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Secretary for the Environment, Transport and Works
(Attn: Mrs Teresa WONG, Principal Assistant
Secretary (Environment and Transport)E2)
Environment Branch
Environment, Transport and Works Bureau
10/F Citibank Tower
3 Garden Road Central
Hong Kong

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BY FAX

Fax No. : 2136 3347
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Dear Mrs WONG,

Waste Disposal (Amendment) (No. 2) Bill 2003

Thank you for your today's letter.

In relation to your answers (1) and (2), with respect, we are of the opinion that it would be desirable to put it in plain words in the statute about the application of the Amendment Ordinance to section 16A (both new and repealed) and related provisions instead of relying on a rule of construction of the statute. Further, in our opinion, it would be unsafe to rely on section 19 of Cap. 1 as a rule of construction in the present context. In *Medical Council of Hong Kong v Chow Siu Shek David [2000]2 HK428*, the court at p. 438 was of the view that :—

"I turn now to s 19 of the Interpretation and General Clauses Ordinance (Cap 1) which provides that: An Ordinance shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit.

The opening statement in the section that 'An Ordinance shall be deemed to be remedial' is plain enough. But then the section becomes less and less plain as one reads on. Reasonable people may differ — and frequently do differ — over what would be 'fair, large and liberal'. And merely calling for the interpretation which 'will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit' does not of itself provide any practical guidance on how to go about achieving that interpretation.

Section 19 plainly establishes that legislation is to be interpreted as being remedial. But beyond that the section deals with what is to be done rather than how to do it. As a general statement of the proper approach to be followed in most if not all cases calling for statutory interpretation, I think that there is much to be said for the statement in Francis Bennion: Statutory Interpretation (3rd Ed, 1997) at p 424 that: the basic rule of statutory interpretation is that it is taken to be the legislator's intention that the enactment shall be construed in accordance with the general guides to legislative intention laid down by law; and that where these conflict the problem shall be resolved by weighing and balancing the interpretative factors concerned.

What interpretative factors are concerned in any given instance must depend on its circumstances."

In relation to your answer (3), do you have any legal authority in support of your proposition? Would you also explain the situation in which the trial of an offence under the repealed section 16A straddles the commencement of the Amendment Ordinance? Could the defendant avail himself of the defences in new section 16A? These questions relate to important issues which may have implication for criminal proceedings. We would suggest that the relevant policy intent on how they should be addressed be provided for explicitly in legislation.

Your earliest reply in both languages is much appreciated.

Yours sincerely,

(Stephen LAM)
Assistant Legal Adviser

c.c. DoJ
(Attn: Miss Shandy LIU, SGC)
(Fax No. 2869 1302)
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