

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Bill 2012

Contents

Clause	Page
Part 1	
Preliminary	
1. Short title.....	1
2. Enactments amended.....	1
Part 2	
Amendments to Inland Revenue Ordinance—Part 6A and Schedule 17A	
Added	
3. Part 6A added	2
Part 6A	
Specified Alternative Bond Scheme and its Tax Treatment	
40AB. Schedule 17A: specified alternative bond scheme and its tax treatment	2
4. Schedule 17A added.....	2
Schedule 17A Specified Alternative Bond Scheme and its Tax Treatment.....	3
Part 3	
Amendments to Inland Revenue Ordinance—Other Amendments and	

Clause	Page
Transitional Provisions	
5. Section 5B amended (ascertainment of assessable value on or after 1 April 1983)	52
6. Section 14A amended (qualifying debt instruments).....	52
7. Section 15 amended (certain amounts deemed trading receipts).....	53
8. Section 16 amended (ascertainment of chargeable profits).....	53
9. Section 20AC amended (certain profits of non-resident persons exempt from tax).....	53
10. Section 26A amended (exclusion of certain profits from tax).....	54
11. Section 51C amended (business records to be kept).....	54
12. Section 60 amended (additional assessments).....	54
13. Section 64 amended (objections).....	54
14. Section 79 amended (tax paid in excess to be refunded).....	55
15. Section 80 amended (penalties for failure to make returns, making incorrect returns, etc.).....	55
16. Section 82A amended (additional tax in certain cases)	55
17. Section 89 amended (transitional provisions)	55
18. Schedule 6 amended.....	56
19. Schedule 16 amended (specified transactions).....	56
20. Schedule 27 added.....	57

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes)
(Amendment) Bill 2012

iii

Clause	Page
Schedule 27 Transitional Provisions for Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2012.....	57
Part 4	
Amendments to Stamp Duty Ordinance—Parts VA and VB and Schedule 6 Added	
21. Part VA added.....	59
Part VA	
Relief for Certain Transactions in relation to Specified Alternative Bond Scheme	
47C. Interpretation.....	59
47D. Qualified bond arrangement, and qualified investment arrangement, in specified alternative bond scheme	61
47E. Alternative bond under qualified bond arrangement regarded as bond	63
47F. Relief on transactions under qualified investment arrangement	64
47G. Sections 29CA and 29DA modified in relation to property held, or formerly held, under qualified investment arrangement	65

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes)
(Amendment) Bill 2012

iv

Clause	Page
47H. Relief granted under section 47F or 47G deemed withdrawn	65
47I. Instrument to be duly stamped.....	69
47J. Records and returns	70
47K. Offence in respect of false or misleading information.....	72
22. Part VB added.....	72
Part VB	
Assessment after Deemed Withdrawal of Relief	
47L. Assessment after deemed withdrawal of relief under section 45 or 47H	73
23. Schedule 6 added.....	75
Schedule 6 Sections 29CA and 29DA of this Ordinance Modified in relation to Property Held, or Formerly Held, under Qualified Investment Arrangement.....	76
Part 5	
Amendments to Stamp Duty Ordinance—Other Amendments and Transitional Provisions	
24. Section 2 amended (interpretation)	83
25. Section 4 amended (charging of, liability for, and recovery of	

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes)
(Amendment) Bill 2012

v

Clause	Page
stamp duty)	84
26. Section 13 amended (adjudication of stamp duty by Collector)	85
27. Section 14 amended (appeal against assessment)	85
28. Section 18J amended (power of Collector to cancel stamp certificates).....	85
29. Section 19 amended (contract notes, etc. in respect of sale and purchase of Hong Kong stock)	86
30. Section 45 amended (relief in case of conveyance from one associated body corporate to another).....	86
31. Section 58A amended (representations may be made to Collector before certain penalties are imposed)	87
32. Section 58B amended (remission of certain penalties).....	88
33. Section 69 added.....	88
69. Transitional provisions for Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2012.....	88
34. First Schedule amended	88
35. Schedule 7 added.....	89
Schedule 7 Transitional Provisions for Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance	

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes)
(Amendment) Bill 2012

vi

Clause	Page
2012.....	89

A BILL 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.

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 2012.

2. Enactments amended

- (1) The Inland Revenue Ordinance (Cap. 112) is amended as set out in Parts 2 and 3.
 - (2) The Stamp Duty Ordinance (Cap. 117) is amended as set out in Parts 4 and 5.
-

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 &
27]

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 11 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 22.

