



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

LC Paper No. CB(1)805/12-13(01)

來函檔號 YOUR REF :
本函檔號 OUR REF : LS/B/2/11-12
電話 TELEPHONE : 3919 3508

傳真 FACSIMILE : 2877 5029
電郵 E-MAIL : kcheng@legco.gov.hk

By Fax (2761 7444)

3 April 2013

Mrs Vicki Kwok
Principal Assistant Secretary (Housing) (Private Housing)
Housing Department
Private Housing Sub-division
Housing Authority Headquarters
33 Fat Kwong Street
Ho Man Tin
Kowloon

Dear Mrs Kwok,

Stamp Duty (Amendment) Bill 2012

I refer to your letter dated 8 February 2013 and the Legal Service Division takes note of the Administration's analysis of the relationship of proposed section 63A of the Stamp Duty (Amendment) Bill 2012 and Article 73(3) of the Basic Law.

The effect of proposed section 63A is that the notice published pursuant to that section will be subsidiary legislation subject to the "negative vetting" by the Legislative Council within the specified period under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). With regard to the adjustment mechanism of Special Stamp Duty ("SSD") and Buyer's Stamp Duty ("BSD") in proposed section 63A, I would be pleased if you could advise further on the following issues -

- (a) Under section 28(3) of Cap. 1, subsidiary legislation comes into operation at the beginning of the day on which it is published, unless a provision is made for a different commencement date. If the rates of SSD and/or BSD are amended by the Financial Secretary ("the new rates") in a notice published in the Gazette ("the original notice"), and

the new rates are subsequently reduced by the Legislative Council under section 34 of Cap. 1, will there be a refund of the payment made pursuant to the higher rates as prescribed in the original notice? If so, what will be the legal arrangement for such refund?

- (b) You may note that in some other Ordinances, there are express provisions which state clearly that a piece of subsidiary legislation is not to come into operation before the Legislative Council completes scrutiny. (The relevant provisions of the Legislation Publication Ordinance (Cap. 614) (section 18) and the Import and Export Ordinance (Cap. 60) (section 31(4)) are attached for your easy reference.) With a view to improving the refund system, if any, in the situation as described in paragraph (a), would the Administration consider providing expressly in the Bill that the new rates of SSD and/or BSD will not come into operation before the expiry of the negative vetting period of the Legislative Council?
- (c) Instead of negative vetting as now being sought in the Bill, would the Administration consider providing that the amendment to the rates of SSD and BSD by the Financial Secretary be subject to the "positive vetting" of the Legislative Council (i.e. by way of a resolution of the Legislative Council) to allow greater flexibility in the scrutiny by the Legislative Council?

I look forward to your reply in bilingual form before 12 April 2013.

Yours sincerely,



Kitty Cheng
Assistant Legal Adviser

Encl

c.c. LA
CCS(1)3

- 第 18 條 (2)(a)
- (i) 該另一條例的簡稱或引稱；
 - (ii) 該另一條例在制定、訂立或作出年份的各條例中排列的編號；或
 - (iii) 根據第 11(a) 條而編配予該另一條例的章號；
 - (i) 以無性別色彩的字或詞句取代任何條例中示明性別或可視為示明性別的字或詞句；
 - (j) 修訂任何條例，以改變提述條文的方式；及
 - (k) 就任何根據本條（本段除外）作出的修訂，對任何條例作出相應的修訂。

18. 修正命令的生效日期

根據第 17 條作出的命令，在可按照《釋義及通則條例》（第 1 章）第 34 條通過訂定將該命令修訂的決議的期限屆滿之前，不得生效。

- 第 18 條 (2)(a)
- (i) the short title or citation of that other Ordinance;
 - (ii) its number among the Ordinances of the year in which it was enacted or made; or
 - (iii) the chapter number given to it under section 11(a);
 - (i) replace a word or expression in an Ordinance indicating gender or that could be taken to indicate gender by a gender-neutral word or expression;
 - (j) amend an Ordinance to change the way of referring to a provision; and
 - (k) make an amendment to an Ordinance that is consequential on any amendment made under this section (other than this paragraph).

