

## LCQ21: Non-liability for payment, remission and refund of stamp duty

Following is a question by the Hon Kenneth Leung and a written reply by the Secretary for Financial Services and the Treasury, Mr James Lau, in the Legislative Council today (March 27):

Question:

Under section 41 of the Stamp Duty Ordinance (Cap 117), the Central People's Government, the Government or any incorporated public officer or any person acting in his capacity as a public officer shall not be liable for the payment of stamp duty chargeable on any instrument. Under section 52 of Cap 117, the Chief Executive (CE) may remit, wholly or in part, the stamp duty payable, or refund, wholly or in part, the stamp duty paid, in respect of any instrument chargeable with stamp duty. Regarding the enforcement of those provisions, will the Government inform this Council:

(1) of the number of cases in each of the past 10 years in which the payment of stamp duty was exempted under section 41 of Cap 117 and the details of such cases (including the identities of the beneficiaries, as well as the amounts and types of stamp duty involved);

(2) of the number of cases in each of the past 10 years in which remission or refund of stamp duty was granted under section 52 of Cap 117 and the details of such cases (including the identities of the beneficiaries, as well as the amounts and types of stamp duty involved);

(3) of the number of cases among those in (1) and (2) in which the beneficiary was the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG) or companies associated with it, and the details of such cases (including the amounts and types of stamp duty involved);

(4) whether the Government will stipulate specific conditions (e.g. the property involved to be for self-use or for non-profit-making purposes only) to be met by property transactions before exemption or remission of stamp duty may be granted; if so, of the details, including the mechanism for monitoring the compliance with the relevant conditions; if not, the reasons for that;

(5) of the policy intents of the aforesaid provisions and the procedures for vetting and approval of the applications concerned; what information the persons applying for exemption, remission or refund of stamp duty have to furnish in support of their applications; and

(6) as it has been reported that the transactions for acquisition of properties in Hong Kong by a private company owned by two staff members of

LOCPG have been granted remission by CE under section 52 of Cap 117 of all the stamp duty payable, of the reasons why the company was accorded such treatment; if it was because the persons concerned claimed that the company was controlled by LOCPG, how the authorities verified the claim?

Reply:

President,

Under section 41(1) of the Stamp Duty Ordinance (SDO), the Central People's Government (CPG), the Government of the Hong Kong Special Administrative Region (HKSAR) or any incorporated public officer or any person acting in his capacity as a public officer shall not be liable for the payment of stamp duty chargeable on any instrument. Therefore, the CPG is exempt from the payment of stamp duty for the acquisition of properties in Hong Kong. Before Hong Kong's return to China, the same exemption was also available to the British Government for the acquisition of properties in Hong Kong. Moreover, under section 52(1) of the SDO, the Chief Executive (CE) may remit, wholly or in part, the stamp duty payable, or refund, wholly or in part, the stamp duty paid, in respect of any instrument chargeable with stamp duty.

The organs of the CPG in Hong Kong are exempt from the payment of stamp duty for the acquisition of properties in Hong Kong under section 41 of the SDO. There is no specified condition for such exemption. Where a CPG's organ in Hong Kong acquires a local property through its subsidiary company, section 41 is not directly applicable. With reference to the principle of section 41, the HKSAR Government will apply section 52(1) to remit the stamp duty chargeable on the relevant transaction instrument. To ensure the consistency of the exemption arrangement, remission of stamp duty on transaction instruments is granted under section 52(1) for local properties acquired either by the CPG's organs in Hong Kong or through their subsidiary company. The Chief Executive has authorised relevant officials of the Financial Services and the Treasury Bureau (FSTB) to exercise the power under section 52(1) of the SDO. In exercising the delegated authority, the FSTB will examine and consider the information submitted by the CPG's organs in Hong Kong or their subsidiary company, such as agreements for sale and purchase, declarations of trust, notarial certificates, declarations of shareholdings and/or company search records, etc.

Information on stamp duty remission accorded to the CPG's organs in Hong Kong or their subsidiary company in respect of local properties they acquired between the financial years 2009-10 and 2018-19 is tabulated below:

Financial Year	Organisations	Stamp duty involved (\$ million)	No. of properties involved
2009-10	—	0	0
2010-11	—	0	0

2011-12	—	0	0
2012-13	Subsidiary company of a CPG's organ in Hong Kong	1.9	15
2013-14	—	0	0
2014-15	Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region	52.3	6
2015-16	Ministry of Commerce of the People's Republic of China	3.6	8
	Subsidiary company of a CPG's organ in Hong Kong	15.6	15
2016-17	Subsidiary company of a CPG's organ in Hong Kong	8.4	8
2017-18	—	0	0
2018-19 (as at February 28, 2019)	Subsidiary company of a CPG's organ in Hong Kong	47.9	25

The Government does not comment on individual cases. Nevertheless, the HKSAR Government would emphasise that in implementing the SDO (including its provision on stamp duty remission), the HKSAR Government will carefully examine each case and the information provided by the persons concerned and confirm that the requirements are met before granting remission in accordance with the law.

