

Document Class:	EXEMPTIONS
Document Name:	Marketable Securities
Document Description:	Liquidator In Specie Distribution
Document Code:	EX

Introduction

This guide note refers to a conveyance of marketable securities, that are not quoted on a recognised stock exchange, by way of *in specie* distribution.

Transfers *in specie* of marketable securities owned by a company in liquidation made by the liquidator to a shareholder of the company that is in liquidation are deemed by section 71(5)(b) of the SD Act not to be transfers operating as a voluntary disposition *inter vivos*.

The marketable securities can be transferred to any one or more shareholders of the company in liquidation regardless of how many, or the class of shares that are held by the shareholders.

A transfer of marketable securities to a shareholder of the company in liquidation who takes the marketable securities as a trustee of a trust is not precluded from this exemption by section 71(6) of the SD Act as the shareholder did not have a beneficial interest in the marketable securities prior to the transfer. Further, the liquidator is acting as an agent of the company and not as a trustee.

The consideration panel of the transfer should recite “by way of *in specie* distribution” or similar and there should be no consideration stated in the document.

The following similar transactions cannot be stamped under this document heading:

The document must be submitted for the Opinion of the Commissioner of State Taxation and the value of the land declared in the document where:

- the marketable securities are transferred to a shareholder and another party; or
- the marketable securities are transferred to a shareholder in consideration of amounts owing by the company that is in liquidation to that shareholder (ie. in lieu of repayment of a debt).

What *documents* can I stamp under this document heading?

The document can be in the form of:

- a Standard Transfer Form;
- a Share Transfer Form; or
- any other document that conveys marketable securities by way of *in specie* distribution.

What types of *transactions* can I stamp under this document heading?

A transfer *in specie* of marketable securities owned by a company in liquidation made by a liquidator to a shareholder of the liquidated company is deemed **suitable** for self-stamping under this document heading where:

- the document conveys marketable securities that are not quoted on a recognised stock exchange;
- the transferor is the liquidator of the company;
- the transferee is a shareholder of the company; and
- the conveyance is by way of *in specie* distribution and not for a consideration.

What stamp duty is payable on this document?

Exempt.

What evidence do I need to retain for audit purposes?

For audit purposes, you will need to retain the following documentation:

- a copy of the stamped document;
- a statement or statutory declaration from the liquidator stating:
 - the name of the liquidator;
 - that the marketable securities conveyed are an asset of the company;
 - that provision has been made for payment of all debts of the company;
 - the names of all the shareholders of the company; and
 - that the transaction is **not** by way of sale.

Example 1 – *In Specie* Distribution

Briggs Pty Ltd owns shares in Martin Cooke Pty Ltd. Briggs Pty Ltd has five shareholders, A, B, C, D and E. Briggs Pty Ltd has gone into voluntary liquidation and Tim has been appointed liquidator.

Tim transfers the shares in Martin Cooke Pty Ltd *in specie* to A and B. As the requirements of section 71(5)(b) of the SD Act have been satisfied, the transfer will be stamped Exempt.

What section of the SD Act applies?

Section 71(5)(b)
Schedule 2, Part 2, General Exemption 29