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Stamp Duty
HANDBOOK

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Stamp Duty Handbook

Table of Contents

The commentary in this book states the law as at 1 October 2025.

Division 4—Conveyances on Sale: Further Provisions

Division 5—Refund of Stamp Duty in case of Redevelopment

Division 6—Further Provisions on Ad Valorem Stamp Duty

Division 6A—Stamp Duty Treatment for Hong Kong Permanent Residents Admitted into Hong Kong under Certain Admission Schemes

Subdivision 1—Preliminary

Subdivision 2—Refund of Certain Amounts of Stamp Duty

Subdivision 3—Suspension of and Waiver of Liabilities in respect of Certain Amounts of Stamp Duty

Division 7—Miscellaneous Provisions

PART IV
UNIT TRUSTS

PART IVA
OPEN-ENDED FUND COMPANIES

PART V
EXEMPTION AND RELIEF

PART VA
RELIEF FOR CERTAIN TRANSACTIONS IN RELATION TO SPECIFIED ALTERNATIVE BOND SCHEME

PART VB
ASSESSMENT AFTER DEEMED WITHDRAWAL OF RELIEF

PART VI
ALLOWANCE FOR SPOILED OR UNWANTED STAMPS, ETC.

PART VII
MISCELLANEOUS

LT. Long title

To consolidate and amend the law relating to stamp duty.

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

PART I

Preliminary

(Format changes—E.R. 2 of 2014)

1. Short title

This Ordinance may be cited as the Stamp Duty Ordinance.

[1.01] General note

A brief legislative history of the Stamp Duty Ordinance (Cap 117) is in order. Stamp duty first became chargeable in Hong Kong upon the enactment of the Stamp Ordinance 1866 (12 of 1866). It was subsequently replaced by the Stamp Ordinance 1921 (8 of 1921) and the Stamp Duties Management Ordinance 1911 (35 of 1911). Although both statutes were improved over the years, their persistent opacity and complexity warranted a complete overhaul, culminating in the enactment of the present Stamp Duty Ordinance. It is nevertheless critical to have a sense of history when researching on stamp duty issues, as the accretion of authorities in the past 150 years remains useful in modern litigation.

2. Interpretation

(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)*

agreement for sale (買賣協議) has the meaning given by section 29A(1); *(Added 2 of 2018 s. 3)*

assessment (評稅) means an assessment made by the Collector under section 13 or 47L as to the amount of stamp duty chargeable on an instrument, and ***assessed*** (評定) has the corresponding meaning; *(Amended 10 of 2013 s. 24)*

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 t bearer by delivery of which any stock can be transferre but does not include an instrument relating to stock whic consists of a loan expressed in terms other than in the currency of Hong Kong except to the extent that the loa is repayable, or may at the option of any person be repai in the currency of Hong Kong; *(Amended 77 of 1981 s. 2)*

bond (債券) is to be construed having regard to sectio 47E(b); *(Added 10 of 2013 s. 24)*

buyer's stamp duty (買家印花稅) means buyer's stamp du chargeable under head 1(1AAB) or (1C) in the Firs Schedule; *(Added 2 of 2014 s. 3)*

chargeable (可予徵收, 徵收) means chargeable under thi Ordinance;

Collector (署長) means the Collector of Stamp Revenu appointed under section 3;

contract note (成交單據) means a contract note required t 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 wherel any immovable property is transferred to or vested in an person;

conveyance on sale (售賣轉易契) means every conveyance whereby any immovable property, upon the sale thereof, i transferred to or vested in a purchaser or any other perso on his behalf or by his direction, and includes a foreclosur order;

duly stamped (加蓋適當印花), in relation to an instrument means duly stamped under this Ordinance in respect of th stamp duty chargeable on such instrument;

exchange participant (交易所參與者) means an exchang 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 instrumen 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)*

relevant Ordinance (《有關條例》) means the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date# of section 2 of Schedule 9 to the Companies Ordinance (Cap. 622); *(Added 28 of 2012 ss. 912 & 920)*

special stamp duty (額外印花稅) means special stamp duty chargeable under head 1(1AA) or (1B) in the First Schedule; *(Added 14 of 2011 s. 3)*

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, remission, suspension or waiver 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; L.N. 148 of 2023 and 3 of 2024 s. 3)*

(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 and includes additional stamp duty

chargeable under section 13(10) or 47L(7), buyer's stamp duty and special stamp duty; *(Amended 14 of 2011 s. 3; 10 of 2013 s. 24; 2 of 2014 s. 3)*

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.