## [Offer of spectrum assignments in 26 GHz and 28 GHz bands for provision of 5G services](#)

The Office of the Communications Authority (OFCA) announced today (March 27) that a total of 1 200 MHz of spectrum in the 26 GHz and 28 GHz (26/28 GHz) bands has been offered for assignment to three mobile network operators (MNOs), namely China Mobile Hong Kong Company Limited (CMHK), Hong Kong Telecommunications (HKT) Limited (HKT) and SmarTone Mobile Communications Limited (SmarTone), for the provision of the fifth generation mobile (5G) services.

Following a public consultation, the Communications Authority (CA) decided on December 13, 2018, to allocate 4 100 MHz of spectrum in the 26/28 GHz bands to mobile service and adopt an administrative approach for spectrum assignment in view of the abundant supply of spectrum in the two bands, and

the Secretary for Commerce and Economic Development decided that no spectrum utilisation fee (SUF) will be charged unless 75 per cent of the available spectrum in these bands is assigned or occupied.

The CA invited applications for spectrum assignment in the two bands on December 21, 2018, for the provision of large-scale public mobile services, and received three applications, from CMHK, HKT and SmarTone, by the close of the application period on February 22, 2019. Having completed the evaluation of their applications, the CA decided to offer assignment of 400 MHz of spectrum to each of the three applicants as per their applications.

"The spectrum can be used from April 2019 onwards for deployment of 5G services to provide high-capacity transmission at both outdoor and indoor locations of high traffic demand. As the total amount of spectrum to be assigned accounts for less than 75 per cent of the total available spectrum supply in the 26/28 GHz bands, the assignees do not need to pay any SUF for the use of the spectrum," a spokesman of the CA said.

Details of the spectrum assignment offers to the three MNOs are as follows:

	Spectrum Offered for Assignment	
Successful Applicant	Frequency Range (GHz)	Amount (MHz)
a. SmarTone Mobile Communications Limited	26.55 – 26.95	400
b. China Mobile Hong Kong Company Limited	26.95 – 27.35	400
c. Hong Kong Telecommunications (HKT) Limited	27.35 – 27.75	400

The assignment of the spectrum to each of the successful applicants will be subject to their submission of a performance bond to guarantee compliance with the network and service rollout obligations specified by the CA and payment of the relevant licence fees.

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## [LCQ12: Soccer pitches under the Leisure and Cultural Services Department](#)

Following is a question by the Dr Hon Pierre Chan and a written reply by the Secretary for Home Affairs, Mr Lau Kong-wah, in the Legislative Council

today (March 27):

Question:

Regarding the soccer pitches under the Leisure and Cultural Services Department, will the Government inform this Council:

(1) of the respective current numbers of the four types of soccer pitches, namely (i) 11-a-side soccer pitches (natural turf), (ii) 11-a-side soccer pitches (artificial turf), (iii) 7-a-side soccer pitches (natural turf) and (iv) 7-a-side soccer pitches (artificial turf); set out, for each type of soccer pitches in a table of the same format as the table below, the following of each pitch: the District Council district in which it is located, name, dimensions (length and width), construction cost and usage rate in 2018;

Type of pitches:

District Council district	Name	Dimensions (in metres)	Construction cost	Usage rate in 2018
Hong Kong				
Eastern	Siu Sai Wan Sports Ground			
...				
Kowloon				
...				
New Territories				
...				

(2) of the method for calculating the usage rates of soccer pitches;

(3) whether it has regularly reviewed the usage of soccer pitches; of the circumstances under which the Government will propose the construction of soccer pitches, and the relevant planning criteria; and

(4) whether it consulted, in the past three years, members of the football sector and the public on the planning of soccer pitches; if so, of the details; if not, the reasons for that?

Reply:

President,

My reply to the Dr Hon Pierre Chan's question is as follows –

(1) The Leisure and Cultural Services Department (LCSD) manages 42 natural turf soccer pitches and 40 artificial turf soccer pitches. As most turf soccer pitches only form part of the recreation and sports facilities concerned, and the construction cost of a soccer pitch also forms part of the total estimated construction cost of a facility, the LCSD does not have separate figures on the construction costs for turf soccer pitches. The information in respect of the size and usage rate of turf pitches is set out at Annex.

