within the meaning of that sub-subparagraph, security to the satisfaction of the Collector has been given for the payment of the stamp duty chargeable on the instruments in so far as they are not so duly stamped; and
- (c) where a body corporate is liable for stamping the agreement as a purchaser under the agreement, a banker's undertaking described in subsection (14) has been given by way of security for the payment of the stamp duty chargeable on the agreement.
- (13) On an application made to the Collector under subsection (12)(a) in respect of a chargeable agreement for sale which, if implemented, would be implemented by a conveyance on sale-
- (a) where the requirements set out in subsection (12)(b) and (c) are, in so far as they are applicable, satisfied, the Collector shall endorse the agreement to the effect that subsection (11) applies to the agreement in such manner as he may think fit;
 - (b) where any of the requirements set out in subsection (12)(b) and (c) are, in so far as they are applicable, not satisfied, the Collector shall issue a notice in writing of the decision to the person making the application.
- (14) For the purposes of subsection (12)(c), a banker's undertaking given in relation to a chargeable agreement for sale shall-
- (a) be in a form acceptable to the Collector;
 - (b) be provided by a bank as defined in the Banking Ordinance (Cap 155);
 - (c) not be revocable without the consent of the Collector;
 - (d) be expressed to be an undertaking to pay an amount equivalent to the stamp duty chargeable on the agreement; and
 - (e) provide that the amount referred to in paragraph (d), or such lesser amount as demanded by the Collector, shall be paid to the Collector upon written notification to the bank by the Collector that the agreement has become due for stamping.
- (15) Notwithstanding subsections (11) to (14), where at any time before the time for stamping specified in relation to a chargeable agreement for sale in subsection (11)(a) has expired-
- (a) a banker's undertaking described in subsection (14) has been given in relation to the agreement; and
 - (b) no further banker's undertaking described in subsection (14) is given in relation to the agreement by way of

security for the payment of the stamp duty chargeable on the agreement, one month before the banker's undertaking referred to in paragraph (a) expires or ceases to have effect under the terms of that undertaking, the agreement shall, on demand of the Collector, immediately become due for stamping."

Section:	29D	Conveyances on sale of residential property	L.N. 82 of 2004	02/08/2004
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(1) If a conveyance on sale of residential property is presented for stamping, or an application for stamping is made under section 18F, and the Collector has reason to believe- (Amended 21 of 2003 s. 15)

- (a) that a chargeable agreement for sale or an unwritten sale agreement that would, if it were in the form of an instrument, be a chargeable agreement for sale has been made in respect of all or any part of that property after it was vested in the vendor; and
- (b) that, in respect of that agreement, section 29B(1) has not been complied with, or the agreement for sale has not been duly stamped or stamped under section 5(1), 13(2) or 18E(1),

the Collector may refuse to stamp the conveyance on sale or issue a stamp certificate in respect of the conveyance on sale.

(2) Subject to subsection (3), where a conveyance on sale of residential property is executed in conformity with a chargeable agreement for sale and-

- (a) the agreement for sale is duly stamped or stamped under section 5(1), 13(2) or 18E(1) (whether before or after the execution of the conveyance on sale), the conveyance on sale is chargeable with stamp duty of \$100;
- (b) the agreement for sale is not stamped-
 - (i) the conveyance on sale is chargeable with stamp duty under head 1(1) in the First Schedule;
 - (ii) for the purposes of subparagraph (i), the conveyance shall be deemed to have been executed on the date that the agreement for sale was made or, if the agreement for sale was preceded by an agreement for sale, or an unwritten sale agreement, made between the same parties and on the same terms, the date when the first such agreement was made; and (Amended L.N. 90 of 1999 and 44 of 1999 s. 20)
 - (iii) the agreement for sale is chargeable with stamp duty of \$100.

(3) Where a conveyance on sale of residential property is executed in conformity with 2 or more agreements for sale, each relating to different parts of the residential property, and one or more of those agreements is a chargeable agreement for sale, then-

- (a) if each of the chargeable agreements for sale is duly stamped or stamped under section 5(1), 13(2) or 18E(1) (whether before or after the execution of the conveyance on sale), the conveyance on sale is chargeable with stamp duty under head 1(1) in the First Schedule, less the total amount of stamp duty (excluding any penalty) paid or assessed to be payable in respect of those agreements for sale;
- (b) if any of the chargeable agreements for sale is not duly stamped or stamped under section 5(1), 13(2) or 18E(1), the conveyance on sale shall not be stamped except by the Collector upon payment of the stamp duty payable in respect of the conveyance under head 1(1) in the First Schedule, and any penalty payable in respect of that agreement for sale under section 9, less the total amount of stamp duty paid or assessed to be payable in respect of any of the other chargeable agreements for sale;
- (c) if the conveyance on sale is duly stamped or stamped under section 5(1), 13(2) or 18E(1) before each of the chargeable agreements for sale is duly stamped, any unstamped chargeable agreement for sale is chargeable with stamp duty of \$100, any chargeable agreement for sale that has been assessed remains chargeable with the amount of the stamp duty assessed, and any chargeable agreement for sale that has been stamped under section 13(2) but not assessed ceases to be chargeable with any further stamp duty.

(4) Where a conveyance on sale of residential property is executed in pursuance of a chargeable agreement for sale and is in favour of a person named in the agreement as the purchaser and another person who is not so named, then-

- (a) if the agreement for sale is duly stamped or stamped under section 5(1), 13(2) or 18E(1) (whether before or after the execution of the conveyance on sale), the conveyance on sale is chargeable with stamp duty under head 1(1) in the First Schedule by reference to the consideration for the conveyance, less a fraction of the stamp duty representing the proportion of the residential property that is vested in the person named in the agreement as the purchaser; and for the purposes of this subsection, joint tenants shall be treated as having equal undivided shares in the property;
- (b) if the agreement for sale is not so stamped-

- (i) the conveyance on sale is chargeable with stamp duty under head 1(1) in the First Schedule;
- (ii)-(iii) (Repealed L.N. 90 of 1999 and 44 of 1999 s. 20)

(5) Where a conveyance on sale of residential property is executed in pursuance of a chargeable agreement for sale and is in favour of one or some (but not all) of the persons named in the agreement as the purchaser or purchasers, then-

- (a) if the agreement for sale is duly stamped, or stamped under section 5(1), 13(2) or 18E(1) (whether before or after the execution of the conveyance on sale), the conveyance on sale is chargeable with stamp duty under head 1(1) in the First Schedule by reference to the consideration for the conveyance, less a fraction of the stamp duty representing the proportion of the residential property that, according to the agreement for sale, was to be conveyed to the person or persons in whose favour the conveyance on sale was executed; and for the purposes of this subsection, an agreement that provides for a conveyance to purchasers as joint tenants shall be treated as an agreement to convey the property to those purchasers in equal undivided shares;
- (b) if the agreement for sale is not so stamped-
 - (i) the conveyance on sale is chargeable with stamp duty under head 1(1) in the First Schedule;
 - (ii)-(iii) (Repealed L.N. 90 of 1999 and 44 of 1999 s. 20)

(6) For the purposes of this section-

- (a) a conveyance on sale shall be deemed to be a conveyance on sale of residential property unless it contains a statement certifying that the immovable property subject to the conveyance is non-residential property within the meaning of section 29A(1);
- (b) a conveyance on sale that contains such a statement may be shown to be a conveyance on sale of residential property;
- (c) a conveyance on sale is not executed in conformity with an agreement for sale unless the conveyance on sale-
 - (i) is of the whole or part of the immovable property subject to the agreement for sale; and
 - (ii) is in favour of the person or all persons named in the agreement for sale as the purchaser or purchasers and no other person; but, for the purpose of this paragraph, a person and a parent, spouse or child of that person shall be treated as the same person;
- (d) a conveyance on sale is not executed in pursuance of an agreement for sale unless the conveyance on sale is of the whole or part of the immovable property subject to the agreement for sale and is not executed in conformity with the agreement for sale;
- (e) a reference in subsection (3) to an agreement for sale includes a reference to an agreement for sale made before the commencement of the Stamp Duty (Amendment) Ordinance 1992 (8 of 1992).

(Part IIIA added 8 of 1992 s. 4. Amended 21 of 2003 s. 15)

Section:	29E	Section 26 inapplicable to certain agreements		30/06/1997
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Section 26 does not apply to any contract or agreement for the sale of an equitable estate or interest in immovable property that is-

- (a) a chargeable agreement for sale; or
- (b) an unwritten sale agreement which would, if it were in the form of an instrument, be a chargeable agreement for sale.

(Part IIIA added 8 of 1992 s. 4)

Section:	29F	Voluntary chargeable agreements for sale	L.N. 214 of 1998	01/05/1998
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(1) Any chargeable agreement for sale operating as a voluntary agreement inter vivos shall be chargeable with stamp duty as a chargeable agreement for sale, with the substitution of the value of the immovable property subject to the agreement for the amount or value of the consideration for the agreement.

(2) A chargeable agreement for sale operating as a voluntary agreement inter vivos is not duly stamped unless the Collector has stamped the instrument under section 13(3)(b).

(3) Any chargeable agreement for sale (not being an agreement made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration) shall for the purposes of this Ordinance be deemed to be a chargeable agreement for sale operating as a voluntary agreement inter vivos, and (except where marriage is the consideration) the consideration for any agreement for sale shall not for this purpose be deemed to be valuable

consideration where-

- (a) the amount of the consideration is not ascertained at the time of the agreement; or
- (b) the Collector is of opinion that by reason of the inadequacy of the amount or value of the consideration paid or to be paid or other circumstances the agreement for sale confers a substantial benefit on the purchaser.

(4) Nothing in this section shall apply to a chargeable agreement for sale made for nominal consideration for the purpose of securing the repayment of an advance or loan, and this subsection shall have effect only if the circumstances exempting the agreement from charge under this section are set forth in the agreement. (Amended 33 of 1998 s. 9)

(Part IIIA added 8 of 1992 s. 4)

Section:	29G	Certificate with reference to certain agreements for sale		30/06/1997
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(1) References in head 1(1A) in the First Schedule to an agreement for sale being certified at a particular amount mean that such agreement for sale contains a statement certifying that the transaction agreed to, or effected by, the instrument does not form part of a larger transaction or series of transaction in respect of which the amount or value, or aggregate amount or value, of the consideration exceeds that amount.