- (e) Sections 12 to 19 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 20 and 21 contain detailed provisions on the tax treatment of the arrangements.
- (f) Sections 23 to 28 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)	17
<i>asset transaction between O and BU</i> (發起	7(3)

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes)
(Amendment) Bill 2012

Part 2
Clause 4

5

Column 1 Expression	Column 2 Section
人 — 業務實體資產交易) (in relation to a profits sharing arrangement)	
BA disqualifying event (喪失債券安排資格事件)	12(5)
bond arrangement (債券安排)	2
bond arrangement as financial liability condition (債券安排作金融負債條件)	14
bond-holder (持債人)	2
bond-issuer (發債人)	2
bond-issuer as conduit condition (發債人作轉付者條件)	18
bond proceeds (發債所得)	2
Hong Kong connection condition (與香港 關連條件)	15
IA disqualifying event (喪失投資安排資格事件)	12(5)
investment arrangement (投資安排)	2
investment arrangement as financial liability condition (投資安排作金融負債條件)	19
lease arrangement (租賃安排)	6
maximum term length condition (最長年期條件)	16
originator (發起人)	2
proceeds of disposal (處置所得)	2

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes)
(Amendment) Bill 2012

Part 2
Clause 4

6

Column 1 Expression	Column 2 Section
profits sharing arrangement (分利安排)	7
purchase and sale arrangement (買賣安排)	8
qualified bond arrangement (合資格債券安排)	12(1)
qualified investment arrangement (合資格投資安排)	12(2)
reasonable commercial return condition (合理商業回報條件)	13
redemption payment (贖債付款)	2
specified alternative bond scheme (指明另類債券計劃)	4
specified asset (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
specified asset transaction between O and BI (發起人 — 發債人指明資產交易)—	
(a) in relation to a lease arrangement;	6(3)

Column 1 Expression	Column 2 Section
(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)
<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—

asset (資產) means any property or any class of property;

investment return (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 any of the following arrangements, means the investment return calculated in accordance with section 10 of this Schedule—
 - (i) a lease arrangement;
 - (ii) a profits sharing arrangement;
 - (iii) an agency arrangement; and
- (c) in relation to a purchase and sale arrangement, means the investment return calculated in accordance with section 11 of this Schedule.

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 incorporated, constituted or acquired solely for the purposes of 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), (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 person incorporated, constituted or acquired solely for the purposes of 2 or more schemes (whether existing or intended to be set up) is regarded as a person incorporated, constituted or acquired solely for the purposes of 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 person as the bond-issuer and the same other person as the originator.
- (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) 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) 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 and 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 21(3)(a) of this Schedule means—
- (a) any acquisition of an asset as, or as part of, the specified asset from the originator under subsection (1) or (2);
 - (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 to the originator under subsection (1) or (2).

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,

(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 21(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 21(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 21(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 a fixed agency fee or an incentive fee.
- (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 21(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, profits sharing arrangement and agency arrangement—investment return

- (1) This section applies to a specified investment arrangement that is—
 - (a) a lease arrangement;
 - (b) a profits sharing arrangement; or
 - (c) an agency 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 (including any amount regarded as specified income under subsection (7)) paid under the arrangement in the period; or
- (b) for a profits sharing arrangement or an agency arrangement, the total amount of specified return 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 or an agency arrangement, the total amount of any incentive fee (referred to in section 7(1)(e) or 9(1)(c) of this Schedule) that is paid by the bond-issuer to the originator under the arrangement in the period.

- (4) In subsection (3)—

specified acquisition cost (指明取得成本), in relation to a specified investment arrangement in a specified alternative bond scheme, means—

- (a) in relation to a period in which the whole of the specified asset under the scheme is disposed of to enable the bond-issuer to fully redeem or cancel the alternative bonds under the bond arrangement in the scheme, the acquisition cost; or
- (b) in relation to any other period—
 - (i) if a part of the specified asset under the scheme is disposed of in the period to enable the bond-issuer to partly redeem or cancel the alternative bonds under the bond arrangement in the scheme, the part of the acquisition cost attributable to that part of the specified asset unless subparagraph (ii) applies; or
 - (ii) (for a lease arrangement or an agency arrangement in a specified alternative bond scheme) if the alternative bonds under the bond arrangement in the scheme are fully redeemed or cancelled in the period as a result of the destruction or loss of the specified asset under the scheme, the acquisition cost;

specified income (指明入息), in relation to a lease arrangement, has the meaning given by section 6(1)(c) of this Schedule;

specified proceeds of disposal (指明處置所得), in relation to a specified investment arrangement in a specified alternative bond scheme, means—

