

Relaxation of Waiver Application for Existing Industrial Buildings

The Chief Executive has announced that Government will reactivate the revitalisation scheme for industrial buildings (“IBs¹”) in her 2018 Policy Address. Among the relevant measures, we will, subject to the terms and conditions in this announcement, permit certain uses on a time-limited basis (for five years initially) to operate at premises within existing IBs without the need for making separate waiver applications to the Lands Department (“LandsD”) and paying waiver fees, so long as such uses are always permitted under the planning regime (requiring no planning application). This note sets out the policy of and operational arrangement for the measure.

Existing arrangement

2. To optimise the use of existing IBs¹ with no immediate plan for wholesale conversion or redevelopment, the Town Planning Board has over the years broadened the always-permitted uses of existing IBs to include certain non-industrial uses such as Art Studio not involving direct provision of services or goods. However, as per their land leases² executed in the past, the uses of most existing IBs are restricted to industrial uses. Therefore, under the existing land administration arrangement, if an IB owner wishes to put its premises into such always-permitted non-industrial uses, the owner (or an authorised person) needs to submit a temporary waiver application to LandsD for temporarily waiving the lease restrictions for the specific premises. Unless exempted under any prevailing policy, the

¹ In this announcement, an IB refers to a building lawfully erected on a lot which, under the lease conditions, shall not be used for any purpose other than for industrial purpose or for industrial and / or godown purposes. IBs do not include special factories such as those located in industrial estates, storage premises in container terminals and flatbed factories built by the Hong Kong Housing Authority, or those buildings on lots supporting specific industries such as cargo handling uses, ship building and repairing, oil storage and refining and production of associated chemical by-product, manufacture of polystyrene plastics, manufacture and storage of chlorine, hydrogen and textile chemicals, etc.

² In this announcement, all references to “land lease” cover Government lease or Conditions of Sale/Grant/Exchange, etc. (as the case may be) and “land leases” shall be construed accordingly.

application will be subject to payment of a waiver fee (if approved) and an administrative fee.

Revised arrangement

3. To support the development of a number of sectors (including arts and cultural sectors, creative industries, and innovation and technology sectors), and address the demand for safe and lawful space in IBs, Government would **permit**, at any time during the five-year period **between 1 February 2019 and 31 January 2024** (the Specified Period), certain uses falling within the categories as set out in paragraph 4 below in premises within IBs, **provided that such uses are permitted under the land use zoning of the sites concerned on the relevant Outline Zoning Plans (OZPs) as “Column 1” (i.e. always permitted) uses** (the Permission). Under this policy, an owner of part(s) of an existing IB does **not** need to apply for a temporary waiver from LandsD, and does **not** need to pay a waiver fee and an administrative fee which would otherwise be payable, for putting the relevant IB premises to any of the permitted uses set out in paragraph 4 below during the Specified Period.

Permitted uses

4. Subject to paragraph 5 below, the following uses in existing IBs are covered under the Permission set out in paragraph 3 above –

- (a) **“Art Studio”**: It means any art premises purely used as a working place for the creation of paintings, sculptures, pottery and other pictures or objects which are the subject of art; or as a venue for rehearsal for art performance. For the avoidance of doubt, the Permission excludes any premises used for teaching art or other subjects (which will be regarded as a type of “school” use); for domestic purposes; or for providing rehearsal facilities

for any party other than the operator, owner and tenant(s) of the premises.

- (b) **“Office (Audio-visual Recording Studio)”**: It means any premises solely used for the production of audio and video records and small-scale production of motion pictures.
- (c) **“Office (Design and Media Production)”**: It means any premises for media design and production work, but does not cover free-standing broadcasting, television and/or film studio.
- (d) **“Office” (used by “specified creative industries” only)**: Office means any premises used as a place of business and for conducting clerical, administrative, documenting and other business- or industrial-related work. For the purposes of the Permission, only offices used by the “specified creative industries” (namely design and media production firms, printing and publishing industries, film companies, and film-related trade organisations) are within the scope of the Permission. For the avoidance of doubt, the Permission does not cover any broadcasting, television and/or film production studio, cinema, movie theatre, or museum.
- (e) **“Research, Design and Development Centre”**: It means any premises used for research and design of new or substantially modified products or industrial processes, and research and development of information technology and telecommunications. For the purposes of the Permission, the permitted uses would

also cover premises used by firms for research and design of innovation, science and technology³.

5. The permitted uses set out in paragraph 4 above should **not involve** uses/activities that would attract visiting members of the general public by providing direct services or goods, such as conducting hobby classes, exhibitions and sales activities, or providing rehearsal facilities for any party other than the operator, owner and tenant(s) of the premises.