(2) In subsection (1) a reference to the amount or value of the consideration shall be construed in relation to stamp duty chargeable on a chargeable agreement for sale operating as a voluntary agreement inter vivos as a reference to the value of the immovable property subject to the agreement.

(Part IIIA added 8 of 1992 s. 4)

Section:	29H	Exemptions and relief	12 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made-see 12 of 1999 s. 3

- (1) This Part and the First Schedule do not apply to an agreement for sale or an unwritten sale agreement-
 - (a) made in favour of the Government or an incorporated public officer within the meaning of section 38; (Amended 12 of 1999 s. 3)
 - (b) of exempted premises under which agreement the purchaser is an exempted person, within the meaning of section 38; (Amended 40 of 1992 s. 3)
 - (c) to which the Hong Kong Housing Authority or a person nominated by the Hong Kong Housing Authority is a party; or
 - (d) which is made with the consent of the Hong Kong Housing Authority.

(2) Section 43(1) applies to a chargeable agreement for sale in the same manner as it applies to a conveyance on sale.

(3) If a conveyance on sale executed in conformity with a chargeable agreement for sale (within the meaning of section 29D(6)(c)) would not, by virtue of section 45, be chargeable with stamp duty under head 1(1) in the First Schedule-

- (a) the agreement for sale is not chargeable with stamp duty under head 1(1A) in the First Schedule; and
- (b) section 45(3) and (5A) applies to the agreement for sale in the same manner as it applies to a conveyance on sale.

(Part IIIA added 8 of 1992 s. 4)

Section:	29I	(Repealed L.N. 90 of 1999 and 44 of 1999 s. 21)	L.N. 90 of 1999; 44 of 1999	01/04/1999
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Section:	30	Interpretation of Part IV		30/06/1997
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PART IV

UNIT TRUSTS

(1) (Omitted as spent)

(2) In this Part-

"certificate to bearer" (不記名證明書), in relation to a unit under a unit trust scheme, means a document by the delivery of which the unit can be transferred;

"trust instrument" (信託文書), in relation to a unit trust scheme, means the trust deed or other instrument (whether under seal or not) creating or recording the trusts by virtue of which persons are to participate in such scheme;

"trust property" (信託財產), in relation to a unit trust scheme, means property subject to the trusts of the trust instrument;

"unit" (單位), in relation to a unit trust scheme, means a right or interest (whether described as a unit, as a sub-unit or otherwise) of a beneficiary under the trust instrument;

"unit trust scheme" (單位信託計劃) means any arrangements made for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.

(3) Where a person authorizes or requires the trustees or managers under a unit trust scheme to treat him as no longer interested in a unit under that scheme and authorizes or requires them to treat another person as entitled to that unit, he shall be deemed for the purposes of this Ordinance to transfer that unit, and any instrument whereby he gives the authority or makes the requirement or any other instrument expressed to be substituted therefor by the managers with the approval of the Collector shall be deemed for those purposes to be a transfer operating as a voluntary disposition inter vivos under section 27(4) or a transfer by way of sale falling within head 2(4) in the First Schedule according to the nature of the transaction as between him and the person whom he authorizes or requires the trustees or managers to treat as entitled to the unit. (Amended 77 of 1981 s. 7)

(4) Where a person authorizes or requires the trustees or managers under a unit trust scheme to treat him as no longer interested in a unit under that scheme and does not authorize or require them to treat another person as entitled to that unit, he shall be deemed for the purposes of this Ordinance to transfer that unit to the managers by way of sale, and any instrument whereby he gives the authority or makes the requirement or any other instrument expressed to be substituted therefor by the managers with the approval of the Collector shall be deemed for those purposes to be a transfer falling within head 2(4) in the First Schedule. (Amended 77 of 1981 s. 7)

(5) Where the managers under a unit trust scheme authorize or require the trustees under that scheme to treat a person as entitled to a unit thereunder and their power so to do arises from a previous transfer to them of that unit or some other unit, they shall be deemed for the purposes of this Ordinance to transfer the first-mentioned unit to that person by way of sale, and any instrument whereby they give the authority or make the requirement or any other instrument expressed to be substituted therefor by the managers with the approval of the Collector shall be deemed for those purposes to be a transfer falling within head 2(4) in the First Schedule; but this subsection does not apply to anything done by the managers for the purpose merely of recognizing or giving effect to a transmission of a unit by operation of law. (Amended 77 of 1981 s. 7)

Section:	31	Duty of trustees and managers to keep records		30/06/1997
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(1) The trustees of a unit trust scheme shall keep a record showing the number of units under the scheme representing the trust property, and from time to time as soon as any change occurs in the amount of such property they shall enter in the record the alteration in the number consequential on such change.

(2) The managers of a unit trust scheme shall keep a record showing-

- (a) the number of units to which they become entitled in consequence of any addition to the trust property and the date on which they become so entitled; and
- (b) where any units are extinguished, the number of units extinguished and the date of extinction.

Section:	32	Numbering and preservation of certificates and instruments of transfer		30/06/1997
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(1) Every registered certificate and every certificate to bearer in respect of units under a unit trust scheme shall before issue be given a serial number by the trustees of the scheme and, when surrendered by the holder, shall be preserved by the trustees in such a manner as to enable reference to be made readily thereto.

(2) Every instrument of transfer in respect of units under a unit trust scheme shall, when delivered to the trustees of the scheme, be preserved by the trustees in such a manner as to enable reference to be made readily thereto.

Section:	33	Register of holders of registered units		30/06/1997
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The trustees of a unit trust scheme shall keep a register of the holders of registered units under the scheme and shall enter therein the following particulars-

- (a) the name and address of each person who holds any units under the scheme, the serial number of the certificate or certificates representing the units held by each such person and the number of units to which each such certificate relates;
- (b) the date or dates on which each such person became the holder of any units and the number of units of which he became the holder on each such date, and-
 - (i) where he became the holder by virtue of an instrument of transfer, or in consequence of the surrender of a certificate to bearer, a sufficient reference to enable the instrument or certificate to be readily produced;
 - (ii) where he became entitled to the units by operation of law, particulars of the name of the person from whom the right to such units was transmitted to him, and of the circumstances in which it was so transmitted or a sufficient reference to some other record kept by the trustees containing those particulars;
- (c) where any person has ceased to hold any units, the date or dates at which he ceased to hold them, and-
 - (i) where he so ceased by virtue of an instrument of transfer, or in consequence of the issue of a certificate to bearer, a sufficient reference to the instrument of transfer to enable it to be readily produced or, as the case may be, a note of the serial number of the certificate to bearer;
 - (ii) where his right to any units has been transmitted to another person by operation of law, particulars of the name of that person, and of the circumstances in which it was so transmitted, or a sufficient reference to some other record kept by the trustees containing those particulars.

Section:	34	Register of certificates to bearer		30/06/1997
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(1) Where any units under a unit trust scheme are represented by a certificate to bearer, the trustees of the scheme shall enter in a separate part of the register referred to in section 33, or in a separate register, the following particulars-

- (a) the fact of the issue of the certificate and the serial number of the certificate;
- (b) the number of units included in the certificate; and
- (c) the date of the issue of the certificate.

(2) Upon the surrender and cancellation of any certificate to bearer, a note of the date of surrender shall be added to the entry.

Section:	35	Form and period of preservation of records		30/06/1997
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(1) Registers or records required under this Part may be kept by recording the matters in question-

- (a) in bound books or any other legible form; or
- (b) otherwise than in a legible form so long as the recording is capable of being reproduced in a legible form,

but where any such register or record is kept otherwise than by making entries in a bound book, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(2) Unless the register kept under section 33 is in such a form as to constitute in itself an index, the trustees of the scheme shall keep in a convenient form an index of the names of the holders.

(3) The registers, statements and other records and documents referred to in this Part shall be preserved during the life of the trust scheme and for a period of not less than 1 year thereafter, but nothing in this Part shall require instruments of transfer or registered certificates or certificates to bearer to be preserved for a period exceeding 6 years from the date on which they were finally delivered to the trustees of the scheme.

Section:	36	Restriction on registration of transfer of units		30/06/1997
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Notwithstanding anything in the trust instrument of a unit trust scheme, the trustees or managers under the scheme shall not register a transfer of units thereunder unless an instrument of transfer has been delivered to them; but nothing in this section shall prejudice any power of the trustees or managers to register as entitled to a unit any person to whom the right to that unit has been transmitted by operation of law.

Section:	37	Penalty	12 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made-see 12 of 1999 s. 3

Any person who-

- (a) being a trustee of a unit trust scheme fails to comply with any of the provisions of section 31(1), 32, 33, 34, 35(2) or (3), or 36;
- (b) being a manager of a unit trust scheme fails to comply with any of the provisions of section 31(2), 35(3) or 36,

shall incur a penalty at level 2 which shall be recoverable by the Collector as a civil debt due to the Government.

(Amended 70 of 1994 s. 5; L.N. 338 of 1995; 12 of 1999 s. 3)

Section:	38	Interpretation of Part V	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

PART V

EXEMPTION AND RELIEF

In this Part-

"exempted institution" (獲豁免機構) means a charitable institution or trust of a public character which is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap 112);

"exempted person" (獲豁免人) means any person in respect of whom the Chief Secretary for Administration has issued a certificate under section 43(3)(b); (Amended L.N. 362 of 1997)

"exempted premises" (獲豁免處所) means any premises in respect of which the Chief Secretary for Administration has issued a certificate under section 43(3)(a); (Added 40 of 1992 s. 4. Amended L.N. 362 of 1997)

"incorporated public officer" (公職人員法團) means any of the following-

- (a) The Financial Secretary Incorporated (Cap 1015); (Amended L.N. 180 of 1985)
- (b) Permanent Secretary for Education Incorporated (Cap 1098); (Amended 3 of 2003 s. 21; L.N. 130 of 2007)
- (c) The Director of Social Welfare Incorporated (Cap 1096);
- (d) The Secretary for Home Affairs Incorporated (Cap 1044). (Amended 61 of 1984 s. 5; L.N. 190 of 1986; L.N. 263 of 1989)

(Amended 40 of 1992 s. 4; 12 of 1999 s. 3)

Section:	39	Instruments generally exempted	L.N. 320 of 1999	01/01/2000
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The following instruments shall not be chargeable with stamp duty under this Ordinance-

- (a) all instruments duly stamped under the stamp regulations enforced by the Japanese in Hong Kong between 26 November 1942 and 1 September 1945;
- (b) all conveyances on sale to the Government or an incorporated public officer; (Amended 12 of 1999 s. 3)
- (c) all grants by the Government and all Government leases and all surrenders of such grants and leases;

- (Amended 12 of 1999 s. 3)
- (d) all instruments executed by the Housing Authority for the purposes of the Housing Ordinance (Cap 283) other than a conveyance on sale executed for the purposes of section 17A thereof;
 - (e) (Repealed 78 of 1999 s. 7)
 - (ea) (Repealed 78 of 1999 s. 7)
 - (f) all conveyances on sale of exempted premises to an exempted person; (Amended 40 of 1992 s. 5)
 - (g) all instruments exempted under section 125 of the Bankruptcy Ordinance (Cap 6), or section 281 of the Companies Ordinance (Cap 32).

