

15. Non-admissibility, etc. of instruments not duly stamped

- (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)*

15. Non-admissibility, etc. of instruments not duly stamped

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- (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 (*Amended 8 of 1992 s. 3; L.N. 90 of 1999 and 44 of 1999 s. 15; 21 of 2003 s. 7; 14 of 2011 s. 4*)
 - (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.
- (5) The amendment made by section 4(1) of the Stamp Duty (Amendment) Ordinance 2011 (14 of 2011) does not apply in respect of a chargeable agreement for sale that was entered into before the date of commencement* of that section, and subsection (3)(a) as in force immediately before that date applies to the agreement as if that amendment had not been made. (*Added 14 of 2011 s. 4*)

* Note 1: The various amendments made by the Revenue Ordinance 1999 (44 of 1999) to sections 15(3)(a) and 29C, and 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.

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* Note 1: The various amendments made by the Revenue Ordinance 1999 (44 of 1999) to sections 15(3)(a) and 29C, and 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.

PART IIIA

AGREEMENTS TO SELL IMMOVABLE PROPERTY

29A. Interpretation and application of Part IIIA

(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;

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 - (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;

↑ Certain Instruments Dealing with Immovable Property

△ Division 1—Preliminary

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- (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)

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(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;

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“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;
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Hong Kong permanent resident (香港永久性居民) means a person—

- (a) who holds a valid permanent identity card; or
- (b) who does not hold a valid permanent identity card but—
 - (i) is, under regulation 25(e) of the Registration of Persons Regulations (Cap. 177 sub. leg. A), not required to register or apply for the issue of an identity card or for the renewal of an identity card under the Registration of Persons Ordinance (Cap. 177) and those Regulations; and
 - (ii) is entitled to be issued with a permanent identity card if he or she makes an application to the registration officer as defined by section 1A(1) of that Ordinance for that purpose;

mentally incapacitated person (精神上無行為能力的人) means a person who is mentally disordered or mentally handicapped within the meaning of the Mental Health Ordinance (Cap. 136);

permanent identity card (永久性居民身分證) has the meaning given by section 1A(1) of the Registration of Persons Ordinance (Cap. 177);

transferee (承讓人), in relation to a conveyance on sale, means the person to whom the property concerned is transferred, or in whom the property is vested, under the conveyance;

transferor (轉讓人), in relation to a conveyance on sale, means the person from whom the property concerned is transferred or divested under the conveyance;



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Stamp Duty Ordinance

Stamp Duty (Amendment) Bill 2013

Committee Stage Amendments to be moved
By Hon Abraham SHEK Lai-him

- (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) and (1B) 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—
(Amended 14 of 2011 s. 6)
- (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) and (1B) 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

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sale (as the case may be) and the previous agreement—
(Amended 14 of 2011 s. 6)

- (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) and (1B) in the First Schedule does not apply to an agreement for sale in respect of non-residential property. (Amended 14 of 2011 s. 6)
- (6) This Part and head 1(1A) and (1B) in the First Schedule apply notwithstanding any provision in any other Part of this Ordinance. (Amended 14 of 2011 s. 6)
- (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).

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↑ 1(1B)

- △ (8) In this Part and section 71—
- (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).

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- △ (8) In this Part and section 71—
- (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).



29DF. Partial refund of ad valorem stamp duty on disposal of residential property in certain circumstances

(1) In this section—

applicable instrument (適用文書) means an instrument—

- (a) under which a residential property is acquired; and
- (b) on which stamp duty had been paid according to Scale 1 of head 1(1), or Scale 1 of head 1(1A), in the First Schedule;

original property (原物業), in relation to a person who acquires a subject property under an applicable instrument, means another residential property of which the person is a beneficial owner on the date of that acquisition;

specified amount (指明款項) means—

- (a) for an applicable instrument on which stamp duty had been paid according to Scale 1 of head 1(1) in the First Schedule—an amount equal to the difference between the stamp duty paid and the stamp duty that would have been payable on that instrument if it were chargeable under Scale 2 of head 1(1) in the First Schedule; or
- (b) for an applicable instrument on which stamp duty had been paid according to Scale 1 of head 1(1A) in the First Schedule—an amount equal to the difference between the stamp duty paid and the stamp duty that would have been payable on that instrument if it were chargeable under Scale 2 of head 1(1A) in the First Schedule;

subject property (標的物業) means the residential property acquired under an applicable instrument.

(2) The Collector may, on an application made by a person (*applicant*) who had paid stamp duty on an applicable instrument, refund to the applicant the specified amount if—

- (a) subsection (3) or (4) applies to the disposal of an original property of the applicant; and
- (b) had the original property been disposed of before the subject property was acquired, the applicable instrument would have been chargeable with stamp duty under Scale 2 of head 1(1), or Scale 2 of head 1(1A), in the First Schedule.

(3) This subsection applies to the disposal of an original property of the applicant if—

- (a) it is shown to the satisfaction of the Collector that the original property is disposed of by the applicant under an agreement for sale that is made within ~~6 months~~ after the date of the applicable instrument;

↑ "12 months"

- (b) it is shown to the satisfaction of the Collector that the original property is transferred or divested from the applicant under a conveyance on sale executed in conformity with that agreement; and
 - (c) the application for refund is made by the applicant not later than 2 years after the date of the applicable instrument.
- (4) This subsection applies to the disposal of an original property of the applicant if—
- (a) it is shown to the satisfaction of the Collector that the original property is transferred or divested from the applicant under a conveyance on sale within 6 months after the date of the applicable instrument; and
 - (b) the application for refund is made by the applicant not later than 2 years after the date of the applicable instrument.