(2) The usage rate of turf pitches is calculated on the basis of the number of hours of hire. If there is more than one pitch in a venue, the number of hours hired for all the pitches will be aggregated. The calculation is as follows:

Overall usage rate of turf pitch (%) = Total hours hired during the year/  
Total hours available during the year x 100%

(3) and (4) The LCSD reviews from time to time the usage rate of soccer pitches so as to provide members of the public with appropriate facilities. When planning for new sports facilities (including soccer pitch), the Government will make reference to the Hong Kong Planning Standards and Guidelines and take account of other relevant factors, including policy objectives for sports development, existing provision of sports facilities in various districts, usage rates of existing facilities, demographic changes, views of District Councils, availability of land sites and technical feasibility. The LCSD will consult related national sports associations where necessary. The LCSD's soccer pitches are designed in accordance with the relevant standards (Note 1). The sizes of the vast majority of turf pitches meet the relevant standards, except those with venue constraints.

Note 1: The 7-a-side and 11-a-side soccer pitches managed by the LCSD are designed in accordance with the Hong Kong Planning Standard and Guidelines and the standard set by the Fédération Internationale de Football Association respectively.

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## Illegal worker jailed

A Pakistani illegal worker holding a recognisance form was jailed by Shatin Magistrates' Courts yesterday (March 26).

Immigration Department (ImmD) investigators received a referral from the Hong Kong Police Force to further investigate an illegal employment case in January. Enforcement officers arrested one male Pakistani worker, aged 31, selling blankets in Central. Upon identity checking, he was found to be a holder of a recognisance form issued by ImmD, which prohibits him from taking employment, and further investigation revealed that he was a non-refoulement

claimant.

The illegal worker was charged at Shatin Magistrates' Courts yesterday with taking employment after landing in Hong Kong unlawfully and remaining in Hong Kong without the authority of the Director of Immigration or while being a person in respect of whom a removal order or deportation order was in force. He pleaded guilty to the charge and was sentenced to 15 months' imprisonment.

The ImmD spokesman warned that, as stipulated in section 38AA of the Immigration Ordinance, illegal immigrants or people who are the subject of a removal order or a deportation order are prohibited from taking any employment, whether paid or unpaid, or establishing or joining in any business. Offenders are liable upon conviction to a maximum fine of \$50,000 and up to three years' imprisonment. The Court of Appeal has issued a guideline ruling that a sentence of 15 months' imprisonment should be applied in such cases.

The spokesman reiterated that it is a serious offence to employ people who are not lawfully employable. The maximum penalty is imprisonment for three years and a fine of \$350,000. The High Court has laid down sentencing guidelines that the employer of an illegal worker should be given an immediate custodial sentence. According to the court sentencing, employers must take all practicable steps to determine whether a person is lawfully employable prior to employment. Apart from inspecting a prospective employee's identity card, the employer has the explicit duty to make enquiries regarding the person and ensure that the answers would not cast any reasonable doubt concerning the lawful employability of the person. The court will not accept failure to do so as a defence in proceedings. It is also an offence if an employer fails to inspect the job seeker's valid travel document if the job seeker does not have a Hong Kong permanent identity card. The maximum penalty for failing to inspect such a document is imprisonment for one year and a fine of \$150,000.

Under the existing mechanism, the ImmD will, as a standard procedure, conduct initial screening of vulnerable persons, including illegal workers, illegal immigrants, sex workers and foreign domestic helpers, who are arrested during any operation with a view to ascertaining whether they are trafficking in persons (TIP) victims. When any TIP indicator is revealed in the initial screening, the officers will conduct a full debriefing and identification by using a standardised checklist to ascertain the presence of TIP elements, such as threat and coercion in the recruitment phase, and the nature of exploitation. Identified TIP victims will be provided with various forms of support and assistance, including urgent interference, medical services, counselling, shelter, temporary accommodation and other supporting services. The ImmD calls on TIP victims to report crimes to the relevant departments.

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## Gazettal of subsidiary legislation on Insurance Authority's collection of new user fees

The Government will gazette on Friday (March 29) the Insurance (Prescribed Fees) (Amendment) Regulation 2019 (Amendment Regulation) to enable the Insurance Authority (IA) to collect new user fees to recover the cost of providing specific services.

As an independent regulatory body, the IA is financially and operationally independent of the Government. The IA is empowered to collect, among other things, user fees on specific services provided. The first batch of 11 more frequently used service items came into effect on June 26, 2017.

"The Amendment Regulation seeks to introduce the second batch of 12 user fee items. The items cover mainly fees in relation to transfer of businesses and various modifications to the accounting requirements under different sections of the Insurance Ordinance (Cap. 41) and apply primarily to insurance companies or their auditors. In determining the fee levels, the methodology is largely in line with the approach used by the Government," a spokesman for the Financial Services and the Treasury Bureau said today (March 27).

The Amendment Regulation will be tabled before the Legislative Council for negative vetting on April 3, 2019. The provisions in the Amendment Regulation will come into operation on May 27, 2019, except section 4(2) which will come into effect upon the commencement of the new licensing regime for insurance intermediaries, tentatively in the second half of 2019.