18. Commencement of revision order

An order made under section 17 is not to come into operation before the expiry of the period within which a resolution providing for the amendment of the order may be passed in accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

- (b) 訂定條件，以便將沒收或處置的物品、船隻或車輛的擁有權，或將任何處置的收益的擁有權，透過該等條件而交付或移轉予聲請人；或
- (c) 拒絕該項呈請。 (由 1993 年第 62 號第 12 條代替)
- (3) (由 1993 年第 62 號第 12 條廢除)

第 VII 部

規例

31. 訂立規例的權力

(1) 行政長官會同行政會議可為施行下列任何一項或各項，訂立規例—— (由 2000 年第 66 號第 3 條修訂)

- (a) 禁止輸入和輸出任何物品；
- (b) 除非根據並按照許可證所列條款及條件，否則禁止輸入和輸出任何物品；
- (c) 就發出許可證以輸入或輸出任何物品，作出規定；
- (ca) 賦權署長豁免任何人，無須取得許可證方可輸入或輸出任何禁運物品； (由 1984 年第 50 號第 2 條增補)
- (cb) 訂明任何物品或某一種類的物品，而該物品是除非根據並按照許可證的規定，否則根據本條例的規定，輸入或輸出該物品乃屬受禁止者； (由 1993 年第 62 號第 13 條增補)
- (d) 訂明任何人在進口許可證或出口許可證發出前或發出後所須遵守的條件；
- (e) 就艙單、提單、空運提單、航空托運單和其他類似事宜，向船隻、飛機及車輛的擁有人，船舶的船長，飛機的機長和車輛的掌管人，施加對於有效施行本條例條文乃屬需要的義務；
- (f) 就輸入或輸出任何物品施加其他條件或限制；
- (g) 對於為輸入或輸出而放置在任何船隻、飛機或車輛的任何貨物，施加條件或限制；
- (h) 對已輸入或輸出，或即將輸入或輸出的物品，就其查驗及貯存施行管制；

- (b) stipulate conditions upon which the delivery and transfer of ownership of the forfeited or disposed of article, vessel or vehicle, or the proceeds of any disposal, to the claimant is to be effected; or
- (c) reject the petition. (Replaced 62 of 1993 s. 12)
- (3) (Repealed 62 of 1993 s. 12)

PART VII

REGULATIONS

31. Power to make regulations

(1) The Chief Executive in Council may make regulations for all or any of the following purposes— (Amended 66 of 2000 s. 3)

- (a) prohibiting the import and export of any article;
- (b) prohibiting the import and export of any article except under and in accordance with the terms and conditions of a licence;
- (c) providing for the issue of licences to import or export any article;
- (ca) empowering the Director to exempt any person from any requirement to obtain a licence to import or export any prohibited article; (Added 50 of 1984 s. 2)
- (cb) prescribing any article or a class or description of an article the import or export of which except under and in accordance with a licence is prohibited under this Ordinance; (Added 62 of 1993 s. 13)
- (d) prescribing conditions to be observed by any person before or after the issue of an import licence or an export licence;
- (e) imposing upon owners of ships, aircraft and vehicles, masters of ships, commanders of aircraft and persons in charge of vehicles such obligations in respect of manifests, bills of lading, air waybills, air consignment notes and such other similar matters as may be necessary for carrying into effect the provisions of this Ordinance;
- (f) imposing other conditions or restrictions on the import or export of any article;
- (g) imposing conditions or restrictions on any cargo placed in or on any vessel, aircraft or vehicle for the purpose of import or export;
- (h) controlling the examination and storage of articles imported or exported or about to be imported or exported;

