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**Inland Revenue and Stamp Duty Legislation  
(Alternative Bond Schemes) (Amendment)  
Ordinance 2013**

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**HONG KONG SPECIAL ADMINISTRATIVE REGION**

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**ORDINANCE NO. 10 OF 2013**



C. Y. LEUNG  
Chief Executive  
18 July 2013

An Ordinance to amend the Inland Revenue Ordinance to bring particular types of arrangements that are economically equivalent to debt arrangements under tax rules comparable to those applying to debt arrangements; to amend the Stamp Duty Ordinance to give stamp duty relief in relation to those types of arrangements; to provide for related matters; and to make certain technical amendments.

[19 July 2013]

Enacted by the Legislative Council.

## **Part 1**

### **Preliminary**

**1. Short title**

This Ordinance may be cited as the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013.

**2. Enactments amended**

- (1) The Inland Revenue Ordinance (Cap. 112) is amended as set out in Parts 2 and 3.

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes)  
(Amendment) Ordinance 2013

Part 1  
Section 2

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- (2) The Stamp Duty Ordinance (Cap. 117) is amended as set out in Parts 4 and 5.
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## **Part 2**

### **Amendments to Inland Revenue Ordinance—Part 6A and Schedule 17A Added**

**3. Part 6A added**

After Part 6—

**Add**

#### **“Part 6A**

#### **Specified Alternative Bond Scheme and its Tax Treatment**

**40AB. Schedule 17A: specified alternative bond scheme and its tax  
treatment**

Schedule 17A contains provisions about the tax treatment of specified alternative bond schemes within the meaning of that Schedule.”.

**4. Schedule 17A added**

After Schedule 17—

**Add**



**“Schedule 17A** [ss. 5B(7), 14A(6),  
15(3A), 16(4A),  
20AC(7), 26A(4),  
40AB, 51C(5),  
60(4), 64(11),  
79(4), 80(6) &  
82A(8) &  
Schs. 6, 16  
& 29]

## **Specified Alternative Bond Scheme and its Tax Treatment**

**Note—**

The following is an overview of the content of this Schedule and does not have legislative effect—

- (a) This Schedule enables particular arrangements in a specified alternative bond scheme to be regarded as debt arrangements for the purposes of this Ordinance if certain conditions are met.
- (b) Sections 2 and 3 provide for the basic structure of an alternative bond scheme, which comprises a bond arrangement and an investment arrangement.
- (c) Under section 4, a specified alternative bond scheme is, in broad terms, an alternative bond scheme whose investment arrangement is always the same specified investment arrangement.
- (d) Different types of specified investment arrangements are set out in section 5. Sections 6 to 12 provide for the structures of those types of specified investment arrangements and for the calculation of the investment return under them. These provisions may be amended by notice published in the Gazette under section 23.

- (e) Sections 13 to 20 provide for the conditions that must be met in order for the bond arrangement, and investment arrangement, in a specified alternative bond scheme to be regarded as debt arrangements for the purposes of this Ordinance. Sections 21 and 22 contain detailed provisions on the tax treatment of the arrangements.
- (f) Sections 24 to 29 provide for record-keeping, notifications, assessments and other miscellaneous matters.

## Part 1

### Preliminary

#### 1. Interpretation

- (1) In this Schedule, an expression specified in column 1 of the Table below is to be construed in accordance with the section of this Schedule specified opposite to it in column 2 of the Table—

**Table**

Column 1 Expression	Column 2 Section
<i>acquisition cost</i> (取得成本)	2
<i>additional payments</i> (額外付款)	2
<i>agency arrangement</i> (代理安排)	9
<i>alternative bond</i> (另類債券)	2
<i>alternative bond scheme</i> (另類債券計劃)	2
<i>arrangements performed according to terms condition</i> (按條款履行安排條件)	18

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Part 2  
Section 4

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A235

Column 1 Expression	Column 2 Section
<i>asset transaction between O and BU</i> (發起人—業務實體資產交易) (in relation to a profits sharing arrangement)	7(3)
<i>BA disqualifying event</i> (喪失債券安排資格事件)	13(5)
<i>bond arrangement</i> (債券安排)	2
<i>bond arrangement as financial liability condition</i> (債券安排作金融負債條件)	15
<i>bond-holder</i> (持債人)	2
<i>bond-issuer</i> (發債人)	2
<i>bond-issuer as conduit condition</i> (發債人作轉付者條件)	19
<i>bond proceeds</i> (發債所得)	2
<i>Hong Kong connection condition</i> (與香港關連條件)	16
<i>IA disqualifying event</i> (喪失投資安排資格事件)	13(5)
<i>investment arrangement</i> (投資安排)	2
<i>investment arrangement as financial liability condition</i> (投資安排作金融負債條件)	20
<i>lease arrangement</i> (租賃安排)	6
<i>maximum term length condition</i> (最長年期條件)	17
<i>originator</i> (發起人)	2
<i>proceeds of disposal</i> (處置所得)	2
<i>profits sharing arrangement</i> (分利安排)	7
<i>purchase and sale arrangement</i> (買賣安排)	8

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes)  
(Amendment) Ordinance 2013

Part 2  
Section 4

Ord. No. 10 of 2013  
A237

Column 1 Expression	Column 2 Section
<b>qualified bond arrangement</b> (合資格債券安排)	13(1)
<b>qualified investment arrangement</b> (合資格投資安排)	13(2)
<b>reasonable commercial return condition</b> (合理商業回報條件)	14
<b>redemption payment</b> (贖債付款)	2
<b>specified alternative bond scheme</b> (指明另類債券計劃)	4
<b>specified asset</b> (指明資產)—	
(a) in relation to an alternative bond scheme;	2
(b) in relation to a lease arrangement;	6
(c) in relation to a profits sharing arrangement;	7
(d) in relation to a purchase and sale arrangement;	8
(e) in relation to an agency arrangement	9
<b>specified asset transaction between O and BI</b> (發起人—發債人指明資產交易)—	
(a) in relation to a lease arrangement;	6(3)
(b) in relation to a profits sharing arrangement;	7(3)
(c) in relation to a purchase and sale arrangement;	8(6)
(d) in relation to an agency arrangement	9(7)

Column 1 Expression	Column 2 Section
<i>specified investment arrangement</i> (指明投資安排)	5
<i>specified term</i> (指明年期)	2
(2) In this Schedule—	
<i>asset</i> (資產) means any property or any class of property;	
<i>investment return</i> (投資回報)—	
(a) in relation to an investment arrangement, has the meaning given by section 2 of this Schedule;	
(b) in relation to a lease arrangement or a profits sharing arrangement, means the investment return calculated in accordance with section 10 of this Schedule;	
(c) in relation to a purchase and sale arrangement, means the investment return calculated in accordance with section 11 of this Schedule; and	
(d) in relation to an agency arrangement, means the investment return calculated in accordance with section 12 of this Schedule;	
<i>special purpose vehicle</i> (特定目的工具), in relation to any scheme or schemes, means a corporation, partnership or any other entity that—	
(a) is established solely for the purposes of the scheme or schemes (as the case requires); and	
(b) does not carry on any trade or activities except for the purposes of the scheme or schemes (as the case requires).	

## Part 2

# Specified Alternative Bond Scheme and its Tax Treatment

## Division 1—Alternative Bond Scheme, Bond Arrangement and Investment Arrangement

2. **Alternative bond scheme, bond arrangement and investment arrangement**
  - (1) If a scheme comprises 2 arrangements (*arrangement A* and *arrangement B*), and the scheme and the arrangements meet the description in subsections (2), (3) and (4), then—
    - (a) the scheme is an *alternative bond scheme*;
    - (b) arrangement A is the *bond arrangement* in the scheme; and
    - (c) arrangement B is the *investment arrangement* in the scheme.
  - (2) The scheme (and arrangement A and arrangement B in it)—
    - (a) commences on the date on which alternative bonds are issued under arrangement A, as referred to in subsection (3)(d); and
    - (b) ends on the date on which the alternative bonds are to be fully redeemed or cancelled under the terms of arrangement A,  
  
(the period that so commences and ends is referred to as the *specified term*).
  - (3) Under arrangement A—

- (a) one or more persons (each is referred to as an **initial bond-holder**) pay a sum of money (**bond proceeds**) to another person (**bond-issuer**);
- (b) the bond-issuer is a special purpose vehicle for the scheme;
- (c) on behalf of the initial bond-holders, the bond-issuer enters into arrangement B, as referred to in subsection (4);
- (d) the bond-issuer issues instruments (**alternative bonds**) to the initial bond-holders evidencing their rights and interests in or in relation to the specified asset referred to in subsection (4)(a);
- (e) if the alternative bonds are transferable from 1 person to another, transferees of any such alternative bonds become holders of the alternative bonds (**subsequent bond-holders**) because of the transfers (any initial bond-holder or subsequent bond-holder is referred to as a **bond-holder**); and
- (f) the bond-issuer undertakes—
  - (i) to make a payment (**redemption payment**), whether or not by instalments, to the bond-holders during or at the end of the specified term to redeem the alternative bonds;
  - (ii) to make other payments (**additional payments**) to the bond-holders on one or more occasions during, or at the end of, the specified term; and
  - (iii) to use the investment return and the proceeds of disposal under arrangement B as referred to in subsection (4)(b) and (c), or part of these sums, for payment of the redemption payment and additional payments.

- (4) The bond-issuer enters into arrangement B with another person (*originator*), under which—
- (a) the bond-issuer uses the bond proceeds (*acquisition cost*) to acquire an asset (which asset, or an asset that is subject to the scheme in the circumstances described in section 3(2)(b), (3) and (4) of this Schedule, is referred to as the *specified asset*);
  - (b) the bond-issuer arranges for the management of the specified asset with a view to generating income or gains during the specified term (the income or gains are referred to as the *investment return*); and
  - (c) the bond-issuer is to dispose of the specified asset by the end of the specified term (the consideration received by the bond-issuer for the disposal of the specified asset is referred to as the *proceeds of disposal*).

**3. Construction of references in section 2(3)(b) and (4)(b) of this Schedule**

- (1) For the purposes of section 2(3)(b) of this Schedule, a special purpose vehicle for 2 or more schemes (whether existing or intended to be set up) is regarded as a special purpose vehicle for each of those schemes if—
- (a) each of the schemes would have been, or when set up would have been, an alternative bond scheme but for that section; and
  - (b) each of the schemes has, or is intended to have, that special purpose vehicle as the bond-issuer and the same other person as the originator.



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- (2) A reference in section 2(4)(b) of this Schedule to the management of the specified asset includes—
- (a) its disposal; and
  - (b) a change of the specified asset described in subsection (3) with the consequences described in subsection (4).
- (3) A change of the specified asset refers to—
- (a) the asset that is at any time the specified asset under the scheme (*pre-change asset*) being disposed of, destroyed or lost, in whole or in part (the asset or part disposed of, destroyed or lost is referred to as the *outgoing asset*); and
  - (b) another asset (*incoming asset*) being acquired.
- (4) The consequences of the change of the specified asset are—
- (a) the outgoing asset ceases to be subject to the scheme; and
  - (b) either—
    - (i) if the outgoing asset constitutes the whole of the pre-change asset, the incoming asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in subsections (2)(b) and (3) and this subsection; or
    - (ii) if the outgoing asset constitutes only part of the pre-change asset, the asset comprising the incoming asset and the remaining part of the pre-change asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in subsections (2)(b) and (3) and this subsection.

