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Bills Committee on Energy Efficiency (Labelling of Products) Bill

Purpose

This paper reports on the deliberations of the Bills Committee on Energy Efficiency (Labelling of Products) Bill (the Bills Committee).

Background

2. Since 1995, the Electrical and Mechanical Services Department (EMSD) has been operating a voluntary Energy Efficiency Labelling Scheme (EELS) for household and office appliances as well as vehicles. The voluntary scheme aims at promoting energy saving by informing consumers of the energy performance level of the products. It also intends to encourage product suppliers to make available more energy-efficient products to meet consumers' demand. The market penetration rates of the voluntary EELS vary from 0% to around 80% among different products. The energy saving achieved by the voluntary scheme is about 200 GWh per year. As significant improvement in market penetration rates cannot be achieved under the voluntary scheme, the Administration proposes to introduce a mandatory EELS under which energy labels in prescribed formats are required to be shown on prescribed products for supply in Hong Kong to inform consumers of their energy efficiency performance.

The Bill

3. The Bill aims at introducing a scheme for the provision by suppliers of specified information in respect of, and the display of energy labels on, specified energy-using products, including household and office appliances.

The Bills Committee

4. At the House Committee meeting held on 20 April 2007, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Audrey EU Yuet-mee, the Bills Committee has held 16 meetings. The membership list of the Bills Committee is in **Appendix I**. Apart from examining the Bill with the Administration, the Bills Committee has also invited views from the trade and related sectors. 25 groups have made written and/or oral representation to the Bills Committee. A list of these groups is in **Appendix II**.

Deliberations of the Bills Committee

5. Members generally support the policy intent of the Bill to promote energy saving by informing consumers of the energy efficiency performance of the products. In the course of deliberation, they have raised questions on the second phase of the mandatory EELS, prohibition on supply of prescribed products, assignment of reference number and energy labels, contravention and enforcement, prosecution and penalty, appeal, transitional arrangement, exemption, legislative process for making regulations and amending Schedules, codes of practice, updating of energy efficiency grading and publicity efforts.

Second phase of the mandatory EELS

6. The Bills Committee notes that only three of the 18 types of energy-using products under the voluntary EELS, namely room air conditioners, refrigerating appliances and compact fluorescent lamps (CFLs), are included in the initial phase of the mandatory EELS. A list of the 18 products and their penetration rates is given in **Appendix III**. With the implementation of the mandatory EELS for the three prescribed products, it is expected that additional electricity saving of 150 GWh per year can be achieved. This is equivalent to the annual electricity consumption of 105 000 units of room air conditioners or a monetary saving of \$135 million in electricity bill per year. An annual reduction of carbon dioxide emission of 105 000 tonnes can also be achieved. To further promote energy saving, the majority of members consider that the Administration should start consulting the relevant trades on the priority of and timeframe within which the remaining 15 products should be included in the second phase of the mandatory scheme. Mr Vincent FANG however holds the view that legislation should only be introduced when voluntary schemes/measures cannot achieve the target results.

7. According to the Administration, the three prescribed products are included in the initial phase of the mandatory EELS because they together account for about 70% of the electricity consumption in the residential sector. They are also products that have been included since the early stages of the voluntary EELS and have relatively high market penetration rates. The Administration will need to consult the community and the relevant trades on the priority of products to be included in the

second phase of the mandatory scheme and the corresponding timeframe, taking into account the results of the initial phase of the mandatory EELS, such as the acceptance of the public and the energy saving achievements.

8. Apart from the residential sector, members consider that efforts should also be made to promote energy saving in the commercial sector which has a much higher energy consumption level (61%) than the residential sector (25%). In this connection, they have studied the feasibility of introducing a similar mandatory scheme for commercial and office buildings, given that management companies of these buildings are not keen to adopt energy efficiency measures when electricity bills are usually shared among tenants. According to the Administration, EMSD has launched the Hong Kong Energy Efficiency Registration Scheme for Buildings (HKEERSB) since 1998. HKEERSB is a voluntary scheme mainly intended to provide recognition for compliance with the Building Energy Codes (BECs). As at November 2007, 1 981 certificates have been issued under HKEERSB to 791 buildings.

