THE STAMP DUTY LAW, 1973

LAW 5 OF 1973

MEMORANDUM OF OBJECTS AND REASONS

A high proportion of the revenue of the Islands is derived from stamp duty, but the Stamp Duty Law (Cap. 159), introduced at a time when the revenue of the Islands derived from this source must have been negligible, is, by reason of omissions, ambiguities and lack of effective provisions for enforcement and administration, no longer adequate for the important function it is required to perform. It is therefore sought to introduce a new law designed to bring this important department of revenue collection under effective control.

CAYMAN ISLANDS

LAW 5 of 1973.

I assent,

K.R. CROCK
Governor

12th July, 1973.

A LAW TO REPEAL AND REPLACE IN AMENDED FORM THE STAMP DUTY LAW.

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Stamp Duty Law, 1973 and shall come into operation on a day to be appointed by the Governor by Government Notice published in the Cayman Islands. *Short title and commencement.*

2. In this Law, unless the context otherwise requires - *Interpretation.*

"adjudicator" means the adjudicator of stamp duty appointed under section 6;

"banker" means a banker licensed as such under any law in that behalf;

"Commissioner" means the Commissioner for stamp duty collection appointed under section 4;

"duty" means any stamp duty chargeable under this Law;

''executed'' and its cognates means with reference to any instrument, that it is sealed or signed, or sealed and signed, in such manner as to render such instrument a lawful obligation by the person by, or on whose behalf, such instrument is so sealed, signed, or sealed and signed;

Cap. 22. ''exempted company'' has the meaning ascribed to it in the Companies Law;

''Financial Secretary'' means the Financial Secretary of the Islands;

''Governor'' means the Governor in Council;

''instrument'' includes every written document;

''material'' includes any material upon which words or figures can be expressed;

Cap. 159. ''old law'' means the Stamp Duty Law repealed by this Law;

Cap. 142. ''recording'' and its cognates means recording under the Public Recorder Law;

''registering'' and its cognates has reference to registration under any requirement of any law whereby any instrument or event is required to be registered in any public office;

Cap. 129. ''stamp'' means a stamp authorised by the Governor under this Law or authorized under the Post Office Law, which is either -

(a) a stamp impressed by means of a die; or

(b) an adhesive stamp; or

(c) a stamp printed by a lawfully operated postal franking machine;

''stamped'' with reference to any instrument or

material has reference to any instrument or material upon which a stamp has been impressed, affixed or printed.

The charge of stamp duty.

3. (1) With effect from the coming into operation of this Law and subject to the provisions hereof, there shall, in substitution for the duties chargeable under the old law, be charged for the revenue of the Islands stamp duties upon the several instruments specified in the schedule at the rates therein prescribed.

(2) Duties chargeable under subsection (1) shall, immediately upon coming due, be recoverable as civil debts at the suit of the Commissioner.

The Commissioner.

4. The Financial Secretary is ex-officio Commissioner for the collection of stamp duty and has care and management of the collection of all stamp duty imposed by this or any other law.

Commissioner may delegate.

5. The Commissioner may, under his hand, authorise any officer of the Government to perform all or any of his functions.

Adjudicator.

6. The Commissioner is the adjudicator of stamp duty.

Adjudication.

7. The adjudicator shall, on payment in the prescribed manner of the prescribed fee, adjudicate for stamp duty every instrument presented to him for that purpose within fifteen days of such presentation and, subject to the right of appeal of any person paying the duty as adjudicated, such adjudication shall be final and binding for all purposes of this Law.

Appeal against adjudication.

8. Any person who has paid an adjudicated stamp duty upon any instrument may, within thirty days of the adjudication, appeal there against to the Grand Court.

Manner of appeal.

9. Every appeal under section 8 shall be commenced by notice of motion to the Grand Court with copy thereof

to the Commissioner.

Effect of appeal.

10. Upon an appeal brought under section 8 the Grand Court, after hearing the parties may -

(a) uphold the adjudication ; or
(b) order that duty be charged at a lower rate; or
(c) order that the instrument is not subject to duty; or
(d) order that duty be charged at a higher rate;

and in the event of the order of the Grand Court falling under the heads of paragraphs (b), (c) or (d), the Grand Court shall cause the instrument to be indorsed with the substance and date of the order and the seal of the Grand Court and the Commissioner shall cause the instrument to be re-stamped or otherwise dealt with in accordance with the order, against appropriate adjustment made in the charge of duty to the appellant.