(5) If this Ordinance provides for a penalty for a contravention of this Ordinance or an act by reference to a level, the penalty applicable for the contravention or the act is the amount equal to the amount of fine shown for that level in Schedule 8 to theCriminal Procedure Ordinance (Cap. 221). *(Added 10 of 2013 s. 24)*

(6) For the purposes of this Ordinance—

(a) a conveyance on sale is executed in conformity with an agreement for sale only if it is executed as provided in section 29D(6)(c); and

(b) a conveyance on sale is executed in pursuance of an agreement for sale only if it is executed as provided in section 29D(6)(d). *(Added 2 of 2018 s. 3)*

Note (with no legislative effect)—

For the meaning of an agreement for sale, an unwritten sale agreement (as defined by section 29A(1)) or a conveyance on sale being made on the same terms as a previous agreement—see section 29A(4). *(Added L.N. 231 of 2020 and 2 of 2021 s. 3)*

Editorial Note:

* Commencement date : 3 March 2014.

[2.01] Enactment history

Subsection (5) was added by s 24 of the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013 (10 of 2013), commencing 19 July 2013.

[2.02] Adhesive stamp

Adhesive stamps may be used for the stamping of certain contract notes under head 2(1) in the First Sch. The kinds and denominations of adhesive stamps are prescribed by the Collector: s 5(3). There are sanctions (s 58) and offences (s 56(g)–(j)) specific to the use of adhesive stamps.

[2.03] Adjudication fee

An assessment is made by the Collector in the course of adjudication. It has been held, under the Australian income tax regime, that the meaning of 'assessment' is not confined to the paper document recording the tax authorities' determination, but covers the process by which tax liability is ascertained: *R v Deputy Commissioner of Taxation; ex p Hooper* (1926) 37 CLR 368 at 373, [1926] ALR 101 (HC, Aust), per Issacs J. For more details concerning the process of adjudication, see annotations to s 13.

[2.04] Assessment

An assessment is made by the Collector in the course of adjudication. It has been held, under the Australian income tax regime, that the meaning of 'assessment' is not confined to the paper document recording the tax authorities' determination, but covers the process by which tax liability is ascertained: *R v Deputy Commissioner of Taxation; ex p Hooper* (1926) 37 CLR 368 at 373, [1926] ALR 101 (HC, Aust), per Issacs J. For more details concerning the process of adjudication, see annotations to s 13.

One must, however, be careful when borrowing case authorities concerning other forms of tax. For instance, in relation to profits tax, Deputy Judge A To held, in *The Commissioner of Inland Revenue v Common Empire Ltd* [2006] 1 HKLRD 942, [2006] HKCU 118 (CFI) at para 39, that a nil or negative assessment is no assessment at all under the Inland Revenue Ordinance (Cap 112). Nevertheless, s 13(1)(a) makes clear that adjudication may be sought in relation to the stampability of an instrument, from which it must follow that a nil assessment is possible. This, being an assessment made pursuant to s 13, must be an 'assessment' within the meaning of s 2(1).

The definition of 'assessment' refers to s 47L, which regulates the dutiability of Islamic bonds (sukuk, or sakk (singular)), and forms part of a broader effort to provide official support for Islamic financing. According to Stamp Office Interpretation and Practice Notes No 50, Islamic bonds are 'in essence trust certificates backed by Shariah-acceptable assets'. Pursuant to s 47L, the Collector is entitled to raise an assessment where stamp duty relief is previously granted for a 'qualified' investment concerning Islamic bonds, but such relief is withdrawn due to the occurrence of a 'disqualifying event'. For more details, see annotations to s 47L.

