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BY FAX
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Dear

Public Health and Municipal Services (Amendment) Bill 2008

We refer to your letter of 20 January 2009 and the further revised CSAs to the Bill.

We have further questions on the revised appeal mechanism and would be grateful for your clarification. The questions are as follows:-

- (a) What would happen to the appeal under the new section 78G against a section 78B Order, if there is a subsequent appeal against its variation before the determination of the original order by the MSAB? Procedurally, would the first appeal lapse automatically or a new provision is to be added to provide for this scenario in respect of the first appeal?
- (b) Under the revised appeal mechanism, an aggrieved person may appeal against a section 78B Order under the new section 78G(1) and at the same time seek compensation from the District Court or Small Claims Tribunal under the new section 78H. Would there be an anomaly if the MSAB determines under the new section 78G that the decision of the Authority was reasonable and does not temper with the Order; whereas the District Court or Small Claims Tribunal determines under the new section 78H(1A) that the Authority did not have reasonable grounds to make the section 78B Order and awards compensation accordingly? The anomaly will be removed, if the function to confirm, vary or set aside a section 78B Order is given to the District Court or Small Claims Tribunal instead of the MSAB.

- (c) Under the new section 78H(1A)(a), the aggrieved person has to prove that the Authority did not have reasonable grounds to make the section 78B Order. Instead of requiring the aggrieved person, who has appealed successfully against a section 78B Order before the MSAB, to prove the same again before the District Court or Small Claims Tribunal, would you consider it appropriate to allow the District Court or Small Claims Tribunal to accept the evidence before the MSAB, without further proof, if the MSAB determines that the Authority did not have reasonable grounds to make a section 78B Order?

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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