

**立法會**  
*Legislative Council*

LC Paper No. LS64/10-11

**Observations on use of reader aids in recently proposed legislation**

We understand that the drafting practice of using reader aids in legislation will be discussed by the Panel on Administration of Justice and Legal Services (the Panel) on 23 May 2011.

2. An increasing use of reader aids in the text of bills and subsidiary legislation recently proposed by the Administration has been observed -

- (a) In the Communications Authority Bill (CA Bill), the Administration has proposed a Committee Stage amendment (CSA) to clause 17(3) seeking to summarize in parentheses the subject matter of various sections of the Telecommunications Ordinance (Cap. 106), the Broadcasting Authority Ordinance (Cap. 391) (to be renamed the Broadcasting (Miscellaneous Provisions) Ordinance) and the Broadcasting Ordinance (Cap. 562) which are referred to in that subclause. It is noted that some of the proposed descriptors do not merely replicate the relevant section headings, but appear to be shorthand descriptions of what the Administration perceives to be the subject matter of the sections referred to. A copy of the Administration's proposed CSA, together with a marked up version of Clause 17 of the CA Bill, is at **Annex I**. At the meeting of the Bills Committee on the CA Bill held on 12 April 2011, members considered the proposed CSA and noted the Administration's explanation that the proposed descriptors were intended to be reader aids to enhance understanding of the Bill.
- (b) Other bills and subsidiary legislation recently introduced by the Administration also contain notes for the purpose of enhancing readers' comprehension. While some notes inserted in bills would have the benefit of a specific interpretation provision to clarify their status (e.g. clause 3(6) of the Companies Bill and clause 2(8) of the Lifts and Escalators Bill respectively provide that a note located in the text of the ordinance is provided for information only

and has no legislative effect), some notes inserted do not have such provision (e.g. the notes in Schedule 3 to the Building Energy Efficiency Bill and in section 1 of the Tramway Ordinance (Alteration of Fares) (Amendment) Notice 2011). Enquiries have been made with the Administration about the status and legislative effect of the notes without an interpretation provision. Copies of the Administration's replies and relevant documents are at **Annex II**.

3. It is noted that under section 18(3) of the Interpretation and General Clauses Ordinance (Cap. 1), marginal notes and section headings do not have any legislative effect, but this section does not cover other reader aids like the proposed descriptors in the CA Bill and the notes in the texts of the bills and subsidiary legislation referred to above. The issues which may be of interest to the Panel include -

- (a) what status the proposed descriptors and notes have in the absence of any express provision on the legal or legislative effect of these reader aids; and
- (b) the mechanism and form for amending these descriptors and notes in bills and subsidiary legislation subject to positive vetting of LegCo during the legislative proceedings, and those in ordinances and subsidiary legislation subject to negative vetting of LegCo.

Encls.

Prepared by

Legal Service Division  
Legislative Council Secretariat  
19 May 2011

COMMUNICATIONS AUTHORITY BILL

COMMITTEE STAGE

Amendments to be moved by the  
Secretary for Commerce and Economic Development

<u>Clause</u>	<u>Amendment Proposed</u>
17(3)	<p>(a) In paragraph (b) –</p> <p>(i) by deleting “submit” and substituting “submission of”;</p> <p>(ii) by deleting “appoint” and substituting “appointment of”.</p> <p>(b) In paragraph (c), by deleting “13C, 13CA or 13E” and substituting “13C (grant of licence), 13CA (issue of guidelines) or 13E (renewal of licence)”.</p> <p>(c) In paragraph (e), by deleting “10(1), 19, 21 or 24” and substituting “10(1) (appointment of Broadcast Complaints Committee), 19 (issue of Codes of Practice), 21 (inquiry by Authority) or 24 (imposition of financial penalties)”.</p> <p>(d) In paragraph (f), by deleting “3, 4, 8, 9, 10, 11, 28, 31, 32 or 33” and substituting “3 (approval of codes of practice), 4 (publication of guidelines), 8 (to whom licence may be granted), 9 (recommendations on licence applications), 10 (grant of licence), 11 (extension or renewal of licence), 28 (licensee to pay financial penalty), 31 (suspension of licence), 32 (revocation of licence) or 33 (inquiry by Authority)”.</p>

## Communications Authority Bill

## Committee Stage amendments to be moved by the Secretary for Commence and Economic Development

### 17. Delegation of functions to committees, Director-General and public officers

(1) Subject to subsection (3), the Authority may by resolution, with or without restrictions or conditions as it thinks fit, delegate in writing any of its functions to—

- (a) any committee appointed under section 16, if the majority of its members are members of the Authority;
- (b) the Director-General; or
- (c) any public officer.