[2.05] Authorized ATS provider

Automated Trading Services (ATS) are regulated by the Securities and Futures Commission in Hong Kong. Essentially, ATS refers to electronic services in respect of the trading of securities, futures contracts, and over-the-counter derivatives, other than those supplied by recognised exchange companies, recognised clearing houses, or Government-run companies: Securities and Futures Ordinance (Cap 571), Pt 2 of Sch 5.

Normally, ATS providers handle a large volume of transactions involving stampable instruments (eg, contract notes concerning the sale and purchase of Hong Kong stock) on a daily basis. It would be impracticable to demand that ATS providers stamp each such instrument individually. Accordingly, the Collector is empowered by s 5A, to institute a centralised and streamlined collection process for authorised ATS providers. It is also worthy of note that contract notes executed through authorised ATS providers (and recognised clearing houses) are the only stampable instruments which may be created and executed in electronic forms: Electronic Transactions Ordinance (Cap 553), para 4 of Sch 1. For more details, see annotations to s 5A below.

[2.06] Bearer instrument and Hong Kong Bearer Instrument

A bearer instrument entitles the holder of the instrument (the bearer) to ownership of the underlying asset. It is a form of negotiable instrument, as entitlement derives from possession of the instrument, not other legal facts, and is generally used to raise capital by way of debt financing. This definition of 'bearer instrument' reflects this established meaning, as it refers to instruments by which any stock can be transferred by mere delivery, save instruments to bearers relating to stocks comprising loans denominated in a foreign currency and not repayable in Hong Kong Dollars. Hong Kong bearer instruments refer to those issued in Hong Kong or, those issued by a corporation or an unincorporated association formed in Hong Kong, irrespective of the location of issue.

Head 3 in the First Sch, one of the four charging heads in Hong Kong, deals exclusively with Hong Kong bearer instruments. The issue of Hong Kong bearer instruments concerning any stock (other than units in a specific kind of unit trust) is chargeable with stamp duty under head 3(1), and the exchange of Hong Kong bearer instruments with a like instrument duty stamped under head 3(1) attracts stamp duty under head 3(2). Because of such stamp duty liability, and the easy accessibility of alternative, stamp-duty-free, avenues of raising capital, bearer instruments are not very popular in Hong Kong. It became less popular still due to the passage of the Companies Ordinance (Cap 622). Prior to its enactment, a company incorporated in Hong Kong may issue share warrants, the transfer and delivery of which passes legal title to the underlying shares. These share warrants are bearer instruments, but they can no longer be issued by virtue of Companies Ordinance, s 139(1).

A 'bearer instrument' within this definition must be one issued 'to bearer'. It appears that an instrument issued to a named person but convertible to a bearer instrument falls outside this definition, and thus does not attract stamp duty under head 3.

[2.07] Bond

Section 47E(b) provides that an alternative bond issued under a qualified bond arrangement (ie, certain Islamic bonds: see annotations to s 47D for more details) will be regarded as a bond to which neither para (b) nor (c) of the definition of 'loan capital' in s 2(1). The effect is that the transfer of an Islamic bond is ordinarily not subject to stamp duty, since it would generally be 'loan capital' to which no heads of charge apply (save where the exception in para (a) of the definition applies).

[2.08] Buyer's stamp duty

Buyer's stamp duty (BSD) was introduced as a means to curb excessive speculation of residential properties in Hong Kong. In addition to the usual heads of charge, under head 1(1AAB) and 1(1C) in the First Sch, subject to exceptions, a flat rate of 15% applies to (respectively) a conveyance and an agreement of sale of residential properties acquired on or after 27 October 2012. Permanent residents of Hong Kong buying a residential property for themselves may be exempted form BSD. The Hong Kong Government abolished all demand-side management measures for residential properties with effect from 28 February 2024 (ie, the 2024–25 Budget date). The abolition was implemented through the Stamp Duty (Amendment) Ordinance 2024 (8 of 2024) ('2024 Amendment Ordinance'), which was published in the Gazette on 19 April 2024. Under the 2024 Amendment Ordinance, any instrument executed on or after 28 February 2024 for the sale and purchase or transfer of residential property is no longer subject to BSD. References to BSD is therefore largely of historical interest only. For more details, see annotations to First Sch.

