

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

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Ms Sharon CHUNG
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

18 June 2015

Dear Ms CHUNG,

Control of Unauthorised Signboards

Thank you for your letter dated 18 May 2015. The information requested is as follows:

(a) **Views and concerns set out in the letter from the Chairman of Wanchai District Council on signboard matters**

(1) **Change of signboard ownership**

The Government attaches much importance to the safety issue of signboards and has taken appropriate enforcement actions in handling unauthorised signboards. To tackle unauthorised signboards, the Buildings Department (BD), pursuant to section 24(2)(c) of the

Buildings Ordinance (BO), issues removal orders to the persons who shall be responsible for removing the unauthorised signboards. Pursuant to section 24(2)(c)(i) of BO, if the relevant signboard has been erected or is being erected for a person (the signboard owner), a removal order shall be served on the signboard owner. If the signboard owner cannot be found, BD will, pursuant to section 24(2)(c)(ii) of BO, serve a removal order on the person who would receive any rent or other money consideration if the signboard were hired out. Only if the persons referred to in section 24(2)(c)(i) and section 24(2)(c)(ii) of BO cannot be found, BD, pursuant to section 24(2)(c)(iii) of the BO, will then serve a removal order on the owner of the land or premises on which the signboard has been erected.

During the enforcement actions, if someone submits new information or declares ownership of the signboard, BD has to carry out further investigation on the submitted information and interview the parties concerned in order to ascertain who should be responsible for the removal of the signboard because, if BD has to engage government contractors to carry out the removal works on behalf of the signboard owner, BD will recover the cost of the removal works plus supervision charge and surcharge from the parties concerned afterwards. In this regard, BD has reviewed the verification process and will send written inquiries to the relevant parties, including shop owners using the unauthorised signboards, owners of the premises, owners of the external wall, property management companies, owners' corporations, etc., requesting them to provide the relevant information including the leases in order to clarify the ownership of the signboard. Unless there is substantive evidence that the order is invalid, BD will continue the enforcement actions and arrange government contractors to carry out the

removal works, and may instigate prosecution proceedings against the parties concerned for non-compliance with the order. During emergency situation, BD will take prompt action to remove dangerous signboards so as to eliminate the danger posed on the public and recover the cost from the signboard owners afterwards.

(2) Minor works associated with signboards

The full implementation of the Minor Works Control System (MWCS) since 31 December 2010 enables signboard owners to erect, alter or remove certain types of signboards which are relatively small in scale and pose less potential risk through simplified requirements. For signboards erected under MWCS, any subsequent alteration or addition carried out without BD's prior approval or not in accordance with the MWCS requirements is unauthorised building works (UBWs). If BD receives such reports, it will take corresponding enforcement actions against the signboard in accordance with the enforcement policy against UBWs.

Moreover, BD conducts audit checks in order to ensure that minor works submissions are in compliance with the statutory requirements. In 2015, BD has increased the target of audit on minor work submissions by 8% compared to last year. The audit on minor works submissions relating to signboards will also be increased proportionally. If irregularities or non-compliance of statutory requirements are found during audit, BD will request the relevant person to provide supplementary information or carry out rectification as appropriate. If the person concerned cannot provide supplementary information or carry out rectification within a reasonable time, BD may, in accordance with

BO, consider initiating prosecution or disciplinary action, or issuing order to the relevant person mandating the removal or rectification of the works.

(3) Erection of signboards and issues related to building management

BO administered by BD aims to regulate the planning, design and construction of buildings and associated works, and prescribe the building standards regarding the structural and fire safety of buildings in order to safeguard public safety. Erection of signboards on the external walls of buildings is building works and must comply with the requirements under BO. In this regard, BD has issued practice notes specifying the standards on display area, distance, position, materials, structural safety, etc. for the erection of signboard on external walls.

Section 14 (2) of BO and section 61 of the Building (Minor Works) Regulation (B(MW)R) stipulate that neither the approval of any plans, the consent for the commencement of any building works, nor the acknowledgement of receipt of plans or documents concerning minor works from BD shall be deemed:

- (a) to confer any title to land;
- (b) to act as a waiver of any term in any lease or licence; or
- (c) to grant any exemption from or to permit any contravention of any of the provisions of BO or of any other enactment.

In other words, any approval or consent from BD in accordance with BO only implies that the design satisfies the requirements under BO.

