

政府總部
發展局
規劃地政科
香港花園道美利大廈



CB(1)1123/10-11(01)
Planning and Lands Branch
Development Bureau
Government Secretariat
Murray Building, Garden Road
Hong Kong

本局檔號 Our Ref.

DEVB(PL-CR) 2/15-08

電話 Tel.: 2848 6297

來函檔號 Your Ref.

CB/1/BC/4/09

傳真 Fax.: 2899 2916

21 January 2011

Mr Stephen LAM
Clerk to Bills Committee
Legislative Council Building
8 Jackson Road, Central

Dear Mr LAM,

**Bills Committee on Buildings (Amendment) Bill 2010
Administration's Response to Follow-up Issues**

In response to the discussion at the meeting of the Bills Committee on the Buildings (Amendment) Bill 2010 (the Bill) on 7 January 2011, we are pleased to provide below information in relation to the matters about which Members enquired.

Penalty Notices

At the aforementioned meeting of the Bills Committee, Members requested the Administration to provide a flowchart on the procedure and timing for service and enforcement of a penalty notice. Members also asked for the wording and format of penalty notices and the accompanying explanatory letters that the Building Authority would issue to owners. The drafts of these documents are at Annex for Members' reference. Exact wordings of the notice and explanatory letter are subject to further refinement.

Members also enquired the meaning of the term "proceedings" referred to in section 17 of the proposed new Schedule 7. As a matter of fact, sections 15 to 17 of the Schedule 17 aim to set out the procedures when a person on

whom a penalty notice under the proposed section 40(1BE) has been served disputes liability for the offence concerned. The section 17 should be read together with sections 15 and 16. Therefore the “proceedings” in section 17 means the proceedings taken as stipulated in section 15. Members may wish to refer to the flow chart at Annex for reference of the procedures.

RIs/QPs to Conduct Inspections Personally

As regards the requirements for registered inspectors (RIs) or qualified persons (QPs) to carry out the prescribed inspection personally under the new sections 30D(3)(a) and 30E(2), Members may wish to note that the Buildings Department will require the RIs and QPs to certify in a specified form that the prescribed inspections have been carried out by them personally. The RIs will also be required to keep daily inspection records, in which details including the time and date of inspections, locations and items or parts of buildings that have been inspected etc. should be recorded. Upon completion of the prescribed inspection, the RIs have to submit inspection reports, together with those daily inspection records, to the Buildings Department. We consider these records will form essential evidence of inspections conducted by the RIs personally. The RIs and QPs will be personally responsible for the result of the inspection or supervision concerned. As explained in the Bills Committee meeting on 7 January 2011, according to the new section 40(2AD), any RI or QP who contravenes sections 30(D)(3)(a) or 30E(2) (i.e. s/he fails to personally conduct the prescribed inspections) commits an offence and is liable on conviction to a fine of \$250,000. Also, according to section 40(2A)(c), any building professional directly concerned with any such inspection or works who knowingly misrepresents a material fact in any plan, certificate, form, report, notice or other document given to the Building Authority under the Buildings Ordinance shall be guilty of an offence. In the context of MBIS/MWIS (i.e. a possibility is that s/he submits a specified form certifying that s/he has personally conducted the prescribed inspections but there is evidence that s/he has not), the maximum penalty is a fine of \$1,000,000 and imprisonment for 3 years (for prescribed inspection under MBIS) or a fine of \$500,000 and imprisonment for 18 months (for prescribed inspection under MWIS). The Building Authority would take into account the sufficiency of admissible evidence of individual cases before deciding whether to charge the RI/QP concerned for committing which (or both) offences.

Criminal Liability of Owners' Corporations

We are seeking advice from relevant bureaux/departments as regards whether an individual owner on the management committee of an owners' corporations will be liable to imprisonment under the proposed new sections 30B(3), (4), (5), (6) and 30C(3), (4). A written response will be provided as soon as possible.