[2.09] Collector

The Collector of Stamp Revenue, and assistant collectors, are appointed by the Chief Executive. They are collectively responsible for, inter alia, the collection of stamp duty, adjudication, and enforcement.

[2.10] Contract note

Save in the case of recognised exchange companies and authorised ATS (see s 5A), a person who engages in the sale or purchase of 'Hong Kong stock' (as defined under s 2(1)), whether as principal or agent, must make and execute a contract note (s 19(16)). The purchaser shall execute a 'bought note', and the seller a 'sold note'. Under head 2(1) of First Sch, each note is chargeable with ad valorem duty (at 0.13% of the consideration or the value of the stock at the date of execution, yielding a 0.26% rate in total), and must be stamped within two days of execution unless the transaction is effected overseas (in which case a 30-day deadline applies). Further, a contract note must fulfil the content requirements set out in s 19(2). For more details, see annotations to s 19.

[2.11] Conveyance

'Conveyance' is given an exhaustive meaning to cover only instruments and co decrees or orders under which immovable property is transferred to or vested in person. It does not, in other words, catch instruments transferring movable prope The meanings of 'property', 'immovable property', and 'moveable property' ma be gleaned from the Interpretation and General Clauses Ordinance (Cap 1), whic by s 3, defines them as follows:

> ***immovable property*** (不動產) means—
>
> (a) land, whether covered by water or not;
>
> (b) any estate, right, interest or easement in or over any land; an
>
> (c) things attached to land or permanently fastened to anythin attached to land;
>
> ...
>
> ***movable property*** (動產) means property of every descriptio except immovable property;
>
> ...
>
> ***property*** (財產) includes—
>
> (a) money, goods, choses in action and land; and
>
> (b) obligations, easements and every description of estate, interes and profit, present or future, vested or contingent, arising out o or incident to property as defined in paragraph (a) of th definition
>
> ...

Common examples of 'conveyance' include assignments, voluntary dispositions leases of land, and vesting orders. In Hong Kong, it used to be consequentia whether agreements of sale constituted a conveyance, but since the introductio of stamp duty for such agreements in 2013, the question became purely academ for stamp duty purposes. An exchange of land is a conveyance, albeit not a conveyance on sale unless equality consideration is paid: *Ngai Sau Ying (倪秀英) & Anor v Collector of Stamp Revenue* [2019] 5 HKC 547, [2019] HKCA 1104 a para 29, per Kwan V-P.

[2.12] Conveyance on sale

Not all conveyances are conveyances on sale. The distinction is important, as on instruments effecting conveyances on sale attract ad valorem stamp duty unde head 1(1) in the First Sch, and, potentially, special stamp duty under head 1(1AA and buyer's stamp duty under head 1(1AAB). It is therefore necessary to exami the meaning of 'sale'.

A useful starting point is the English House of Lords decision in *Littlewoods Ma*

Orders Stores Ltd v Inland Revenue Commissioners [1963] AC 1 (HL). There, the taxpayers were parties to a deed of exchange, whereby the owner and the lessees of the relevant premises agreed to exchange the freehold with the leases. The issue was whether the deed was stampable as a 'conveyance or transfer on sale'. Viscount Simonds cited *Benjamin's Sale of Goods* (8th edn, Sweet & Maxwell 2012 Reissue) at 152 which defined a sale as 'a transfer of the absolute or general property in a thing for a price in money'. Hence it follows that, to constitute a 'valid sale, there must be a concurrence of the following elements ... (1) parties competent to contract; (2) mutual assent; (3) a thing, the absolute or general property in which is transferred from the seller to the buyer; and (4) a price in money paid or promised'. So far as the exchange was concerned, Viscount Simonds held that it did not involve a sale, since 'there was no price in money paid or promised on one side or the other'.