Section:	40	Instruments specially exempted	L.N. 82 of 2004	02/08/2004
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(1) In the case of any instrument in respect of which, by virtue of section 41 or 43(1), no person is liable for the payment of stamp duty chargeable thereon, the instrument shall not be chargeable with stamp duty if, but only if, it is presented to the Collector for stamping.

(2) Any instrument presented to the Collector under this section, and any duplicate or counterpart of such instrument, shall, without payment of an adjudication fee and notwithstanding section 13(4), be stamped under subsection (3)(a) of that section to the effect that it is not chargeable with stamp duty, and subsection (6) of that section shall apply accordingly. (Amended 21 of 2003 s. 16)

Section:	41	Non-liability of Government or public officer for payment of stamp duty	12 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made-see 12 of 1999 s. 3

(1) Notwithstanding section 4(3), the Central People's Government, the Government or any incorporated public officer or any person acting in his capacity as a public officer shall not be liable for the payment of stamp duty chargeable on any instrument or any penalty payable in respect thereof under section 9. (Amended 12 of 1999 s. 3)

(2) Subsection (1) does not apply to-

- (a) any public officer acting in his capacity as-
 - (i) Official Administrator;
 - (ii) Official Receiver;
 - (iii) Official Trustee; or
 - (iv) liquidator; or
- (b) any public officer acting in pursuance of any order of any court.

Section:	42	Relief in case of certain leases etc. to Government	12 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made-see 12 of 1999 s. 3

(1) This section applies to a lease or agreement for a lease (other than an instrument to which section 39 applies) made between-

- (aa) the Central People's Government, or any person acting on behalf of the Central People's Government; (Added 12 of 1999 s. 3)
- (a) the Government, or any person acting on behalf of the Government; or
- (b) an incorporated public officer,

and any other person ("the other party") not being a person to whom section 43(1) applies.

(2) Every instrument to which this section applies shall, for the purposes of this Ordinance, be deemed to contain a provision whereby the other party undertakes to pay 50 per cent of the stamp duty chargeable on such instrument; and payment of that amount under a provision deemed by virtue of this section to be contained in an instrument shall be deemed to constitute payment of the stamp duty chargeable on the instrument.

Section:	43	Relief in case of certain leases etc. of consular premises	L.N. 83 of 2000	07/04/2000
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(1) Where an exempted person or a person acting on behalf of an exempted person is a party to any instrument being a lease, agreement for a lease or conveyance on sale of exempted premises, the exempted person or any person acting on behalf of the exempted person shall not be liable for the payment of stamp duty chargeable on such instrument or any penalty payable in respect thereof under section 9. (Amended 61 of 1984 s. 5; 18 of 1985 s. 5; 44 of 1985 s. 7; 36 of 1989 s. 5)

(2) Every lease or agreement for a lease (other than an instrument to which section 39 applies) made in respect of exempted premises between an exempted person, or a person acting on behalf of an exempted person, and any other person (other than the Central People's Government, the Government, an incorporated public officer or an exempted person) shall be deemed to contain a provision whereby such other person undertakes to pay 50 per cent of the stamp duty chargeable on such instrument; and payment of that amount under a provision deemed by virtue of this subsection to be contained in an instrument shall be deemed to constitute payment of the stamp duty chargeable on the instrument. (Amended 61 of 1984 s. 5; 18 of 1985 s. 5; 44 of 1985 s. 7; 36 of 1989 s. 5; 12 of 1999 s. 3)

(3) The Chief Secretary for Administration may certify- (Amended L.N. 362 of 1997)

- (a) (i) in respect of premises which are exempt from taxation under the Consular Relations Ordinance (Cap 557), that such premises are exempted premises for the purposes of this Part; (Amended 16 of 2000 s. 13)
- (ii) (Repealed 81 of 1999 s. 3)
- (iii) in respect of premises which are exempt from taxation under the Privileges and Immunities (Joint Liaison Group) Ordinance (Cap 36), that such premises are exempted premises for the purposes of this Part; (Added 18 of 1985 s. 5. Amended 44 of 1985 s. 7; 81 of 1999 s. 3)
- (iv) in respect of premises which are exempt from taxation under the Privileges and Immunities (International Committee of the Red Cross) Ordinance (Cap 402), that such premises are exempted premises for the purposes of this Part; (Added 36 of 1989 s. 5. Amended 17 of 2000 s. 8)
- (v) in respect of premises which are exempt from taxation under an order made under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap 558), that such premises are exempted premises for the purposes of this Part; and (Added 17 of 2000 s. 8)
- (b) (i) in respect of any diplomatic agent or consular officer within the meaning of the Consular Relations Ordinance (Cap 557), that such person is an exempted person for the purposes of this Part; (Amended 16 of 2000 s. 13)
- (ii) (Repealed 81 of 1999 s. 3)
- (iii) in respect of a person to whom the Privileges and Immunities (Joint Liaison Group) Ordinance (Cap 36) applies, that such person is an exempted person for the purposes of this Part; (Added 18 of 1985 s. 5. Amended 44 of 1985 s. 7; 81 of 1999 s. 3; 17 of 2000 s. 8)
- (iv) in respect of a delegate within the meaning of the Privileges and Immunities (International Committee of the Red Cross) Ordinance (Cap 402), that such person is an exempted person for the purposes of this Part; and (Added 36 of 1989 s. 5. Amended 17 of 2000 s. 8)
- (v) in respect of a person who is exempt from taxation under an order made under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap 558), that such person is an exempted person for the purposes of this Part. (Added 17 of 2000 s. 8)

(Replaced 61 of 1984 s. 5. Amended 18 of 1985 s. 5; 40 of 1992 s. 6)

Section:	44	Relief in case of gift to exempted institution	L.N. 82 of 2004	02/08/2004
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(1) Stamp duty under head 1(1) or head 2(3) in the First Schedule shall not be chargeable on an instrument to which this section applies.

(2) This section applies to the following instruments-

- (a) any conveyance of immovable property operating as a voluntary disposition inter vivos where the beneficial interest therein passes by way of gift from the person entitled to that interest to or on trust for an exempted institution;
- (b) any transfer of Hong Kong stock operating as a voluntary disposition inter vivos where the beneficial interest therein passes by way of gift from the registered owner or transferor of the Hong Kong stock to or on trust for an exempted institution.

(3) An instrument to which this section applies shall not be duly stamped unless it is stamped with the stamp duty with which it would, but for this section, be chargeable or it has, in accordance with section 13, been stamped with a particular stamp or by way of a stamp certificate, denoting either that it is not chargeable with any stamp duty or that it is duly stamped. (Amended 21 of 2003 s. 17)

Section:	45	Relief in case of conveyance from one associated body corporate to another	L.N. 82 of 2004	02/08/2004
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(1) Stamp duty under head 1(1), 2(1) and 2(3) in the First Schedule shall not be chargeable on an instrument to which this section applies.

(2) Subject to subsections (4), (5), (5A) and (6), this section applies to any instrument as respects which it is shown to the satisfaction of the Collector that the effect thereof is to convey a beneficial interest in immovable property, or to transfer a beneficial interest in Hong Kong stock, from one associated body corporate to another, and also applies to any instrument that is a contract note in respect of a sale or purchase of Hong Kong stock made between one associated body corporate and another, where in each case the bodies are associated, that is to say, one is beneficial owner of not less than 90 per cent of the issued share capital of the other, or a third such body is beneficial owner of not less than 90 per cent of the issued share capital of each.

(3) An instrument to which this section applies and that conveys a beneficial interest in immovable property or is a contract note shall not be duly stamped unless it is stamped with the stamp duty with which it would, but for this section, be chargeable or it has, in accordance with section 13, been stamped with a particular stamp or by way of a stamp certificate, denoting either that it is not chargeable with any stamp duty or that it is duly stamped. (Amended 21 of 2003 s. 18)

(4) This section shall not apply to any instrument unless it is also shown to the satisfaction of the Collector that the instrument was not executed, or the sale or purchase of the Hong Kong stock was not made, in pursuance of or in connexion with an arrangement under which-

- (a) the consideration, or any part of the consideration, for the conveyance, transfer, sale or purchase was to be provided or received, directly or indirectly by a person other than a body corporate which at the time of the sale or purchase, or of the execution of the conveyance or transfer, was associated within the meaning of subsection (2) with either the transferor or the transferee (meaning respectively, the body corporate from whom and the body corporate to whom the beneficial interest was conveyed or transferred, or the Hong Kong stock was purchased or sold);
- (b) the said interest was previously conveyed, transferred, purchased or sold, directly or indirectly, by such a person; or
- (c) the transferor and the transferee were to cease to be associated within the meaning of subsection (2) by reason of a change in the percentage of the issued share capital of the transferee in the beneficial ownership of the transferor or a third body corporate.

(5) Without prejudice to the generality of paragraph (a) of subsection (4), an arrangement shall be treated as within that paragraph if it is one under which the transferor or the transferee, or a body corporate associated with either as there mentioned, was to be enabled to provide any of the consideration, or was to part with any of it, by or in consequence of the carrying out of a transaction or transactions involving, or any of them involving, a payment or other disposition by a person other than a body corporate so associated.