#### 4. Specified alternative bond scheme

A scheme is a *specified alternative bond scheme* at any time (*material time*) if at the material time, and from the commencement of the specified term of the scheme up to the material time—

- (a) the terms of the scheme are, and have always been, those as described of an alternative bond scheme in section 2 of this Schedule; and
- (b) the terms of the investment arrangement in the scheme are those as described of a specified investment arrangement in Division 2 of this Part, and have always been those as so described of the same specified investment arrangement.

### Division 2—Specified Investment Arrangements: Description and Calculation of Investment Return

#### 5. Specified investment arrangement

The investment arrangement in an alternative bond scheme is a *specified investment arrangement* if it is—

- (a) a lease arrangement;
- (b) a profits sharing arrangement;
- (c) a purchase and sale arrangement; or
- (d) an agency arrangement.

#### 6. Lease arrangement

- (1) The investment arrangement in an alternative bond scheme is a *lease arrangement* if, under the investment arrangement—

- (a) the bond-issuer uses the acquisition cost to acquire an asset (which asset, or an asset that is subject to the scheme in the circumstances described in subsection (2), is referred to as the **specified asset**);
  - (b) subject to paragraph (d), the bond-issuer is to hold the specified asset until the end of the specified term;
  - (c) for the purposes of generating income or gains during the specified term, the bond-issuer leases the specified asset to the originator for a consideration (**specified income**); and
  - (d) the bond-issuer is to dispose of the specified asset to the originator, whether or not in stages, by the end of the specified term in return for the proceeds of disposal.
- (2) For the purposes of subsection (1), an asset that is at any time the specified asset under the scheme (**pre-replacement asset**) may be replaced in whole or in part (the asset or part replaced is referred to as the **replaced asset**, and any remainder is referred to as the **remainder asset**) by another asset (**replacing asset**) if—
- (a) either—
    - (i) the bond-issuer acquires the replacing asset from a person in consideration of the bond-issuer's disposal of the replaced asset to that person; or
    - (ii) the replaced asset is destroyed or lost during the specified term with or without any remains, and the bond-issuer acquires the replacing asset from a person using—
      - (A) the consideration received by the bond-issuer for the disposal to that person of any remains of the replaced asset; and

- (B) any insurance money or other compensation of any description arising in respect of the destruction or loss;
- (b) the person referred to in paragraph (a)(i) or (ii) is—
  - (i) the originator, whether or not subparagraph (ii) applies; or
  - (ii) if the asset acquired with the acquisition cost under subsection (1)(a) was acquired from a third party, the third party; and
- (c) on the replacement—
  - (i) the replaced asset ceases to be subject to the scheme; and
  - (ii) either—
    - (A) for a replacement in whole, the replacing asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in this subsection; or
    - (B) for a replacement in part, the asset comprising the replacing asset and the remainder asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in this subsection.
- (3) In relation to a lease arrangement, *specified asset transaction between O and BI* in section 22(3)(a) of this Schedule means—
  - (a) any acquisition of an asset as, or as part of, the specified asset under subsection (1) or (2) from the originator;
  - (b) any leasing of an asset as, or as part of, the specified asset under subsection (1); or

- (c) any disposal of an asset as, or as part of, the specified asset under subsection (1) or (2) to the originator.

## 7. Profits sharing arrangement

- (1) The investment arrangement in an alternative bond scheme is a *profits sharing arrangement* if, under the investment arrangement—
  - (a) the bond-issuer and the originator form a business undertaking—
    - (i) by the bond-issuer contributing the acquisition cost to the business undertaking in return for an interest in it; and
    - (ii) by the originator contributing to the business undertaking in either of the following ways in return for an interest in it—
      - (A) contributing a sum of money or in kind or both;
      - (B) contributing expertise and management skills only,

(the interest in the business undertaking acquired by the bond-issuer under subparagraph (i) is referred to as the *specified asset*);
  - (b) subject to paragraph (f), the bond-issuer is to hold the specified asset until the end of the specified term;
  - (c) for the purposes of generating income or gains during the specified term, the business undertaking carries on business activities in accordance with the terms of the arrangement;
  - (d) for any profits generated, and any losses incurred, by the business undertaking—

- 
- (i) if paragraph (a)(ii)(A) applies, the bond-issuer shares with the originator—
    - (A) the profits in accordance with the profits sharing ratios set out in the arrangement; and
    - (B) the losses in proportion to the capital contributions of the bond-issuer and the originator; or
  - (ii) if paragraph (a)(ii)(B) applies, the bond-issuer—
    - (A) shares with the originator the profits in accordance with the profits sharing ratios set out in the arrangement; and
    - (B) bears the losses,  
(the profits due to the bond-issuer, less the losses borne by the bond-issuer, are referred to as the ***specified return***);
  - (e) the bond-issuer may pay a portion of its share of the profits to the originator as an incentive fee; and
  - (f) the bond-issuer is to dispose of the specified asset to the originator, whether or not in stages, by the end of the specified term in return for the proceeds of disposal.
- (2) Business activities carried on by the business undertaking under subsection (1)(c) may include—
- (a) acquiring an asset;
  - (b) leasing an asset; and
  - (c) disposing of an asset.
- (3) In relation to a profits sharing arrangement—
- (a) ***asset transaction between O and BU*** in section 22(4)(b) of this Schedule means an acquisition of

an asset by the business undertaking as a contribution in kind by the originator because of subsection (1)(a)(ii)(A), or any acquisition, leasing or disposal of an asset by the business undertaking from or to the originator referred to in subsection (2);

- (b) *specified asset transaction between O and BI* in section 22(3)(a) of this Schedule means the disposal of the specified asset under subsection (1)(f).

## 8. Purchase and sale arrangement

- (1) The investment arrangement in an alternative bond scheme is a *purchase and sale arrangement* if it is an investment arrangement described in subsection (2) or (3).
- (2) An investment arrangement described in this subsection is one under which—
- (a) at the commencement of the specified term, the bond-issuer acquires an asset from a third party on immediate payment of the acquisition cost to that third party;
  - (b) for the purposes of generating income or gains, the bond-issuer, on acquiring the asset, immediately disposes of it onward to the originator in return for the proceeds of disposal, which—
    - (i) are of an amount equal to the acquisition cost plus a markup (*markup*); and
    - (ii) are payable on deferred payment terms, in a lump sum or by instalments, by the end of the specified term; and
  - (c) on the acquisition of the asset from the bond-issuer, the originator either—

- (i) immediately disposes of the asset onward to another third party against immediate payment of a price equal to the acquisition cost; or
    - (ii) retains the asset for the originator's own use.
- (3) An investment arrangement described in this subsection is one under which—
  - (a) an acquisition and disposal of an asset by the bond-issuer and an onward disposal of it by the originator occur—
    - (i) at the commencement of the specified term; and
    - (ii) on each date (except the last one) on which an additional payment is payable under the bond arrangement in the scheme,  
(a date on which transactions referred to in this paragraph occur is referred to as a ***transaction date***); and
  - (b) the acquisitions, disposals and onward disposals of assets on the transaction dates meet the description in subsection (4).
- (4) Under an investment arrangement described in subsection (3)—
  - (a) on each transaction date (***material transaction date***), the bond-issuer acquires an asset (***asset of the material transaction date***) from a third party on immediate payment to that third party of—
    - (i) if the material transaction date is the 1st transaction date, the acquisition cost;
    - (ii) in any other case, an amount equal to the acquisition cost that is paid out of the proceeds of the bond-issuer's disposal of the asset of the preceding transaction date;



- (b) for the purposes of generating income or gains, the bond-issuer, on acquiring the asset of the material transaction date, immediately disposes of it onward to the originator in return for an amount that—
    - (i) is equal to the acquisition cost plus a markup (*markup*); and
    - (ii) is payable in a lump sum—
      - (A) except if sub-subparagraph (B) applies, on the next transaction date; or
      - (B) if the material transaction date is the last transaction date, at the end of the specified term; and
  - (c) on the acquisition of the asset of the material transaction date from the bond-issuer, the originator immediately disposes of it onward to another third party against immediate payment of a price equal to the acquisition cost.
- (5) In relation to a purchase and sale arrangement described in subsection (2) or (3), each asset acquired and disposed of by the bond-issuer in accordance with subsection (2) or (4) (as the case requires) is, from the acquisition until the disposal, referred to as the *specified asset*.
- (6) In section 22(3)(a) of this Schedule, *specified asset transaction between O and BI* means—
- (a) in relation to a purchase and sale arrangement described in subsection (2), the disposal of the specified asset under subsection (2)(b); or
  - (b) in relation to a purchase and sale arrangement described in subsection (3), the disposal of a specified asset under subsection (4)(b) on a transaction date.

## 9. Agency arrangement

- (1) The investment arrangement in an alternative bond scheme is an **agency arrangement** if, under the investment arrangement—
  - (a) the bond-issuer appoints the originator, and the originator undertakes to act, as the bond-issuer's agent;
  - (b) subject to subsection (2), the originator as the bond-issuer's agent undertakes the matters specified below—
    - (i) using the acquisition cost to acquire an asset (which asset, or an asset that is subject to the scheme in the circumstances described in subsections (4), (5) and (6), is referred to as the **specified asset**);
    - (ii) subject to subparagraphs (iii) and (iv), holding the specified asset until the end of the specified term;
    - (iii) the management of the specified asset for the purposes of generating income or gains; and
    - (iv) disposing of the specified asset, whether or not in stages, by the end of the specified term in return for the proceeds of disposal; and
  - (c) the bond-issuer is entitled to the profits from the management of the specified asset (**specified return**), and the originator is entitled to an agency fee or an incentive fee, or both.
- (2) For the purposes of subsection (1), the bond-issuer may act otherwise than through the originator as its agent—
  - (a) partly in the matter specified in subsection (1)(b)(iii); and

- 
- (b) wholly or partly in the matters specified in subsection (1)(b)(i), (ii) and (iv).
- (3) For the purposes of this section, the management of the specified asset may include leasing and disposing of an asset as, or as part of, the specified asset.
- (4) For the purposes of this section, the management of the specified asset may also include a replacement described in subsection (5) with the consequences described in subsection (6).
- (5) A replacement refers to—
- (a) the asset that is at any time the specified asset under the scheme (*pre-replacement asset*) being disposed of, destroyed or lost, in whole or in part (the asset or part disposed of, destroyed or lost is referred to as the *replaced asset*, and any remainder is referred to as the *remainder asset*); and
  - (b) another asset (*replacing asset*) being acquired.
- (6) The consequences of a replacement are—
- (a) the replaced asset ceases to be subject to the scheme; and
  - (b) either—
    - (i) if the replaced asset constitutes the whole of the pre-replacement asset, the replacing asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in subsections (4) and (5) and this subsection; or
    - (ii) if the replaced asset constitutes only part of the pre-replacement asset, the asset comprising the replacing asset and the remainder asset is subject to the scheme, until another asset is subject to the scheme in the

circumstances described in subsections (4) and (5) and this subsection.

