



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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20 March 2012

Ms Aubrey FUNG
Prin Asst Secy (Civic Affairs) 2
Home Affairs Bureau
13/F., West Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

URGENT

Dear Ms FUNG,

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

I am scrutinizing the above resolution and grateful if you would clarify the following -

New Paragraph 8 to Part I of Schedule 3

It seems unnatural to say "[c]ivil proceedings in the Court of First Instance or Court of Appeal that are brought in respect of an appeal under the Labour Tribunal Ordinance (Cap. 25) relating to a claim to which the person seeking legal aid is a party in the capacity as an employee...". It may be preferable to delete all words before "an appeal".

New Part III of Schedule 3

- (a) In the Chinese text of the definition of "personal insurance", please consider amending "但並不包括唯一目的或主要目的是下列任何一項或多於一項的該等保險" to make it readily comprehensible.
- (b) In the definition of "residential property", the description of "constructed or to be constructed for residential use" does not seem to be relevant for the purposes of the Ordinance. Further,

ownership of a residential property is not of the physical unit but an exclusive right to occupy the property as a separate unit for residential purpose. Please consider modifying the definition to align with the law of real property.

- (c) Under the new Part III, a residential property is a first-hand property if no agreement for sale and purchase has ever been entered into in respect of the property. Paragraphs 4, 5 and 6 under Part III set out agreements which are not to be regarded as having been entered into in respect of a residential property. The proposed Part III has not excluded the agreement for sale and purchase entered into between the developer and its associate corporation or holding company in respect of part of a development, which would be a route for avoidance. Please consider whether this possible escape route should be blocked.

To enable us to report to the members before the House Committee meeting of 23 March 2012, I shall be most grateful if you could let me have your response in both Chinese and English before 22 March 2012.

Yours sincerely,



(Clara TAM)

Assistant Legal Adviser

cc. DoJ (Attn: Ms Frances HUI, SGC (Fax No.: 2869 1302))
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