9. Members are disappointed at the low overall participation rate of commercial buildings under HKEERSB. They hold the view that there is a need to turn the existing voluntary scheme into a mandatory one. In light of members' concern, the Administration launched a three-month public consultation on a proposal to introduce mandatory implementation of BECs for certain new and existing buildings in December 2007. Meanwhile, it will continue to strengthen the promotion of voluntary compliance with BECs through organizing promotional activities and seminars.

Prohibition on supply of prescribed products

10. With the introduction of the mandatory EELS, a manufacturer or importer of a prescribed product is prohibited from supplying the product unless it is a product of a listed model with a reference number that is assigned in the name of the manufacturer or importer and included in the record and bears an energy label that complies with the requirements specified under the Bill. A person who is not a manufacturer or importer of a prescribed product shall not supply the prescribed product unless the person has ensured that the product is a listed model with a reference number and bears an energy label.

11. The Bills Committee notes that there is concern about the definition of "supply" in relation to a prescribed product which includes, among other things, making a gift of such a product for commercial purposes. It is pointed out that developers providing electrical appliances in first-hand properties may be unnecessarily caught as suppliers under the Bill. According to the Administration, it is appropriate to include a prescribed product that is supplied as part of or in connection with the disposition of any specified premises under the Bill since flat buyers are also consumers of the prescribed products and should be informed of the energy efficiency performance of the products. After commencement of the

mandatory EELS, property developers would need to exercise due diligence in ensuring that the prescribed products being supplied within their new properties are listed models with reference numbers and bear energy labels. Members however pointed out that under the Bill, energy labels for CFLs should be affixed to their packaging. It would be difficult for CFLs supplied in specified premises to meet the requirement. To this end, the Administration agrees to move Committee Stage amendment (CSA) to exclude CFLs supplied as part of or in connection with the disposition of any specified premises from the relevant requirement.

12. Members are also concerned about the burden which the Bill may put on employees, particularly those junior sales staff, if they are required to “ensure” that a product is a listed model with a reference number and bears an energy label. While the Bill provides that it is a defence for an employee to show that he is acting in accordance with the instructions given to him by his employer in the course of employment and he has no reasonable ground to believe that the prescribed product is not a product of a listed model and does not bear an energy label, the scope of defence is very limited as compared with the “ensure” requirement.

13. The Administration’s explanation is that many of the local legislation make no distinction between employers and employees in the imposition of legal duties and the application of the offence provisions. This arrangement allows prosecuting authority to take enforcement actions according to the facts and evidence of each case. To strike an appropriate balance, the Bill provides a defence for employees who have acted in accordance with the instructions of their employers and have no reasonable grounds to suspect cases of non-compliance. Nevertheless, the Administration takes note of members’ view that junior sales staff should not be expected to take step to “ensure” as required under the Bill. In this connection, CSA will be moved to exclude junior sales staff such that only employees who exercise managerial functions are required to meet the “ensure” requirement. However, an employee who knowingly commits an offence will still be held liable under the Bill.

Assignment of reference number and energy labels

14. A person who wishes to apply for a reference number for a product in his name is required to submit the specified information and specified documents in respect of the product model to the Director of Electrical and Mechanical Services (DEMS) in accordance with the provisions of the Bill. A self-testing system will be implemented under which manufacturers or importers of the prescribed products are required to conduct tests in accordance with the codes of practice and in institutions recognized by DEMS. A letter of notification to the manufacturers or importers specifying the reference number assigned to the product model concerned will be issued if DEMS is satisfied with the information and documents submitted.

15. The Bills Committee notes that specified information in respect of a product model includes, among other things, its energy efficiency and performance characteristics as measured by tests carried out by an institution recognized by DEMS.