- (7) In relation to an agency arrangement, *specified asset transaction between O and BI* in section 22(3)(a) of this Schedule means any acquisition, leasing or disposal of an asset as, or as part of, the specified asset by the bond-issuer (whether or not acting through the originator as its agent) from or to the originator under subsection (1)(b) or (2).

**10. Lease arrangement and profits sharing arrangement—  
investment return**

- (1) This section applies to a specified investment arrangement that is—
- (a) a lease arrangement; or
  - (b) a profits sharing arrangement.
- (2) The investment return paid or payable under a specified investment arrangement to which this section applies in a period in the specified term is to be calculated in accordance with the following formula—

$$A + B - C + D - E$$

- (3) If the formula is used for calculating the investment return paid under a specified investment arrangement in the period—
- A means—
- (a) for a lease arrangement, the total amount of specified income (referred to in section 6(1)(c) of this Schedule) paid under the arrangement in the period, plus any amount regarded under subsection (5)(b) as specified income paid under the arrangement in the period; or

- (b) for a profits sharing arrangement, the total amount of specified return (referred to in section 7(1)(d) of this Schedule) paid under the arrangement in the period;
- B means the specified proceeds of disposal paid under the arrangement in the period;
- C means the specified acquisition cost paid under the arrangement in the period;
- D means the total amount of any other sums paid by the originator to the bond-issuer under the arrangement in the period;
- E means—
- (a) for a lease arrangement, nil; or
- (b) for a profits sharing arrangement, the total amount of any incentive fee (referred to in section 7(1)(e) of this Schedule) that is paid by the bond-issuer to the originator under the arrangement in the period.
- (4) In this section, in relation to a specified investment arrangement in a specified alternative bond scheme—
- full redemption of bonds** (全額贖回債券) means full redemption or cancellation of the alternative bonds under the bond arrangement in the scheme;
- partial redemption of bonds** (局部贖回債券) means partial redemption or cancellation of the alternative bonds under the bond arrangement in the scheme;
- specified acquisition cost** (指明取得成本), in relation to a period in the specified term, means the sum specified in paragraph (a) or (b) or the total amount of the sums specified in paragraphs (a) and (b) (as the case requires)—
- (a) if the specified proceeds of disposal is wholly or partly attributable to the consideration for the

disposal of an asset as, or as part of, the specified asset—the acquisition cost or the part of the acquisition cost attributable to the asset disposed of (as the case requires);

- (b) if the specified proceeds of disposal is wholly or partly attributable to the money deemed under subsection (5)(c)(ii) to be the consideration for the deemed disposal of an asset as, or as part of, the specified asset—the acquisition cost or the part of the acquisition cost attributable to the asset deemed to be disposed of (as the case requires);

*specified proceeds of disposal* (指明處置所得), in relation to a period in the specified term, means the sum specified in paragraph (a) or (b) or the total amount of the sums specified in paragraphs (a) and (b) (as the case requires)—

- (a) the consideration for the disposal of an asset as, or as part of, the specified asset if the consideration is used for full or partial redemption of bonds in the period;
  - (b) the money deemed under subsection (5)(c)(ii) to be the consideration for the deemed disposal of an asset as, or as part of, the specified asset.
- (5) If an asset (*asset A*) that is or forms part of the specified asset under a lease arrangement is destroyed or lost—
- (a) the money arising from the destruction or loss is the total amount of the following—
    - (i) any insurance money or other compensation of any description arising in respect of the destruction or loss;
    - (ii) any consideration received for the disposal of any remains left of asset A after the destruction or loss;

- (b) if in a period—
  - (i) the money arising from the destruction or loss is received by the bond-issuer but is not used for full or partial redemption of bonds; and
  - (ii) the money or part of it is not used for any acquisition of an asset as, or as part of, the specified asset referred to in section 6(2)(a)(ii) of this Schedule,  
then the unused money or part is to be regarded as specified income paid under the arrangement in the period for the purposes of subsection (3); and
- (c) if the money arising from the destruction or loss is received by the bond-issuer who uses the money for full or partial redemption of bonds in a period, then—
  - (i) asset A is deemed to be disposed of in the period; and
  - (ii) the money arising from the destruction or loss is deemed to be consideration for the deemed disposal of asset A in the period.
- (6) If the formula is used for calculating the investment return payable under a specified investment arrangement in the period, then subsections (3), (4) and (5) apply with necessary modifications including—
  - (a) paid is to be read as payable;
  - (b) disposed of is to be read as to be disposed of;
  - (c) received is to be read as receivable; and
  - (d) used is to be read as to be used.

**11. Purchase and sale arrangement—investment return**

- (1) The investment return paid or payable under a purchase and sale arrangement in a period in the specified term is to be calculated in accordance with the following formula—

$$A + B$$

- (2) If the formula is used for calculating the investment return paid under a purchase and sale arrangement in the period—

A means—

- (a) for a purchase and sale arrangement described in section 8(2) of this Schedule, the markup referred to in that section, or part of it, that is paid under the arrangement in the period; or
- (b) for a purchase and sale arrangement described in section 8(3) of this Schedule, the total amount of the markups referred to in section 8(4)(b) of this Schedule paid under the arrangement in the period;

B means the total amount of any other sums paid by the originator to the bond-issuer under the arrangement in the period.

- (3) If the formula is used for calculating the investment return payable under a purchase and sale arrangement in the period, A and B have the meaning given by subsection (2), except that a reference in that subsection to paid is to be read as payable.



**12. Agency arrangement—investment return**

- (1) The investment return paid or payable under an agency arrangement in a period in the specified term is to be calculated in accordance with the following formula—

$$A + B - C$$

- (2) If the formula is used for calculating the investment return paid under an agency arrangement in the period—

A means the total amount of specified return (referred to in section 9(1)(c) of this Schedule) paid under the arrangement in the period;

B means the total amount of any other sums paid by the originator to the bond-issuer under the arrangement in the period;

C means the total amount of any agency fee and incentive fee (referred to in section 9(1)(c) of this Schedule) that is paid by the bond-issuer to the originator under the arrangement in the period.

- (3) If the formula is used for calculating the investment return payable under an agency arrangement in the period, A, B and C have the meaning given by subsection (2), except that a reference in that subsection to paid is to be read as payable.

**Division 3—Qualified Bond Arrangement, and Qualified Investment Arrangement, in Specified Alternative Bond Scheme Regarded as Debt Arrangements**

**13. Qualified bond arrangement, and qualified investment arrangement, in specified alternative bond scheme**

- (1) Subject to subsection (3), the bond arrangement in a specified alternative bond scheme is a *qualified bond*

- arrangement* at any time (*material time*) if the scheme at the material time complies with, and from the commencement of the specified term of the scheme up to the material time has always complied with—
- (a) the reasonable commercial return condition;
  - (b) the bond arrangement as financial liability condition;
  - (c) the Hong Kong connection condition;
  - (d) the maximum term length condition; and
  - (e) the arrangements performed according to terms condition.
- (2) Subject to subsection (4), the specified investment arrangement in a specified alternative bond scheme is a *qualified investment arrangement* at any time (*material time*) if—
- (a) the bond arrangement in the scheme at the material time is, and from the commencement of the specified term of the scheme up to the material time has always been, a qualified bond arrangement; and
  - (b) the scheme at the material time complies with, and from the commencement of the specified term up to the material time has always complied with—
    - (i) the bond-issuer as conduit condition; and
    - (ii) the investment arrangement as financial liability condition.
- (3) Despite subsection (1) but subject to section 28 of this Schedule, an arrangement in a scheme is to be regarded as never having been a qualified bond arrangement in a specified alternative bond scheme if a BA disqualifying event occurs in relation to the arrangement at any time during the specified term.

(4) Despite subsection (2) but subject to section 28 of this Schedule, an arrangement in a scheme is to be regarded as never having been a qualified investment arrangement in a specified alternative bond scheme if an IA disqualifying event occurs in relation to the arrangement at any time during the specified term.

(5) In this section—

**BA disqualifying event** (喪失債券安排資格事件), in relation to an arrangement in a scheme that has been claimed or accepted to be a qualified bond arrangement in a specified alternative bond scheme for the purposes of ascertaining the tax chargeable on a person, means—

- (a) the scheme is not a specified alternative bond scheme at any time during the specified term of the scheme; or
- (b) although the scheme is a specified alternative bond scheme at all times during the specified term of the scheme, the scheme fails to comply with any of the conditions specified in subsection (1) at any time during the specified term;

**IA disqualifying event** (喪失投資安排資格事件), in relation to an arrangement in a scheme that has been claimed or accepted to be a qualified investment arrangement in a specified alternative bond scheme for the purposes of ascertaining the tax chargeable on a person, means—

- (a) the scheme is not a specified alternative bond scheme at any time during the specified term of the scheme; or
- (b) although the scheme is a specified alternative bond scheme at all times during the specified term of the scheme, the scheme fails to comply with any of the conditions specified in subsection (1) or (2)(b) at any time during the specified term.

**14. Reasonable commercial return condition**

- (1) A specified alternative bond scheme complies with the reasonable commercial return condition if the requirements in subsections (2) and (3) are met.
- (2) The Commissioner is satisfied that, in each period ending on a scheduled payment date, the maximum total amount of the bond return that may be payable under the terms of the bond arrangement in the scheme will not exceed an amount that would be a reasonable commercial return on money borrowed of an amount equal to the bond proceeds.
- (3) In each period ending on an actual payment date, the total amount of the bond return actually paid under the bond arrangement in the scheme does not exceed an amount that would be a reasonable commercial return on money borrowed of an amount equal to the bond proceeds.
- (4) In this section—

*period ending on a scheduled payment date* (於預定付款日期告終的期間), in relation to a specified alternative bond scheme, means a period—

- (a) beginning on the commencement of the specified term of the scheme; and
- (b) ending on a date on which an additional payment, or the redemption payment or part of it, may be payable under the terms of the bond arrangement in the scheme;

*period ending on an actual payment date* (於實際付款日期告終的期間), in relation to a specified alternative bond scheme, means a period—

- (a) beginning on the commencement of the specified term of the scheme; and

- (b) ending on a date on which an additional payment, or the redemption payment or part of it, is actually paid under the bond arrangement in the scheme.
- (5) For the purposes of this section, the bond return paid or payable under a bond arrangement in a period in the specified term is to be calculated in accordance with the following formula—

$$(A - (B \times A / C)) + D$$

- (6) If the formula is used for calculating the bond return paid under a bond arrangement in the period—
  - A is the amount of the redemption payment or part of it that is paid under the arrangement in the period;
  - B is the whole amount of the bond proceeds under the arrangement;
  - C is the whole amount of the redemption payment under the arrangement;
  - D is the total amount of additional payments paid under the arrangement in the period.
- (7) If the formula is used for calculating the bond return payable under a bond arrangement in the period, A, B, C and D have the meaning given by subsection (6), except that a reference in that subsection to paid is to be read as payable.