- (a) in relation to a period in which the whole of the specified asset under the scheme is disposed of to enable the bond-issuer to fully redeem or cancel the alternative bonds under the bond arrangement in

- the scheme, the consideration received by the bond-issuer for the disposal of the specified asset subject to subsection (5); or
- (b) in relation to any other period, the sum of the following—
 - (i) if a part of the specified asset under the scheme is disposed of in the period to enable the bond-issuer to partly redeem or cancel the alternative bonds under the bond arrangement in the scheme, the consideration received by the bond-issuer for the disposal of that part of the specified asset subject to subsection (5);
 - (ii) (for a lease arrangement or an agency arrangement in a specified alternative bond scheme) if the alternative bonds under the bond arrangement in the scheme are fully redeemed or cancelled in the period as a result of the destruction or loss of the specified asset under the scheme, the amount regarded as the consideration received by the bond-issuer for the disposal of the specified asset under subsection (8) subject to subsection (5);

specified return (指明回報)—

- (a) in relation to a profits sharing arrangement, has the meaning given by section 7(1)(d) of this Schedule;
 - (b) in relation to an agency arrangement, has the meaning given by section 9(1)(c) of this Schedule.
- (5) A sum that is counted as, or as part of, the specified return paid under an agency arrangement in a period is

- not to be counted as, or as part of, the specified proceeds of disposal paid under the arrangement in the period.
- (6) If the formula is used for calculating the investment return payable under a specified investment arrangement in the period, A, B, C, D and E have the meaning given by subsections (3) and (4) and subsection (5) applies, except that—
- (a) a reference in subsection (3), (4) or (5) to paid is to be read as payable; and
 - (b) in the definitions of *specified acquisition cost* and *specified proceeds of disposal* in subsection (4)—
 - (i) a reference to is disposed of is to be read as is to be disposed of; and
 - (ii) paragraph (b)(ii) in each definition does not apply.
- (7) Except where subsection (8) applies, the aggregate of any money arising from the destruction or loss of the specified asset paid under a lease arrangement is to be regarded as specified income under the arrangement for the purposes of subsection (3) if the money—
- (a) is received by the bond-issuer; but
 - (b) 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.
- (8) The aggregate of any money arising from the destruction or loss of the specified asset paid under a lease arrangement or an agency arrangement in a specified alternative bond scheme is to be regarded as the consideration received by the bond-issuer for the

- disposal of the specified asset under the arrangement for the purposes of subsection (3) if—
- (a) alternative bonds under the bond arrangement in the scheme are fully redeemed or cancelled as a result of the destruction or loss; and
 - (b) the money is received by the bond-issuer.
- (9) In this section—
- (a) *the destruction or loss of the specified asset* (except in paragraph (b)(i)) means the destruction or loss, in whole or in part, of an asset that is the specified asset; and
 - (b) *money arising from the destruction or loss of the specified asset* means the sum of the following—
 - (i) any insurance money or other compensation of any description arising in respect of the destruction or loss, in whole or in part, of an asset that is the specified asset (the asset or part destroyed or lost is referred to as the *previous asset*);
 - (ii) any consideration received for the disposal of any remains left of the previous asset after the destruction or loss.

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.

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

12. 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 27 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 27 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.

13. 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.

14. 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.

15. 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.

16. 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).

17. 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.

18. 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 13(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 13 of this Schedule.

19. 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.

20. 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;
 - (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.

21. 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.
- (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 affecting section 7(3)(b) of this Schedule, 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

22. 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

23. Interpretation (Part 3 of this Schedule)

- (1) This section applies 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 12(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 12(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 26(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.

24. Records to be kept

- (1) Section 51C of this Ordinance applies, with the modifications specified in subsection (2), to a person who—
 - (a) carries on a trade, profession or business in Hong Kong; and
 - (b) 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.

25. 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.

26. 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), an objection made by a person under section 64 of this Ordinance against a specified assessment made for a year of assessment because of the disqualification of an accepted arrangement 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.

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

- (1) Section 12(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 12(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.

28. 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.”.