(5A) Where a transferor and transferee, as described in subsection (4), cease to be associated as described in subsection (4)(c) within 2 years after the date of execution of the instrument or, in the case of contract note, within 2 years after the date on which the note was required to have been made and executed under section 19, and relief from stamp duty has been claimed under this section-

- (a) the transferor and transferee shall notify the Collector of that fact and of the date of the cessation within 30 days after the date of the cessation;
- (b) any pending claim for relief from stamp duty under this section in relation to the instrument shall be deemed to be denied;
- (c) if any relief from stamp duty has been granted by the Collector under this section, the transferor and transferee are liable or jointly and severally liable, as the case may be, to pay to the Collector, within 30 days after the date of the cessation, by way of stamp duty an amount equal to the stamp duty which would have been chargeable on the instrument as if no relief from stamp duty had been granted by the Collector under this section; and
- (d) if the amount referred to in paragraph (c) is not paid within the 30 days, the transferor and transferee

are liable or jointly and severally liable, as the case may be, to a penalty calculated under section 9, and for that purpose section 9 applies in relation to the stamping of the instrument as it applies in relation to the stamping of an instrument chargeable with stamp duty which is not stamped before or within the time for stamping it. (Added 43 of 1991 s. 6)

(6) The ownership referred to in subsections (2) and (4) is ownership either directly or through another body corporate or other bodies corporate, or partly directly and partly through another body corporate or other bodies corporate, and the Third Schedule shall apply accordingly for the purposes of this section.

(7) A person who fails to comply with subsection (5A)(a) shall incur a penalty at level 2 which shall be recoverable by the Collector as a civil debt due to the Government. (Added 43 of 1991 s. 6. Amended 70 of 1994 s. 6; L.N. 338 of 1995; 12 of 1999 s. 3)

(Amended 43 of 1991 s. 6)

Section:	46	Instruments affecting immovable property made for new Government lease or exchange to be exempt	L.N. 82 of 2004	02/08/2004
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(1) Where the Director of Lands certifies that any instrument affecting any immovable property held from the Government has been executed in compliance with his requirements for the sole purpose of enabling a Government lease of the immovable property to be granted to the owner thereof and has been replaced by a new instrument affecting the immovable property in the same manner as, and similar as far as possible to, the instrument replaced, and executed immediately upon the granting of the said Government lease, then such instruments shall be exempt from stamp duty, and the Collector shall, on production to him of the instruments so certified, endorse on the instruments a certificate, or issue a stamp certificate, to the effect that the instruments are by virtue of this section exempt from stamp duty.

(2) Where the Director of Lands certifies that any instrument affecting any immovable property held from the Government has been executed in compliance with his requirements for the sole purpose of enabling the owner of the immovable property to surrender it to the Government as consideration or part consideration for an exchange and has been replaced by a new instrument affecting the immovable property in the same manner as, and similar as far as possible to, the instrument replaced, and executed immediately upon the granting of the said Government lease, then such instruments shall be exempt from stamp duty, and the Collector shall, on production to him of the instruments so certified, endorse on the instruments a certificate, or issue a stamp certificate, to the effect that the instruments are by virtue of this section exempt from stamp duty.

(Amended 8 of 1993 s. 3; L.N. 291 of 1993; 12 of 1999 s. 3; 21 of 2003 s. 19)

Section:	47	Instruments confirmatory of transactions during Japanese occupation to be exempt	L.N. 82 of 2004	02/08/2004
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(1) Whenever the Land Registrar certifies that in his opinion an assignment or reassignment has been made by the appropriate parties solely for the purpose of carrying into effect a transaction or a series of transactions in respect whereof an instrument or a series of instruments has been registered or recorded in the Japanese House Registration Office and of effectuating by an assignment or reassignment in the form in common use in Hong Kong the transaction or series of transactions which to him appears to have been intended to be effected by such instrument or series of instruments, then such assignment or reassignment shall be exempt from stamp duty. (Amended 8 of 1993 s. 3)

(2) The certificate under subsection (1) shall be endorsed upon the instrument in question, and on production of the certificate under subsection (1) and of the instrument in question the Collector shall endorse upon the instrument a certificate, or issue a stamp certificate, to the effect that the same is under this section exempt from stamp duty. (Amended 21 of 2003 s. 20)

(3) This section shall not apply to any instrument executed in contravention of the Moratorium Proclamation of the British Military Administration dated 13 September 1945.

Section:	47A	Instruments of transfer of units under mandatory provident fund schemes to be exempt	70 of 2000	01/12/2000
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- (1) An instrument of transfer of a unit under a unit trust scheme is not chargeable with stamp duty if-
- (a) the scheme is a constituent fund of a registered scheme;
 - (b) the unit is transferred by the manager of the fund to a person who is, or intends to be, a scheme

- member of the registered scheme; and
- (c) the power of the manager to effect the transfer arises otherwise than from a previous transfer to him of that or some other unit.
- (2) An instrument of transfer of a unit under a unit trust scheme is not chargeable with stamp duty if-
- (a) the scheme is an approved pooled investment fund;
- (b) the unit is transferred by the manager of the fund ("fund manager") to the trustee or manager of a constituent fund of a registered scheme; and
- (c) the power of the fund manager to effect the transfer arises otherwise than from a previous transfer to him of that or some other unit.
- (3) Where a person is deemed under section 30(4) to transfer a unit under a unit trust scheme, then if-
- (a) the scheme is a constituent fund of a registered scheme; and
- (b) such deemed transfer is effected by extinguishing the unit,
- the instrument that is deemed under that section to be a transfer of the unit is not chargeable with stamp duty.
- (4) Where the trustee or manager of a constituent fund of a registered scheme is deemed under section 30(4) to transfer a unit under a unit trust scheme, then if-
- (a) the unit trust scheme is an approved pooled investment fund; and
- (b) such deemed transfer is effected by extinguishing the unit,
- the instrument that is deemed under that section to be a transfer of the unit is not chargeable with stamp duty.
- (5) In this section-

"approved pooled investment fund" (核准匯集投資基金) has the same meaning as in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap 485 sub. leg. A);

"constituent fund" (成分基金) has the same meaning as in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap 485 sub. leg. A);

"registered scheme" (註冊計劃) has the same meaning as in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap 485);

"scheme member" (計劃成員) has the same meaning as in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap 485).

(Added 70 of 2000 s. 2)

Section:	47B	Instruments of transfer relating to indirect allotment or redemption of units to be exempt	34 of 2003	14/11/2003
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(1) Where a person is deemed under section 30(3) to transfer a unit under a unit trust scheme and, in relation to that transfer, an instrument is deemed under that section to be a transfer by way of sale falling within head 2(4) in the First Schedule, if that transfer is one to which section 19(1) does not apply by virtue of section 19(1A)(b)(ii), that instrument is not chargeable with stamp duty.

(2) Where a person is deemed under section 30(4) to transfer a unit under a unit trust scheme, if that transfer is one to which section 19(1) does not apply by virtue of section 19(1A)(a), the instrument that is deemed under section 30(4) to be a transfer of the unit is not chargeable with stamp duty.

(3) Where a person is deemed under section 30(5) to transfer a unit under a unit trust scheme, if that transfer is one to which section 19(1) does not apply by virtue of section 19(1A)(b)(i), the instrument that is deemed under section 30(5) to be a transfer of the unit is not chargeable with stamp duty.

(Added 34 of 2003 s. 7)

Section:	48	Allowance for spoiled stamps and stamp certificates rendered unfit for purpose intended	L.N. 82 of 2004	02/08/2004
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PART VI

ALLOWANCE FOR SPOILED OR UNWANTED STAMPS, ETC.

(Amended 21 of 2003 s. 21)

(1) Subject to subsection (2) and to the production of such evidence, by statutory declaration or otherwise, as the Collector may require, allowance shall be made by the Collector for any stamp spoiled or any stamp certificate

rendered unfit for the purpose intended in any of the following cases- (Amended 21 of 2003 s. 22)

- (a) where the stamp on any material is inadvertently spoiled, obliterated or by any means rendered unfit for the purpose intended before the material bears the signature of any person or any instrument written thereon is executed by any party;
- (b) where an adhesive stamp is inadvertently spoiled or rendered unfit for use and has not in the opinion of the Collector been affixed to any material;
- (c) where the stamp is used for, or the stamp certificate is issued in respect of, any instrument executed by any person which- (Amended 21 of 2003 s. 22)
 - (i) is afterwards found to be absolutely void from the beginning;
 - (ii) is afterwards found to be unfit, by reason of any error or mistake therein, for the purpose originally intended;
 - (iii) has not been made use of for any purpose whatever and, by reason of the inability or refusal of some necessary party to sign the instrument or to complete the transaction according to the instrument, is incomplete and insufficient for the purpose for which it was intended;
 - (iv) fails of its intended purpose, or becomes void, by reason of the refusal of any person to act under the instrument or for want of enrolment or registration thereof within the time required by law; or
 - (v) is inadvertently spoiled and in lieu thereof another instrument made between the same parties and for the same purpose is executed and duly stamped, or becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped.

(2) This section shall not apply unless-

- (a) the application for allowance is made within 2 years after the stamp has been spoiled or become useless or, in the case of an instrument executed by any person, after the date of the instrument or if it is not dated within 2 years after the execution thereof by the person by whom it was first or alone executed, or such further time as the Collector may determine in the case of any instrument sent outside Hong Kong for execution or where from unavoidable circumstances any instrument for which another has been substituted cannot be produced within the said period; and (Amended 23 of 1998 s. 2)
- (b) in the case of an executed instrument, no legal proceeding (other than legal proceedings in which the question whether the instrument is void falls to be determined) has been commenced in which the instrument could or would have been given or offered in evidence and, if the Collector so requires, the instrument is given up to be cancelled.

Section:	49	Allowance for stamps inadvertently used and stamp certificates inadvertently issued	L.N. 82 of 2004	02/08/2004
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(1) Subject to subsections (2) and (3), where-

- (a) any person has inadvertently used a stamp for, or a stamp certificate has been inadvertently issued in respect of, an instrument chargeable with stamp duty, and the stamp duty paid was of greater value than was necessary; or
- (b) any person has inadvertently used a stamp for, or a stamp certificate has been inadvertently issued in respect of, an instrument not chargeable with stamp duty,

the Collector may, upon application, cancel the stamp or the stamp certificate (as the case may be).

(2) An application under subsection (1) shall be made-

- (a) within 2 years after the date of the instrument; or
- (b) if it is not dated, within 2 years after its execution by the person by whom it was first or alone executed.