**15. Bond arrangement as financial liability condition**

A specified alternative bond scheme complies with the bond arrangement as financial liability condition if the bond arrangement in the scheme—

- (a) is treated as a financial liability of the bond-issuer, in accordance with—

- (i) the Hong Kong Financial Reporting Standards (issued by the Hong Kong Institute of Certified Public Accountants); or
  - (ii) the International Financial Reporting Standards (issued by the International Accounting Standards Board); or
- (b) would be treated as a financial liability of the bond-issuer if the bond-issuer applied those standards.

#### **16. Hong Kong connection condition**

A specified alternative bond scheme complies with the Hong Kong connection condition if alternative bonds issued under the bond arrangement in the scheme—

- (a) are listed on a stock exchange in Hong Kong;
- (b) are issued in good faith and in the course of carrying on business in Hong Kong;
- (c) are marketed in Hong Kong; or
- (d) are lodged with and cleared by the Central Moneymarkets Unit operated by the Monetary Authority.

#### **17. Maximum term length condition**

- (1) A specified alternative bond scheme complies with the maximum term length condition if its specified term is not longer than 15 years.
- (2) The Financial Secretary may, by notice published in the Gazette, amend the period specified in subsection (1).

**18. Arrangements performed according to terms condition**

- (1) A specified alternative bond scheme complies with the arrangements performed according to terms condition if the bond arrangement and specified investment arrangement in the scheme are performed according to the terms of the arrangements as described—
  - (a) in section 2 of this Schedule; and
  - (b) in the provisions in Division 2 of this Part that describe the specified investment arrangement.
- (2) Despite subsection (1), a specified alternative bond scheme does not cease to comply with the arrangements performed according to terms condition solely because of a delay, of not more than 30 days, in disposing of the specified asset.

**19. Bond-issuer as conduit condition**

- (1) A specified alternative bond scheme complies with the bond-issuer as conduit condition if the requirements in subsections (2) and (3) are met.
- (2) The Commissioner is satisfied that, in each period ending on a scheduled payment date, the maximum total amount of the investment return that may be payable under the terms of the specified investment arrangement in the scheme will not exceed the maximum total amount of the bond return that may be payable under the terms of the bond arrangement in the scheme.
- (3) In each period ending on an actual payment date, the total amount of the investment return actually paid under the specified investment arrangement in the scheme does not exceed the total amount of the bond return actually paid under the bond arrangement in the scheme.

- (4) Section 14(4), (5), (6) and (7) of this Schedule applies for the purposes of this section in the same way it applies for the purposes of section 14 of this Schedule.

## **20. Investment arrangement as financial liability condition**

A specified alternative bond scheme complies with the investment arrangement as financial liability condition if the specified investment arrangement in the scheme—

- (a) is treated as a financial liability of the originator, in accordance with—
  - (i) the Hong Kong Financial Reporting Standards (issued by the Hong Kong Institute of Certified Public Accountants); or
  - (ii) the International Financial Reporting Standards (issued by the International Accounting Standards Board); or
- (b) would be treated as a financial liability of the originator if the originator applied those standards.

## **21. Qualified bond arrangement regarded as debt arrangement**

- (1) This Ordinance applies, with the modifications set out in this section, to a qualified bond arrangement in a specified alternative bond scheme.
- (2) For the purposes of this Ordinance, the qualified bond arrangement is to be regarded as a debt arrangement and—
  - (a) the bond proceeds paid by the bond-holders to the bond-issuer under the qualified bond arrangement are to be regarded as money borrowed by the bond-issuer from the bond-holders;



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- (b) the additional payments payable by the bond-issuer to the bond-holders under the qualified bond arrangement are to be regarded as interest payable on the money borrowed by the bond-issuer from the bond-holders;
  - (c) the bond-issuer is to be regarded as not being a trustee in respect of the specified asset under the specified alternative bond scheme; and
  - (d) the bond-holders are to be regarded as not having any legal or beneficial interest in the specified asset under the specified alternative bond scheme.
- (3) For the purposes of sections 14A and 26A of this Ordinance—
- (a) if the rights in an alternative bond under the qualified bond arrangement are transferable by delivery of the alternative bond, with or without endorsement, the alternative bond is to be regarded as an instrument specified in item 3 of Part 1 of Schedule 6;
  - (b) the issue of alternative bonds under the qualified bond arrangement is to be regarded as a debt issue for the purpose of paragraph (a) of the definition of *debt instrument* in section 14A(4) of this Ordinance; and
  - (c) if an alternative bond is for the purposes of section 14A of this Ordinance regarded as a debt instrument because of paragraphs (a) and (b), the making of the redemption payment for the alternative bond is to be regarded as the redemption on maturity or presentment of a debt instrument.
- (4) For the purposes of section 15(1)(j), (k) and (l) of this Ordinance—

- (a) if the rights in an alternative bond under the qualified bond arrangement are transferable by delivery of the alternative bond, with or without endorsement, the alternative bond is to be regarded as a certificate of deposit; and
  - (b) the making of the redemption payment for the alternative bond is to be regarded as the redemption on maturity or presentment of a certificate of deposit.
- (5) Section 16(2)(f) of this Ordinance is to apply to additional payments payable on alternative bonds under the qualified bond arrangement by the bond-issuer as if they were interest payable on debentures or instruments by the bond-issuer.
- (6) Section 20AC of this Ordinance and item 1 of Schedule 16 are to apply as if alternative bonds issued under the qualified bond arrangement were bonds for the purposes of paragraph (a) of the definition of *securities* in that Schedule.
- (7) For the purposes of section 26A of this Ordinance, the qualified bond arrangement is to be regarded as not being a mutual fund, unit trust or similar investment scheme described in subsection (1A)(a) of that section.

**22. Qualified investment arrangement regarded as debt arrangement**

- (1) This Ordinance applies, with the modifications set out in this section, to a qualified investment arrangement in a specified alternative bond scheme.
- (2) For the purposes of this Ordinance, the qualified investment arrangement is to be regarded as a debt arrangement in the following respects—

- (a) the acquisition cost under the qualified investment arrangement is to be regarded as money borrowed by the originator from the bond-issuer;
  - (b) the investment return payable under the qualified investment arrangement is to be regarded as interest payable on the money borrowed by the originator from the bond-issuer;
  - (c) the bond-issuer is to be regarded as not having any legal or beneficial interest in the specified asset under the specified alternative bond scheme.
- (3) For the purposes of this Ordinance, whether or not subsection (4) applies—
- (a) any specified asset transaction between O and BI under the qualified investment arrangement is to be disregarded;
  - (b) if an asset is acquired as, or as part of, the specified asset under the qualified investment arrangement by the bond-issuer from a third party, the asset is to be regarded as acquired by the originator directly from the third party;
  - (c) if an asset is disposed of as, or as part of, the specified asset under the qualified investment arrangement by the bond-issuer to a third party, the asset is to be regarded as disposed of by the originator directly to the third party; and
  - (d) any income, expenditure, profits, gains or losses arising from or attributable to any asset as, or as part of, the specified asset under the qualified investment arrangement are to be regarded as income, expenditure, profits, gains or losses (as the case requires) of the originator.

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- (4) If the qualified investment arrangement in the specified alternative bond scheme involves the bond-issuer holding, as the specified asset under the scheme, an interest in a business undertaking that is formed by the originator and the bond-issuer, then for the purposes of this Ordinance—
- (a) without limiting subsection (3)(a), the business undertaking, the acquisition of the interest in the business undertaking as the specified asset by the bond-issuer and the disposal of that interest in favour of the originator, are to be disregarded;
  - (b) any asset transaction between O and BU under the qualified investment arrangement is to be disregarded;
  - (c) if an asset is acquired by the business undertaking from a third party, the asset is to be regarded as acquired by the originator directly from the third party;
  - (d) if an asset is disposed of by the business undertaking to a third party, the asset is to be regarded as disposed of by the originator directly to the third party;
  - (e) any other business activities carried on by the business undertaking during the specified term are to be regarded as business activities carried on by the originator directly; and
  - (f) any income, expenditure, profits, gains or losses arising from or attributable to—
    - (i) an asset held by the business undertaking during the specified term; or
    - (ii) other business activities carried on by the business undertaking during that specified term,

are to be regarded as income, expenditure, profits, gains or losses (as the case requires) of the originator.

- (5) Without limiting subsection (2)(b), (3)(a) or (b) or (4)(b) or (c), the investment return, or any part of it, under the qualified investment arrangement that, but for this section, would have constituted consideration payable in respect of the right of use of land or buildings, or both, for the purposes of section 5B of this Ordinance is to be regarded as not being such consideration.
- (6) In relation to a qualified investment arrangement, *specified asset transaction between O and BI* in subsection (3)(a) or *asset transaction between O and BU* in subsection (4)(b) (as the case requires) has the meaning given by the provisions in Division 2 of this Part in which the relevant specified investment arrangement is described.
- (7) Section 16(2)(f)(iii) of this Ordinance is to apply—
  - (a) as if the alternative bonds issued under the qualified bond arrangement in the specified alternative bond scheme were debentures or instruments; and
  - (b) for the bond-issuer who is not an associated corporation of the originator, as if the bond-issuer were an associated corporation of the originator.
- (8) Subsection (7)(b) does not apply to a qualified investment arrangement in a specified alternative bond scheme to which section 3(1) of this Schedule applies if—
  - (a) any of the other schemes referred to in that section is not, or is not intended to be, a specified alternative bond scheme; or

- (b) although each of those other schemes is, or is intended to be, a specified alternative bond scheme, any of those other schemes does not comply, or is not intended to comply with—
  - (i) the reasonable commercial return condition;  
or
  - (ii) the bond-issuer as conduit condition.

### **Division 4—Miscellaneous**

#### **23. Power to amend Division 2 of this Part, etc.**

The Financial Secretary may, by notice published in the Gazette—

- (a) amend Division 2 of this Part, including—
  - (i) adding any investment arrangement into that Division as a specified investment arrangement, and providing for calculation of its investment return; and
  - (ii) specifying any transaction as a specified asset transaction between O and BI or an asset transaction between O and BU; and
- (b) make amendments to section 1 of this Schedule if the amendments are consequential on or necessary as a result of any amendments made under paragraph (a).

