

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

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21 December 2017

Ms. Doris LO  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Ms. LO,

**Legislative Council Panel on Development**  
**Proposed Amendments to the Buildings Ordinance (Cap. 123)**  
**for Strengthening Enforcement Action against**  
**Illegal Domestic Use in Industrial Buildings (IBs)**

I refer to your email of 8 August 2017 attaching a letter of 28 July from Hon. CHU Hoi-dick regarding the captioned matter. In consultation with the Buildings Department (BD), our reply is as follows:

**Existing Enforcement Policy**

Using an IB premises for domestic purpose would pose a significantly higher level of safety risk to the inhabitants. As stated in the discussion paper submitted by this bureau and the BD to the Legislative Council Panel on Development on 26 June, the BD at present takes enforcement action against illegal domestic uses in IBs mainly under sections 25(2) and 26(1) of the Buildings Ordinance (Cap. 123) (BO). Section 25(2) of the BO empowers the Building Authority (BA) to require the owner or occupier to discontinue the present use of a building if the BA considers that the building is not suitable by reason of its construction for the present use. An order under section 26(1) of

the BO may be issued declaring any buildings to be dangerous or liable to become dangerous, and requiring, *inter alia*, rectification of a dangerous situation. If unauthorized building works (UBWs) are identified, the BA may also invoke section 24(1) of the BO to order the owner to remove the UBWs.

As regards criminal sanctions, section 40 of the BO provides that failure to comply with a section 25(2) or section 26(1) order can result in a maximum fine of \$50,000 and imprisonment for one year as well as a further fine of \$5,000 for each day that the offence has continued, while failure to comply with a section 24(1) order can result in a maximum fine of \$200,000 and imprisonment for one year as well as a further fine of \$20,000 for each day that the offence has continued.

### **Enforcement Action through the Large-scale Operations (LSOs)**

Adopting a “risk-oriented approach”, the BD has stepped up enforcement action against illegal domestic use in IBs through LSOs since 2012. To enhance the effectiveness of inspections and enforcement actions, IBs which are more likely to be used as illegal domestic premises have been selected as target buildings, such as old IBs with multiple ownership and IBs with public reports or referrals by other Government departments. Inspections generally cover the external areas of the buildings and common areas, and include entry to suspected illegal domestic premises in IBs. Night visits are also conducted. In the event of failure to enter the suspected illegal domestic premises for inspection, the BD will apply for warrant to enter the subject premises under section 22 of the BO as appropriate. From 2012 to 31 October 2017, the BD had invoked section 22 of the BO to apply to the court for 40 warrants for entering the premises concerned in IBs for inspection.

Once illegal domestic use is identified, the BD will issue relevant orders under the BO requiring the rectification of irregularities and dangerous situations. According to sections 24(2C) and 26(2A) of the BO, the BD will send the statutory orders issued under sections 24(1) and 26(1) of the BO to the Land Registry (LR) for registration, and will lodge in the LR the record of compliance against that order upon the order is complied with. The BD does not compile statistics on the number of statutory orders sent to the LR for registration. Without prescriptive provision under the BO, there is no legal authority for BD to send the discontinuation order under section 25(2) and

warrants issued by the court to LR for registration.

In addition, once illegal domestic premises in IBs are identified in LSOs, the cases will be referred to the corresponding District Lands Offices for the examination of lease conditions and consideration of parallel follow-up action.

The number of target buildings under the LSOs against suspected illegal domestic premises in IBs is tabulated as follows:

	<b>No. of target buildings</b>	
	<u>Target</u>	<u>Actual</u>
2012	30	30
2013	30	30
2014	38 <sup>1</sup>	38
2015	60	20 <sup>2</sup>
2016	20	20
2017	20	20

The geographical distribution of target buildings inspected since 2012 to 31 October 2017 is tabulated as follows<sup>3</sup>:

<b>District</b>	<b>No. of target buildings</b>
Central and Western	1
Eastern	4
Southern	3
Wong Tai Sin	11
Kwun Tong	26
Yau Tsim Mong	24
Sham Shui Po	8
Kowloon City	8
Sha Tin	6

<sup>1</sup> The BD has allocated additional resources to conduct the LSOs since 1 October 2014.

<sup>2</sup> Number of target buildings in 2015 was published in February 2015. After taking into account the recommendations of the Audit Commission in its "The Director of Audit's Report No. 64" on LSOs and the actual difficulties encountered in enforcement actions, the BD has reduced the number of target buildings of the LSOs to 20 in order to redeploy resources to complete outstanding LSOs and clear the backlog of outstanding removal orders.

<sup>3</sup> No target buildings were selected in North, Wan Chai, Sai Kung, Tai Po and Islands Districts under previous LSOs.

<b>District</b>	<b>No. of target buildings</b>
Tsuen Wan	12
Tuen Mun	17
Yuen Long	2
Kwai Tsing	15
<b>Total</b>	<b>137</b>

At present, the BD eradicates illegal domestic premises in IBs mainly through the LSOs. The BD does not compile separate statistics on the number of reports or referrals on illegal domestic premises in IBs.