(2) A delegation made under this section does not preclude the Authority from performing at any time any of the functions so delegated.

(3) The Authority must not delegate—

- (a) the power to delegate under this section;
- (b) any function under section 6 (submit annual reports) or section 16 (appoint committees);
- (c) any function under section ~~13C, 13CA or 13E~~ of the Telecommunications Ordinance (Cap. 106);
- (d) any power conferred on it by regulations made under section 37 of the Telecommunications Ordinance (Cap. 106) to fix the limits of any electrical or radiated interference in respect of any class or classes of apparatus;
- (e) any function under section ~~10(1), 19, 21 or 24~~ of the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391); or
- (f) any function under section ~~3, 4, 8, 9, 10, 11, 28, 31, 32 or 33~~ of the Broadcasting Ordinance (Cap. 562).

↑ submission of

↑ appointment of

↑ 13C (grant of licence), 13CA (issue of guidelines)  
or 13E (renewal of licence)

↓ 10(1) (appointment of Broadcast Complaints  
Committee), 19 (issue of Codes of Practice), 21 (inquiry by  
Authority) or 24 (imposition of financial penalties)

↓ 3 (approval of codes of practice), 4  
(publication of guidelines), 8 (to whom licence may be  
granted), 9 (recommendations on licence applications), 10  
(grant of licence), 11 (extension or renewal of licence), 28  
(licensee to pay financial penalty), 31 (suspension of licence),  
32 (revocation of licence) or 33 (inquiry by Authority)

## SCHEDULE 3

[ss. 2 &amp; 43]

## MAJOR RETROFITTING WORKS

1. Works involving addition or replacement of a building services installation specified in a code of practice that covers one or more places with a floor area or total floor area of not less than 500 m<sup>2</sup> under the same series of works within 12 months in a unit or a common area of a prescribed building.
2. Addition or replacement of a main component of a central building services installation, including—
  - (a) addition or replacement of a complete electrical circuit at rating of 400A or above;
  - (b) addition or replacement of a unitary air-conditioner or air-conditioning chiller of a cooling or heating rating at or exceeding 350 kW; or
  - (c) addition or replacement of the motor drive and mechanical drive of a lift, an escalator or a passenger conveyer.

## Notes

- (1) For the purposes of item 1 of this Schedule—
  - (a) an occupants' clubhouse or a carpark is to be regarded as a separate common area within the building; and
  - (b) all other common areas are to be regarded together as a separate common area.
- (2) 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 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.
- (3) In Note (2), "relevant factors" (有關因素) means—
  - (a) whether the works are carried out by a single contractor;
  - (b) whether the works are carried out under a single agreement;
  - (c) whether the works are carried out pursuant to a single works order;
  - (d) the time at which and the period during which the works are carried out;
  - (e) the manner in which the contractor is paid; and
  - (f) whether the works are treated as a single project in the plans and works programme.

# Extract

CB(1) 1799/09-10(01)

## Buildings Energy Efficiency Bill

Letter from Assistant Legal Adviser dated 19 March 2010 -  
The Administration's response to issues relating from clauses 17 onwards

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X            X            X            X            X            X            X            X

### *Schedule 3*

#### Question:

48. What is the legal effect of the "Notes" which appears below paragraph 2?

#### Answer:

- The "Notes" in Schedule 3 have the same legal effect as other substantive provisions in the Bill. The purpose of the "Notes" is to provide explanations to paragraphs 1 and 2 in Schedule 3.

#### Question:

49. Is the reference "carpark" in paragraph (1) of the Notes same as "car parks" in the definition of "common area" in clause 2?

#### Answer:

- The meaning of "carpark" in paragraph (1) of the Note is the same as "car parks" in the definition of "common area". For consistency, we plan to move amendment to replace "carpark" by "car park" in paragraph (1) of the Note.