Yours sincerely,



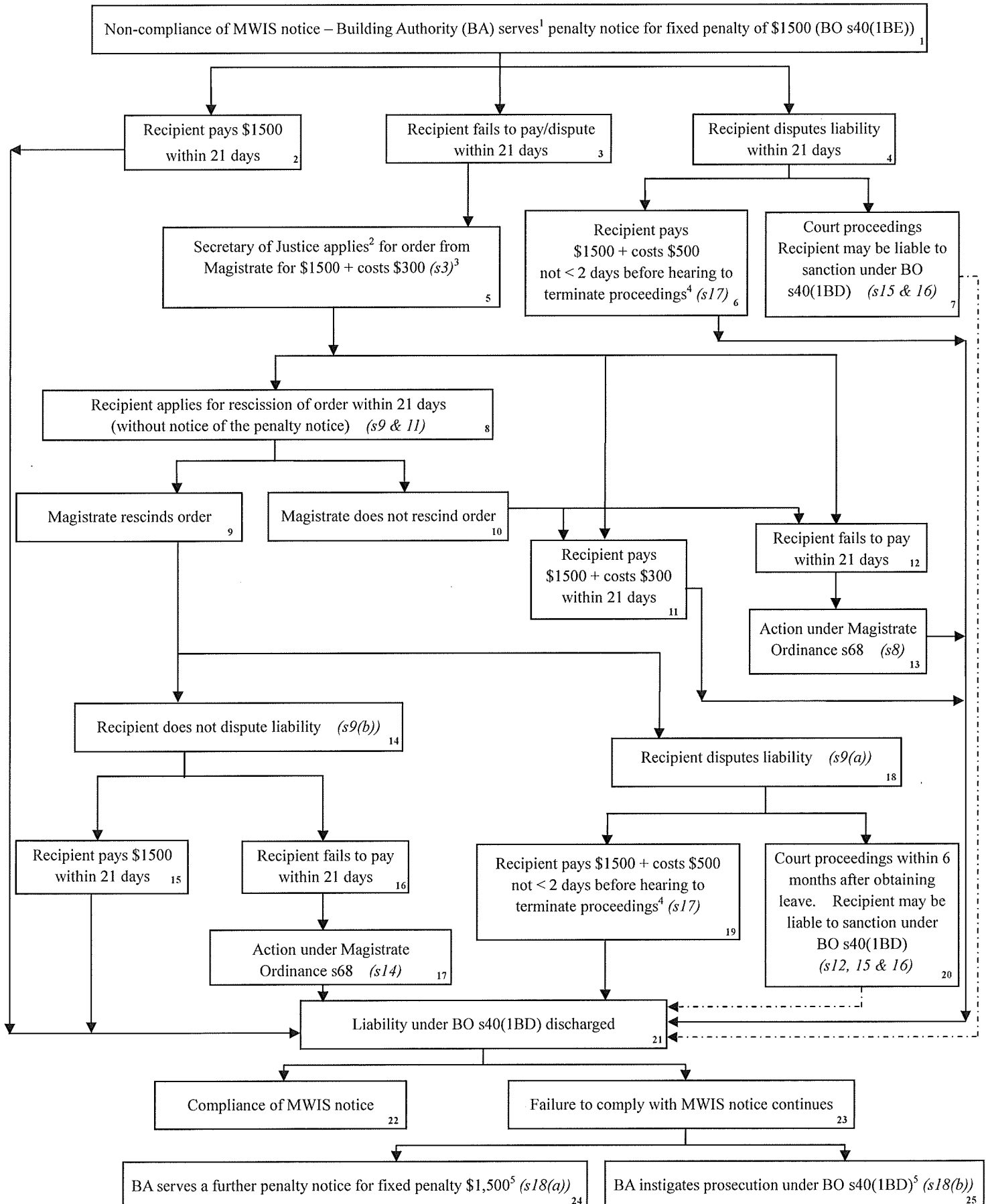
(Edward To)
for Secretary for Development

c.c.

Director of Buildings
Department of Justice

(Attention: Mr. S T Lam)
(Attention: Ms. Rayne Chai)

**Flowchart of Penalty Notice for MWIS Notice
Section 40(1BE) of the Buildings Ordinance ("BO")**



- Notes:
1. In general, a penalty notice will be served within 5 months after the expiry of the MWIS notice (a warning letter will be issued within 2 months).
 2. In general, a magistrate order will be applied for within 3 months after the expiry of 21 days.
 3. The sections in *italics* means the section numbers in the proposed Schedule 7.
 4. "Proceedings" means those referred to in *sections 15 & 16*.
 5. In general, two penalty notices will be served before instigating prosecution under BO s40(1BD).

DRAFT

(exact wording subject to further refinement)

<date>

REGISTERED MAIL

(Name & address of owner)

Dear Sir/Madam,

(Address of concerned premises)

I refer to my notice no. _____ (“notice”) served on you on ____<date>____ under section 30C[(3)/(4)]* of the Buildings Ordinance (Cap. 123) in respect of the carrying out of a prescribed inspection and prescribed repair (if necessary) of the windows in the premises at the captioned address. As you have failed to comply with the notice, I serve on you [a/a further]* penalty notice issued under the Buildings Ordinance Section 40(1BE). You are required to pay a fixed penalty of \$1,500 within 21 days after the date of this penalty notice (i.e. by ____<date>____).

Should you wish to dispute liability against the notice, you must notify me within 21 days after the date of this penalty notice by completing and returning the notification form (Form XX) attached to this letter. I would like to advise that if you have failed to pay the fixed penalty of \$1,500, and I have not received your Form XX, within 21 days after the date of the penalty notice, a magistrate may order you to pay the fixed penalty of \$1,500, together with a sum of \$300 by way of costs.

As the owner of the concerned premises, you should employ a qualified person and/or a registered contractor as required by the Buildings Ordinance to carry out a prescribed inspection and prescribed repair (if necessary) of the windows in the premises as soon as possible in order to comply with the requirements of the notice_____. If your failure to comply with the notice continues, I may [serve on you a further penalty notice after the expiry of the penalty notice or]* *(delete if this is a further penalty notice)* instigate prosecution proceedings against you for non-compliance with the notice.

