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16 February 2009

**BY FAX**  
**Fax No.: 2136 3281**

Dear

**Public Health and Municipal Services (Amendment) Bill 2008**

Thank for your letter of 13 February. We have the following questions in relation to your reply-

- (a) The appellant may be aggrieved by the varied section 78B order but not, in light of the variation, the original section 78B order. Therefore, there may be no need for the two appeals to be heard together. It is noted that section 12(1)(a) of the Municipal Services Appeals Board Ordinance (Cap. 220) (MSABO) provides that, for the purposes of an appeal, the Municipal Services Appeals Board (MSAB) hearing the appeal may determine its own procedure. Would it settle the issue of the outstanding original appeal, to require, by virtue of section 12(1) of the MSABO, an appellant to withdraw his first appeal against a section 78B order if he subsequently lodges with the MSAB another appeal against a varied section 78B order and he does not wish the two appeals to be heard together?
- (b) It is appreciated that the decision of the MSAB may be different from that of the court, for example the decision of the MSAB may be subsequently overturned upon judicial review by the decision of the court. But our question is that a parallel hearing by the MSAB and a court on, for example an issue of the reasonableness of the Authority's decision would result in an anomaly if the MSAB finds that the Authority's decision is reasonable but the court simultaneously finds it otherwise.

- (c) It is noted that section 15(4) of the MSABO provides for the admissibility of the decision or order of the MSAB in other proceedings. But it is not for sure whether it is sufficient in all cases for an appellant who simply relies on the decision or order of the MSAB could discharge his burden of proof under the revised section 78H(1A). Would you consider it appropriate to adapt a wider scope of admissibility of the contents of documents in another proceedings as provided for under sections 62(2)(b), 63(2)(b) and 64(2) of the Evidence Ordinance (Cap. 8) for the purpose of an application for compensation under the revised section 78H?

It is appreciated that your reply in both languages could reach us as soon as possible.

Yours sincerely,

(Stephen LAM)  
Assistant Legal Adviser

cc. DoJ (Attn.: Ms. Leonora IP, SGC & Miss Mandy NG, GC) (By Fax: 2845 2215)  
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