Costs.

11. Where the Grand Court makes an order under paragraph (a) of section 10, it shall award costs to the Commissioner for payment to the Treasury for the revenue, and where the Grand Court makes an order under paragraph (b) or (c) of section 10 it shall order costs to be paid out of the revenue by the Commissioner to the appellant; where the Grand Court makes an order under paragraph (d) of section 10, no costs shall be awarded. The scale of costs shall be as prescribed.

Methods of stamping.

12. (1) In addition to any other methods of stamping instruments which the Governor may from time to time prescribe, instruments may be stamped for the purposes of this Law by affixing thereto adhesive stamps issued by the Governor to the Post Office for the purpose of the Post Office Law or of this Law of such designs and denominations as the Governor may from time to time prescribe or by means of postal franking machines approved for use under that Law.

Cap. 129.

(2) The Commissioner may collect in advance from any banker any duty payable upon cheques and may authorize the pre-stamping of forms of such cheques in blank for subsequent issue for use by the public.

(3) Such blank forms shall be imprinted under the supervision of the Commissioner with a double black circle printed round with the words "Cayman Islands Stamp Duty Paid" in such manner as to be readily and clearly apparent and to show the amount of duty paid.

Instruments to be separately charged with duty in certain cases.

13. Except where express provision to the contrary is made in this or any other law one instrument -

(a) containing or relating to several distinct matters is to be separately and distinctly charged, as if it were a separate instrument with duty in respect of each of the matters;

(b) made for any consideration in respect whereof it is charged with ad valorem duty, and also for any further or other valuable consideration or considerations, is to be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the considerations.

Facts and circumstances affecting duty to be set forth in instruments.

14. All facts and circumstances affecting the liability of an instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument.

Mode of calculating ad valorem duty in certain cases.

15. (1) Where an instrument is chargeable with ad valorem duty in respect of any non-Caymanian currency, the duty shall be calculated on the day of the date of the execution of the instrument according to the average current rate of exchange on that day.

(2) Where an instrument contains a statement of current rate of exchange and is stamped in accordance with that statement, it is, so far as the subject matter of the statement, to be deemed to be duly stamped.

unless or until it is shown that the statement is untrue and that the instrument is insufficiently stamped.

Cancellation of adhesive stamps.

16. Where adhesive stamps are used to stamp any instrument the person whose duty it is to stamp the same shall, immediately after affixing such stamps, cancel each one by writing across it his name or initials or the name or initials of his firm together with the true date of his so writing, or otherwise so effectively cancel such stamp or stamps as to render them incapable of being used for any other purpose.

Denoting payment of duty.

17. Where the duty with which an instrument is chargeable depends in any manner upon the duty paid upon another instrument, the fact of the payment of the last mentioned duty shall, upon application to the Commissioner and production to him of both instruments, be denoted by the Commissioner by endorsement under his hand upon the first instrument in such manner as he thinks fit.

Time limit for stamping.

18. All instruments which are required to be stamped under this Law shall be stamped at the time of execution save that instruments which are required to be stamped with ad valorem duty shall be stamped or presented for adjudication within thirty days of execution or, in the case of such instruments received from outside the Islands, within thirty days of the receipt thereof in the Islands.

Stamping after adjudication.

19. All unstamped or partly stamped instruments presented for adjudication shall, within seven days of adjudication, be stamped or stamped up to the extent of the amount adjudicated and with stamps to cover the adjudication fee and, until so stamped, shall remain in the custody of the adjudicator who shall give facilities to the owner for the stamping thereof while in such custody, and shall give notice to the owner or his agents in any reasonable manner the owner or his agent may stipulate, of the completion of the adjudication.

Interest to be charged upon instruments remaining unstamped.

20. In addition to any penalty imposed by this Law for late stamping or non-stamping of any instrument which is required to be stamped, there shall be charged interest at five per cent per annum for the first month or part of a month and thereafter at the rate of ten per cent per annum upon the total amount of the duty so remaining unpaid:

Provided that the Commissioner may at his discretion for good cause waive payment of the whole or any part of such interest.

Unstamped instruments as evidence.

Cap. 49.