## Part 3

### Record-keeping, Notifications, Assessments and Other Miscellaneous Matters

#### 24. Interpretation (Part 3 of this Schedule)

- (1) Subsections (2), (3) and (4) apply for the purposes of this Part.
- (2) In relation to an arrangement in a scheme and for a year of assessment—
  - (a) a person makes a BA claim if, for the purposes of ascertaining the tax chargeable on the person for the year of assessment, the person claims—
    - (i) that the arrangement is a qualified bond arrangement in a specified alternative bond scheme; and
    - (ii) that the person is the bond-issuer under the alleged specified alternative bond scheme; and
  - (b) a person makes an IA claim if, for the purposes of ascertaining the tax chargeable on the person for the year of assessment, the person claims—
    - (i) that the arrangement is a qualified investment arrangement in a specified alternative bond scheme; and
    - (ii) that the person is the originator or bond-issuer under the alleged specified alternative bond scheme.
- (3) A BA claim or IA claim by a person in relation to an arrangement in a scheme for a year of assessment is accepted if the matters specified in subsection (2)(a) or (b) (as the case requires) are accepted for the purposes specified in that subsection.

- (4) A reference to the disqualification of an arrangement is a reference to—
- (a) if the arrangement is one for which a BA claim by a person for a year of assessment has been accepted, the fact that the arrangement is under section 13(3) of this Schedule regarded as never having been a qualified bond arrangement in a specified alternative bond scheme; or
  - (b) if the arrangement is one for which an IA claim by a person for a year of assessment has been accepted, the fact that the arrangement is under section 13(4) of this Schedule regarded as never having been a qualified investment arrangement in a specified alternative bond scheme.

(5) In this Part—

***specified assessment*** (指明評稅) has the meaning given by section 27(7)(c) of this Schedule;

***specified event*** (指明事件) means—

- (a) (for a person who has made a BA claim, or whose BA claim has been accepted, in relation to an arrangement in a scheme) a BA disqualifying event; or
- (b) (for a person who has made an IA claim, or whose IA claim has been accepted, in relation to an arrangement in a scheme) an IA disqualifying event.

## 25. Records to be kept

- (1) Section 51C of this Ordinance applies, with the modifications specified in subsection (2), to a person who makes a BA claim or IA claim in relation to an arrangement in a scheme (***alleged specified alternative bond scheme***) for the purposes of ascertaining the



assessable profits of the trade, profession or business for any year of assessment.

- (2) The person must retain records relating to transactions, acts or operations relating to the alleged specified alternative bond scheme under section 51C(1) of this Ordinance at least until the later of the following—
  - (a) the expiry of 7 years after the completion of the transactions, acts or operations to which they relate; or
  - (b) the expiry of 3 years after the end of the specified term of the scheme.
- (3) Section 80 of this Ordinance applies to a failure to comply with section 51C of this Ordinance, as modified by subsection (2) in the same way that section 80 applies to a failure to comply with that section 51C.
- (4) Subsection (1) ceases to apply to the retention, by a person who makes a BA claim or IA claim in relation to an arrangement in an alleged specified alternative bond scheme, of records relating to transactions, acts or operations relating to the scheme if—
  - (a) one or more assessments have been made on the person on the basis that the claim is not accepted for any years of assessment, and the assessments have all become final and conclusive under section 70 of this Ordinance; or
  - (b) after the claim has been accepted for any years of assessment, one or more specified assessments have been made on the person because of the disqualification of the arrangement, and the specified assessments have all become final and conclusive under section 70 of this Ordinance.

**26. Obligation to inform Commissioner of disqualifying event**

- (1) A person who has made a BA claim or IA claim in relation to an arrangement in a scheme must inform the Commissioner, in writing, of any specified event that occurs in relation to the arrangement within 30 days after the occurrence.
- (2) The following provisions apply as if references in those provisions to a failure to comply with section 51(2) of this Ordinance included a failure to comply with subsection (1)—
  - (a) section 80 of this Ordinance;
  - (b) section 82A of this Ordinance.
- (3) A person who has made a BA claim or IA claim in relation to an arrangement in a scheme is not required to inform the Commissioner of a specified event in relation to the arrangement under subsection (1) if—
  - (a) one or more assessments have been made on the person on the basis that the claim is not accepted for any years of assessment, and the assessments have all become final and conclusive under section 70 of this Ordinance; or
  - (b) after the claim has been accepted for any years of assessment, one or more specified assessments have been made on the person on the basis that the arrangement is disqualified because of an earlier specified event, and the specified assessments have all become final and conclusive under section 70 of this Ordinance.

**27. Additional assessments; tax paid in excess to be refunded**

- (1) In this section, an arrangement in a scheme is an *accepted arrangement* in relation to a person and a year of assessment if the person's BA claim or IA claim in relation to the arrangement has been accepted

- for the purposes of ascertaining the tax chargeable on the person for the year of assessment.
- (2) Section 60 of this Ordinance applies, with modifications specified in subsection (3), to the making of an assessment or additional assessment on a person for a year of assessment because of the disqualification of an accepted arrangement.
  - (3) For the purposes of subsection (2), each of the following periods begins to run after the expiry of the year of disqualification if that year falls after the year of assessment—
    - (a) 6 years referred to in section 60(1) of this Ordinance;
    - (b) 10 years referred to in paragraph (b) of the proviso to section 60(1) of this Ordinance; and
    - (c) 6 years referred to in section 60(2) of this Ordinance.
  - (4) Section 79 of this Ordinance applies, with modifications specified in subsections (5) and (6), to an amount of tax that is, because of the disqualification of an accepted arrangement, found to be paid in excess by a person for a year of assessment.
  - (5) For the purposes of subsection (4), the period of 6 years referred to in section 79(1) of this Ordinance begins to run after the end of the year of disqualification if that year falls after the year of assessment.
  - (6) If—
    - (a) because of the disqualification of an accepted arrangement, an assessor makes an assessment or additional assessment under section 60 of this Ordinance on the person for a year of assessment; and

- (b) it appears to the assessor that, because of the same disqualification, an amount of tax has been paid in excess by the person for another year of assessment,  
then, even in the absence of a claim in writing being made under section 79 of this Ordinance for the refund—
  - (c) a refund of that amount of tax paid in excess may be made under section 79 of this Ordinance; or
  - (d) the refundable amount may be set off against any amount payable under the assessment or additional assessment referred to in paragraph (a).
- (7) The provisions of this Ordinance relating to a notice of assessment, appeal and other proceedings that apply—
  - (a) to an assessment, additional assessment or reassessment made under section 60 or 79 (as the case requires) of this Ordinance; and
  - (b) to any tax charged under it,  
are to apply—
    - (c) to an assessment, additional assessment or reassessment (*specified assessment*) made under section 60 or 79 (as the case requires) of this Ordinance as modified by this section; and
    - (d) to any tax charged accordingly.
- (8) Despite subsection (7), if—
  - (a) a specified assessment is made for a year of assessment because of the disqualification of an accepted arrangement; and
  - (b) a person makes an objection under section 64 of this Ordinance against the specified assessment, disputing the disqualification,

the objection is to be regarded as objections so made by the person against all specified assessments made for all years of assessment because of that disqualification.

(9) In this section—

*year of disqualification* (喪失資格年度), in relation to a person whose BA claim or IA claim in relation to an arrangement in a scheme has been accepted, means the year of assessment in which—

- (a) a specified event occurs in relation to the arrangement; or
- (b) if there are 2 or more specified events, the earliest specified event occurs in relation to the arrangement.

**28. Delay in disposing of specified asset may be disregarded in certain circumstances**

- (1) Section 13(3) and (4) of this Schedule does not apply in relation to an arrangement in a scheme, despite the fact that a BA disqualifying event or IA disqualifying event occurs in relation to the arrangement, if—
  - (a) the scheme is at the time of the occurrence, and from the commencement of the specified term of the scheme up to that time has always been, a specified alternative bond scheme;
  - (b) among the conditions specified in section 13(1) and (2)(b) of this Schedule, the scheme only fails to comply with the arrangements performed according to terms condition; and
  - (c) the Commissioner disregards the non-compliance under subsection (2).
- (2) The Commissioner may disregard a non-compliance with the arrangements performed according to terms condition by a specified alternative bond scheme if—

- (a) the non-compliance was solely constituted by a delay, of more than 30 days, in disposing of the specified asset; and
- (b) it is proved to the satisfaction of the Commissioner that there was a reasonable excuse for the delay.

**29. Commissioner may apportion acquisition cost**

For the purposes of calculating, under Division 2 of Part 2 of this Schedule, the investment return under a specified investment arrangement in a specified alternative bond scheme under which the specified asset is or is to be disposed of in parts, the Commissioner may allocate a part of the acquisition cost as attributable to each part of the specified asset having regard to all the circumstances of the scheme.”.

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## Part 3

### Amendments to Inland Revenue Ordinance—Other Amendments and Transitional Provisions

5. **Section 5B amended (ascertainment of assessable value on or after 1 April 1983)**

After section 5B(6)—

**Add**

“(7) Section 22 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section.”.

6. **Section 14A amended (qualifying debt instruments)**

(1) Section 14A(4), definition of *debt instrument*, paragraph (g)—

**Repeal**

“14 November 2003”

**Substitute**

“24 May 1996”.

(2) A relevant instrument is to be regarded as a debt instrument within the meaning of section 14A of the IRO in relation to a year of assessment to the extent to which it would have been such a debt instrument if paragraph (g) of the definition of *debt instrument* in subsection (4) of that section, as amended by subsection (1) of this section, had always been in force.

(3) If, for the purposes of an assessment made before the date of commencement of subsection (1), a relevant instrument was regarded as a debt instrument within the meaning of section 14A of the IRO, the assessment is to be regarded as valid to the extent to which it would have been valid if

paragraph (g) of the definition of *debt instrument* in subsection (4) of that section, as amended by subsection (1) of this section, had always been in force.

(4) For the purposes of subsections (2) and (3)—

*IRO* (《條例》) means the Inland Revenue Ordinance (Cap. 112);

*relevant instrument* (相關票據) means an instrument issued on or after 24 May 1996 but before 14 November 2003.

(5) After section 14A(5)—

**Add**

“(6) Section 21 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section.”.

**7. Section 15 amended (certain amounts deemed trading receipts)**

After section 15(3)—

**Add**

“(3A) Section 21 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to subsection (1)(j), (k) and (l).”.

**8. Section 16 amended (ascertainment of chargeable profits)**

After section 16(4)—

**Add**

“(4A) Sections 21 and 22 of Schedule 17A (specified alternative bond scheme and its tax treatment) provide for modifications to subsection (2)(f).”.

**9. Section 20AC amended (certain profits of non-resident persons exempt from tax)**

After section 20AC(6)—



**Add**

“(7) Section 21 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section.”.

**10. Section 26A amended (exclusion of certain profits from tax)**

After section 26A(3)—

**Add**

“(4) Section 21 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section.”.

**11. Section 51C amended (business records to be kept)**

After section 51C(4)—

**Add**

“(5) Section 25 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section.”.

**12. Section 60 amended (additional assessments)**

After section 60(3)—

**Add**

“(4) Section 27 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section.”.

**13. Section 64 amended (objections)**

After section 64(10)—

**Add**

“(11) Section 27 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section.”.

**14. Section 79 amended (tax paid in excess to be refunded)**

After section 79(3)—

**Add**

“(4) Section 27 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section.”.