- (ha) 規定進入或離開香港的車輛的掌管人提供為實施本條例而需要的關於該車輛的資料； (由 2007 年第 8 號第 3 條增補)
- (i) 規定輸入或輸出任何物品的人或涉及任何物品的輸入或輸出的人，在該物品輸入或輸出之前或之後提供關於該物品的任何指明資料； (由 2007 年第 8 號第 3 條修訂)
- (ia) 賦權署長或關長就須根據本條例向他們提供的資料，指明任何表格、格式或規定； (由 1995 年第 30 號第 11 條增補。由 2000 年第 66 號第 3 條修訂；由 2002 年第 24 號第 2 條修訂；由 2007 年第 8 號第 3 條修訂)
- (j) 對已輸入或輸出的任何物品，或擬輸入或輸出的任何物品，或根據本條例的規定以其他方式處理的任何物品，規管其在香港的流動；
- (ja) 訂定關長可憑其酌情決定權，對於規例訂明的物品或署長按照本條例的規定訂明的物品，就其在香港水域內在船隻上或藉船隻而進行的運載，包括就經由陸路將該等物品運往船隻和將該等物品裝載上船隻的附帶活動，施加條件規限，以及訂定關長可發出許可證規管所有該等活動； (由 1991 年第 22 號第 11 條增補。由 1994 年第 1 號第 16 條修訂；由 2000 年第 66 號第 3 條修訂)
- (k) 就輸入、輸出、生產、加工、製造和組成任何物品而發出證明書，和就該等證明書所附帶的條件，作出規定；
- (l) 就特惠關稅稅率發出證明書和就該等證明書所附帶的條件，作出規定；
- (m) 就申請發給任何許可證或認可生產通知書的人，或就本條例所規定須呈交生產通知書或任何其他文件的人，或就符合多於一項上述說明的人，而進行的登記和就該登記所附帶的條件，作出規定； (由 1999 年第 37 號第 6 條修訂)

- (ha) requiring any person in charge of a vehicle entering or leaving Hong Kong to give such information in respect of the vehicle as may be necessary for giving effect to this Ordinance; (*Added 8 of 2007 s. 3*)
- (i) requiring any person importing or exporting any article or any person involved in the importing or exporting of any article to give any specified information in respect of the article before or after it has been imported or exported; (*Amended 8 of 2007 s. 3*)
- (ia) empowering the Commissioner or the Director to specify any form or requirement for giving information required to be given to the Commissioner or the Director under this Ordinance; (*Added 30 of 1995 s. 11. Amended 24 of 2002 s. 2; 8 of 2007 s. 3*)
- (j) regulating the movement within Hong Kong of any article which has been or is intended to be imported or exported or otherwise dealt with under the provisions of this Ordinance;
- (ja) providing for the imposition of conditions in the discretion of the Commissioner on the carriage of articles prescribed by the regulations or by the Director in accordance with the requirements of this Ordinance on or by vessels in the waters of Hong Kong including activities incidental to the transportation on land of the articles to the vessels and loading of such articles on to such vessels and for the issue of licences by the Commissioner to regulate all such activities; (*Added 22 of 1991 s. 11. Amended 1 of 1994 s. 16*)
- (k) providing for the issue of certificates in respect of the importing, exporting, producing, processing, manufacturing and composition of any article and for conditions which may be attached to such certificate;
- (l) providing for the issue of certificates in respect of preferential customs tariffs and for conditions which may be attached to such certificate;
- (m) providing for the registration of any person applying for the issue of any licence or validated production notification, or any person required to lodge a production notification or any other document under this Ordinance, or any combination thereof, and for conditions which may be attached to such registration; (*Amended 37 of 1999 s. 6*)

- (n) 就輸入、輸出、製造、加工、貯存、分銷、售賣或處理任何可獲發給許可證或認可生產通知書的物品的人，或就輸入、輸出、製造、加工、貯存、分銷、售賣或處理本條例所規定須呈交生產通知書或其他文件的物品的人，或就符合多於一項上述說明的人，而進行的登記，和就該登記所附帶的條件，作出規定；（由 1999 年第 37 號第 6 條修訂）
- (o) 就任何符合以下說明的處所的登記作出規定——
 - (i) 可就該處所獲發給任何許可證或認可生產通知書的，或本條例所規定須就該處所呈交生產通知書或其他文件的，或符合多於一項上述說明的；或
 - (ii) 與輸入、輸出、製造、加工、貯存、分銷、售賣或以其他方式處理任何可獲發給許可證或認可生產通知書的物品相關的，或與輸入、輸出、製造、加工、貯存、分銷、售賣或以其他方式處理本條例所規定須呈交生產通知書或其他文件的物品相關的，或符合多於一項上述說明的，並就登記該等處所時訂明的任何條件，作出訂明；（由 1999 年第 37 號第 6 條修訂）
- (p) 就署長信納作出登記的人曾違反許可證、認可生產通知書或根據本條例發出的其他文件的任何條件而作出取消、撤銷或暫時吊銷其登記任何一段時期，作出規定；（由 1999 年第 37 號第 6 條修訂）
- (q) 就輸入或輸出任何物品而施加和執行配額管制，作出規定；
- (r) 就任何配額的售賣或轉讓，並就可售賣或轉讓任何配額所根據的條件，作出規定；
- (s) 就涉及處理受配額管制的物品的人而進行的登記，並就任何該登記從一人移轉至另一人，作出規定；
- (t) 規定進口商、出口商、承運人、擁有人及製造商向署長或任何其他指定的公職人員提供資料以編製與任何在香港以外地方經營業務或進行其他活動的人、法人團體或並非法人團體的團體貿易的統計；（由 1998 年第 23 號第 2 條修訂）