The requirement of 'a price paid in money or promised' (element (4) above) is apparent under the Hong Kong legislation. Section 25(7) provides that an exchange can be charged as a 'conveyance on sale' for the consideration only if consideration is 'paid or given, or agreed to be paid or given, for equality'. Although the specific wordings of s 25(7) means that the price does not necessarily have to be money, it does imply that an exchange simpliciter does not constitute a conveyance on sale: see also *Ngai Sau Ying (倪秀英) & Anor v Collector of Stamp Revenue* [2019] 5 HKC 547, [2019] HKCA 1104 at para 29, per Kwan V-P.

A transfer of property in satisfaction of a debt, or in consideration of stock, is not normally a sale: *Simpson v Connolly* [1953] 2 All ER 474, [1953] 1 WLR 911 (QB). Be that as it may, there are specific provisions in the Hong Kong legislation governing the stamp duty payable where the conveyance on sale is in consideration of a debt owing to the transferee (s 24(1)), stock (s 24(1)), and the transferee incurring indebtedness in the body corporate which issued the stock (s 24(3)). For more details, see annotations to s 24.

A conveyance in contemplation of a sale is not, strictly speaking, a 'conveyance on sale': *Wm Cory & Son Ltd v Inland Revenue Commissioners* [1965] AC 1088 at 1077, [1965] 1 All ER 917, [1964] 2 WLR 924 (HL), per Lord Reid. Nevertheless, this distinction does not avail parties seeking to minimise stamp duty liabilities, as s 28 provides that a conveyance in contemplation of a sale is generally chargeable as a voluntary disposition. For more details, see annotations to s 28.

Foreclosure orders are expressly included in the definition of 'conveyance on sale'. The following transactions have been judicially determined to be a 'conveyance on sale':

(1) transfer of partnership assets for payment under a deed of retirement (*Commissioner of State Taxation (SA) v Cyril Henschke Pty Ltd* (2010) HCA 43) or otherwise (*Christie v IRC* (1866) LR 2 Ex 46; *Garnett v IRC* (1899) 81 LR 633);

(2) an assent giving effect to a sale and purchase agreement executed by the deceased as seller: *GHR Co v Commissioner of Inland Revenue* [1943] KB 303;

(3) an assent giving effect to an agreement between the legatee and the personal representatives to settle a pecuniary legacy: *Jopling v IRC* [1940] 2 KB 282; and

(4) options to purchase immoveable property: *George Wimpey & Co Ltd v Inland Revenue Commissioners* [1975] 2 All ER 45, [1975] 1 WLR 995 (CA, Eng); although under the current legislation such options are in any event 'agreements for sale'.

The following transactions have been judicially determined *not* to be a 'conveyance on sale':

(1) transfer of immoveable property by liquidators to shareholders in satisfaction of their rights upon winding-up: *Wigan Coal and Iron Co Ltd v Inland Revenue Commissioners* [1945] 1 All ER 392 (KB); *Henty and Constable (Brewers) Ltd v IRC* [1961] 3 All ER 1146 [1961] 1 WLR 1504 (CA, Eng); and

(2) exchange without the giving of consideration: *Ngai Sau Ying & Anor v Collector of Stamp Revenue* [2019] 5 HKC 547, [2019] HKCA 1104.

A partition is not a 'conveyance on sale', save where equality consideration is paid: s 25(7). Normally, the distribution of a deceased's estate, even if involving a conveyance of immoveable property, does not attract stamp duty, as it is a partition.

A mortgage granted by way of security is not a 'conveyance on sale' because it is collateral to the loan transaction, and thus not given for a 'price'. Indeed, it does not attract stamp duty as a voluntary disposition either. Under s 27(5), a conveyance or transfer made for nominal consideration for the purpose of securing the repayment of a loan does not normally attract stamp duty. The effect is that most mortgages do not attract stamp duty.

