

Sales and Letting of Premises in Industrial Buildings

We are writing to seek your assistance in bringing the contents of this letter to the attention of estate agents licensed under the Estate Agents Ordinance, Cap. 511 ("Licensees").

Recently, a considerable number of industrial buildings ("IBs") which are restricted to "industrial" or "industrial and/or godown" purposes under the individual land lease have been/are to be redeveloped after obtaining planning permission from the Town Planning Board ("TPB") for redevelopment for "modern industrial uses" or "non-polluting industrial uses". However, in the context of the land lease, industrial use must involve a process of manufacturing and must take place within the lot concerned, whereas godown use must involve storage of goods and/or transient deposit and storage for delivery purpose. This interpretation is not the same as the interpretation of "non-polluting industrial use", "other uses as permitted in the "Other Specified Uses" annotated "Business" ("OU(B)") zone" and "industrial use" in the planning regime as follows –

- (a) "Non-polluting industrial use" in planning terms covers a much wider range of uses, the examples as quoted from the TPB guidelines include "research and development", "quality control", "information technology support", "training for the process of enhanced productivity/delivery of goods", "computer-aided design service", "editing of newspapers/books/magazines", "after-sale service of products", etc.
- (b) "Other uses as permitted in the OU(B) zone" include "shop and services", "office", "information, technology and telecommunication industries", "educational institution", "eating place", "place of entertainment", "place of recreation, sports or culture", etc.
- (c) "Industrial use" in planning terms covers a wide range of uses, the examples as quoted from the TPB guidelines include "art studio", "office (audio-visual recording studio, design and media production, office related to industrial use only)", "research, design and development centre", "shop and service (motor-vehicle showroom on ground floor, service trades)", "vehicle repair workshop", "technology and telecommunication industries", "non-polluting industrial use", etc.

All the above uses will constitute uses in breach of the user restriction of "industrial purpose" under lease.

LandsD takes a serious stance against breaches of land lease in respect of private properties. It is thus important that Licensees do provide accurate information to their clients in respect of the sales and/or letting of premises in IBs. Licensees should also be fully aware of the different interpretations under leases and the planning regime, in order to avoid providing inaccurate or misleading information to prospective purchasers or tenants of properties in IBs. Otherwise, if a breach of land lease conditions is detected, LandsD shall take lease enforcement actions in respect of the breach including but not limited to the Government exercising its right of re-entry under the Government Rights (Re-entry and Vesting Remedies) Ordinance, Chapter 126.

We hope this letter has explained Government's position on the interpretation of "industrial purpose" under lease and shall be grateful if you could inform all Licensees to take note of the above when handling the sale and purchase or leasing of industrial premises in IBs that are redeveloped or to be redeveloped in accordance with the planning permission as mentioned in paragraph 2 above.