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 21 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) If—

- (a) an instrument is issued on or after 24 May 1996 but before 14 November 2003; and
- (b) the instrument is not a debt instrument in section 14A of the Inland Revenue Ordinance (Cap. 112) in relation to a year of assessment solely because of the amendment by the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011) to paragraph (g) of the definition of *debt instrument* in subsection (4) of that section,

that instrument may be regarded as a debt instrument in that section in relation to that year of assessment as if paragraph (g) of that definition, as amended by subsection (1), had always been in force.

(3) After section 14A(5)—

Add

“(6) Section 20 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 20 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 20 and 21 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 20 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 20 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 24 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 26 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 26 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 26 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 24 and 25 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 25 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(9)—

Add

“(10) Schedule 27 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 2012 (of 2012).”.

18. Schedule 6 amended

(1) Schedule 6—

Repeal

“& (3)]”

Substitute

“& (3) & Schs. 17A & 27]”.

(2) Schedule 6, Part 1, item 3—

Repeal

“Any”

Substitute

“Subject to section 20(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 & 27]”.

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

Repeal

“shares”

Substitute

“subject to section 20(6) of Schedule 17A (specified alternative bond scheme and its tax treatment), shares”.

20. Schedule 27 added

After Schedule 26—

Add

“Schedule 27 [s. 89(10)]

**Transitional Provisions for Inland Revenue and
Stamp Duty Legislation (Alternative Bond
Schemes) (Amendment) Ordinance 2012**

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(3), 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 2012 (of 2012) (*2012 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 2012 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 2012 Amendment Ordinance.”.

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 18 and 13 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, apart from this section, would have been chargeable on the instrument; and
 - (b) other amounts that, apart from this section, would have been payable under this Ordinance.

47G. Sections 29CA and 29DA modified 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 specified in section 1 of that Schedule.
- (2) 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 this section; 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 this section.

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 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 an amount to the Collector, by way of stamp duty;
 - (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 an amount to the Collector, by way of stamp duty;
 - (iv) the stamp duty referred to in subparagraph (ii) or (iii) is of an amount equal to the stamp duty that would have been chargeable on the instrument as if no relief from stamp duty had

- been granted by the Collector under section 47F or 47G; and
- (v) the stamp duty referred to in subparagraph (ii) or (iii) must be payable—
 - (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 referred to in subsection (2)(b)(iv) is not paid within the 30 days referred to in subsection (2)(b)(v)—
 - (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)(v) is the same as that calculated under section 9 for an instrument chargeable with stamp duty of the amount referred to in subsection (2)(b)(iv) 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).

47L. 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 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
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 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) Bill 2012

Part 4
Clause 23

81

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	(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

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes)
(Amendment) Bill 2012

Part 4
Clause 23

82

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".
				originator	A as originator

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

“section; and”

Substitute

“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 2012**

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 2012 (of 2012).”.

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 2012**

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 2012 (of 2012) (*2012 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 2012 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 2012 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 2012 Amendment Ordinance.”.

Explanatory Memorandum

This Bill seeks to amend the Inland Revenue Ordinance (Cap. 112) (*IRO*) and the Stamp Duty Ordinance (Cap. 117) (*SDO*) to treat as debt arrangements, for profits tax, property tax and stamp duty purposes, particular types of arrangements that are economically equivalent to debt arrangements. The Bill also provides for related matters and makes certain technical amendments.

Part 2—Amendments to IRO: new section 40AB and new Schedule 17A added

2. Clauses 3 and 4 add new section 40AB and new Schedule 17A to the IRO to describe the core features of specified alternative bond schemes and provide for treatment of arrangements in them as debt arrangements under the IRO if certain conditions are met.

Features of specified alternative bond schemes

3. In section 2 of new Schedule 17A, core features of an *alternative bond scheme* are laid out as follows—
 - (a) An alternative bond scheme comprises a *bond arrangement* and an *investment arrangement*—
 - (i) A bond arrangement defines the relationship between investors (*bond-holders*) and a special purpose vehicle (*bond-issuer*).
 - (ii) An investment arrangement defines the relationship between the bond-issuer and the party raising funds (*originator*).
 - (b) Under the bond arrangement, the bond-issuer, in return for bond proceeds that the bond-holders pay for purchasing the alternative bonds—

- (i) enters into the investment arrangement with the originator; and
 - (ii) undertakes to make a payment (*redemption payment*) for redeeming the alternative bonds and to make other payments (*additional payments*) to the bond-holders.
- (c) Under the investment arrangement, the bond-issuer—
 - (i) uses the bond proceeds to acquire an asset (*specified asset*) and arranges for management of the specified asset to generate income or gains (*investment return*) during the term of the alternative bond scheme (*specified term*);
 - (ii) disposes of the specified asset by the end of that term in return for a consideration (*proceeds of disposal*).