Implications under lease

6. If a use of any premises within an existing IB–
- (a) is permitted under the land use zoning of the site occupied by the IB stated in the relevant OZP as a “Column 1” (i.e. always permitted) use; **and**
 - (b) falls within the permitted uses set out in paragraph 4 above (subject to the criteria set out in paragraph 5 above);

such a use would be permitted during the Specified Period without the need for the owner making a temporary waiver application to LandsD, and for payment of any waiver fee or administrative fee. The Permission is to be construed as a temporary waiver of the user restriction under the land lease during any time in the Specified Period and insofar as the use in question falls within one of the permitted uses set out in paragraph 4 above but not otherwise. For the avoidance of doubt, other than as specified, the Permission shall not in any way prejudice or affect Government’s rights under the land lease whether before or after the expiration of the Specified

³ Owners of IB premises would still need to apply for temporary waivers for uses other than “Research, Design and Development Centre” if such uses fall within the definition of Information Technology and Telecommunications Industries under the Definition of Terms published by the Town Planning Board.

Period. The Permission is subject to all other terms, covenants and conditions applicable or stipulated whether in the land lease, the Buildings Ordinance, the Town Planning Ordinance and other legislation or otherwise, and shall not prejudice any rights and remedies of other parties under the deed of mutual covenant of the IBs involved (if applicable). In the event of LandsD receiving any complaint for a use falling outside the permitted uses set out in paragraph 4 above and constituting a breach of the covenants under the land lease, investigation and, where appropriate, lease enforcement action will be considered after LandsD seeking advice from the relevant bureaux on the alleged non-compliant use outside the scope of the Permission. Other points to note that are relevant to the Permission are at **Annex**.

7. In determining whether a particular use is within the scope of the Permission, the decision of the relevant bureaux shall be final.

8. To provide certainty for owners and tenants of individual IB units, the Permission is valid initially for five years starting from 1 February 2019. Government would review the need for extending the Permission towards the end of the five-year period and make an announcement in a timely manner.

Enquiries

9. Enquiries about how this announcement will impact on individual IBs should be addressed to the relevant District Lands Office of LandsD in the first instance.

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Other points to note

Owners are reminded of the need to approach relevant authorities and departments, such as Fire Services Department and the Building Authority, to obtain all necessary approvals, permits, permissions or licences that may be required under any Ordinance, by-law, or regulation in force from time to time for the use and occupation of any premises for the purposes permitted under the Permission, whether or not any alteration, structural or otherwise to the existing building or any part thereof is involved. In addition, the Permission should not be construed as any guarantee by Government on the feasibility of any proposed use of the premises nor acceptance of any liability on any related expenses the owners had incurred whether in converting their premises into a permitted use or reverting the premises to an industrial use stipulated in the land leases, or otherwise.

2. Before changing the use of their premises to a use permitted under the Permission, owners should take into consideration any possible implication of the relevant deed of mutual covenant for such uses, as Government is not a party to that deed.

3. If owners or users would like to ascertain the zoning of an IB and the “Column 1” permitted uses specified in the notes to the relevant OZP, they should check the information contained in the website of the Town Planning Board (<http://www.ozp.tpb.gov.hk/>), or consult relevant professionals as appropriate.

4. For the avoidance of doubt, the Permission does not affect the right of an owner of any industrial premises to apply during the Specified Period to LandsD under the existing mechanism for a waiver, subject to the payment of a waiver fee and an administrative fee, in respect of a change of use for the lifetime of the existing building or until the expiry of the land lease of the lot.

5. Nothing contained in the Permission shall be construed as a release or any abandonment of Government's rights to require or insist on compliance with the terms and covenants of the land lease in respect of any subsequent redevelopment of a lot covered by the Permission or any part thereof or any application for modification or variation of the land lease. Government will be entitled to charge a premium (i) upon any subsequent redevelopment of the lot or any part thereof should such redevelopment exceed the development conditions permitted under the land lease or (ii) upon any application for a modification or variation of the terms and conditions of the land lease and, in either case, no account shall be taken of the Permission. For the avoidance of doubt, in the event of such redevelopment of the lot, or modification or variation of the terms and conditions of the land lease, any premium/waiver fee assessment in relation thereto shall be based on and made with reference to the user restriction and the terms and covenants set out in the land lease, without taking into account the Permission or any terms set out in this announcement.

6. If a lot covered by the Permission or any part thereof is or is to be resumed by Government, whether pursuant to an Ordinance or under the terms and conditions of the land lease, the Permission, insofar as it relates to the lot or the relevant part thereof, shall be deemed to have been withdrawn and cancelled upon the first publication of the notice of resumption or such notice or order of like effect under the relevant Ordinance or (as the case may be) the giving of the notice of resumption under the land lease. In this case,

the lot or the relevant part thereof shall, for all purposes, be excluded from the Permission.

7. Government would review the suitability of renewing the Permission before the expiry of the Specified Period (i.e. 31 January 2024). Government reserves the right to interpret or review the Permission as applied to individual circumstances and as a whole, and to vary the terms and conditions of the Permission or to cancel the Permission whether in respect of any particular IB or otherwise, during and after the Specified Period. Nothing in this announcement shall constitute any representation on the part of Government or give rise to any expectation on the part of any person that Government will renew the Permission or otherwise in future. In the event that the Permission is cancelled at any time or is not renewed upon expiry of the Specified Period, in respect of all or some of the IBs or parts thereof, the user restriction under the relevant land leases shall apply in full force without any further notice.

Development Bureau

1 February 2019