Payment of \$1,500 may be made in accordance with the payment methods listed in the

Annex attached.

Eligible owners in need of financial support in carrying out the prescribed inspection and prescribed repair (if necessary) may apply for financial assistance. Please refer to the leaflet attached for further information. If you have any questions regarding technical or financial assistance, please feel free to contact the [<name of officer at supporting organisation>] at telephone number xxxx xxxx.

If you have any queries, please contact (_____) at telephone no (_____).

Yours faithfully,

(_____)
for Building Authority

[*delete whichever is inapplicable]

BUILDINGS ORDINANCE
(Chapter 123)

To: The Building Authority

I wish to the dispute liability for the offence specified in your notice no. _____
issued under section 30C[(3)/(4)]* of the Buildings Ordinance.

Date:

Signature:

Name (in full):

[*delete whichever is inapplicable]

Annex - PAYMENT METHODS

1. Payment may be made-

(a) Through Bank Automated Teller Machine (ATM)

Payment can be made at any ATM affixed with "Bill Payment" signage. Please select "Buildings Department" for payment.

(b) By Phone using PPS

Before making payment, please dial 18011 to register this notice. Please select the "Merchant Code" of "XXXX". For making payment, please dial 18031 and follow the instructions to enter the information required. For enquiries, please call PPS Hotline: 2311 9876.

(c) Through Internet

Payment can be made through the bill payment services provided by banks and PPS on the Internet. For details, please visit the web site of the Electronic Service Delivery (ESD) Scheme (URL address: <http://www.esd.gov.hk>) or the web site of Treasury (URL address: <http://www.try.gov.hk>). Payment could also be made at any of the ESD kiosks. Please select "Building Department" as appropriate for payment.

(d) Through Phone-banking Service

Payment can be made through the bill payment services by using the phone-banking service provided by banks. Please select "Buildings Department" for payment.

(e) By Post

A cheque, draft or cashier order should be sent together with the Slip for Payment by Post to the Treasury, P.O. Box No. 28000, Gloucester Road Post Office, Hong Kong. Cash should not be sent through the post. Please write the Penalty Notice No. on the back of the cheque, draft or cashier order. Please note that no receipt will be issued for payment by post. The date of the relevant post mark is to be regarded as the date of payment.

(f) In Person

Payment can be made in person or through an agent at any Post Office (other than a post office letter box or a mobile post office). This notice must be kept intact and produced at the time of payment. It will be receipted and returned to you upon payment. For addresses and opening hours, please call the Hongkong Post Hotline: 2921 2222 or visit the web site (URL address: <http://www.hongkongpost.com>).

2. For payment through ATM, by PPS, through Internet or phone-banking service, please key in the Penalty Notice No. for making payment. Payment made before mid-night on the due date will be regarded as on-time payment.
3. Cheques, drafts or cashier orders should be made payable to "The Government of the Hong Kong Special Administrative Region" or "The Government of the HKSAR" and crossed. For payment made by cheque, payment is valid only when the cheque is honoured on the first presentation to the drawee bank. Post-dated cheques will not be accepted.

DRAFT

(exact wording subject to further refinement)

BUILDINGS ORDINANCE (CAP. 123)

Penalty Notice by the Building Authority under section 40(1BE)

Penalty Notice No.:

BD Ref.:

Issue date:

To:

Office of the Building Authority,
12/F-18/F, Pioneer Centre,
750 Nathan Road, Mongkok,
Kowloon, Hong Kong.

Owner(s) of (Address)

on (Lot Number)

1. Under section 40(1BE) of the Buildings Ordinance, I hereby serve on you [*a/a further] penalty notice for an offence under section 40(1BD) of the Buildings Ordinance as follows:

You have failed to comply with a notice no. _____ served on you on (date) under section 30C[(3)/(4)]* of the Buildings Ordinance to carry out a prescribed inspection and prescribed repair (if necessary) in respect of the windows in the premises located at (address) .

You are required to pay a fixed penalty of HK\$1,500 within 21 days after the date of this penalty notice.

2. If you wish to dispute liability for the offence under section 40(1BD) of the Buildings Ordinance, you must notify me in writing within 21 days after the date of this penalty notice.
3. If the above-mentioned offence continues, I may-
 - (i) serve on you a further penalty notice after the expiry of this penalty notice;^{note 1}
 - (ii) proceed to take court proceedings for the offence and you would be liable to the fine and imprisonment mentioned in section 40(1BD) of the Buildings Ordinance.
4. Payment of HK\$1,500 may be made through bank Automated Teller Machine, the Internet or phone-banking service, by PPS or post or in person.

()

for Building Authority

^{note 1} : Paragraph (i) is not applicable if the penalty notice being served is already a further penalty notice.

* Delete whichever is inapplicable