The payments under the bond arrangement are to be funded by the investment return generated by, and the proceeds of disposal payable under, the investment arrangement.

4. In broad terms, a *specified alternative bond scheme* is an alternative bond scheme whose investment arrangement is always a specified investment arrangement. (Section 4 of new Schedule 17A.)
5. A *specified investment arrangement* is an investment arrangement of one of the 4 types specified in sections 6, 7, 8 and 9 of new Schedule 17A. (Section 5 of new Schedule 17A.)
6. Sections 6 to 9 of new Schedule 17A reflect the different ways in which investment return may be generated under the 4 types of investment arrangements (*specified investment arrangements*)—

- (a) Under a lease arrangement, the investment return is generated by leasing the specified asset to the originator for a consideration. The asset constituting the specified asset may be wholly or partly replaced. (Section 6 of new Schedule 17A.)
 - (b) Under a profits sharing arrangement, the specified asset is an interest acquired by the bond-issuer in a business undertaking that is formed by the bond-issuer and the originator. The investment return of the investment arrangement is generated by net profits received in respect of the interest in the business undertaking. (Section 7 of new Schedule 17A.)
 - (c) Under a purchase and sale arrangement, the investment return is generated by the sale of the specified asset to the originator at a markup price. A purchase and sale arrangement may also provide for the transactions to recur at regular intervals. (Section 8 of new Schedule 17A.)
 - (d) Under an agency arrangement, the investment return is generated by the management of the specified asset by the originator as the bond-issuer's agent. (Section 9 of new Schedule 17A.)
7. Sections 6, 7, 8 and 9 of new Schedule 17A each defines, in relation to the specified investment arrangement concerned, the expression ***specified asset transaction between O and BI***. In relation to a profits sharing arrangement (which involves the bond-issuer holding, as the specified asset under the specified alternative bond scheme, an interest in a business undertaking that is formed by the originator and the bond-issuer), section 7 of new Schedule 17A defines the expression ***asset transaction between O and BU***. These transactions will be disregarded as explained in paragraph 23.

8. Sections 10 and 11 of new Schedule 17A provide for the calculation of the investment return under the specified investment arrangements.
9. Section 22 of new Schedule 17A empowers the Financial Secretary, by notice published in the Gazette (which will be subsidiary legislation subject to negative vetting by the Legislative Council)—
 - (a) to specify new specified investment arrangements or amend the description of existing ones;
 - (b) to specify a transaction as a specified asset transaction between O and BI or an asset transaction between O and BU.

Prescribing conditions for qualified bond arrangement and qualified investment arrangement

10. Under sections 12 to 21 of new Schedule 17A, a qualified bond arrangement and qualified investment arrangement in a specified alternative bond scheme will be regarded as debt arrangements.
11. Under section 12(1) of new Schedule 17A, the bond arrangement in a specified alternative bond scheme is a qualified bond arrangement if the scheme always complies 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.

(Conditions referred to in this paragraph are defined by sections 13 to 17 of new Schedule 17A.)

12. The conditions referred to in the preceding paragraph ensure—

- (a) that the return on the alternative bonds paid or payable to the bond-holders does not exceed an amount that would be a reasonable commercial return on money borrowed of an amount equal to the bond proceeds;
 - (b) that the bond arrangement is treated as the bond-issuer's financial liability for accounting purposes;
 - (c) that the alternative bonds under the bond arrangement are listed on a Hong Kong stock exchange, issued or marketed in Hong Kong or lodged with and cleared by the Central Moneymarkets Unit operated by the Monetary Authority;
 - (d) that the specified term of the scheme is not longer than 15 years; and
 - (e) that the arrangements in the scheme are performed according to their terms.
13. A **BA disqualifying event** occurs when any of the conditions referred to in paragraph 12 is no longer complied with. (Section 12(5) of new Schedule 17A.)
14. Under section 12(2) of new Schedule 17A, the specified investment arrangement in a specified alternative bond scheme is a qualified investment arrangement if the following conditions are met—
- (a) The bond arrangement in the scheme is always a qualified bond arrangement.
 - (b) The scheme always complies with the bond-issuer as conduit condition and the investment arrangement as financial liability condition.