- (n) providing for the registration of any person importing, exporting, manufacturing, processing, storing, distributing, selling or dealing with any article in respect of which any licence or validated production notification may be issued, or in respect of which any production notification or other document is required to be lodged under this Ordinance, or any combination thereof, and for the conditions which may be attached to the registration of any such person; (*Amended 37 of 1999 s. 6*)
- (o) providing for the registration of any premises—
 - (i) in respect of which any licence or validated production notification may be issued, or in respect of which any production notification or other document is required to be lodged under this Ordinance, or any combination thereof; or
 - (ii) connected with the importing, exporting, manufacture, processing, storage, distribution, sale or other dealing with any article in respect of which any licence or validated production notification may be issued, or in respect of which any production notification or other document is required to be lodged under this Ordinance, or any combination thereof,and prescribing any condition upon the registration of such premises; (*Amended 37 of 1999 s. 6*)
- (p) providing for the cancellation, revocation or suspension for any period of the registration of any person where the Director is satisfied that the person so registered has contravened any condition of any licence, validated production notification or other document issued under this Ordinance; (*Amended 37 of 1999 s. 6*)
- (q) providing for the imposition and administration of quota controls in respect of the import or export of any article;
- (r) providing for the sale or transfer of any quota and for the conditions under which any quota may be sold or transferred;
- (s) providing for the registration of any person involved in any dealing with an article on which any quota control is imposed and the transfer of any such registration from one person to another;
- (t) requiring importers, exporters, carriers, owners and manufacturers to furnish to the Director or any other specified public officer information for the purpose of compiling statistics of trade with any person or body of persons, corporate or unincorporate, carrying on business or other activities outside Hong Kong; (*Amended 23 of 1998 s. 2*)

- (u) 對於就根據本條例向關長或署長、獲授權人員、獲委任人員或海關人員所提供的資料或詳情而作出的發表或披露，施行禁止或管制；（由 2000 年第 66 號第 3 條修訂）
- (ua) 就指明團體所發給的保安裝置的使用作出管制，而該裝置是為對使用指明團體所提供的服務而為本條例的目的送出的資料作出認證的；（由 1995 年第 30 號第 11 條增補）
- (ub) 禁止指明代理人代人使用指明團體所提供的服務為本條例的目的而在未經授權下送出資料；（由 1995 年第 30 號第 11 條增補）
- (v) 就任何人根據本條例所須提供的任何詳情或資料而作出的核實，作出規定；
- (w) 規定任何人如在訂明的期間內未有向關長或署長或其他指明公職人員呈交任何文件或提供任何資料，須繳付一筆訂明款項，而該款項須為一筆應付予政府和可由政府追討的民事債項者；（由 2000 年第 66 號第 3 條修訂）
- (wa) 賦權關長就關於向關長提供資料的規例中的規定批予豁免；（由 2007 年第 8 號第 3 條增補）
- (x) 就根據本條例所引起的任何事項而由關長或署長徵收的費用，作出訂明，並概括訂明該等費用的付款方式及時間；（由 2000 年第 66 號第 3 條修訂）
- (y) 賦權署長就本條例所規定的任何許可證及任何承諾書的格式，作出決定；
- (z) 規定工業貿易署署長可藉憲報刊登的公告，對根據本條例訂立的任何規例的附表（不包括第 6B(1) 或 6F 條提述的附表或其任何部分）作出修訂；（由 1989 年第 292 號法律公告修訂；由 1994 年第 1 號第 16 條修訂；由 2000 年第 173 號法律公告修訂）
- (za) 規定獲發許可證的人須將訂明的或由署長予以決定的紀錄或文件備存；（由 1973 年第 3 號第 3 條增補）
- (zb) 就第 IIA 部所規定須由規例訂明的事項，或就該部所容許由規例訂定條文的事項，作出規定；（由 1999 年第 37 號第 6 條增補）