**15. Section 80 amended (penalties for failure to make returns, making incorrect returns, etc.)**

After section 80(5)—

**Add**

“(6) Sections 25 and 26 of Schedule 17A (specified alternative bond scheme and its tax treatment) provide for modifications to this section.”.

**16. Section 82A amended (additional tax in certain cases)**

After section 82A(7)—

**Add**

“(8) Section 26 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section.”.

**17. Section 89 amended (transitional provisions)**

After section 89(10)—

**Add**

“(11) Schedule 29 sets out transitional provisions that have effect for the purposes of amendments to this Ordinance made by the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013 (10 of 2013).”.

**18. Schedule 6 amended**

(1) Schedule 6—

**Repeal**

“& (3)”

**Substitute**

“& (3) & Schs. 17A & 29”.

(2) Schedule 6, Part 1, item 3—

**Repeal**

“Any”

**Substitute**

“Subject to section 21(3)(a) of Schedule 17A (specified alternative bond scheme and its tax treatment), any”.

**19. Schedule 16 amended (specified transactions)**

(1) Schedule 16—

**Repeal**

“[s. 20AC]”

**Substitute**

“[s. 20AC & Schs. 17A & 29]”.

(2) Schedule 16, definition of *securities*, paragraph (a)—

**Repeal**

“shares”

**Substitute**

“subject to section 21(6) of Schedule 17A (specified alternative bond scheme and its tax treatment), shares”.

**20. Schedule 29 added**

After Schedule 28—

**Add**

**“Schedule 29**

[s. 89(11)]

**Transitional Provisions for Inland Revenue and  
Stamp Duty Legislation (Alternative Bond  
Schemes) (Amendment) Ordinance 2013**

1. The amendments made to sections 5B, 14A, 15, 16, 20AC, 26A, 51C, 60, 64, 79, 80 and 82A of, and Schedules 6 and 16 to, this Ordinance by sections 5, 6(5), 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18 and 19 of the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013 (10 of 2013) (**2013 Amendment Ordinance**), do not apply to an alternative bond scheme, or the bond arrangement or investment arrangement in it, if alternative bonds are issued under the bond arrangement in the scheme before the date of commencement of section 3 of the 2013 Amendment Ordinance.
  2. Section 40AB of, and Schedule 17A to, this Ordinance do not apply to an alternative bond scheme, or the bond arrangement or investment arrangement in it, if alternative bonds are issued under the bond arrangement in the scheme before the date of commencement of section 3 of the 2013 Amendment Ordinance.”.
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## Part 4

### Amendments to Stamp Duty Ordinance—Parts VA and VB and Schedule 6 Added

21. **Part VA added**  
After Part V—  
**Add**

#### “Part VA

#### Relief for Certain Transactions in relation to Specified Alternative Bond Scheme

**Note—**

This Part provides for stamp duty relief for instruments executed in relation to the bond arrangement, or investment arrangement, in a specified alternative bond scheme if certain conditions are met.

(This Note does not have legislative effect.)

#### 47C. Interpretation

- (1) In this Part, subject to subsection (2), an expression specified below has the same meaning as it has in Schedule 17A to the Inland Revenue Ordinance (Cap. 112)—

***alternative bond*** (另類債券)

***arrangements performed according to terms condition***  
(按條款履行安排條件)

***asset transaction between O and BU*** (發起人—業務實體  
資產交易)

***bond arrangement*** (債券安排)

***bond arrangement as financial liability condition*** (債券安排作金融負債條件)

***bond-holder*** (持債人)

***bond-issuer*** (發債人)

***bond-issuer as conduit condition*** (發債人作轉付者條件)

***Hong Kong connection condition*** (與香港關連條件)

***investment arrangement*** (投資安排)

***investment arrangement as financial liability condition***  
(投資安排作金融負債條件)

***investment return*** (投資回報)

***maximum term length condition*** (最長年期條件)

***originator*** (發起人)

***reasonable commercial return condition*** (合理商業回報條件)

***specified alternative bond scheme*** (指明另類債券計劃)

***specified asset*** (指明資產)

***specified asset transaction between O and BI*** (發起人—發債人指明資產交易)

***specified investment arrangement*** (指明投資安排)

***specified term*** (指明年期)

- (2) For the purposes of the definitions of ***bond-issuer as conduit condition*** and ***reasonable commercial return condition*** in subsection (1), sections 19 and 14 of Schedule 17A to the Inland Revenue Ordinance (Cap. 112) are to be read as if references to the Commissioner in those sections were references to the Collector.
- (3) In this Part, an expression specified in column 1 of the Table below has the meaning given by the section specified opposite to it in column 2 of the Table—

**Table**

Column 1 Expression	Column 2 Section
<i>IA disqualifying event</i> (喪失投資安排資格事件)	47D(4)
<i>qualified bond arrangement</i> (合資格債券安排)	47D(1)
<i>qualified investment arrangement</i> (合資格投資安排)	47D(2)

**47D. Qualified bond arrangement, and qualified investment arrangement, in specified alternative bond scheme**

- (1) The bond arrangement in a specified alternative bond scheme is a *qualified bond arrangement* at any time (*material time*) if the scheme at the material time complies with, and from the commencement of the specified term of the scheme up to the material time has always complied with—
  - (a) the reasonable commercial return condition;
  - (b) the bond arrangement as financial liability condition;
  - (c) the Hong Kong connection condition;
  - (d) the maximum term length condition; and
  - (e) the arrangements performed according to terms condition.
- (2) Subject to subsection (3), the specified investment arrangement in a specified alternative bond scheme is a *qualified investment arrangement* at any time (*material time*) if—

- (a) the bond arrangement in the scheme at the material time is, and from the commencement of the specified term of the scheme up to the material time has always been, a qualified bond arrangement; and
- (b) the scheme at the material time complies with, and from the commencement of the specified term up to the material time has always complied with—
  - (i) the bond-issuer as conduit condition; and
  - (ii) the investment arrangement as financial liability condition.
- (3) Despite subsection (2) but subject to section 47H(6), an arrangement in a scheme is to be regarded (except in relation to section 47J) as never having been a qualified investment arrangement in a specified alternative bond scheme if an IA disqualifying event occurs in relation to the arrangement at any time during the specified term.

(4) In this section—

**IA disqualifying event** (喪失投資安排資格事件), in relation to an arrangement in a scheme that has been claimed or accepted to be a qualified investment arrangement in a specified alternative bond scheme for the purposes of determining the stamp duty (if any) with which an instrument is chargeable, means—

- (a) the scheme is not a specified alternative bond scheme at any time during the specified term of the scheme; or
- (b) although the scheme is a specified alternative bond scheme at all times during the specified term of the scheme, the scheme fails to comply with any of the conditions specified in subsection (1) or (2)(b) at any time during the specified term.



- (5) For the purposes of this section, provisions of Schedule 17A to the Inland Revenue Ordinance (Cap. 112) relating to the calculation of the investment return under a specified investment arrangement apply—
- (a) in the same way in which those provisions apply to the calculation of the investment return under a specified investment arrangement for the purposes of that Ordinance; and
  - (b) as if a reference to the Commissioner in those provisions were a reference to the Collector.

**47E. Alternative bond under qualified bond arrangement regarded as bond**

For the purposes of this Ordinance—

- (a) the bond-holders under a qualified bond arrangement in a specified alternative bond scheme are to be regarded as not having any legal or beneficial interest in the specified asset under the specified alternative bond scheme; and
- (b) an alternative bond issued under such a qualified bond arrangement is to be regarded as a bond to which neither paragraph (b) nor (c) of the definition of *loan capital* in section 2(1) applies.

**47F. Relief on transactions under qualified investment arrangement**

- (1) Subject to sections 47H, 47I and 47L, an instrument is not chargeable with stamp duty under head 1(1), 1(1AA), 1(1A), 1(1B), 1(2), 2(1), 2(3) or 2(4) in the First Schedule or under section 29D(2)(a) if the requirements under subsections (2) and (3) are complied with in relation to the instrument.
- (2) It must be shown to the satisfaction of the Collector that—

- (a) the instrument is executed under a qualified investment arrangement in a specified alternative bond scheme either—
    - (i) to effect a transaction that is a specified asset transaction between O and BI or an asset transaction between O and BU under that qualified investment arrangement (*IA transaction*); or
    - (ii) as an agreement for an IA transaction; or
  - (b) the instrument is required by this Ordinance to be made and executed for effecting an IA transaction.
- (3) Security must be given to the satisfaction of the Collector for the payment of—
- (a) the stamp duty that, but for this section, would have been chargeable on the instrument; and
  - (b) other amounts that, but for this section, would have been payable under this Ordinance.

**47G. Relief resulting from modification of sections 29CA and 29DA in relation to property held, or formerly held, under qualified investment arrangement**

- (1) Sections 29CA and 29DA apply, with the modifications specified in Schedule 6, to an agreement for sale or a conveyance on sale if it is shown to the satisfaction of the Collector that—
- (a) the agreement or conveyance falls within section 1 of that Schedule; and
  - (b) the requirements under subsection (2) or (3) are complied with.

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- (2) If the operation of subsection (1) will result in the agreement or conveyance not being chargeable with special stamp duty under head 1(1B) or 1(1AA) in the First Schedule, security must be given to the satisfaction of the Collector for the payment of—
    - (a) the special stamp duty that, but for subsection (1), would have been chargeable on the agreement or conveyance; and
    - (b) other amounts that, but for subsection (1), would have been payable under this Ordinance.
  - (3) If the operation of subsection (1) will result in the agreement or conveyance being chargeable with special stamp duty under head 1(1B) or 1(1AA) in the First Schedule of an amount that is less than the amount that would have been chargeable but for subsection (1), security must be given to the satisfaction of the Collector for the payment of—
    - (a) the amount by which the special stamp duty chargeable will be reduced by the operation of subsection (1); and
    - (b) the excess of the amounts (other than the special stamp duty) that, but for subsection (1), would have been payable under this Ordinance over the amounts (other than the special stamp duty) that will be payable with the operation of subsection (1).
  - (4) In this Ordinance, a reference to relief granted under this section for an agreement for sale or a conveyance on sale is a reference to the fact that the agreement or conveyance is stamped on the basis—
    - (a) that the agreement or conveyance is not chargeable with special stamp duty under head 1(1B) or 1(1AA) in the First Schedule because of subsection (1); or

- (b) that the agreement or conveyance is chargeable with special stamp duty under head 1(1B) or 1(1AA) in the First Schedule of an amount that is less than the amount that would have been chargeable, but for subsection (1).