Regarding the manpower allocation of the LSOs, the BD, since 2014, has appointed consultants to assist in conducting initial inspection of target buildings, mainly including inspecting common areas of the buildings and conducting inspections for external areas at night. Given that the consultancy agreement covers the inspections of IBs and non-IBs and the surveys of other buildings, in which the inspection of IBs is only part of the duties under the terms of the consultancy agreement, and that the requirements and dates of inspection service vary in each case, we do not compile separate statistics on the consultancy fees associated with the inspection of IBs or the completion date of the inspection of each case. Enforcement action for the safety of existing buildings and against UBWs are carried out by the professional and technical staff of the two Existing Buildings Divisions in BD, while prosecutions against owners who fail to comply with the orders are instigated by the professional and technical staff of the Legal Services Section of the BD. As enforcement actions and prosecutions related to IBs are part of duties of the Existing Buildings Divisions and the Legal Services Section, the BD does not compile separate statistics on the manpower resources and expenditure involving in the enforcement actions and prosecutions against illegal domestic premises in IBs.

### **Statistics Related to Enforcement Actions and executions of Closure Orders/Statutory Orders**

As at 31 October 2017, the BD inspected 137 target buildings and identified a total of 155 illegal domestic premises. Out of the 304 statutory orders issued, 248 orders have been discharged. Besides, 31 prosecutions were instigated against individuals for non-compliance with the statutory orders.

The defendants concerned are all convicted and the average fine was about \$18,000. The BD applied to the court for closure orders for three cases and arranged Government contractors to carry out the works required for the irresponsible owners. The premises involved in these three cases were situated in Yau Tsim Mong, Kowloon City and Tsuen Wan districts and closure orders were granted in March 2012, February 2015 and March 2015 respectively. The premises involved in these three cases have ceased to be used for illegal domestic purpose and rectification works were completed.

### **In-house Social Services Teams of the BD**

To assist the enforcement actions regarding the building safety, health and environment of buildings, the in-house social services teams (social service teams) of the BD would provide social welfare assistance and counselling services for owners/occupants affected by the BD's enforcement actions, and enhance mutual understanding and communication between occupants and the BD. The BD has appointed non-governmental organisations to establish social services teams through service contracts. Currently, there are 25 registered social workers and in the financial years of 2017-18 and 2018-19, the estimated expenditure is about \$14 million.

As per the established practice, when enforcement actions against illegal domestic use in IBs are underway, the BD will assign the social services teams to visit the affected occupants, offer them with appropriate welfare assistance and counselling as well as making referral to relevant departments, including the Housing Department, the Social Welfare Department and the Home Affairs Department, according to the circumstances of occupants for the provision of appropriate assistance. From 2012 to 31 October 2017, BD identified 155 illegal domestic premises in the target IBs. All cases were provided with assistance and followed up by social services teams.

### **Relocation Arrangement for Affected Occupants**

Under the current policy, persons affected by Government's enforcement actions need to find their own accommodation. That said, those who are rendered homeless as a result of BD's enforcement actions and have temporary accommodation need may, through referral from BD, be accommodated in the Hong Kong Housing Authority's Po Tin Transit Centre (TC) in Tuen Mun while they look for alternative accommodation. If these persons have stayed in TC

for three months, passed the “homeless test” and fulfilled the eligibility criteria for public rental housing (PRH) including income limit, asset limit and “no-domestic-property” requirement, they can be admitted to the Interim Housing (IH) in Tuen Mun while awaiting PRH.

From 2012 to 31 October 2017, a total of 16 people were admitted into the TC as a result of BD’s enforcement actions. 12 of them were eventually admitted to IH with the other four withdrawing their applications for IH later on. These cases did not involve Compassionate Rehousing. The BD does not keep records on whether cases involve receiving the Comprehensive Social Security Assistance or awaiting PRH.

### **Relocation Allowance Programme under the Community Care Fund**

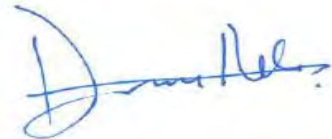
Considering the BD’s enforcement actions would require occupants illegally residing in IBs to move out of the premises, and that some of such occupants are low income earners and may not be able to afford the relocation expenses, the Steering Committee on Community Care Fund endorsed the “Relocation Allowance for Eligible Residents of Sub-divided Units in Industrial Buildings who Have to Move out as a result of the Buildings Department’s Enforcement Action (the Programme) in October 2011. The Programme provides basic emergency assistance for low-income occupants affected by the BD’s enforcement action and with financial needs if there are compassionate considerations and imminent needs, to facilitate their early relocation. The relocation allowance is set with reference to the allowances of other relocation-related programmes of the Government, and an upward adjustment was made in 2013. As at 31 October 2017, the BD approved 161 applications involving 247 beneficiaries.

The BD completed the evaluation of the Programme earlier. At the meeting on 17 November 2017, the Commission on Poverty took note of the evaluation report on the effectiveness of the Programme and endorsed two recommendations for enhancement, namely to expand the coverage of the Programme to allow Hong Kong residents under 18, who are the holders of a Hong Kong Identity Card or Birth Certificate, to apply for and receive the relocation allowance, and to introduce a mechanism to automatically adjust the allowance on an annual basis. The Programme is also renamed as “Relocation Allowance for Residents of Illegal Domestic Premises in Industrial Buildings

who Have to Move out as a result of the Buildings Department's Enforcement Action" to better reflect the target beneficiaries of the Programme.

Should you have any enquiries, please contact me at 3509 8852.

Yours sincerely,



(Mr. David NG)  
for Secretary for Development

c.c.

Director of Buildings

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