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5 July 2010

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By Fax (2877 5029) and By Mail

Dear Miss Cheng,

**Buildings Energy Efficiency Bill
Administration's Draft Committee Stage Amendments**

Thank you for your letter dated 10 June 2010. I am writing to provide the Administration's response to the questions raised at your letter regarding issues of terminology at the Buildings Energy Efficiency Bill ("the Bill").

Residential "use / building / unit"

2. Clause 29(1) of the Bill empowers an authorized officer to enter any part of a prescribed building that is not a "residential unit". As explained in our earlier paper (LC Paper No. CB(1)1799/09-10(01)), "residential unit" means a unit in a prescribed building which is for "residential use". The term "unit" is specifically defined in the Bill and we consider that the meaning of "residential unit" is clear. Hence, the Administration considers it not necessary to specifically define

“residential unit”, “residential use” or include a cross reference to the definition of “residential building” for the purpose of interpreting “residential unit”. In future, when the Court determines whether a space concerned is a “residential unit” under the Buildings Energy Efficiency Ordinance (“the Ordinance”), the Court would construe the term having regard to the Ordinance as a whole and all relevant facts of the case. There is also a wealth of judicial precedents on the meaning of cognate expressions such as “resides”, “residence” and “resident” that offers assistance to the Court.

Industrial and commercial “building / portion / use”

3. After considering paragraph 7 of your letter, we agree to amend items 2 and 5 of Schedule 1 and item 2 of Schedule 4 to the Bill, by making express reference to the use of the premises. Nevertheless, we shall retain the usage of “portion” instead of “part” at these items, for the reasons given below. Committee Stage Amendments will be proposed to take this forward.

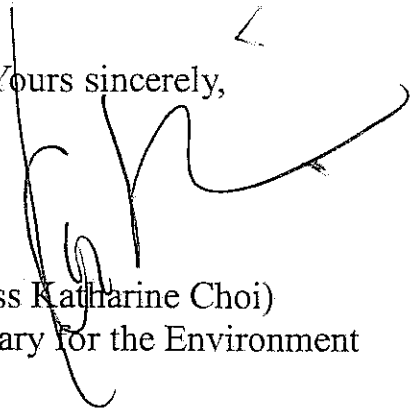
4. The word “portion” means a part or share into which something is divided. The usage of “portion” or “part” in the context of land and buildings carry meanings of a fine difference. We intend to use “portion” when a larger apportionment of building or land is involved while “part” or “unit” refers to spaces of a smaller scale. For example, a composite building may contain a residential portion, say, a residential floor, but a part of it, say, the lift lobby, is a “non-residential part” since normally no individual will reside at the lift lobby. If, as suggested, item 2 of Schedule 1 to the Bill were amended to become “part of a composite building that is not for residential or industrial use”, it may misdirect a reader to refer to smaller spaces such as lift lobbies or staircases, etc.

5. Having reviewed the definition of “residential building” in the Bill, the Administration also proposes to amend part (b) of the definition by replacing “such parts of a composite building that are for residential use,” with “a portion of a composite building that is for residential use.”.

6. Similar examples in existing legislation could be identified. For instance, in section 2 of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), the definition of “domestic premises” (住宅處所) means “premises the subject of a separate letting (including any bed-space, cubicle, room, floor or portion of a floor or building) which are used wholly or primarily for human habitation...”; and in section 2 of

the Government Rent and Premium (Apportionment) Ordinance (Cap. 125), the definition of “section” (分段) means “any portion or division of a lot”.

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