**47H. Relief granted under section 47F or 47G deemed withdrawn**

- (1) This section applies if—
  - (a) a claim for relief from stamp duty has been made under section 47F or 47G for any instrument, alleging that—
    - (i) an arrangement (*alleged qualified investment arrangement*) in a scheme (*alleged specified ABS*) is a qualified investment arrangement in a specified alternative bond scheme; and
    - (ii) particular persons are respectively the originator and bond-issuer under the alleged specified ABS (*alleged originator* and *alleged bond-issuer*); and
  - (b) an IA disqualifying event occurs in relation to the alleged qualified investment arrangement.
- (2) If this section applies—
  - (a) the alleged originator and alleged bond-issuer under the alleged specified ABS must inform the Collector, in writing, of the IA disqualifying event within 30 days after the event occurs;
  - (b) if any relief from stamp duty has been granted by the Collector under section 47F or 47G for the instrument, then subject to section 13(6)—
    - (i) the relief is deemed to be withdrawn;
    - (ii) for a relief granted under section 47F, the parties to the instrument are liable or jointly and severally liable (as the case requires) to

- pay to the Collector, by way of stamp duty, an amount equal to the stamp duty that would have been chargeable on the instrument had the relief not been granted;
- (iii) for a relief granted under section 47G for an instrument that is an agreement for sale or a conveyance on sale, the vendor under the agreement or the transferor under the conveyance (as the case requires) is liable to pay to the Collector, by way of stamp duty, an amount equal to—
    - (A) for an agreement or a conveyance that is not chargeable with special stamp duty because of the relief—the special stamp duty that would have been chargeable on the agreement or conveyance had the relief not been granted; or
    - (B) for an agreement or a conveyance that, because of the relief, is chargeable with special stamp duty of an amount that is less than the amount that would have been chargeable but for the relief—the amount by which the special stamp duty chargeable is reduced because of the relief; and
  - (iv) the amount payable under subparagraph (ii) or (iii) must be paid—
    - (A) within 30 days after the IA disqualifying event occurs; or
    - (B) if there are 2 or more IA disqualifying events, within 30 days after the earliest IA disqualifying event occurs.
- (3) If the amount payable under subsection (2)(b)(ii) or (iii) is not paid within the 30 days referred to in subsection (2)(b)(iv)—

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- (a) for a relief granted under section 47F, the parties to the instrument are liable or jointly and severally liable (as the case requires) to a penalty;
  - (b) for a relief granted under section 47G for an instrument that is an agreement for sale or a conveyance on sale, the vendor under the agreement or the transferor under the conveyance (as the case requires) is liable to a penalty; and
  - (c) the amount of the penalty payable under paragraph (a) or (b) after a lapse of a period of time after the 30 days referred to in subsection (2)(b)(iv) is the same as that calculated under section 9 for an instrument chargeable with stamp duty of an amount equal to the amount payable under subsection (2)(b)(ii) or (iii) that—
    - (i) is not stamped before or within the time for stamping it; and
    - (ii) is stamped after the lapse of the same period of time after the time for stamping it.
- (4) An IA disqualifying event in relation to the alleged qualified investment arrangement is not required to be notified under subsection (2)(a) if—
- (a) either—
    - (i) relief from stamp duty under section 47F or 47G is denied; or
    - (ii) because of an earlier IA disqualifying event in relation to the alleged qualified investment arrangement, relief granted under section 47F or 47G for an instrument on the basis referred to in subsection (1)(a) is deemed to be withdrawn;
  - (b) an assessment of the stamp duty payable for the instrument has been made under section 13 or 47L; and

- (c) either—
  - (i) the assessment has become final and conclusive under section 13(8) or 47L(3); or
  - (ii) the denial or deemed withdrawal of the relief has been confirmed by the court on appeal.
- (5) A person who fails to comply with subsection (2)(a) incurs a penalty at level 2 which is recoverable by the Collector as a civil debt due to the Government.
- (6) Subsections (2)(b) and (3) and section 47D(3) do not apply, despite the occurrence of an IA disqualifying event in relation to an alleged qualified investment arrangement, if—
  - (a) the alleged specified ABS at the time the event occurs is, and from the commencement of the specified term of the scheme up to the time the event occurs has always been, a specified alternative bond scheme;
  - (b) among the conditions specified in section 47D(1) and (2)(b), the alleged specified ABS only fails to comply with the arrangements performed according to terms condition; and
  - (c) the Collector disregards the non-compliance under subsection (7).
- (7) For the purposes of subsection (6), the Collector may disregard a non-compliance with the arrangements performed according to terms condition by a specified alternative bond scheme if—
  - (a) the non-compliance was solely constituted by a delay, of more than 30 days, in disposing of the specified asset; and
  - (b) it is proved to the satisfaction of the Collector that there was a reasonable excuse for the delay.

- (8) The Collector may remit the whole or any part of any penalty payable under subsection (3).

**47I. Instrument to be duly stamped**

An instrument to which section 47F(1) or 47G(1) applies is not duly stamped unless—

- (a) it is stamped with the stamp duty with which it would be chargeable but for section 47F or 47G; or
- (b) 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.

**47J. Records and returns**

- (1) This section applies to a person (*specified person*) if relief from stamp duty is granted under section 47F or 47G for an instrument on the basis that—
  - (a) an arrangement (*alleged qualified investment arrangement*) in a scheme (*alleged specified ABS*) is a qualified investment arrangement in a specified alternative bond scheme; and
  - (b) the specified person is the originator or the bond-issuer under the alleged specified ABS.
- (2) A specified person—
  - (a) must keep proper and sufficient books and records in the English or Chinese language of transactions, acts or operations to which the alleged specified ABS relates so as to enable determinations under this Ordinance to be made; and



- (b) must retain the books and records at least until the expiry of 1 year after the end of the specified term of the alleged specified ABS.
- (3) Subsection (2) does not require a specified person to keep—
  - (a) any books or records that the Collector has specified as books or records that need not be kept by the person; or
  - (b) any books or records of a body corporate that has ceased to exist.
- (4) For the purposes of making a determination under this Ordinance, the Collector—
  - (a) may give notice in writing to a specified person, requiring the specified person—
    - (i) to furnish a return within a reasonable time stated in the notice; or
    - (ii) to furnish returns at any time intervals stated in the notice; and
  - (b) may specify in the notice—
    - (i) the information relating to the alleged specified ABS to be contained in the return; and
    - (ii) the form in which the return is to be furnished.
- (5) Without limiting subsection (2) or (4), a determination under this Ordinance includes a determination as to—
  - (a) whether to grant relief under section 47F or 47G for an instrument on the basis referred to in subsection (1)(a) or whether such relief is deemed to be withdrawn under section 47H; and

- (b) whether an IA disqualifying event has occurred in relation to the alleged qualified investment arrangement.
- (6) A person who fails to comply with subsection (2), or a requirement in a notice given under subsection (4), incurs a penalty at level 2 which is recoverable by the Collector as a civil debt due to the Government.
- (7) This section ceases to apply to a specified person in relation to the alleged qualified investment arrangement in the alleged specified ABS if, for each instrument for which relief under section 47F or 47G has been granted to the specified person on the basis referred to in subsection (1)—
  - (a) the relief is deemed to be withdrawn under section 47H;
  - (b) an assessment of the stamp duty payable has been made under section 47L; and
  - (c) either—
    - (i) the assessment has become final and conclusive under section 47L(3); or
    - (ii) the deemed withdrawal of the relief has been confirmed by the court on appeal.

**47K. Offence in respect of false or misleading information**

- (1) A person commits an offence if—
  - (a) the person, with intent to defraud the Government of any stamp duty, causes or allows—
    - (i) an entry to be made in the books and records kept under section 47J; or
    - (ii) particulars to be furnished in a return made under section 47J; and

- (b) the entry or particulars are false or misleading in a material respect.
- (2) A person who commits an offence under this section is liable for the fine and imprisonment specified in section 60.”.

**22. Part VB added**

Before Part VI—

**Add**

**“Part VB**

**Assessment after Deemed Withdrawal of Relief**

**47L. Assessment after deemed withdrawal of relief under section 45 or 47H**

- (1) The Collector—
  - (a) may make an assessment of the stamp duty payable for an instrument under a specified liability provision, on a person who is liable for the stamp duty; and
  - (b) may serve on the person a notice of the assessment by post within 7 days from the date on which the assessment is made.
- (2) If required by a person liable under a specified liability provision for the stamp duty payable for an instrument under that provision, the Collector—
  - (a) must make an assessment of the stamp duty so payable for the instrument; and
  - (b) must serve on the person a notice of the assessment by post within 7 days from the date on which the assessment is made.

- (3) An assessment under subsection (1) or (2) is, after the expiry of 1 month from the date on which the assessment is made, final and conclusive for all purposes as against the person, except if and to the extent to which an appeal made against it under section 14 succeeds.
- (4) If, within 1 month from the date on which an assessment is made, it appears to the Collector that the amount of the stamp duty so assessed is excessive—
  - (a) the Collector may cancel the assessment and make another assessment instead as the Collector may consider proper; and
  - (b) a reference in this Ordinance to an assessment includes an assessment so made instead.
- (5) Subsections (1) and (2) do not relieve a person of the person's liability to any penalty to which the person would otherwise be liable under a specified penalty provision.
- (6) A person liable for the stamp duty payable under a specified liability provision for an instrument is liable to pay to the Collector an additional stamp duty if—
  - (a) an amount of stamp duty is paid purporting to be the stamp duty payable for the instrument under the specified liability provision;
  - (b) the amount is less than the amount of the stamp duty so payable for the instrument as assessed by the Collector; and
  - (c) the difference is not paid by the expiry of 1 month from the date on which the assessment is made.
- (7) The amount of additional stamp duty payable under subsection (6) is of an amount equal to interest on the amount of the outstanding duty at the rate of 4 cents per \$100 (or part of \$100) per day for the period—

- (a) beginning on the expiry of 1 month from the date on which the assessment is made; and
  - (b) ending on the date of the full payment of the outstanding duty and additional stamp duty.
- (8) Subsections (6) and (7) do not relieve a person of—
- (a) the person's liability for the payment of the outstanding duty for which the person would otherwise be liable under a specified liability provision; or
  - (b) the person's liability to any penalty to which the person would otherwise be liable under a specified penalty provision.
- (9) The Collector may remit the whole or any part of any additional stamp duty payable under subsection (7).
- (10) In this section—
- specified liability provision*** (指明法律責任條文) means—
- (a) in relation to an instrument for which relief has been granted under section 45, section 45(5A)(c); or
  - (b) in relation to an instrument for which relief has been granted under section 47F or 47G, section 47H(2)(b);
- specified penalty provision*** (指明罰款條文) means—
- (a) if section 45(5A)(c) is the specified liability provision, section 45(5A)(d); or
  - (b) if section 47H(2)(b) is the specified liability provision, section 47H(3).”

