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By Fax (2147 5834)

3 May 2010

Miss Katharine Choi
Principal Assistant Secretary for the Environment (Energy)
Environment Bureau
46/F, Revenue Tower
5 Gloucester Road
Wan Chai
Hong Kong

Dear Miss Choi,

Buildings Energy Efficiency Bill

I refer to "The Administration's responses to issue relating from clauses 17 onwards" and enclose some further questions on Schedule 3 to the Buildings Energy Efficiency Bill for your consideration.

I look forward to your advice on these questions in bilingual form as soon as possible.

Yours sincerely,

Kitty Cheng
Assistant Legal Adviser

Encl

c.c. CCS(1)1

Buildings Energy Efficiency Bill

Schedule 3

1. According to the Administration, the purpose of the "Notes" in Schedule 3 is "to provide explanations" to paragraphs (query: "items" as referred in the Notes) 1 and 2 in Schedule 3 and the Notes have the same legal effect as other substantive provisions in the Bill (para. 48, "*The Administration's responses to issues relating from clauses 17 onwards*").

2. Interpretation of legislation is always a matter for the court, although elaboration of legislative intention might be more explicitly declared in the substantive parts of the legislation for the sake of clarity. Section 18 of the Interpretation and General Clauses Ordinance (Cap. 1) provides that marginal notes or section headings to any provision of any Ordinance shall not have any legislative effect and shall not in any way vary, limit or extend the interpretation of any Ordinance.

3. The insertion of some "Notes" to certain provisions of a Bill "to provide explanations" seems to be a rather new approach to law drafting in Hong Kong. Would the Administration inform the Bills Committee that whether this rather new approach has been consulted or referred to the LegCo Panel on Administration of Justice and Legal Services?

4. In addition, please explain why the contents of the Notes cannot be included in the substantive provisions of items 1 and 2 of Schedule 3?

5. Paragraph (2) of the Notes to Schedule 3 seeks to provide the following -

"If works are carried out for more than one place in a unit or a common area of a prescribed building and, having regard to all relevant factors of the case, the works *should reasonably be regarded as* (按理應視為) being under the same series of works, the reference to floor area in item 1 of this Schedule is a reference to the aggregate of the floor area of all those places."

6. Who will be the person "having regard to all relevant factors of the case" in paragraph (2) of the Notes? In other words, who determines whether certain works fall within the scope of Schedule 3?

7. With a view to improving certainty of the scope of paragraph (2) of the Notes, should the phrase "*should reasonably be regarded as*" be replaced by "are to be regarded as" or "shall be regarded as", if that is the true intention of the provision?

8. Does paragraph (2) of the Notes apply to only item 1 of Schedule 3? Does it have any effect on the other parts of Schedule 3 or the Bill?