(3) An application under this section in respect of a stamp certificate inadvertently issued shall be made by the person who can prove to the satisfaction of the Collector that the stamp duty to which the stamp certificate relates was paid by him.

(4) If the Collector-

- (a) cancels a stamp in respect of an instrument chargeable with stamp duty, he may, where the instrument is stamped with a stamp denoting payment of the stamp duty chargeable on it, allow as spoiled the stamp so used; or
- (b) cancels a stamp certificate in respect of an instrument chargeable with stamp duty, he may issue a new

stamp certificate denoting payment of the stamp duty chargeable on the instrument and make an allowance for the overpayment of stamp duty.

(5) If the Collector-

- (a) cancels a stamp in respect of an instrument not chargeable with stamp duty, he may allow as spoiled the stamp so used; or
- (b) cancels a stamp certificate in respect of an instrument not chargeable with stamp duty, he may allow for the stamp duty paid.

(6) The total allowance made in respect of a stamp or stamp certificate shall not exceed the stamp duty paid for stamping the instrument.

(7) Where an allowance for the stamp duty paid has been made in full, the Collector shall cancel the stamp used for, or the stamp certificate issued in respect of, the instrument.

(Replaced 21 of 2003 s. 23)

Section:	50	Allowance for unwanted adhesive stamps		30/06/1997
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The Collector may, upon application by any person being the purchaser of an adhesive stamp which has not been spoiled or rendered unfit or useless for the purpose intended, make allowance to such person in respect thereof if-

- (a) the adhesive stamp is delivered up to the Collector; and
- (b) the Collector is satisfied that the adhesive stamp was purchased by such person-
 - (i) at the office of the Collector within a period of not more than 2 years preceding the application; and
 - (ii) with a bona fide intention to use it.

Section:	51	Manner of making, and time for taking up, allowance	L.N. 82 of 2004	02/08/2004
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(1) In any case in which allowance is made under this Part for a stamp, adhesive stamp or stamp certificate, the Collector may-

- (a) give in lieu of the stamp, adhesive stamp or stamp certificate-
 - (i) money to the value of such stamp, or to the amount of stamp duty denoted on such stamp certificate;
 - (ii) other stamp of the same denomination or value; or
 - (iii) if required and the Collector thinks proper, a stamp of any other denomination to the same value or issue a stamp certificate denoting the same amount; or
- (b) use a combination of any of the ways as provided under subsection (1)(a) to effect the allowance. (Replaced 21 of 2003 s. 24)

(2) Any allowance made under this Part shall lapse upon the expiration of 1 year from the date on which it is made.

Section:	52	Remission of stamp duty	12 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made-see 12 of 1999 s. 3

PART VII

MISCELLANEOUS

(1) The Chief Executive may- (Amended 12 of 1999 s. 3)

- (a) remit, wholly or in part, the stamp duty payable; or
- (b) refund, wholly or in part, the stamp duty paid,

in respect of any instrument chargeable with stamp duty. (Replaced 8 of 1992 s. 5)

(2) The amount of any stamp duty remitted or refunded under this section in respect of any instrument shall for the purposes of this Ordinance be deemed to have been paid in respect of that instrument. (Amended 8 of 1992 s. 5)

Section:	53	Liability for offences by bodies corporate	30/06/1997
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When at any time a body corporate commits an offence under this Ordinance with the consent or connivance of, or because of neglect by, any individual, the individual commits the like offence if at that time-

- (a) he is a director, manager, secretary or similar officer of the body corporate;
- (b) he is purporting to act as such officer; or
- (c) the body corporate is managed by its members, of whom he is one.

Section:	54	Inspection of books of account etc.	30/06/1997
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(1) If it appears to a magistrate upon the oath of any person that there is reason to believe that there are on any premises any books of account or other instruments whatsoever of which any of the contents may tend to show that an offence under this Ordinance has been committed, the magistrate may issue a search warrant authorizing any person named in the warrant to enter such premises and to search the same and any person found thereon, and to inspect, and to make and take away copies of, any books of account or other instruments found on such premises or such person; and any person so authorized shall, as respects any such books kept by recording any matters otherwise than in a legible form, be deemed to be authorized to require inspection of, and to take away, a reproduction of the recording or of the relevant part of it in a legible form.

(2) Any copies so made shall be admissible in evidence in any proceedings under this Ordinance.

(3) No person shall obstruct any such inspection, or the making or taking away of any copy or reproduction, in any manner whatsoever.

(4) Every person in whose possession or under whose control there may be any books of account or other documents whatsoever which the Collector, or any person authorized thereto by him in writing, may wish to inspect for the purposes of this Ordinance, shall afford to the Collector or to the person duly authorized by him all reasonable facilities for such inspection and for making and taking away copies of such books of account and documents.

(5) Where any books of account referred to in subsection (4) are kept by recording any matters otherwise than in a legible form, the duty imposed by that subsection shall be treated as a duty to allow inspection of, and the taking away of, a reproduction of the recording or of the relevant part of it in a legible form.

(6) Any person who contravenes subsection (3) or fails to comply with subsection (4) commits an offence.

Section:	55	Falsification	30/06/1997
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Any person who for the purpose of evading any stamp duty or penalty payable under this Ordinance falsifies, mutilates or destroys any book of account or other instrument whatsoever commits an offence.

Section:	56	Offences relating to stamps	30/06/1997
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Any person who-

- (a) fraudulently prints or impresses upon or affixes to any instrument any stamp;
- (b) knowingly sells or offers or exposes for sale or utters or uses any stamp which has been fraudulently printed or impressed;
- (c) fraudulently mutilates any stamp, with intent that any use may be made of any part of such stamp;
- (d) fraudulently cuts, tears or in any way removes from any instrument any stamp, with intent that any use may be made of such stamp or any part thereof;
- (e) fraudulently fixes or places upon any instrument, or upon any stamp, any stamp or part of a stamp which, whether fraudulently or not, has been cut, torn or in any way removed from any instrument or out of or from any other stamp;
- (f) fraudulently adds to, erases or otherwise either really or apparently removes from any stamped instrument any name, sum, date or other matter or thing whatsoever written thereon, with the intent that any use may be made of the stamp upon such instrument;
- (g) wilfully removes or attempts to remove from any adhesive stamp any cancelling marks thereon;
- (h) knowingly sells or offers or exposes for sale or utters or uses any adhesive stamp from which cancelling marks have been wholly or partially removed;
- (i) fraudulently removes or causes to be removed from any instrument any adhesive stamp, with intent

- that such adhesive stamp may be used again;
- (j) fraudulently affixes to any instrument any adhesive stamp so removed, or knowingly sells or offers or exposes for sale or utters any adhesive stamp so removed, or utters any instrument having thereon an adhesive stamp which to his knowledge has been so removed; or
 - (k) knowingly, and without lawful excuse, has in his possession any stamp which has been fraudulently printed or impressed upon or affixed to any instrument, or any stamp which has been fraudulently mutilated, or any stamp or part of a stamp which has been fraudulently cut, torn or in any way removed from any instrument, or any stamped instrument to or from which any name, sum, date or other matter or thing has been fraudulently added, erased or otherwise either really or apparently removed, or any adhesive stamp from which cancelling marks have been wholly or partially removed or which has been fraudulently removed from any instrument,

commits an offence.

Section:	57	Power of magistrate in relation to stolen stamps		30/06/1997
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(1) If it appears to a magistrate upon the oath of any person that there is reason to believe that any stamps have been stolen or fraudulently obtained and are on any premises, the magistrate may issue a warrant authorizing a police officer to enter such premises and to search the same and any person found thereon and to seize and take away any such stamps found on such premises or such person, and to arrest any person found on such premises in whose possession or custody such stamps are found; and if any such person does not satisfactorily account to a magistrate for his possession or custody of such stamps or it appears to the magistrate that such stamps were not lawfully obtained by him such stamps shall be forfeited and delivered up to the Collector.

(2) Where stamps are seized under a warrant issued under subsection (1), the police officer authorized by the warrant shall, if required, give to any person in whose possession or custody such stamps are found a written acknowledgement of the number, particulars and value of such stamps and permit such stamps to be marked before their removal.

Section:	58	Defacement of adhesive stamps	12 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made-see 12 of 1999 s. 3

Any person who in any manner defaces any adhesive stamp before it is used shall incur a penalty at level 2 which shall be recoverable by the Collector as a civil debt due to the Government: (Amended 70 of 1994 s. 7; L.N. 338 of 1995; 12 of 1999 s. 3)

Provided that any person may with the express sanction of the Collector, and in conformity with the conditions which he may impose, write upon or otherwise appropriate an adhesive stamp before it is used for the purpose of identification thereof.

Section:	58A	Representations may be made to Collector before certain penalties are imposed		30/06/1997
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(1) Before taking any action under section 5A(4), 15(2), 19(15), 37, 45(7) or 58 against a person, the Collector shall- (Amended 70 of 1994 s. 8)

- (a) by notice served personally or by post on that person, inform him of the grounds on which the Collector proposes to take such action; and
- (b) afford that person an opportunity of giving an explanation in writing as to why the Collector should not take such action.

(2) The Collector shall not take any action under any of the provisions referred to in subsection (1) against a person if the Collector is satisfied with an explanation given by that person as to why the Collector should not take such action.

(Added 67 of 1989 s. 4)

Section:	58B	Remission of certain penalties		30/06/1997
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The Collector may remit wholly or in part any penalty recoverable under section 5A(4), 15(2), 19(15), 37, 45(7) or 58.

(Added 70 of 1994 s. 9)

Section:	59	Fraudulent practices		30/06/1997
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Any person who practises or is concerned in any fraudulent act, contrivance or device, not specially provided for by law, with intent to defraud the Government of any stamp duty commits an offence.

Section:	60	Punishment for offences		30/06/1997
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Any person who commits or attempts to commit any offence under this Ordinance shall be liable to a fine at level 6 and to imprisonment for 1 year.

(Amended L.N. 338 of 1995)

Section:	61	Limitation of time for proceedings in respect of offences		30/06/1997
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No criminal proceedings for an offence under this Ordinance shall be instituted after the expiration of 2 years from the discovery of the offence by the Collector or 6 years from the commission of the offence, whichever is the earlier.