21. Subject to the provisions of the Evidence Law, no instrument shall be rejected as evidence in any court or legal tribunal by reason only that it is unstamped or insufficiently stamped for the purpose of this Law, provided, in any civil case, the person pro-pounding the instrument shall be required to stamp or stamp-up the instrument -

(a) if the deficiency of duty paid is in respect of ad valorem duty, with twice the amount of the deficiency;

(b) in any other case, with twenty times the amount of the deficiency;

and, in any criminal case, the instrument shall be impounded and, at the termination of the case, sent to the Commissioner for such action as he may deem fit.

Records etc. to be open to inspection.

22. (1) Every public officer having in his custody any records, books, papers or proceedings, the inspection of which may lead to the discovery of evasion or omission of payment of stamp duty required, by this or any other law to be paid, shall at all reasonable times, permit the Commissioner to inspect and take copies of such records, books, papers or proceedings.

(2) Every public officer who receives or has in his control any instrument which he has reason to believe is chargeable with duty under this Law is either

unstamped or under-stamped shall impound the same and forward it to the Commissioner who shall adjudicate the same and thereafter deal with it according to the provisions of this Law.

Allowance for spoiled stamps.

23. The Commissioner may in proper cases, and subject to such terms, including the making by any person of a declaration on oath or affirmation, make refund to any person in respect of stamps which have inadvertently been spoiled, obliterated or otherwise rendered unfit for the purpose for which they were issued under this Law.

Regulations.

24. The Governor may make regulations prescribing -

(a) types of stamps for issue to the public for use under this Law;

(b) stamp embossing machines and the use thereof; and

(c) anything necessary to be prescribed for the implementation of this Law.

Rules of court and costs.

25. The Judge of the Grand Court may make rules for the conduct of appeals under this Law and for the scale of costs to be charged for the purpose of section 11.

Offences.

26. (1) Whoever -

(a) with intention to defraud fails to issue a receipt in respect of money paid to him or fails to stamp any instrument upon which duty is payable under this Law, it being his duty so to do; or

(b) with intent to defraud presents or causes to be presented for recording or registration any instrument upon which duty is payable which has not been duly stamped; or

(c) with intent to defraud contravenes sections 13, 14, 16, 18, 19 or 22; or

(d) without authorization, deals in any stamps issued for the purpose of compliance with this Law; or

(e) being entrusted with any money for the purpose of stamping any instrument in compliance with this Law, fails to apply such money to such purpose; or

(f) forges any stamp or die provided for the purposes of this Law; or

(g) makes any false statement or declaration for the purpose of avoiding or mitigating any charge to duty payable under this Law or withholds any information which, under this Law, he has a duty to disclose with regard to the true consideration for or any other matter affecting the stamping of any instrument upon which duty is payable; or

(h) being a public officer, knowingly records or registers any instrument, upon which duty is payable, which has not been duly stamped,

is guilty of an offence under this Law in addition to any other offence he may thereby have committed under any other Law.

(2) An offence under this Law shall be deemed to have been committed on the day when it shall first come to the knowledge of the Commissioner.

Penal.

27. (1) Whoever commits an offence under section 26 or attempts to commit or aids or abets any other person to commit such an offence is, if the offence is committed contrary to paragraphs (a), (b), (c) or (d) of that section liable upon summary conviction to a fine not exceeding $50 or to imprisonment for a term not exceeding three months or both, and if the offence is committed contrary to paragraphs (e), (f), (g) or (h) of that section, liable on summary conviction to a fine not exceeding $500 or to imprisonment for a term not ex-

ceeding one year or both.

(2) The Governor may, in his discretion, reward any person who informs him of any offence under this Law or assists in the recovery of any duty under this Law.

Advocates etc. who wilfully contravene this Law may be specially dealt with.

28. Whoever being an attorney-at-law, banker or trust company or any officer of a banker or trust company, or an accountant, agent, broker or estate agent authorized by any law to practise or do business as such in the Islands is convicted of an offence contrary to paragraphs (e), (f), or (g) of section 26 may, at the discretion of the Governor, and in addition to any other punishment imposed, have his licence or authorization to practise or to do business terminated or suspended for such time as the Governor may order and upon such conditions as the Governor may decide.

Repeal with savings. Cap. 159.

