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Ms Serena CHU
Clerk
Public Accounts Committee
Legislative Council Building
8 Jackson Road, Central
Hong Kong

9 May 2008

Dear Ms CHU

**The Director of Audit's Report on the
results of value for money audits (Report No. 50)**

Chapter 2: Commercialisation and utilization of government properties

Thank you for your letter dated 5 May 2008. I would like to respond to your two queries as follows.

To confirm whether FSI premises are exempt from the provisions of the Buildings Ordinance

When exploring the feasibility of putting FSI premises to some use, Buildings Department (BD) gave various views on the types and use of premises that might be exempted from the Buildings Ordinance. In 1994, BD gave the view then that FSI premises were exempted from the Buildings Ordinance and therefore the regulations related to permitted plot ratio were not applicable. The view at that time was that as FSI premises were buildings belonging to the government, they were exempted from all the provisions of the Buildings Ordinance by virtue of section 41(1)(a) thereof.

BD's interpretation of the Buildings Ordinance has always been developing with the accumulation of knowledge and experience with the types and use of premises such as Public Transport Interchange incorporated in private building development. With such development since the above advice given to GPA, BD's current view is that although FSI premises are exempted from the Buildings Ordinance by virtue of section 41(1)(a), the exemption applies to the premises itself only. The land on which the building concerned is erected and thus the building as a whole, of which the FSI premises only form a part, is not exempted from the provisions of the Buildings Ordinance as the land is not unleased land and the building as a whole is not a building belonging to the government.

Based on our current interpretation of the Buildings Ordinance, it is our view that as the permissible gross floor area and plot ratio are related to the land and the building as a whole, the FSI premises could not be excluded from gross floor area calculation by virtue of its exemption under section 41(1)(a) of the Buildings Ordinance. Any proposal to put the premises to other uses will necessitate the granting of new exemptions from gross floor area calculation under the Buildings Ordinance, as the basis for the original exemption no longer applies. To dispel any doubt on our current view as mentioned above, we will seek legal advice in this regard.

The details and progress of BD's consultation with D of J

As mentioned above, any proposed gainful use of the MTR reserved area will necessitate the granting of new exemptions from gross floor area calculation. For this purpose, we have already started discussion with GPA on the possible gainful uses and later would consult other relevant government departments, including Department of Justice.

Please do not hesitate to contact me or our Chief Building Surveyor Patrick Tsui (2626 1555) for further queries.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized initial 'M' followed by a series of connected loops and a final vertical stroke.

(K.M. MO)
for Director of Buildings

c.c. Government Property Administrator
Secretary for Financial Services and the Treasury
Director of Audit