Section:	62	Responsibility for loss of or damage to instrument		30/06/1997
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The Government shall not be responsible for the loss of or for damage to any instrument tendered for stamping whilst in the custody of the Collector, nor shall any officer in the office of the Collector be responsible for such loss or damage, unless he has caused it wilfully, fraudulently or by gross negligence.

Section:	63	Regulations	L.N. 176 of 2000	01/06/2000
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The Financial Secretary may by regulations- (Amended 12 of 1999 s. 3; 5 of 2000 s. 4)

- (a) specify the transactions or dealings in respect of Hong Kong stock that constitute jobbing business for the purposes of this Ordinance;
- (b) prescribe the procedure for stamping contract notes made and executed in respect of any jobbing business;
- (c) amend the Second and the Fourth Schedules. (Amended 33 of 1998 s. 10)

Section:	64	(Have had effect)		30/06/1997
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(Have had effect)

Section:	65	(Have had effect)		30/06/1997
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(Have had effect)

Section:	66	Transitional		30/06/1997
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(1) Any instrument duly stamped under the Stamp Ordinance (Cap 117 1978 Ed.) (in this section referred to as "the repealed Ordinance") shall, as from the commencement of this Ordinance, be deemed for all purposes to be duly stamped under this Ordinance.

(2) Any instrument chargeable with stamp duty but not duly stamped under the repealed Ordinance shall be deemed to be an instrument chargeable with stamp duty under this Ordinance; and any penalty payable under section 9 in respect of any such instrument shall be calculated by reference to the point of time or the period of time which

would have applied if such penalty had become payable under the repealed Ordinance.

(3) Nothing in this Ordinance shall apply in respect of transactions referred to in section 19 which were entered into prior to the commencement of this Ordinance, and the repealed Ordinance shall continue to apply in respect of such transactions as if this Ordinance had not been enacted.

(4) Any licence issued under the repealed Stamp Duties Management Ordinance (Cap 121 1964 Ed.) in respect of the use of a franking machine and in force immediately prior to the commencement of this Ordinance, shall be deemed to have been issued under this Ordinance.

(5) Any assessment of stamp duty or any appeal against such assessment or any action or claim for the recovery of any stamp duty or penalty required or commenced under the repealed Ordinance and pending or not disposed of immediately prior to the commencement of this Ordinance, may be continued and disposed of thereafter as if it had been required or commenced under this Ordinance.

(6) Any allowance made under the repealed Stamp Duties Management Ordinance (Cap 121 1964 Ed.) for any stamps and not taken up before the commencement of this Ordinance may be taken up within 1 year from such commencement and, if not so taken up, shall lapse.

(7) Any authorization given by the Collector of Stamp Revenue under section 47(4) of the repealed Ordinance and in force immediately before the commencement of this Ordinance, shall continue to have effect as if it had been given under section 54(4) of this Ordinance.

Schedule:	1		L.N. 18 of 2010; 16 of 2010	01/04/2010
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[sections 4, 5, 5A, 19, 20,
29, 29A, 29C, 29D,
29G, 29H, 29I,
30, 45 & 47B]
(Amended 34 of 2003 s. 8)

Nature of Instrument	(A) Stamp Duty (B) Time for stamping (C) Persons liable
<p>HEAD 1: IMMOVABLE PROPERTY IN HONG KONG Agreement for Lease, See LEASE and section 16 Agreement or Contract for Sale of equitable interest, See AGREEMENT FOR SALE and section 29E, and CONVEYANCE ON SALE and section 26</p> <p>(1) CONVEYANCE ON SALE</p> <p>(a) where the amount or value of the consideration does not exceed \$2000000 and the instrument is certified in accordance with section 29 at \$2000000</p> <p>(b) where the amount or value of the consideration exceeds \$2000000 but does not exceed \$2351760 and the instrument is certified in accordance with section 29 at \$2351760</p> <p>(c) where the amount or value of the consideration exceeds \$2351760 but does not exceed \$3000000 and the instrument is certified in accordance with section 29 at \$3000000</p> <p>(d) where the amount or value of the consideration exceeds \$3000000 but does not exceed \$3290320 and the instrument is certified in accordance with</p>	<p>(A) (a) \$100 (Replaced L.N. 32 of 2007 and 13 of 2007 s. 3)</p> <p>(b) \$100 plus 10% of the amount by which the amount or value of the consideration exceeds \$2000000 (Replaced L.N. 32 of 2007 and 13 of 2007 s. 3)</p> <p>(c) 1.5% of the amount or value of the consideration (Replaced L.N. 32 of 2007 and 13 of 2007 s. 3)</p> <p>(d) \$45000 plus 10% of the amount by which the amount or value of the consideration exceeds \$3000000</p>

section 29 at \$3290320

- (e) where the amount or value of the consideration exceeds \$3290320 but does not exceed \$4000000 and the instrument is certified in accordance with section 29 at \$4000000
- (f) where the amount or value of the consideration exceeds \$4000000 but does not exceed \$4428570 and the instrument is certified in accordance with section 29 at \$4428570
- (g) where the amount or value of the consideration exceeds \$4428570 but does not exceed \$6000000 and the instrument is certified in accordance with section 29 at \$6000000
- (h) where the amount or value of the consideration exceeds \$6000000 but does not exceed \$6720000 and the instrument is certified in accordance with section 29 at \$6720000
- (i) where the amount or value of the consideration exceeds \$6720000 but does not exceed \$20000000 and the instrument is certified in accordance with section 29 at \$20000000
- (j) where the amount or value of the consideration exceeds \$20000000 but does not exceed \$21739120 and the instrument is certified in accordance with section 29 at \$21739120
- (k) in any other case

And see sections 2, 4, 22, 23, 24, 25, 26, 27, 28, 29, 39, 43, 44 and 45

Note 1

This sub-head shall apply in relation to the stamp duty chargeable by reference to it by virtue of sub-head (2)(a), in a case where part of the consideration for a lease consists of rent, as if paragraphs (a) to (j) and the words

(Replaced L.N. 90 of 1999 and 44 of 1999 s. 22. Amended L.N. 32 of 2007 and 13 of 2007 s. 3)

- (e) 2.25% of the amount or value of the consideration (Replaced L.N. 90 of 1999 and 44 of 1999 s. 22. Amended L.N. 32 of 2007 and 13 of 2007 s. 3)
- (f) \$90000 plus 10% of the amount by which the amount or value of the consideration exceeds \$4000000 (Replaced L.N. 90 of 1999 and 44 of 1999 s. 22. Amended L.N. 32 of 2007 and 13 of 2007 s. 3)
- (g) 3% of the amount or value of the consideration (Replaced L.N. 90 of 1999 and 44 of 1999 s. 22. Amended L.N. 32 of 2007 and 13 of 2007 s. 3)
- (h) \$180000 plus 10% of the amount by which the amount or value of the consideration exceeds \$6000000 (Added L.N. 90 of 1999 and 44 of 1999 s. 22. Amended L.N. 32 of 2007 and 13 of 2007 s. 3)
- (i) 3.75% of the amount or value of the consideration (Replaced L.N. 18 of 2010 and 16 of 2010 s. 4)
- (j) \$750000 plus 10% of the amount by which the amount or value of the consideration exceeds \$20000000 (Added L.N. 18 of 2010 and 16 of 2010 s. 4)
- (k) 4.25% of the amount or value of the consideration (Added L.N. 18 of 2010 and 16 of 2010 s. 4)

(B) 30 days after the execution; but see Note 2 to this sub-head

(C) All parties, and all other persons executing; but see Note 2 to this sub-head (Replaced 36 of 1994 s. 3)

"in any other case" in paragraph (k) were omitted (Amended L.N. 90 of 1999 and 44 of 1999 s. 22; L.N. 32 of 2007 and 13 of 2007 s. 3; L.N. 18 of 2010 and 16 of 2010 s. 4)

Note 2

In the case of a vesting order consequential upon an order for sale or partition or a foreclosure order, the time for stamping shall be before the order is signed by the Registrar and the persons liable shall be the persons obtaining the order

Note 3

In the case of a foreclosure order, the stamp duty chargeable thereon shall not exceed the stamp duty which would be chargeable thereon by reference to the value of the property to which the order relates

Note 4

A foreclosure order shall not be duly stamped unless the Collector has stamped it under section 13(3)(b)

Note 5

In the case of a conveyance on sale of residential property executed after a chargeable agreement for sale has been made in respect of that property, this sub-head is subject to section 29D (Added 8 of 1992 s. 6)

Note 6

(Repealed 33 of 1998 s. 11)

Exchange, Instruments effecting-see section 25(7)

(1A) AGREEMENT FOR SALE

- (a) where the amount or value of the consideration does not exceed \$2000000 and the instrument is certified in accordance with section 29G at \$2000000
- (b) where the amount or value of the consideration exceeds \$2000000 but does not exceed \$2351760 and the instrument is certified in accordance with section 29G at \$2351760
- (c) where the amount or value of the consideration exceeds \$2351760 but does not exceed \$3000000 and the instrument is certified in accordance with section 29G at \$3000000
- (d) where the amount or value of the consideration exceeds \$3000000 but does not exceed \$3290320 and the instrument is certified in accordance with section 29G at \$3290320
- (e) where the amount or value of the consideration exceeds \$3290320 but does not exceed \$4000000 and the instrument is certified in accordance with section 29G at \$4000000

- (A) (a) \$100 (Replaced L.N. 32 of 2007 and 13 of 2007 s. 3)
- (b) \$100 plus 10% of the amount by which the amount or value of the consideration exceeds \$2000000 (Replaced L.N. 32 of 2007 and 13 of 2007 s. 3)
- (c) 1.5% of the amount or value of the consideration (Replaced L.N. 32 of 2007 and 13 of 2007 s. 3)
- (d) \$45000 plus 10% of the amount by which the amount or value of the consideration exceeds \$3000000 (Replaced L.N. 90 of 1999 and 44 of 1999 s. 22. Amended L.N. 32 of 2007 and 13 of 2007 s. 3)
- (e) 2.25% of the amount or value of the consideration (Replaced L.N. 90 of 1999 and 44 of 1999 s. 22. Amended L.N. 32 of 2007 and 13 of 2007 s. 3)

