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26 May 2010

Miss Kitty Cheng
Assistant Legal Advisor
Legislative Council
8 Jackson Road
Central
Hong Kong

By Fax (2877 5029) and By Mail

Dear Miss Cheng,

Buildings Energy Efficiency Bill

Thank you for your letter dated 3 May 2010. I am writing to provide the Administration's response to the questions raised at your letter regarding Schedule 3 to the Buildings Energy Efficiency Bill ("the Bill").

2. As explained in our earlier paper to the Bills Committee (CB(1)1799/09-10(01)), the Notes in Schedule 3 have the same legal effect as other substantive provisions in the Bill.

3. Schedule 3 to the Bill defines major retrofitting works. The purpose of the Notes, which is neither "marginal notes" nor "section headings", is to provide explanations on the operation of items 1 and 2 of Schedule 3. In order to keep the substantive provisions short and comprehensible, we do not propose to include the Notes in the substantive provisions. The paragraphs in the Notes, collectively,

provide objective elements to facilitate comprehension and interpretation of Schedule 3.

4. The Notes facilitate all relevant readers of the legislation in determining whether a certain works should be regarded as a major retrofitting works under Schedule 3. The “relevant readers” include an owner and / or responsible person under the Bill, a works contractor, a registered energy assessor, the Director of Electrical and Mechanical Services, the Court and all other members of the public. In determining whether the works concerned should be regarded as a major retrofitting works, a reasonable man should take into account all relevant factors (see paragraph 3 of the Notes) and make a judgment in a reasonable manner. We do not consider it necessary to amend the wording “*should reasonably be regarded as*” in paragraph 2 of the Notes.

5. The arrangement of making substantive provisions in the form of Notes in legislation is not uncommon. For your reference, examples could be found at Schedule 1 to the Shipping and Port Control Regulations (Cap. 313 sub. leg. A), Schedule 3 to the Metrication Ordinance (Cap. 214), Schedule 3 to the Factories and Industrial Undertakings (Work in Compressed Air) Regulations (Cap. 59 sub. leg. M), Schedule 1 to the Preservatives in Food Regulation (Cap. 132 sub. leg. BD) and Schedule 1 to the Securities and Futures (Price Stabilizing) Rules (Cap. 571 sub. leg. W).

6. The terms of Note (2) make it clear that the Note relates only to item 1 of Schedule 3.

Yours sincerely,


(Miss Katharine Choi)
for Secretary for the Environment

c.c.

Mr K K Li, Electrical and Mechanical Services Department

Mr Gilbert Mo, Department of Justice