

政府總部  
民政事務局

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23 March 2012

By Fax: 2877 5029

Ms Clara Tam  
Assistant Legal Adviser  
Legal Service Division  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road,  
Central, Hong Kong

Dear Ms Tam,

**Proposed Resolution under the Legal Aid Ordinance (Cap. 91)**

Thank you for your letter dated 20 March 2012. The Administration's response is set out in the ensuing paragraphs.

New Paragraph 8 to Part I of Schedule 3

The provision “[c]ivil proceedings in the Court of First Instance or Court of Appeal that are brought in respect of an appeal...” is included to make it clear that all civil proceedings related to the appeal, including civil proceedings that are not the appeal itself, such as applications for leave to appeal, are covered. If all words before “an appeal” are deleted, the scope will be more restricted than is intended.

New Part III of Schedule 3

Our response to paragraphs (a) to (c) on Part III of Schedule 3 is as follows –

- (a) As discussed between your goodself and the Law Drafting Division of the Department of Justice regarding the Chinese text of the definition of

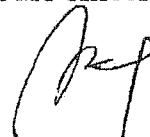
“personal insurance”, we consider the current proposed wording acceptable.

- (b) In the definition of “residential property”, the description of “constructed or intended to be constructed” is to make it clear that sale of properties the construction of which has not yet commenced is also covered. We note that the description “to be constructed” is also used in the Residential Properties (First-hand Sales) Bill (sections 3(4) and 6(2) refer). As it is our policy intent to cover pre-sale of first-hand residential properties, we need to retain the phrase “constructed or intended to be constructed” in the definition.

You also suggested that the proposed definition of residential property be modified to align with the position under land law that the ownership of property is in fact of the exclusive right to occupy the property. Whilst we understand that the description of property in conveyancing documents usually includes a reference to the exclusive right to occupy the unit, we prefer to avoid technicality and adopt a plain description approach in setting out civil proceedings for which legal aid may be given. We also note that a similar plain description approach is adopted in the Residential Properties (First-hand Sales) Bill in its definition of residential property in section 6(1). We also wish to avoid any argument over whether or not proceedings are covered where an agreement simply refers to a unit but not the exclusive right to occupy the unit. We therefore consider that our plain description approach would provide a clearer basis for the Legal Aid Department in considering legal aid applications when the amendments come into effect.

- (c) As regards the exclusion of agreements for sale and purchase entered into between a developer and its associate corporations or holding companies in respect of part of a development, we agree to include additional provisions to the effect that agreements for sale and purchase of residential properties between a company and its associate corporations or holding companies are not regarded as an agreement that has been entered into in respect of the residential properties involved. We will make the corresponding amendments to the proposed resolution as soon as possible.

Yours sincerely,



( Ms Aubrey Fung )  
for Secretary for Home Affairs

c.c.

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