29. The old law is hereby repealed save that all instruments executed before the coming into operation of this Law and duly and timously stamped under the provisions of the old law shall not be liable to duty under the provisions of this Law.

THE SCHEDULE

ADJUDICATION of an instrument

1% of the sum adjudicated with a minimum of $1 and a maximum of $25

ADMINISTRATION (see PROBATE)

AGREEMENT OR MEMORANDUM OF AGREEMENT under hand only where no other duty is specified under any other head of charge — 50 cents

(see also CONVEYANCE, LEASE, MORTGAGE)

APPOINTMENT, POWER OF, exercised by any instrument

other than a will where no other duty is specified under any other head of charge — $6.00

(see also CONVEYANCE)

ASSENT to the vesting of land by personal representatives. — NIL

ASSIGNMENT of a debt, policy of life assurance or other thing in action where no other duty is specified under any other head of charge — $6.00

(see also CONVEYANCE, MORTGAGE)

ATTORNEY, POWER OF, including a letter of attorney where no other duty is specified under any other head of charge — $6.00

(see also CONVEYANCE, MORTGAGE)

BILLS OF EXCHANGE

(a) cheques — 5 cents

(b) drafts, orders, acceptances, letters of credit promissory notes or I.O.U's for payment to the bearer or to order, of any sum of money

not exceeding $100	25 cents
for every extra $100 or part thereof	25 cents
up to a maximum of	$250.00

BILL OF LADING for goods exported	50 cents
BILL OF SALE (see MORTGAGE)	
BOND of any kind whatsoever where no other duty is specified under any other head of charge	$2.00
(see also MORTGAGE)	
CHARGE (see MORTGAGE)	
CHEQUE (see BILL OF EXCHANGE)	
CHARTER-PARTY	$10.00

for the purposes of this charge, the expression ''charter-party'' means any agreement or contract for the charter of any ship, vessel, hovercraft or aircraft or any memorandum, letter, or other writing between the captain, master, or owner of any ship, vessel, hovercraft or aircraft, and any other person for or relating to the freight or conveyance of any money, goods or effects on board thereof.

CONVEYANCE OR TRANSFER ON SALE of any immovable property	7½% of the value of the consideration

For the purpose of this charge to duty the consideration shall be deemed to be the total monetary market value of the property of which the right of disposal is conveyed or transferred, irrespective of any mortgage, charge, lien or other incumbrance to which it is subject, or of the actual form the consideration may take, the period, if any, over which the consideration is payable, whether or not the property conveyed or transferred is contained in one or more parcels or lots and whether or not the property is conveyed or transferred by one or

more instruments, provided that in the case of the use of more than one instrument in respect of any one or more of the same parcels one such instrument shall be declared to be the principal instrument and shall recite the value of the property as hereby defined and shall bear the whole of the ad valorem duty subject to this charge, but so that where the parties desire to convey or transfer different parcels by different instruments, the ad valorem duty charged may be apportioned among such instruments.

For the purpose of this charge to duty, the expression ''conveyance or transfer on sale'' includes every instrument and every decree or order of any court or legal tribunal whereby any immovable property or any estate or interest in such property, upon the sale thereof, is transferred to a purchaser, or any other person upon his behalf or by his direction, and ''sale thereof'' includes grant, bargain, assignment, release, foreclosure or disclaimer however described:
Provided that where there takes place an exchange of parcels of freehold lands the charge for duty shall be based on the total combined value of the parcels or shares in the parcels exchanged between the parties in such manner as the instrument or instruments shall provide.

A power or letter of attorney with respect of any immovable property given for consideration, or declared to be irrevocable, is chargeable to duty as a conveyance on sale. The exercise of a power of appointment to any interest in immovable property if exercised otherwise than by will is chargeable to duty as a conveyance on sale.

For the removal of doubt it is declared that a sale in exercise of the power of sale of a mortgagee of immovable property is chargeable as a conveyance on sale of the whole of the immovable property subject to the mortgage.

