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Housing Department
Strategy Division
Strategic Planning Sub-division
(Attn : Mr Carlson CHAN
Assistant Director (Strategic Planning))
Housing Department Headquarters
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BY FAX
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Dear Mr CHAN,

Housing (Amendment) Bill 2007

I am scrutinizing the legal and drafting aspects of the captioned Bill. I would be grateful if you may clarify the following points—

Mandatory Declaration System

Paragraph 3 of the LegCo Brief mentioned that Housing Authority (HA) would introduce a mandatory declaration system to collect data from public rental housing tenants for the purpose of rent review. While data may be collected under section 25 of the Housing Ordinance (Cap. 283) (the Ordinance), it is noted that the Ordinance or the new section 16A contains no provision empowering HA to pass the data so collected to any tertiary institution or public body to compile income index. Please clarify the personal data policy and the legal basis for passing the data so collected to a tertiary institution.

Income Index

Clause 4 of the Bill introduces the new section 16A, which provides for, *inter alia*, the rent variation mechanism. The rent variation mechanism in subsection (4) refers to "income index" which is defined in section 16A(9) as the index referred to in section 16A(8)(a) and compiled in the manner determined under subsection 16A(8)(c). Section 16A(8)(a) actually creates two types of indexes under (i) and (ii). The present drafting of subsection (4) may be unclear as to which index is referred to.

Regarding the subsequent review, it appears that a new index should be compiled, rather than using the index on the "adjusted mean monthly household income" of the last review as the index for the first period. If this is correct, it may be more accurate to reflect the operation of subsection 4 by defining "income index" as the index compiled under subsection 8(a)(i), and modify the definition of "adjusted mean monthly household income" to become "adjusted mean monthly household income index". Subsection 4(a), for example, should then be rewritten as follow-

"if satisfied on a review of the relevant rent that the ~~income~~ adjusted monthly household income index for the second period is higher than the income index for the first period, ..."

Exception to the Application of section 16A

Section 16A(3) excludes adjustments made to "well-off tenants" and low-income tenants. In section 16(1C) of the Ordinance, similar exclusion covers a combination of both "income" and "assets". Section 16(4) also empowers HA to require tenants to pay different rents based on their total household income or total household income and assets. Section 16A(3) appears to restrict the exclusion to either "income" or "assets". Please clarify whether this is the intention of HA.

Section 16A(3)(a)(ii) and (b)(ii) exclude "a re-adjustment" in the rent of "well-off" and low-income tenants where the total household income or total value of the household assets is lesser (or greater) than a threshold determined by HA. The definition of "relevant rent" does not include section 16A(3)(a)(ii) and (b)(ii). Please clarify whether the exclusion applies only to that particular "re-adjustment" and those tenants will be included in the rent review and variation mechanism after the "re-adjustment" if the tenants are no longer "well-off" or low-income tenants.

Section 16A(6) empowers HA not to vary the relevant rent if the variation required under section 16A(4) is "insignificant". Please clarify what would be considered as "insignificant".

Evidence

Section 16(1E) of the Ordinance provides that a certificate purporting to be signed by the Director of Housing stating what the median rent-to-income ratio is on a specified date is conclusive proof of the facts stated therein. There is no such provision in the Bill regarding the indexes. Please clarify the intention of HA.

Yours faithfully,

(LEE Ka-yun, Kelvin)
Assistant Legal Adviser

Encl.

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