This means the conditions for a qualified bond arrangement also apply. The additional conditions are defined by sections 18 and 19 of new Schedule 17A. (Those additional conditions ensure that the investment return received or receivable by the bond-issuer must be

- wholly used for the return on the alternative bonds paid or payable to the bond-holders; and that the investment arrangement is treated as the originator's financial liability for accounting purposes.)
15. An **IA disqualifying event** occurs when any of the conditions referred to in the preceding paragraph is not complied with. (Section 12(5) of new Schedule 17A.)
16. The occurrence of a BA disqualifying event will result in an arrangement that has formerly been a qualified bond arrangement being regarded as never having been such. Similarly, the occurrence of an IA disqualifying event will result in an arrangement that has formerly been a qualified investment arrangement being regarded as never having been such. (Section 12(3) and (4) of new Schedule 17A.)

Qualified bond arrangement regarded as debt arrangement

17. Under a qualified bond arrangement, the money paid by the bond-holders to the bond-issuer is regarded as money borrowed from the bond-holders; and payments made by the bond-issuer to the bond-holders are regarded as interest and repayment of principal in return. The bond-issuer is regarded as not being a trustee in respect of the specified asset and the bond-holders are regarded as having no interest in the specified asset. (Section 20(2) of new Schedule 17A.)
18. Tax concession and exemption under sections 14A and 26A of the IRO for qualifying debt instruments apply to alternative bonds that are issued under a qualified bond arrangement and are transferrable by their delivery. (Section 20(3) and (7) of new Schedule 17A.)
19. The existing section 15(1)(j), (k) and (l) of the IRO regards any disposal gains before maturity and the premium or discount element received on maturity of a certificate of deposit as trading receipts for profits tax purposes unless they can fall within the qualifying

debt instrument exemption. Those provisions are extended to alternative bonds that are issued under a qualified bond arrangement and are transferrable by their delivery. (Section 20(4) of new Schedule 17A.)

20. Section 16(2)(f) (which makes interest on debentures and instruments deductible) of the IRO is made applicable to additional payments payable by the bond-issuer on alternative bonds under a qualified bond arrangement. (Section 20(5) of new Schedule 17A.)
21. The tax exemption under section 20AC of the IRO for a non-resident person's profits arising from a transaction in securities is made applicable to such person's profits arising from transactions in alternative bonds issued under a qualified bond arrangement. (Section 20(6) of new Schedule 17A.)

Qualified investment arrangement regarded as debt arrangement

22. Similarly, under a qualified investment arrangement, the money paid by the bond-issuer to the originator is regarded as money borrowed from the bond-issuer; and payments made by the originator to the bond-issuer are regarded as interest and repayment of principal in return. (Section 21(2)(a) and (b) of new Schedule 17A.)
23. Under a specified alternative bond scheme—
 - (a) assets are acquired, held and disposed of by the bond-issuer or, if the specified asset consists of an interest in a business undertaking formed by the bond-issuer and the originator, by the business undertaking;
 - (b) the bond-issuer usually declares a trust over assets held under the scheme in favour of the bond-holders; and
 - (c) the assets may be transferred or leased between the originator and the bond-issuer or between the originator and the business undertaking.

However, if the investment arrangement is a qualified investment arrangement—

- (d) the bond-issuer, or business undertaking, and the bond-holders are regarded as having no interest in the assets;
- (e) the assets are regarded as acquired, held and disposed of by the originator; and
- (f) the specified asset transactions between O and BI and asset transactions between O and BU are disregarded.

The effect is that any income, expenditure, profits, gains or losses arising from or attributable to the assets held by the bond-issuer or business undertaking would belong to the originator for tax purposes. In particular, the originator would be entitled to depreciation allowances associated with the assets, if applicable, as a result. (Section 21(2)(c), (3), (4), (5) and (6) of new Schedule 17A.)

24. Under existing section 16(2)(f)(iii) of the IRO, interest payable in respect of money borrowed from an associated corporation that is entirely funded by the proceeds of debentures or debt instruments is deductible subject to certain conditions being met. Under section 21(7) of new Schedule 17A, the investment return payable by the originator to the bond-issuer under a qualified investment arrangement is made deductible subject to those conditions being met.