Where the conveyance is expressed to be for natural love and affection where such relationship is shown to exist between the parties $20.00

DEED of any kind whatsoever, not described in this schedule $6.00

EXCHANGE (see CONVEYANCE)

HYPOTHECATION (see MORTGAGE)

INSURANCE (see POLICY OF INSURANCE)

LEASE OR AGREEMENT FOR A LEASE OF IMMOVABLE PROPERTY OR ANY INTEREST THEREIN

(a) where the term exceeds thirty years — the same duty as on a conveyance on sale upon the full value of the property or interest therein;

(b) where any premium or other valuable consideration other than or in addition to rent is provided in the instrument and the term is thirty years or less — the same duty as on a conveyance on sale upon the premium or other consideration;

(c) where the consideration or any part of the consideration is rent and the term is thirty years or less

(i) if the term does not exceed five years — a duty equal to 5% of the average annual rent;

(ii) if the term exceeds five years but does not exceed ten years — a duty equal to 10% of the average annual rent;

(iii) if the term exceeds ten years — a duty equal to 20% of the average annual rent.

For the purpose of paragraph (c), the average rent shall, for the purpose of calculating duty, if a rent at other than market value is provided in the instrument of lease, be declared at the market value having regard to any premium charged.
In calculating the length of a term for the purpose of this head of duty, the term shall be deemed to cover any period by which, by the exercise of an option or other arrangement or device the lessee or his assigns may have power to extend the said term.

Where in any term a possible increase of future rent is left to be settled by any agreement with or without arbitration, the instrument of lease shall, when such increase of rent has been ascertained be stamped up with the balance of duty which would have been payable had the actual average rent for the whole of the term been ascertainable at the commencement thereof; but until such increase has been ascertained the average annual rent shall be calculated without allowance for such increase.

MORTGAGE being a security by way of mortgage for the payment of any definite sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced or paid, or which may become due upon a current account, together with any sum already advanced or due, or without, as the case may be, howsoever the instrument creating the same may be described.

(a) being a legal or equitable mortgage of movable or immovable property; 1% of the sum secured

(b) being a collateral, or auxiliary, or additional, or substituted security by way of further assurance where the principal or primary security under paragraph (a) has been duly stamped; $10

(c) RELEASE OF MORTGAGE of immovable property whether by way of re-conveyance, surrender, discharge or other instrument howsoever called $6.

Where the amount of money to be advanced on the security of any property by way of mortgage is unlimited, the security is to be available for such an amount as the ad valorem duty paid thereon extends to cover, and if any advance is made in excess of the amount covered by that duty, the security shall for the purpose of stamp duty, be deemed to be a new and separate instrument bearing the date on which the additional advance is made, but the original instrument may be stamped-up with the additional ad valorem duty required to cover the total amount then to be secured and in that case the date of such stamping-up shall be recorded accordingly.

PARTNERSHIP	on every deed or agreement of partnership	$50
	on every rectification of a deed or agreement of partnership	$20
PLEDGE	(see MORTGAGE)	

POLICY OF INSURANCE other than life, personal accident or accidental death 50 cents

POLICY OF LIFE ASSURANCE	where the sum assured does not exceed $1000	50 cents
	where the sum assured exceeds $1000	.05% upon the principal calculated without bonus.

POWER OF APPOINTMENT (see APPOINTMENT)

POWER OF ATTORNEY (see ATTORNEY)

PROBATE AND ADMINISTRATION

On every grant of Probate or Letters of Administration	$10.00
On every oath or affirmation of an executor, administrator or attesting witness	$1.50
On every inventory and affidavit	50 cents

PROMISSORY NOTE (see BILL OF EXCHANGE)

RECEIPT FOR MONEY PAID

UNDER $100	nil
Thereafter for every $100 and fraction of $100	5 cents

RELEASE OR RENUNCIATION of any property (not otherwise provided for) $6

(see also CONVEYANCE and MORTGAGE)

REPORTS BY SHIPS inwards and outwards under the CUSTOMS LAW $2.00

SETTLEMENT or declaration of trust of or concerning any property by any writing (not being a will, or an instrument chargeable with ad valorem duty) $40.00

TRANSFER (see CONVEYANCE)

ATTESTED COPIES, CERTIFIED COPIES, COUNTERPARTS AND DUPLICATES used for the purpose of proving any original instrument stamped under this Law (counterparts and duplicates require also to be denoted under section 17). 50 cents

Passed the Legislative Assembly this 28th day of June, 1973.

K.R. CROOK
President

SYBIL McLAUGHLIN
Clerk of the Legislative Assembly

Government Notice No. 119 of 1973
Date of Operation: 12th July, 1973