X            X            X            X            X            X            X            X



立法會秘書處 法律事務部  
LEGISLATIVE COUNCIL SECRETARIAT  
LEGAL SERVICE DIVISION

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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?

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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,

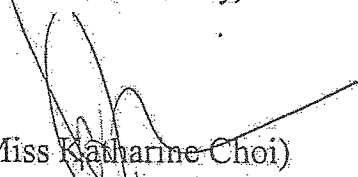
provide objective elements to facilitate comprehension and interpretation of Schedule 3.

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

L.N. 63 of 2011

**Tramway Ordinance (Alteration of Fares)  
(Amendment) Notice 2011**

(Made by Hong Kong Tramways Limited under section 51 of the  
Tramway Ordinance (Cap. 107) with the consent of the  
Chief Executive in Council)

**1. Tramway Ordinance (Alteration of Fares) Notice amended**

The Tramway Ordinance (Alteration of Fares) Notice (Cap. 107  
sub. leg. D) is amended as set out in section 2.

Note—

The amendments set out in section 2 come into force one month after  
publication in the Gazette (see section 51(2) of the Tramway Ordinance  
(Cap. 107)).

**2. Schedule amended (Rates of fares)**

(1) The Schedule, item 1—

**Repeal**

“\$2”

**Substitute**

“\$2.30”.

(2) The Schedule, item 2—

**Repeal**

“\$1”

**Substitute**

“\$1.20”.

(3) The Schedule, item 4—

**Repeal**

“\$170”

**Substitute**

“\$200”.

Bruno CHARRADE  
Hong Kong Tramways Limited

3 May 2011

The Chief Executive in Council consented to the above  
alteration of fares on 3 May 2011.

Manda CHAN  
Clerk to the Executive Council

COUNCIL CHAMBER

3 May 2011



立法會秘書處 法律事務部  
LEGISLATIVE COUNCIL SECRETARIAT  
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**URGENT BY FAX**  
Fax No. : 2104 7274

11 May 2011

Miss Janet WONG  
Prin AS for Transp & Housing (Transp) 1  
Transport and Housing Bureau  
Trade and Industry Department Tower  
14/F, Murray Building  
Garden Road, Central.

Dear Miss WONG,

**Tramway Ordinance (Alteration of Fares)  
(Amendment) Notice 2011 (L.N. 63 of 2011)**

I am scrutinising the legal and drafting aspects of the above Notice.

It is noted that a note on the commencement of the Notice is inserted in section 1 of the Notice. Please clarify the status and legislative effect of this note and explain the reason(s) for not stating such information in the explanatory note of the Notice.

I shall be most grateful if you could let me have your response in both Chinese and English on the above query on or before 12 May 2011 to enable us to report to the House Committee on 13 May 2011.

Yours sincerely,

(Clara TAM)  
Assistant Legal Adviser

cc. DoJ (Attn.: Ms Grace LEUNG, Sr Govt Counsel) (By Fax: 2869 1302)  
LA  
SALA3

政府總部  
運輸及房屋局  
運輸科  
香港花園道美利大廈



Transport and  
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**URGENT BY FAX**  
Fax No. : 2877 5029

12 May 2011

Ms Clara TAM,  
Assistant Legal Adviser,  
Legal Service Division,  
Legislative Council Secretariat,  
Legislative Council Building,  
8 Jackson Road,  
Central, Hong Kong.

Dear Ms TAM,

**Tramway Ordinance (Alteration of Fares)  
(Amendment) Notice 2011 (L.N. 63 of 2011)**

Thank you for your letter dated 11 May 2011 regarding the Tramway Ordinance (Alteration of Fares) (Amendment) Notice 2011.

The note simply reflects the existing provision in section 51(2) of the Tramway Ordinance (Cap. 107). It is included for the convenience of readers who may not be familiar with that provision and therefore may wonder why a commencement date is not included. This is also the reason why the note is put under section 1 where there is usually a commencement provision.

Yours sincerely,

A handwritten signature in cursive script that reads 'Janet'.

(Miss Janet WONG)

Principal Assistant Secretary  
for Transport and Housing Bureau

c.c. Department of Justice  
(Attn : Ms Grace LEUNG, SGC/LDD) (By Fax : 2869 1302)

Transport Department  
(Attn : Miss LUI Ying, AC/BR) (By Fax : 2824 0433)