- (u) prohibiting or controlling the publication or disclosure of information or particulars furnished to the Commissioner or the Director, an authorized officer, an appointed officer or a member of the Customs and Excise Service under this Ordinance;
- (ua) controlling the use of a security device issued by a specified body for authenticating information to be sent for the purposes of this Ordinance using services provided by a specified body; (*Added 30 of 1995 s. 11*)
- (ub) prohibiting the unauthorized sending of information for the purposes of this Ordinance by a specified agent on behalf of a person using services provided by a specified body; (*Added 30 of 1995 s. 11*)
- (v) providing for the verification of any particulars or information required to be furnished by any person under this Ordinance;
- (w) providing that any person who fails to submit any document or furnish any information to the Commissioner or the Director or other specified public officer within a prescribed period of time shall be liable to pay a prescribed sum of money, which sum shall be a civil debt due to and recoverable by the Government; (*Amended 66 of 2000 s. 3*)
- (wa) empowering the Commissioner to grant exemptions from any requirements of the regulations respecting the furnishing of information to the Commissioner; (*Added 8 of 2007 s. 3*)
- (x) prescribing fees to be collected by the Commissioner or the Director in respect of any matter arising under this Ordinance and generally to prescribe the mode and time of payment of such fees;
- (y) empowering the Director to determine the form of any licence and any undertaking required under this Ordinance;
- (z) providing that the Director-General of Trade and Industry may, by notice published in the Gazette, amend the Schedule to any regulation made under this Ordinance, other than a Schedule or a part of a Schedule referred to in section 6B(1) or 6F; (*Amended L.N. 292 of 1989; 1 of 1994 s. 16; L.N. 173 of 2000*)
- (za) requiring any person to whom a licence has been issued to keep such records or documents as may be prescribed or as the Director may determine; (*Added 3 of 1973 s. 3*)
- (zb) providing for any matter required or permitted by Part IIA to be prescribed by or provided for in the regulations; (*Added 37 of 1999 s. 6*)

- (zc) 在不損害 (z) 段的一般性的原則下，在根據本條例訂立的任何規例的附表中指明 (zb) 段所提述的任何事項，並規定工業貿易署署長可藉憲報刊登的命令修訂該附表；（由 1999 年第 37 號第 6 條增補。由 2000 年第 173 號法律公告修訂）
- (zd) 賦權署長為第 6AA(1) 條中“生產”的定義而決定某工序為製造某些指明紡織品的工序；（由 1999 年第 37 號第 6 條增補）
- (ze) 賦權署長為第 6AA(1) 條中“要項”的定義而指明某項詳情為具關鍵性的；（由 1999 年第 37 號第 6 條增補）
- *(aa) 向依據任何根據本條所訂規例提供詳情的人或任何類別的人，按帶有或不帶有例外情況或豁免而徵收費用，以及訂明該等費用的款額或確定該等款額的方法，和訂明該等費用的付款方式及時間；（由 1995 年第 30 號第 11 條修訂；由 2002 年第 24 號第 2 條修訂）
- (ab) 對於根據本條例所訂任何規例須向關長呈交與任何物品的輸入或輸出相關的報關單而沒有將該報關單呈交或沒有於訂明期間內將該報關單呈交的人，施加可循民事程序追討的罰款，或作出如此施加的規定；（由 2000 年第 66 號第 3 條修訂）
- (ac) 賦權關長可免除繳付根據 (ab) 段所訂規例施加的罰款，並且可退還任何該等已繳付的罰款；（由 2000 年第 66 號第 3 條修訂）
- (ad) 賦權署長在發出許可證前可要求許可證的申請人向署長存放一筆由署長予以指明的款項；
- (ae) 就裁判官可將根據 (ad) 段所訂規例存放的全部或任何部分款項沒收歸政府所有，作出規定；（由 2000 年第 66 號第 3 條修訂）
- (af) 訂明根據本條例將會訂明或可予訂明的任何事情；及
- (ag) 概括而言，為更有效施行本條例的條文和貫徹其目的。（由 1982 年第 294 號法律公告修訂）