It does not represent any endorsement of the title of the applicant, or that the applicant has the right to erect the signboard at the premises concerned, and therefore does not affect the enforcement of the Deed of Mutual Covenant (DMC).

On the other hand, requiring owners' consent when erecting signboard at the external wall of a building involves property right and building management issues. Under the Building Management Ordinance (BMO), owners of a building are responsible for the management of the common parts of the building under the civil law, and the DMC demarcates the rights, benefits and responsibilities, etc. amongst the property owners. The enforcement of a DMC rests with the parties to the contract and the Government is not a party to the contract.

For anyone who intends to erect or hang a signboard on the external wall of a building, apart from obtaining the prior approval of the plan and consent to the commencement of works from the Buildings Authority or conducting the works under the MWCS requirements, he shall also ensure that the works will not contravene the requirements under other relevant provisions, including the DMC of the building. He must carefully peruse the relevant land lease and the DMC to ensure that there will not be any contravention of the relevant provisions. Any dispute should be resolved according to the provisions in BMO and the DMC.

Regarding the erection of signboards in the common parts of a building, BD has made the following administrative arrangements to remind the building professionals concerned to obtain consent from the

owners, and to notify the building owners or owners' corporations (OC) in a timely manner to enable them to follow up related matters with the person intending to erect the signboard:

- (a) BD has in the practice notes concerning erection of signboards reminded related parties to obtain consent from the owners concerned or the OC for the erection of signboards having regard to the actual circumstances;
- (b) If the signboard to be erected is situated at or will substantially affect the common parts of a building, BD, in approving the plan, will notify the OC, management committee or the management company of the building concerned;
- (c) If the signboard to be erected is minor works under MWCS, BD has reminded the person who arranges the erection of the signboard, the prescribed building professionals, the prescribed registered contractors, etc. through the "Matters to Note" page of the specified form for notification of minor works that if the works involve the common parts of a building, they should pay attention to the relevant conditions in the DMC of the building, and consult the co-owners, the OC and the property management company concerned before commencement of the works.

When BD receives a minor works submission concerning a signboard, it will notify the OC or the property management company of the building concerned when it issues the acknowledgement letter for the submission. In the acknowledgement letter, BD will remind the prescribed building professionals and prescribed registered contractors that if the

signboard is erected at the exterior or other common parts of the building, they should liaise with the co-owners of the building, the OC, the management company or the owner concerned regarding the right to use the common parts, and to observe all obligations as stipulated in the DMC of the building, including but not limited to the arrangement of third party liability insurance. Otherwise, they may be in breach of the DMC of the building and liable to civil proceedings and bearing of civil liabilities.

Furthermore, in order to enhance the monitoring of the liable persons of signboards, the Building (Minor Works) Regulation stipulates that, where erection of signboards is involved, the prescribed form submitted to BD must include the information regarding for whom the signboard is erected. The information would facilitate BD's future control and enforcement works, reduce the possibility of the need to handle abandoned signboards, enhance OCs' building management works and reduce the risk for the OCs to bear the ultimate liability of signboards.

In conclusion, BD will continue to maintain the aforementioned administrative arrangements, including to provide reminders to parties concerned in advance and timely notification to the OCs, co-owners and management companies. In case of any dispute, the parties concerned can resolve it according to the current provisions in BMO and the DMC.

(b) **Implementation of the Validation Scheme for Unauthorised Signboards**

As part of the Signboard Control System, BD has implemented the

Validation Scheme for Unauthorised Signboards since 2 September 2014. Under the Scheme, certain unauthorised signboards may be retained for continued use after safety inspection, strengthening (if required) and certification of their structural safety by prescribed building professionals and/or prescribed registered contractors. The safety check as to be conducted at an interval of five years, otherwise the signboard has to be removed. Validated signboards remain to be UBWs. If they become dangerous due to lack of proper maintenance within the 5-year period, BD may take prompt enforcement action and require the signboard owner to remove the signboard.

Regarding the implementation of the Scheme, we are compiling the relevant information and will update the Panel on Development through an information paper later.

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

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Penny Wong', written on a light blue rectangular background.

(Miss Penny WONG)

for Secretary for Development

c.c

Director of Buildings

(Attn: Mrs HUI Ming-fong)

Director of Home Affairs

(Attn: Indiana WONG)