[2.13] Duly stamped

An instrument is not 'duly stamped' merely because it shows a stamp on its face. Rather, the stamp must comply with all the substantive and procedural requirements set out in the Stamp Duty Ordinance (Cap 117). To illustrate, a failure to comply with adjudication requirements, or a failure to calculate stamp duty using the correct head of charge: *Ashling v Boon* [1891] 1 Ch 568, means that the instrument is not properly stamped.

In determining whether the transfer was duly stamped, one is entitled to go behind that which appeared on the face of the document and make all necessary investigations. Accordingly, an instrument is not 'duly stamped' if, upon inquiry, the consideration is incorrectly stated and the stamp is consistent with the improper treatment: *Sun Jiyou (孫繼有) & Ors v L & A International Holdings Ltd & Anor* [2017] 3 HKC 507 (CFI) at paras 89–90, per Deputy Judge Le Pichon, citing *Maynard v Consolidated Kent Collieries Corp* [1903] 2 KB 121 (CA, Eng).

Whether an instrument is 'duly stamped' is enormously consequential. An instrument that is not duly stamped is generally inadmissible evidence and not available for 'any other purpose whatsoever': s 15(1). Further, such instruments may not be 'acted upon, filed or registered by any public officer or body corporate',

such as the Land Registry, unless in specified circumstances: s 15(2). For more details, see annotations to s 15.

[2.14] Exchange participant

This section references the Securities Futures Ordinance (Cap 571), where 'exchange participant' is, essentially, defined as approved entities who trade through a 'recognised exchange company' or trade on a 'recognised stock market' or a 'recognised futures market' operated by that company: s 1, Pt 1 of Sch 1.

[2.15] Executed; execution

This definition makes it clear that an instrument which may be executed under hand is duly executed if signed. However, it does not inform readers *when* an instrument may be so executed, and when it *must* be executed by deed. These are determined by specific rules. For instance, an instrument creating, disposing of, and extinguishing legal estates in land must generally be executed by deed: Conveyancing and Property Ordinance (Cap 219), s 4(1).

Although it is often said a deed must be 'signed, sealed and delivered', the precise requirements of execution by deed differ depending on whether the party is a natural person or a body corporate. The former can satisfy the requirements by signing the instrument, which is presumed to be sealed if the instrument:

(1) describes itself as a deed;

(2) states that it has been sealed, and

(3) bears any mark, impression or addition intended to be or to represent a seal or the position of a seal: Conveyancing and Property Ordinance, s 19(1) and (2).

Further, in the case of a natural person, delivery may be effected by evincing an intention to be bound by the deed other than that expressed by the signature, but which is usually inferred from the conduct of signing and sealing: *Bibby Financial Services Ltd and Anor Co v Magson and Anor* [2011] EWHC 2495 (QB), per Judge Richard Seymour QC; *Wong Yiu Ting (黃耀霆) v Kwok Wing Chiu (郭榮超) and Tang Sau Chun Connie (鄧秀珍)* [2009] 1 HKLRD 399, [2008] HKCU 2053 (CFI).

The rules concerning execution by deed by corporations are much more complex. The applicable rules differ depending on the date on which the instrument is created (whether it is before or after the enactment of the Companies Ordinance, ie, the Companies Ordinance (Cap 622)), and also the identity of the officers who purport to execute the document. For an excellent summary of the rules, see Sihombing and Wilkinson, *Hong Kong Conveyancing: Law and Practice*, vol 2D (9th edn, LexisNexis 2022 Reissue) at para 5-135.

The determination of date of execution is critical, as many key dates are set by reference to it. For instance, companies would be disqualified from s 45 relief if they are no longer 'associated' (as defined therein) within two years of execution of the relevant instrument: s 45(5A). Further, the time of stamping is invariably determined by the date of execution of the instrument: see First Sch.