- | | |
|---|---|
| <p>(f) where the amount or value of the consideration exceeds \$4000000 but does not exceed \$4428570 and the instrument is certified in accordance with section 29G at \$4428570</p> <p>(g) where the amount or value of the consideration exceeds \$4428570 but does not exceed \$6000000 and the instrument is certified in accordance with section 29G at \$6000000</p> <p>(h) where the amount or value of the consideration exceeds \$6000000 but does not exceed \$6720000 and the instrument is certified in accordance with section 29G at \$6720000</p> <p>(i) where the amount or value of the consideration exceeds \$6720000 but does not exceed \$20000000 and the instrument is certified in accordance with section 29G at \$20000000</p> <p>(j) where the amount or value of the consideration exceeds \$20000000 but does not exceed \$21739120 and the instrument is certified in accordance with section 29G at \$21739120</p> <p>(k) in any other case</p> | <p>(f) \$90000 plus 10% of the amount by which the amount or value of the consideration exceeds \$4000000 (Replaced L.N. 90 of 1999 and 44 of 1999 s. 22. Amended L.N. 32 of 2007 and 13 of 2007 s. 3)</p> <p>(g) 3% of the amount or value of the consideration (Replaced L.N. 90 of 1999 and 44 of 1999 s. 22. Amended L.N. 32 of 2007 and 13 of 2007 s. 3)</p> <p>(h) \$180000 plus 10% of the amount by which the amount or value of the consideration exceeds \$6000000 (Added L.N. 90 of 1999 and 44 of 1999 s. 22. Amended L.N. 32 of 2007 and 13 of 2007 s. 3)</p> <p>(i) 3.75% of the amount or value of the consideration (Replaced L.N. 18 of 2010 and 16 of 2010 s. 4)</p> <p>(j) \$750000 plus 10% of the amount by which the amount or value of the consideration exceeds \$20000000 (Added L.N. 18 of 2010 and 16 of 2010 s. 4)</p> <p>(k) 4.25% of the amount or value of the consideration (Added L.N. 18 of 2010 and 16 of 2010 s. 4)</p> |
|---|---|

*(B) 30 days after the relevant date (within the meaning of section 29B(3)); but see section 29C(11) and Notes 2 and 3 to this sub-head (Amended L.N. 90 of 1999 and 44 of 1999 s. 22)

(C) All parties except a party who on the relevant date (within the meaning of section 29B(3)) does not know that the agreement affects him, and all other persons executing (Replaced 36 of 1994 s. 3)

And see section 4 and Part IIIA

Note 1

This sub-head does not apply to an agreement for sale in respect of non-residential property (see section 29A(5))

Note 2

If, within the first 14 days of the time for stamping, an agreement for sale is superseded by another agreement for sale made between the same parties and on the same terms executed in accordance with section 29B(1), and

containing the matters specified in section 29B(5)-

(aa) for the purposes of Part IIIA and this sub-head, the second-mentioned agreement is deemed to be made on the relevant date (within the meaning of section 29B(3)); (Added L.N. 90 of 1999 and 44 of 1999 s. 22)

*(a) notwithstanding paragraph (aa) but subject to section 29C(11), the time for stamping the second-mentioned agreement is not later than 30 days after it was executed; and (Amended L.N. 90 of 1999 and 44 of 1999 s. 22)

*(b) if the second-mentioned agreement is duly stamped or stamped under section 5(1), 13(2) or 18E(1), or is endorsed under section 29C(13)(a), the obligation to stamp any preceding agreement between the same parties and on the same terms is discharged (Amended L.N. 90 of 1999 and 44 of 1999 s. 22; 21 of 2003 s. 25)

*Note 3

Subject to Note 2, if 2 or more agreements for sale are made between the same parties and on the same terms-

(a) for the purposes of Part IIIA and this sub-head, all of the agreements are deemed to be made on the relevant date (within the meaning of section 29B(3)); and

(b) where any of the agreements is duly stamped or stamped under section 5(1), 13(2) or 18E(1), or is endorsed under section 29C(13)(a)- (Amended 21 of 2003 s. 25)

(i) the other agreements are each chargeable with stamp duty of \$100; and

(ii) notwithstanding paragraph (a) and section 29C(11), the time for stamping each of the other agreements is not later than 30 days after it was executed (Replaced L.N. 90 of 1999 and 44 of 1999 s. 22)

Note 4

Where 2 agreements for sale are made in respect of the same, or part of the same, property and involve a common purchaser (but are not made between the same parties), this sub-head is subject to section 29C(5)

Note 5

For the purposes of Notes 2, 3 and 4, a person and a parent, spouse or child of that person shall be treated as the same person (Added 8 of 1992 s. 6)

Note 6

(Repealed 33 of 1998 s. 11)

(2) LEASE

(a) where the consideration or any part of the consideration, moving either to the lessor or to any other person, consists of any money, stock or security

(A) The same duty as on a conveyance on sale for the same consideration (see Note 1 to sub-head (1))

(B) 30 days after execution

(C) All parties, and all other persons executing

- (b) where the consideration or any part of the consideration is any rent
 - (i) where the term is not defined or is uncertain;
 - (ii) where the term specified in the lease does not exceed one year;
 - (iii) where the term specified in the lease exceeds one year but does not exceed three years;
 - (iv) where the term specified in the lease exceeds three years
- (c) Lease executed in pursuance of a duly stamped agreement for lease

And see sections 2, 16, 17, 27, 39, 42 and 43

Partition, Instruments effecting-see section 25(7)

Voluntary Chargeable Agreements for Sale-see section 29F
(Added 8 of 1992 s. 6)

Voluntary Disposition inter vivos - see section 27

HEAD 2: HONG KONG STOCK

- (1) CONTRACT NOTE for the sale or purchase of any Hong Kong stock not being jobbing business on every note required to be made under section 19(1)

And see sections 2, 4, 5, 5A, 6, 19, 20, 23, 24, 27 and 45
Note

Where the consideration or any part of the consideration consists of any security not being stock, the amount due upon such security for principal and interest on the date on which the contract note falls to be executed shall be taken to be its value at that date

- (2) CONTRACT NOTE in respect of jobbing business on every note required to be made under section 19(1)

And see sections 2, 4, 19 and 20

- (3) TRANSFER operating as a voluntary disposition inter

- (A) (i) 25 cents for every \$100 or part thereof of the yearly or average yearly rent
- (ii) 25 cents for every \$100 or part thereof of the total rent payable over the term of the lease
- (iii) 50 cents for every \$100 or part thereof of the yearly or average yearly rent
- (iv) \$1 for every \$100 or part thereof of the yearly or average yearly rent
- (B) 30 days after execution
- (C) All parties, and all other persons executing
- (A) \$3
- (B) 30 days after execution
- (C) All parties, and all other persons executing

- (A) 0.1% of the amount of the consideration or of its value at the date on which the contract note falls to be executed: but see Note to this sub-head (Amended 18 of 1998 s. 2; 22 of 2000 s. 2; 22 of 2001 s. 4)
- (B) 2 days after the sale or purchase if effected in Hong Kong: see section 19(1)(b)(i)
30 days after the sale or purchase if effected elsewhere: see section 19(1)(b)(ii)
- (C) The agent or, where no agent, the principal effecting the sale or purchase

- (A) \$5
- (B) 2 days after the sale or purchase: see section 19(1)(b)(i)
- (C) The exchange participant effecting the sale or purchase (Amended 12 of 2000 s. 23)

- (A) \$5 and 0.2% of the value of the stock

vivos or made for the purpose of effectuating a transaction whereby the beneficial interest in Hong Kong stock passes otherwise than on sale and purchase, including a foreclosure order (Amended 33 of 1998 s. 11)

And see sections 4, 19, 27, 28, 30, 44 and 45
Note 1

In the case of a foreclosure order, the time for stamping shall be before the order is signed by the Registrar and the persons liable shall be the persons obtaining the order

Note 2

In the case of a foreclosure order, the stamp duty chargeable thereon shall not exceed the stamp duty which would have been chargeable thereon by reference to the amount of the debt to which the order relates

Note 3

A foreclosure order shall not be duly stamped unless the Collector has stamped it under section 13(3)(b)

- (4) TRANSFER of any other kind

And see sections 5, 7, 19, 30, 47A and 47B (Amended 70 of 2000 s. 3; 34 of 2003 s. 8)

Note

No stamp duty under this sub-head shall be payable on a transfer executed by a recognized clearing house (within the meaning of section 19(16)) or its nominee-

- (a) as the transferor of the Hong Kong stock; and
- (b) in accordance with the rules (within the meaning of section 19(16)) of the clearing house

(Replaced 40 of 1992 s. 7)

HEAD 3: HONG KONG BEARER INSTRUMENT

- (1) HONG KONG BEARER INSTRUMENT issued in respect of any stock other than-
- (a) (Repealed 43 of 1991 s. 7)
 - (b) units in a unit trust scheme under the terms of which the funds of the trust cannot be invested in any investment other than loan capital

And see sections 2 and 5(5)

(Replaced 21 of 1986 s. 2)

- (2) HONG KONG BEARER INSTRUMENT given in substitution for a like instrument duly stamped under sub-head (1) of this head

And see sections 2 and 5(5)

(Amended 18 of 1998 s. 2; 22 of 2000 s. 2; 22 of 2001 s. 4)

- (B) 7 days after execution or, if executed elsewhere than in Hong Kong, 30 days after execution; but see Note 1 to this sub-head
- (C) The transferor and the transferee; but see Note 1 to this sub-head

- (A) \$5; but see Note to this sub-head
- (B) Before execution or, if executed elsewhere than in Hong Kong, 30 days after execution
- (C) The transferor and the transferee

- (A) \$3 per \$100 or part thereof of market value on issue
- (B) Before issue
- (C) The person by whom or on whose behalf the instrument is issued and any person who acts as the agent of that person for the purposes of the issue

- (A) \$5
- (B) Before issue
- (C) The person by whom or on whose behalf the instrument is issued and any person who acts as the agent of that person for the purposes of the issue

HEAD 4: DUPLICATES AND
 COUNTERPARTS

DUPLICATE OR COUNTERPART of any instrument chargeable with any stamp duty

- (A) Where the stamp duty on the original instrument does not amount to \$5, the same stamp duty as on the original; in any other case, \$5: but see Note to this head
- (B) 7 days after execution, or such longer period as the time for stamping the original instrument would allow
- (C) -

And see section 8

Note

If in the case of a lease or agreement for a lease the stamp duty payable in respect thereof is limited in accordance with section 42(2) or 43(2) to 50% of the stamp duty chargeable thereon the stamp duty chargeable on a duplicate or counterpart thereof shall be limited to 50% of the stamp duty otherwise chargeable under this head

(Amended 29 of 1998 s. 2; 43 of 1991 s. 7; 85 of 1991 s. 6; 8 of 1992 s. 6; 36 of 1992 s. 3; 40 of 1992 s. 7; L.N. 50 of 1993; 31 of 1993 s. 2; L.N. 90 of 1999 and 44 of 1999 s. 22)

Note:

* The amendments made by L.N. 90 of 1999 and Ord. No. 44 of 1999 to paragraph (B), Note 2(a) and (b) and Note 3 under head 1(1A) of the First Schedule shall only apply to an agreement for sale, or an unwritten sale agreement, as defined in section 29A(1), if the relevant date within the meaning of section 29B(3) is, in so far as such agreement for sale or unwritten sale agreement (as the case may be) is concerned, on or after 1 April 1999.

