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By Fax (2899 2916)

13 May 2010

Mr. Harry LIN
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Development Bureau
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Dear Mr. LIN,

Buildings (Amendment) Bill 2010

I refer your letter of 18 March 2010 in response to my letter of 25 February 2010 and would like to seek clarification on the Administration's response on the following -

Clause 4(6)

Please clarify whether "testing" in the proposed definition of "prescribed repair"¹ must arise from repair works or whether the proposed definition may mean "testing" without any repair works.

Clause 19

It is noted from your response that where the inspection, investigation or works have been commenced by the Building Authority (BA) and the property had subsequently changed title (before BA's registration of the order or notice), BA will recover the costs of the inspection, investigation or works that BA has carried out or has caused to be carried out from the original owner, i.e. the person on whom the order or notice was served. Please clarify the time at which BA will register a memorial with the Land Registry in such circumstances.

¹ In Clause 4(6) of the Bill, the expression "prescribed repair" is defined as "a repair or testing of a building as prescribed in the regulations".

Additionally, I would like to seek clarification on the following matters -

Clause 6(2) and (19)

It is noted that -

- (a) "must" is used in the proposed section 3(3B) (Clause 6(2) of the Bill), but "shall" is used in the existing section 3(1), (3), (3A) and (4) of the Buildings Ordinance (Cap. 123) (BO); and
- (b) "must" is used in the proposed section 3(9AA) (Clause 6(19) of the Bill) but "shall" is used in the existing section 3(9) of BO.

It is further noted that "shall" is used in section 39C(1)² of BO and the Bill makes no amendment to replace it with "must".

Such intermixing of the use of "must" and "shall" in the same sections was also noted in relation to Occupational Deafness (Compensation) (Amendment) Bill 2009 and Companies (Amendment) Bill 2010 (C(A) Bill). The Administration took the view that this change of drafting practice is only a matter of style and that the legal meaning of the relevant provisions in the C(A) Bill in respect of which clarification is sought is not affected. Please clarify whether this is also the case for the above mentioned new and existing provisions of BO.

Clause 19

The proposed section 30B(6) refers to a signboard which is "erected on a building". The purported corresponding Chinese text refers to "豎設在建築物內某處所上". It appears that there is a discrepancy in that the English text does not make reference to "某處所" in the Chinese text. Please clarify the difference in drafting.

I shall be grateful if you could let me have your response in both Chinese and English to the above points at your earliest convenience, preferably on or before 20 May 2010 to enable members of the Bills Committee to consider the matter before its sixth meeting which is to be held on 27 May 2010.

Yours sincerely,

(Winnie LO)
Assistant Legal Adviser

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² Section 39C of BO was added according to section 27 of the Buildings (Amendment) Ordinance 2008 (20 of 2008) which is not yet in operation.