Record-keeping, notifications, assessments and other miscellaneous matters

25. Sections 23 to 28 of new Schedule 17A provide for record-keeping, notifications of disqualifying events, assessments and other miscellaneous matters in relation to alternative bond schemes.
26. Section 24 of new Schedule 17A modifies section 51C of the IRO so that a person who, for the purposes of ascertaining the person's tax liability, has claimed that an arrangement in a scheme is a

- qualified bond arrangement or qualified investment arrangement (*claimant*) must keep business records at least until the expiry of 7 years after the completion of the transactions, acts or operations concerned or the expiry of 3 years after the end of the specified term of the specified alternative bond scheme (whichever is the later).
27. Section 25 of new Schedule 17A requires a claimant to notify the Commissioner of Inland Revenue (*Commissioner*) within 30 days after the occurrence of a BA disqualifying event or IA disqualifying event. A failure to do so may constitute an offence and entail penalties under sections 80 and 82A of the IRO.
28. Section 26 of new Schedule 17A applies if an arrangement formerly accepted for the purposes of a year of assessment as a qualified bond arrangement or qualified investment arrangement is regarded as never having been such because a BA disqualifying event or IA disqualifying event has occurred. The section provides for the assessment or additional assessment and refund of tax paid in excess, after the disqualification. The time periods specified in section 60 of the IRO are to run after the expiry of the year in which the earliest BA or IA disqualifying event has occurred if that year falls after the relevant year of assessment.
29. Under section 27 of new Schedule 17A, the Commissioner may disregard a delay in disposing of the specified asset as a breach of the arrangements performed according to terms condition if the conditions referred to in paragraphs 11 and 14 are otherwise met, and the Commissioner is satisfied that there was a reasonable excuse for the delay.
30. Section 28 of new Schedule 17A empowers the Commissioner to divide the acquisition cost among different parts of the specified asset for the purposes of calculating the investment return under a specified investment arrangement.

Part 3—Amendments to IRO: other amendments and transitional provisions

31. Clauses 5, 6(3), 7 to 16, 18 and 19 make amendments to provisions of the IRO that are modified by new Schedule 17A to alert the reader to the modifications relating to specified alternative bond schemes.
32. Clause 6(1) and (2) corrects the date of commencement of section 14A of the IRO (which provides for tax concession for qualifying debt instruments).
33. Clauses 17 and 20 provide for a new Schedule 27 which contains transitional provisions for the amendments made by the Bill to the IRO. In essence, the amendments only apply to an alternative bond scheme under which alternative bonds are issued on or after the date of commencement of the amendments.

Part 4—Amendments to SDO: new Parts VA and VB, etc. added

34. Clause 21 adds new Part VA (new sections 47C to 47K) to the SDO to provide for stamp duty relief in relation to a qualified bond arrangement and qualified investment arrangement in a specified alternative bond scheme.
35. New section 47C contains definitions of terms used in new Part VA. Most of those terms have the same meaning as they have in new Schedule 17A to be added to the IRO.
36. New section 47D defines a qualified bond arrangement, qualified investment arrangement and IA disqualifying event. In order for an arrangement in a scheme to be a qualified bond arrangement or qualified investment arrangement, essentially the same conditions as those under the IRO must be complied with. Under new section 47D(5), provisions relating to the calculation of the investment return under a specified investment arrangement in the IRO apply

to the calculation of the investment return for the purposes of the SDO, as if references to the Commissioner in those provisions were references to the Collector of Stamp Revenue (*Collector*).

Transfer of alternative bond

37. Under new section 47E(a), the bond-holders under a qualified bond arrangement in a specified alternative bond scheme are to be regarded as having no interest in the specified asset. This makes it clear that the transfer of an alternative bond issued under a qualified bond arrangement does not involve the transfer of an interest in the specified asset for stamp duty purposes.
38. Under new section 47E(b), an alternative bond issued under 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) of the SDO applies. As a result of this proposed provision, transfer of an alternative bond will not be subject to stamp duty charges in most cases, as it will either—
- (a) fall within the meaning of *loan capital* in section 2(1) of the SDO (unless the alternative bond carries a right of conversion into stock or to the acquisition of any stock, i.e. paragraph (a) of the definition of *loan capital*); or
 - (b) fall within the exclusion in the definition of *stock* in section 2(1) of the SDO if the alternative bond is denominated in a foreign currency and not redeemable in the Hong Kong currency, irrespective of whether it carries a right of conversion into stock or not.