Schedule:	2			30/06/1997
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[sections 7 & 63]

PART 1

FORM

STAMP DUTY ORDINANCE
(section 7)

Licence No.

No. of machine

Licence to use a franking machine

LICENCE is hereby granted to

..... (hereinafter called the licensee) to use the above-numbered franking machine at for the purpose of stamping instruments under section 5(4) of the Stamp Duty Ordinance in respect of stamp duty chargeable under head 2(4) in the First Schedule to that Ordinance.

2. This licence is not transferable.

Dated the day of , 19 .

.....
Collector of Stamp Revenue.

CONDITIONS

1. The machine shall not, except for the purpose of bringing it to the Stamp Office or with the permission of the Collector of Stamp Revenue, be moved from the address hereinbefore specified at which it may be used.
2. The licensee shall maintain the machine in good working order to the satisfaction of the Collector of Stamp Revenue and shall, not less than once in every 2 years and at such other times as the Collector of Stamp Revenue may require, have the machine inspected by the agents in Hong Kong of the manufacturers.
3. The licensee shall permit the Collector of Stamp Revenue or an officer of the Stamp Office authorized in writing by the Collector of Stamp Revenue to inspect the machine at such times as the Collector of Stamp Revenue thinks fit, and shall, for that purpose, allow the Collector of Stamp Revenue or the officer so authorized access to the place where the machine is kept.
4. No words, letters, or marks of any kind whatsoever, other than the stamp denoting the duty with which the instrument is chargeable and the date of stamping, shall be stamped on any instrument by means of the machine.
5. Except with the written consent of the Collector of Stamp Revenue, the machine shall not be used to stamp any instrument other than those connected with the business of the licensee.
6. The licensee shall, on the first day of each month (or if that day is not a working day, on the next working day), send to the Collector of Stamp Revenue, in such form as he may direct, notice of the value of the stamps impressed by means of the machine during the preceding month. (Amended 40 of 1992 s. 8)

PART 2

GENERAL PROVISIONS

1. Every licence shall-
 - (a) be issued in respect of one franking machine only;
 - (b) be issued in respect of a franking machine of a type and make approved by the Collector;
 - (c) be not transferable.
2. Every application for a licence shall be in such form as the Collector may from time to time determine
3. The die and the colour of the stamp to be used in a franking machine shall be in accordance with such specifications or requirements as the Collector may direct.
4. The licensee shall make payment to the Collector in respect of each setting or re-setting of the meter of the licensed franking machine at the time of such setting or re-setting.
5. In the case of every licensed franking machine-
 - (a) the meter shall be set or re-set, as the case may be, by the Collector or a public officer authorized in writing by the Collector for the purposes of section 7; and
 - (b) after the meter has been so set or re-set, the franking machine shall be sealed by the Collector or such public officer with a seal approved by the Collector for the purposes of this provision.

Schedule:	3	PROVISIONS FOR DETERMINING AMOUNT OF SHARE CAPITAL HELD THROUGH OTHER BODIES CORPORATE		30/06/1997
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[section 45]

1. Where, in the case of a number of bodies corporate, the first directly owns share capital of the second and the second directly owns share capital of the third, then, for the purposes of this Schedule, the first shall be deemed to own share capital of the third through the second, and, if the third directly owns share capital of a fourth, the first shall be deemed to own share capital of the fourth through the second and third, and the second shall be deemed to own share capital of the fourth through the third, and so on.

2. In this Schedule-

- (a) any number of bodies corporate of which the first directly owns share capital of the next and the next directly owns share capital of the next but one and so on, and, if they are more than 3, any 3 or more of them, are referred to as "a series";
- (b) in any series-
 - (i) that body corporate which owns share capital of another through the remainder is referred to as "the first owner";
 - (ii) that other body corporate the share capital of which is so owned is referred to as "the last owned body corporate";
 - (iii) the remainder, if one only, is referred to as an "intermediary" and, if more than one, referred to as "a chain of intermediaries";
- (c) a body corporate in a series which directly owns share capital of another body corporate in the series is referred to as an "owner";
- (d) any 2 bodies corporate in a series of which one owns share capital of the other directly, and not through one or more of the other bodies corporate in the series, are referred to as being directly related to one another.

3. Where every owner in a series owns the whole of the share capital of the body corporate to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the share capital of the last owned body corporate.

4. Where one of the owners in a series owns a fraction of the share capital of the body corporate to which it is directly related, and every other owner in the series owns the whole of the share capital of the body corporate to which it is directly related, the first owner shall be deemed to own that fraction of the share capital of the last owned body corporate through the intermediary or chain of intermediaries.

5. Where-

- (a) each of 2 or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the share capital of the body corporate to which it is directly related; or
- (b) every owner in a series owns a fraction of the share capital of the body corporate to which it is directly related,

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the share capital of the last owned body corporate as results from the multiplication of those fractions.

6. Where the first owner in any series owns a fraction of the share capital of the last owned body corporate in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the share capital of the last owned body corporate, either-

- (a) directly; or
- (b) through an intermediary or intermediaries which is not a member or are not members of that series; or
- (c) through a chain or chains of intermediaries of which one or some or all are not members of that series; or
- (d) in a case where the series consists of more than 3 bodies corporate, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of

intermediaries consisting of some but not all of the bodies corporate of which the chain of intermediaries in the series consists, then, for the purpose of ascertaining the amount of the share capital of the last owned body corporate owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

Schedule:	4	EXEMPTED TRANSACTION SPECIFIED FOR THE PURPOSES OF SECTION 19(1D) OF THIS ORDINANCE	L.N. 12 of 2003	01/04/2003
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[sections 19(1D) & 63(c)]

1. An exempted transaction specified for the purposes of section 19(1D) of this Ordinance shall be the sale or purchase of any specified derivative effected by an exchange participant through a recognized stock market in the ordinary course of his business as an exchange participant, whether as principal or agent. (Amended 12 of 2000 s. 23; 5 of 2002 s. 407)

2. For the purpose of this Schedule, a recognized exchange company that operates a stock market may, by notice in the Gazette, specify any regional stock exchange as an approved regional exchange. (Replaced 5 of 2002 s. 407)

3. In this Schedule-

"approved basket stock" (認可一籃子證券) means any stock forming part of a basket of stocks, where-

- (a) the basket of stocks comprises-
 - (i) stocks listed on one or more approved regional exchanges; and
 - (ii) stocks listed on a recognized stock market; and (Amended 5 of 2002 s. 407)
- (b) the aggregate value of the stocks referred to in paragraph (a)(ii) does not exceed 40% of the aggregate value of all of the stocks which the basket of stocks comprises;

"approved regional exchange" (認可地區性交易所) means a regional stock exchange specified as an approved regional exchange under section 2; (Added 5 of 2002 s. 407)

"approved regional stock" (認可地區性證券) means any stock which is listed on an approved regional exchange; (Amended 5 of 2002 s. 407)

"previous closing price" (先前收市價格)-

- (a) in relation to any stock listed on an approved regional exchange, means- (Amended 5 of 2002 s. 407)
 - (i) subject to subparagraph (ii), the previous closing price of the stock as determined in accordance with the rules and practices of the exchange; or
 - (ii) where the previous closing price of the stock cannot be determined under subparagraph (i), the closing price of the stock last quoted in the exchange;
- (b) in relation to any stock listed on a recognized stock market, means the previous closing price of the stock as determined in accordance with the rules and practices of the recognized exchange company that operates the stock market; (Amended 5 of 2002 s. 407)

"purchase" (購買), "sale" (售賣) and "sale or purchase" (售賣或購買) have the meanings respectively assigned to them in section 19 of this Ordinance;

"rules" (規章), in relation to-

- (a) an approved regional exchange, means the rules governing the operation and management of the approved regional exchange or the conduct of its members, by whatever name called and wherever contained;
- (b) a recognized exchange company, has the same meaning as in section 19(16) of this Ordinance; (Replaced 5 of 2002 s. 407)

"specified derivative" (指明衍生工具) means any Hong Kong stock-

- (a) the sale and purchase of which in Hong Kong are subject to the rules and practices of the recognized exchange company that operates the relevant stock market; and (Amended 5 of 2002 s. 407)
- (b) which is-
 - (i) an option which gives its holder the right, but not the obligation, to acquire or dispose of at a pre-determined price a pre-determined number of approved regional stocks or approved basket

- stocks, or to receive a payment in cash in lieu thereof, on or before a pre-determined date; or
- (ii) a convertible bond or note which gives its holder the right, but not the obligation, to convert such bond or note into stocks of the issuer of such bond or note, being either approved regional stocks or approved basket stocks, on or before a pre-determined date;

"value" (價值), in relation to any stock listed on an approved regional exchange or a recognized stock market, means the closing price of the stock as quoted in the approved regional exchange or the recognized stock market, as the case may be, on the launch date of the specified derivative to which the stock relates or, if there is no such closing price, the previous closing price of the stock by reference to that launch date. (Amended 5 of 2002 s. 407)

(Added 33 of 1998 s. 12. Amended 5 of 2002 s. 407)

Schedule:	5	ADJUDICATION FEE	L.N. 176 of 2000	01/06/2000
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[sections 2 & 13]

\$50

(Fifth Schedule added 5 of 2000 s. 5)