

香港特別行政區政府

The Government of the Hong Kong Special Administration Region

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2 June 2010

Ms Winnie LO

Assistant Legal Adviser

Legislative Council Building

8 Jackson Road, Central

Dear Ms LO,

Buildings (Amendment) Bill 2010

Thank you for your letter of 13 May 2010. I am pleased to set out below the Administration's response to the issues raised in your letter.

Clause 4(6)

As explained in our letter of 18 March 2010, registered contractors may be required to conduct testing after carrying out the works to ensure the quality of works. I wish to further clarify that, in the course of a prescribed repair, testing may be required prior to some repair works, and the results may reveal that actual repair works are not required. In other words, there may be occasions that only testing but no repair works are required in a prescribed repair.

Clause 19

As explained in our letter of 18 March 2010, in practice, where an order or a notice served under the Buildings Ordinance (Cap. 123) on the registered owner of a property is not complied with, the Building Authority (BA) will, as

far as practicable, cause the order or notice to be registered by memorial in the Land Registry before the BA carries out or causes to be carried out the inspection, investigation or works required by the order or notice. Where, in some special circumstances, the inspection, investigation or works have been commenced by the BA and the property had subsequently changed title (before the BA's registration of the order or notice), the BA will recover the costs of the inspection, investigation or works that the 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) as a civil claim. In such circumstances, the BA will not cause the order or notice to be registered by memorial in the Land Registry against the concerned property.

Clause 6(2) and (19)

It is the current plain English drafting practice that “must” is used in place of “shall” in new bills and new subsidiary legislation. There is however no need to amend all pre-existing legislation to change “shall” to “must”. We confirm that notwithstanding the co-existence of “must” and “shall” in the same sections that you mentioned, the legal meaning of the relevant provisions is not affected.

Clause 19

We consider that the proposed section 30B(6) should be read as a whole according to the different linguistic considerations. In the English text, “premises” only appears in paragraph (c) of the proposed section 30B(6) when we need to “nail down” to the responsible owner. We do not consider it necessary or desirable to make reference to “premises” in the opening words of the English text. In the Chinese text, “某處所” is put in the opening words instead so that subsection (6) as a whole reads better in Chinese, with a more succinct reference “該處所” in paragraph (c) corresponding to the expression “建築物內某處所” in the opening words. The arrangement aims to make the sentences flow better in Chinese and does not purport to convey a meaning different from that of the English text of that section.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Harry Lin', written in a cursive style.

(Harry LIN)
for Secretary for Development

c.c. CCS(1)4/LegCo
DD/BD
LD/DoJ