Instrument executed in relation to specified asset transaction between O and BI or asset transaction between O and BU

39. New section 47F provides for stamp duty relief for an instrument if the following 2 conditions are met—

- (a) it must be shown to the satisfaction of the Collector that the subject transaction of the instrument is a specified asset transaction between O and BI or an asset transaction between O and BU under a qualified investment arrangement; and
 - (b) security to the satisfaction of the Collector must be given for the payment of the amount of stamp duty and other amounts that, apart from the relief claimed, would have to be paid under the SDO for the instrument.
40. Under existing sections 29CA and 29DA of the SDO, special stamp duty is chargeable on an agreement for sale or a conveyance on sale under which the vendor or transferor under that agreement or conveyance disposes of any residential property within a period of 24 months beginning on the day that the vendor or transferor acquired the property. New section 47G, together with new Schedule 6 (added by clause 23), modify sections 29CA and 29DA of the SDO (to disregard the specified asset transactions between O and BI and asset transactions between O and BU under a qualified investment arrangement) so that the specified alternative bond scheme concerned would not entail additional liability for special stamp duty, when compared with a conventional bond scheme.
41. New section 47H provides that stamp duty relief granted under new section 47F or 47G for an instrument is deemed to be withdrawn if any IA disqualifying event occurs in relation to the alleged qualified investment arrangement.
42. New section 47H(2)(a) requires a person who has claimed relief under new section 47F or 47G alleging that an arrangement in a scheme is a qualified investment arrangement to notify the Collector within 30 days after an IA disqualifying event occurs. A person who fails to do so incurs a penalty at level 2 (i.e. \$5,000).

43. Under new section 47H(2)(b), the stamp duty that would have been chargeable but for the relief would become payable within 30 days after the earliest IA disqualifying event occurs—
- (a) (for the deemed withdrawal of relief formerly granted under new section 47F) by the parties to the instrument; or
 - (b) (for the deemed withdrawal of relief formerly granted under new section 47G) by the vendor under the agreement for sale or the transferor under the conveyance on sale.

Under new section 47H(3), a person liable to pay the stamp duty who fails to do so incurs a penalty, calculated in accordance with section 9 of the SDO.

44. New section 47H(2)(b) makes the deemed withdrawal of relief subject to section 13(6) of the SDO. This means the instrument concerned is still admissible in evidence despite the deemed withdrawal of relief.
45. New section 47H(7) empowers the Collector to disregard a delay in disposing of the specified asset as a breach of the arrangements performed according to terms condition if the conditions referred to in paragraph 36 are otherwise met, and it is proved to the Collector's satisfaction that there was a reasonable excuse for the delay.
46. New section 47I provides that an instrument to which new section 47F or 47G applies is not duly stamped unless it is stamped with the duty chargeable but for the relief under new section 47F or 47G, or it is stamped after adjudication of stamp duty under section 13 of the SDO.
47. New section 47J requires each person who is granted relief under new section 47F or 47G as the originator or the bond-issuer under

- an alleged specified alternative bond scheme to keep proper and sufficient books and records and, if required by the Collector, to furnish returns and information of the alleged specified alternative bond scheme. Failure to do so entails a penalty at level 2 (i.e. \$5,000).
48. Under new section 47K a person commits an offence if, with intent to defraud the Government of any stamp duty, the person keeps books or records or furnishes returns that are false or misleading. The person is punishable with the fine and imprisonment specified in section 60 of the SDO.
49. Clause 22 adds a new Part VB (containing new section 47L) to provide for the making of an assessment of stamp duty payable on the deemed withdrawal of relief under new section 47H, and for appeal against the assessment. If a person on whom an assessment is made fails to pay the difference between the stamp duty assessed by the Collector and the amount actually paid by the person before the expiry of 1 month from the assessment, the person incurs additional stamp duty at the rate of 0.04% per day after the 1-month period has expired. For the sake of consistency, new section 47L also applies to a deemed withdrawal of relief under existing section 45 (relief in case of conveyance from one associated body corporate to another) of the SDO.

Part 5—Amendments to SDO: other amendments and transitional provisions

50. Under new section 4(5A) and (5B) added to the SDO by clause 25(2), for recovering the stamp duty payable on deemed withdrawal of relief under new section 47H, the limitation period will begin to run after the occurrence of the earliest IA disqualifying event if the event falls after the expiry of the period for stamping the instrument concerned.

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes)
(Amendment) Bill 2012

Explanatory Memorandum

Paragraph 51

105

51. The appeal procedures under existing section 14 of the SDO will apply to assessments made under new section 47L. (Clause 27.)
52. Clauses 33 and 35 provide for a new Schedule 7 which contains transitional provisions for the amendments made by the Bill to the SDO. In essence, the amendments only apply to an alternative bond scheme under which alternative bonds are issued on or after the date of commencement of the amendments.