



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

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By Fax (2761 7444)

30 October 2017

Miss KOK Sen Yee, Joyce
Prin Asst Secy (Housing)(Private Housing)
Housing Department
Housing Authority Headquarters
33 Fat Kwong Street
Ho Man Tin, Kowloon

Dear Miss KOK,

Stamp Duty (Amendment) (No. 2) Bill 2017

We are scrutinizing the above amendment bill ("the Bill").

Please find attached two appendices setting out our observations on the Bill (at **Appendix I**) and issues raised by Members at the meeting of the Bills Committee on 20 June 2017 (at **Appendix II**).

To facilitate the consideration of the Bills Committee, we would be most grateful if you could provide your response to us in bilingual form **by close of play on 3 November 2017**.

Yours sincerely,

(Kelvin Ka-yun LEE)
Senior Assistant Legal Adviser

c.c. DoJ (Attn : Ms Francoise LAM & Miss Wendy HO) (By Fax: 3918 4613)
Clerk to Bills Committee
LA

Observations of the Legal Service Division on the Bill

Clause 3

1. Clause 3 proposes to introduce new definitions to section 29A(1) of the Stamp Duty Ordinance (Cap. 117) to deal with instruments of residential properties. In relation to the definition of "single residential property", it includes "a unit and a roof situated immediately above the unit" and "a unit and an adjacent garden". "A unit", "roof" and "garden" are not defined in Part IIIA of Cap. 117 nor in the Bill although there is a definition of "unit" in Cap. 117 which refers to a unit in a unit trust under section 30. As the sale of residential property usually involves the sale of undivided shares, please clarify what constitutes "a unit", "roof" or "garden" and whether these expressions should be defined.

2. A single residential property also includes "a unit that became a single unit following the demolition of...any part of the walls, separating two adjoining units as shown by... a plan signed by an authorized person after the completion of the building works relating to the demolition.". Please clarify:

- (a) in the case of "any part of the walls", to what extent a demolition would render two residential units as one single residential property;
- (b) would the two adjoining units be still treated as a single residential property if:
 - (i) the demolition work does not require the approval of the Building Authority or engaging an authorized person; or
 - (ii) they are not separated by a wall but by, for example, a door or gate, that could be removed without any demolition.

3. Please also clarify that in the proposed section 29A(1A)(d) in clause 3(2) of the Bill, what "other documents" the Administration has in contemplation.

Appeal

4. Please also explain whether there is a procedure to appeal against a determination by the Collector of Stamp Revenue that the residential properties concerned are not a single residential property.

Appendix II

Issues raised by Members at the meeting of the Bills Committee on 20 June 2017

1. Should the Bill clearly provide for what amounts to "single residential property" by making references to instruments like the occupation permit?
2. In the case of a demolition of walls separating two adjoining units, would the liability to pay stamp duty be affected if the demolition is subsequently held to be unlawful as in the case of LDBM108/2007 Chi Fu Fa Yuen Ltd. v CHO Wai Man Raymond?
3. Please clarify the liability to pay stamp duty in the case of a sale of, for example, four subdivided flats by one instrument in which all the subdivided flats are technically within a single residential property under the building plan, the relevant deed of mutual covenant or the occupation permit.
4. Would the liability to pay stamp duty be different if it is a purchase of the same four subdivided flats referred to in question 3 above for the exclusive enjoyment by one single purchaser?