* 《1995 年進出口 (修訂) 條例》(1995 年第 30 號) 第 11 條對 (aa) 段所作的修訂，在未生效前已被《2002 年進出口 (電子交易) 條例》(2002 年第 24 號) 第 2 條廢除。

- (zc) without prejudice to the generality of paragraph (z), specifying any matter referred to in paragraph (zb) in a Schedule to any regulation made under this Ordinance, and providing that the Director-General of Trade and Industry may, by order published in the Gazette, amend that Schedule; (Added 37 of 1999 s. 6. Amended L.N. 173 of 2000)
- (zd) empowering the Director to determine a process to be the process of manufacturing any specified textiles for the purposes of the definition of “production” in section 6AA(1); (Added 37 of 1999 s. 6)
- (ze) empowering the Director to specify a particular as material for the purposes of the definition of “material particular” in section 6AA(1); (Added 37 of 1999 s. 6)
- *(aa) levying, with or without exception or exemption, a charge on persons or any category of persons who furnish particulars pursuant to any regulation made under this section, and prescribing the amount or method of ascertaining the amount of such charge and the mode and time of payment thereof; (Amended 30 of 1995 s. 11; 24 of 2002 s. 2)
- (ab) imposing or providing for the imposition of a pecuniary penalty, recoverable civilly, on any person who, being required under any regulation made under this Ordinance to lodge a declaration with the Commissioner in connexion with the import or export of any article, fails to lodge such a declaration or fails to lodge such a declaration within a prescribed period of time;
- (ac) empowering the Commissioner to waive the payment of any pecuniary penalty imposed under regulations made under paragraph (ab) and to refund any such pecuniary penalty which has been paid;
- (ad) empowering the Director to require an applicant for a licence to deposit with him, before the issue of a licence, such sum of money as the Director may specify;
- (ae) providing for the forfeiture to the Government by a magistrate of all or any of the sum of money deposited under regulations made under paragraph (ad); (Amended 66 of 2000 s. 3)
- (af) prescribing any thing which is to be or may be prescribed under this Ordinance; and
- (ag) generally for the better carrying out of the provisions and purposes of this Ordinance. (Amended L.N. 294 of 1982)

* The amendment to paragraph (aa), as introduced by section 11 of the Import and Export (Amendment) Ordinance 1995 (30 of 1995), was repealed by section 2 of the Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002) before the commencement of the amendment.

(1A) 就第 (1)(x) 或 (aa) 款訂立的規例，可規定在與使用指明團體所提供的服務送出的資料有關連的情況下應繳付的任何費用，須以政府與該指明團體議定的方式繳付。 (由 2002 年第 24 號第 2 條增補)

(2) 除第 (3) 款另有規定外，根據本條訂立的規例，可訂定違反任何該等規例均屬犯罪，並可訂明該罪行的罰則。

(3) 根據本條訂立的規例，可訂明凡違反或觸犯該等規例，須處罰款不超過 \$500,000 及監禁不超過 2 年。 (由 1980 年第 60 號第 5 條修訂)

(4) 根據 (aa)、(ab)、(ac)、(ad) 或 (ae) 段訂立的任何規例，在獲得立法會通過決議作出批准之前，不得實施。 (由 2000 年第 66 號第 3 條修訂)

(1A) Regulations made for the purposes of subsection (1)(x) or (aa) may provide that any fee or charge payable in connection with information that is sent using services provided by a specified body shall be paid in such manner as may be agreed between the Government and the specified body. (Added 24 of 2002 s. 2)

(2) Subject to subsection (3), regulations made under this section may provide that a contravention of any such regulation shall be an offence and may prescribe penalties therefor.

(3) Regulations made under this section may prescribe that a contravention or breach thereof shall be punishable by a fine not exceeding \$500,000 and imprisonment for a term not exceeding 2 years. (Amended 60 of 1980 s. 5)

(4) No regulation made under paragraph (aa), (ab), (ac), (ad) or (ae) shall come into operation until it has been approved by resolution of the Legislative Council.