**23. Schedule 6 added**

After Fifth Schedule—

**Add**

**“Schedule 6** [s. 47G & Sch. 7]

**Sections 29CA and 29DA of this Ordinance  
Modified in relation to Property Held, or  
Formerly Held, under Qualified Investment  
Arrangement**

**1. Application of this Schedule**

Sections 29CA and 29DA of this Ordinance apply, with the modifications specified in this Schedule, to an agreement for sale or a conveyance on sale under which a residential property (*property*) is disposed of if—

- (a) a person (*person A*) is the originator under a qualified investment arrangement in a specified alternative bond scheme;
- (b) either—
  - (i) the property is held or was formerly held as, or as part of, the specified asset under the arrangement; or
  - (ii) if the arrangement involves the bond-issuer holding, as specified asset, an interest in a business undertaking formed by person A and the bond-issuer, the property is held or was formerly held by the business undertaking;
- (c) either—
  - (i) if paragraph (b)(i) applies, person A or the bond-issuer; or
  - (ii) if paragraph (b)(ii) applies, person A or the business undertaking,

is the vendor under the agreement or the transferor under the conveyance (as the case requires); and

- (d) the agreement or conveyance is not an agreement or conveyance for a specified asset transaction between O and BI or an asset transaction between O and BU under the arrangement.

**2. Modifications if property is disposed of after acquisition**

- (1) A reference to the vendor or transferor acquiring the property in section 29CA(1), (2), (5) or (6) or 29DA(1), (2), (5) or (6) of this Ordinance is to be read as a reference to—
  - (a) if section 1(b)(i) of this Schedule applies, either—
    - (i) the bond-issuer acquiring the property from a third party; or
    - (ii) person A acquiring the property from a third party before it was acquired by the bond-issuer from person A as originator; or
  - (b) if section 1(b)(ii) of this Schedule applies, either—
    - (i) the business undertaking acquiring the property from a third party; or
    - (ii) person A acquiring the property from a third party before it was acquired by the business undertaking from person A as originator.
- (2) A reference to the vendor or transferor in section 29CA(5)(a) or (b) or (11) or 29DA(5)(a) or (b) or (11) of this Ordinance is to be read as a reference to the same person as that acquiring the property from a third party as referred to in subsection (1)(a)(i) or (ii) or (b)(i) or (ii) (as the case requires).

**3. Modifications if building is disposed of after construction on land acquired**

Where the property, or part of the property, consists of any building or any part of a building, a reference specified in column 3 of item 1 of the Table in this Schedule in a section of this Ordinance specified, opposite to that reference, in column 4 of that item is to be read as—

- (a) a reference specified, opposite to that reference, in column 5 of that item if section 1(b)(i) of this Schedule applies; or
- (b) a reference specified, opposite to that reference, in column 6 of that item if section 1(b)(ii) of this Schedule applies.

**4. Modifications if land, acquired with building on it, is disposed of after building is demolished**

Where the property, or part of the property, consists of any land, a reference specified in column 3 of item 2 of the Table in this Schedule in a section of this Ordinance specified, opposite to that reference, in column 4 of that item is to be read as—

- (a) a reference specified, opposite to that reference, in column 5 of that item if section 1(b)(i) of this Schedule applies; or
- (b) a reference specified, opposite to that reference, in column 6 of that item if section 1(b)(ii) of this Schedule applies.

**5. Acquisition by business undertaking**

A reference in this Schedule to the property being acquired by the business undertaking includes the property being acquired by it as a contribution by person A to it in kind when the business undertaking was formed.



**Table**  
**Construction of References to Vendor and Transferor in Sections 29CA and 29DA of this Ordinance**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item	Circumstances	Reference	Section of this Ordinance	Reference to be read as	Reference to be read as
1.	Where the property, or part of the property, consists of any building or any part of a building	(a) the vendor or transferor acquiring the land on which the building is constructed	section 29CA(4)(a)(ii) or 29DA(4)(a)(ii)	(i) the bond-issuer acquiring the land from a third party; or  (ii) person A acquiring the land from a third party before it was acquired by the bond-issuer from person A as originator	(i) the business undertaking the land from a third party; or  (ii) person A acquiring the land from a third party before it was acquired by the business undertaking from person A as originator

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes)  
(Amendment) Ordinance 2013

Part 4  
Section 23

Ord. No. 10 of 2013  
A377

Column 1 Item	Column 2 Circumstances	Column 3 Reference	Column 4 Section of this Ordinance	Column 5 Reference to be read as	Column 6 Reference to be read as
		(b) the vendor or transferor	section 29CA(4)(a)(i) or (iii) or 29DA(4)(a)(i) or (iii)	person A or the bond-issuer	person A or the business undertaking
2.	Where the property, or part of the property, consists of any land	(a) the vendor or transferor acquiring the land	section 29CA(4)(b)(i) or 29DA(4)(b)(i)	(i) the bond- issuer acquiring the land from a third party; or (ii) person A acquiring the land from a third party before it was acquired by the bond- issuer from person A as originator	(i) the business undertaking acquiring the land from a third party; or (ii) person A acquiring the land from a third party before it was acquired by the business undertaking from person A as originator

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes)  
(Amendment) Ordinance 2013

Part 4  
Section 23

Ord. No. 10 of 2013  
A379

Column 1 Item	Column 2 Circumstances	Column 3 Reference	Column 4 Section of this Ordinance	Column 5 Reference to be read as	Column 6 Reference to be read as
		(b) the vendor or transferor	section 29CA(4)(b)(ii) or 29DA(4)(b)(ii)	person A or the bond-issuer	person A or the business undertaking”.

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## Part 5

### Amendments to Stamp Duty Ordinance—Other Amendments and Transitional Provisions

#### 24. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *assessment*—

**Repeal**

“under section 13”

**Substitute**

“under section 13 or 47L”.

- (2) Section 2(1), definition of *stamp duty*—

**Repeal**

“under section 13(10)”

**Substitute**

“under section 13(10) or 47L(7)”.

- (3) Section 2(1)—

**Add in alphabetical order**

“*bond* (債券) is to be construed having regard to section 47E(b);”.

- (4) After section 2(4)—

**Add**

“(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 the Criminal Procedure Ordinance (Cap. 221).”.

**25. Section 4 amended (charging of, liability for, and recovery of stamp duty)**

(1) Section 4(3)—

**Repeal**

“section 9”

**Substitute**

“section 9, 45(5A)(d) or 47H(3)”.

(2) After section 4(5)—

**Add**

“(5A) No action may be brought because of section 47H(2)(b) for the recovery of any stamp duty with respect to an instrument more than 6 years after the later of the following—

- (a) the expiry of the time for stamping the instrument;
- (b) an IA disqualifying event as defined by section 47D(4), or the earliest IA disqualifying event (as the case requires), occurs in relation to the material arrangement.

(5B) For the purposes of subsection (5A), an arrangement is the *material arrangement* in relation to an instrument if relief has been granted under section 47F or 47G for the instrument on the basis that the arrangement is a qualified investment arrangement in a specified alternative bond scheme.”.

**26. Section 13 amended (adjudication of stamp duty by Collector)**

Section 13(1B)—

**Repeal**

“44(3) or 45(3)”

**Substitute**

“44(3), 45(3) or 47I”.

**27. Section 14 amended (appeal against assessment)**

(1) Section 14(1) and (1A)(a)—

**Repeal**

“under section 13”

**Substitute**

“under section 13 or 47L”.

(2) Section 14(4)—

**Repeal**

“under section 9”

**Substitute**

“under section 9, 45(5A)(d) or 47H(3)”.

(3) Section 14(5B)—

**Repeal**

“under section 13”

**Substitute**

“under section 13 or 47L”.

**28. Section 18J amended (power of Collector to cancel stamp certificates)**

Section 18J(2)—

**Repeal**

“under section 13”

**Substitute**

“under section 13 or 47L”.

**29. Section 19 amended (contract notes, etc. in respect of sale and purchase of Hong Kong stock)**

Section 19(1)(b) and (d)(ii)—

**Repeal**

“section 45”

**Substitute**

“section 45 or 47F”.

**30. Section 45 amended (relief in case of conveyance from one associated body corporate to another)**

(1) Section 45(5A)—

**Repeal paragraph (b).**

(2) Section 45(5A)(c)—

**Repeal**

“the transferor”

**Substitute**

“the relief is deemed to be withdrawn subject to section 13(6) and the transferor”.

(3) Section 45(5A)(c)—

**Repeal**

everything after “instrument”

**Substitute**

“had relief not been granted under this section;”.

(4) Section 45(5A)—

**Repeal paragraph (d)**

**Substitute**

“(d) if the amount referred to in paragraph (c) is not paid within the 30 days—

- (i) the transferor and transferee are liable or jointly and severally liable (as the case requires) to a penalty; and
  - (ii) the amount of the penalty payable after a lapse of a period of time after the 30 days is the same as that calculated under section 9 for an instrument chargeable with stamp duty of the amount referred to in paragraph (c) that—
    - (A) is not stamped before or within the time for stamping it; and
    - (B) is stamped after the lapse of the same period of time after the time for stamping it; and”.
- (5) After section 45(5A)(d)—

**Add**

- “(e) the Collector may remit the whole or any part of any penalty payable under paragraph (d).”.

**31. Section 58A amended (representations may be made to Collector before certain penalties are imposed)**

Section 58A(1)—

**Repeal**

“45(7)”

**Substitute**

“45(7), 47H(5), 47J(6)”.

**32. Section 58B amended (remission of certain penalties)**

Section 58B—

**Repeal**

“45(7)”



**Substitute**

“45(7), 47H(5), 47J(6)”.

**33. Section 69 added**

After section 68—

**Add**

**“69. Transitional provisions for Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013**

Schedule 7 sets out transitional provisions that have effect for the purposes of amendments to this Ordinance made by the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013 (10 of 2013).”.

**34. First Schedule amended**

First Schedule—

**Repeal**

“& 47B & 2nd Sch.]”

**Substitute**

“, 47B, 47F & 47G & 2nd Sch. & Sch. 7]”.

**35. Schedule 7 added**

At the end of the Ordinance—

**Add**

“**Schedule 7**

[s. 69]

**Transitional Provisions for Inland Revenue and  
Stamp Duty Legislation (Alternative Bond  
Schemes) (Amendment) Ordinance 2013**

1. The amendments made to section 2(1) (definitions of *assessment* and *stamp duty*), sections 4(3), 13, 14, 18J, 19, 45, 58A and 58B of, and the First Schedule to, this Ordinance by sections 24(1) and (2), 25(1), 26, 27, 28, 29, 30, 31, 32 and 34 of the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013 (10 of 2013) (*2013 Amendment Ordinance*)—
  - (a) do not apply to a specified alternative bond scheme, or the bond arrangement or investment arrangement in it, if alternative bonds are issued under the bond arrangement in the scheme before the date of commencement of Part 4 of the 2013 Amendment Ordinance; and
  - (b) do not apply to any instrument executed before that date of commencement.
2. Section 2(1) (definition of *bond*), section 4(5A) and (5B) and Parts VA and VB of, and Schedule 6 to, this Ordinance apply to a specified alternative bond scheme, or the bond arrangement or investment arrangement in it, only if alternative bonds are issued under the bond arrangement in the scheme on or after the date of commencement of Part 4 of the 2013 Amendment Ordinance.
3. Section 47L of this Ordinance does not apply to stamp duty payable under section 45(5A)(c) of this Ordinance for an instrument executed before the date of commencement of Part 4 of the 2013 Amendment Ordinance.”.