As Hong Kong is mainly an importing city, members are concerned about the cost implications, particularly on importers if they are required to conduct test on every prescribed product model they supply. Besides, there may not be sufficient recognized institutions in Hong Kong to conduct the tests.

16. The Administration's explanation is that EMSD will accept test reports issued by recognized laboratories overseas. The eligibility criteria for testing laboratory are given in **Appendix IV**. These criteria will be set out in the codes of practice approved and issued in accordance with the provisions under the Bill. Importers can use these test reports and apply for assignment of reference numbers for their products free of charge. According to a market survey conducted by EMSD on business establishments involved in manufacturing or importing of the three prescribed products in the mandatory scheme, about 90% of the respondents from the trades of room air conditioners and refrigerators and all the respondents from the trade of CFLs have indicated that the test reports are provided by the overseas/Mainland manufacturers. Those who cannot obtain test reports from overseas/Mainland manufacturers will have to arrange the tests to be conducted by laboratories recognized by EMSD.

17. There is also concern about the possible duplication of effort in the event that a prescribed product model is brought into Hong Kong by many importers. In this connection, members have studied whether it is allowed under the Bill for an overseas/Mainland manufacturer to apply for the assignment of a reference number and let local importers use the same reference number on the energy labels for the product model concerned. This can alleviate the financial burden of importers on the one hand and help the manufacturer promote his product on the other. Consideration should also be given to exempting importers from the requirement to submit test report for a particular product model if another importer has already submitted a test report for the same model. This could ease the burden of enterprises, particularly those small and medium sized ones.

18. According to the Administration, the Bill only applies to local manufacturers, importers and other suppliers unless there is an express provision stating otherwise. As such, DEMS does not have the authority to assign reference numbers to overseas/Mainland companies. If these companies wish to apply for assignment of reference numbers, they should do so through their local setups that perform import functions or other local import agents. On the proposed exemption for test report for a particular product model if another importer has already submitted a test report for the same model, the Administration's explanation is that the Bill imposes certain duties on the specified person (i.e. importer or manufacturer) to whom a reference number has been assigned. The reference number could be removed from the record if the specified person fails to perform those duties. Hence, the trades prefer to be held responsible only for the products supplied by them. The design of the mechanism as set out in the Bill has taken into account the trades' request that the names of the information providers should be added to the energy labels. This would not only facilitate enforcement, but also allow consumers to identify the

manufacturers/importers responsible for submitting the relevant information on the energy labels. In addition, the energy efficiency and performance characteristics of different batches of products of the same model may sometimes vary. Manufacturers/importers should ensure that the products they supply are in compliance with the energy efficiency performance as claimed in the test reports. They are also required to provide updated information if there are changes to the energy efficiency performance of the products. Therefore, it is necessary for each manufacturer/importer to submit test reports separately and be responsible for ensuring that the energy efficiency performance of the product complies with the information submitted.

Contravention and enforcement

19. The Bill empowers DEMS to serve an improvement notice if he considers that a person is contravening a requirement under the Bill. An improvement notice may specify the remedial measures to be taken within a specified period.

20. Members note that the Bill does not set a maximum length of the remedy period, nor does it allow extension of the period. The Administration's explanation is that in determining the remedy period to be specified in an improvement notice, DEMS will take into account the individual nature of each case, the impact of the contravention on the public and the time reasonably required for implementing the relevant remedial measures. In light of members' concern, the Administration will move CSA to empower DEMS to extend the remedy period if there are reasonable grounds to do so.

21. The Bill also empowers DEMS to serve a prohibition notice on a person who supplies a prescribed product prohibiting that person from supplying the product if he reasonably believes that the prescribed product is not a product of a listed model or an energy label is not displayed on the product in accordance with the Bill. DEMS may remove from the record the reference number assigned to a product model in the name of a specified person if the person fails to perform his duties under the Bill, provides false information or engages in certain conducts. Before the removal, DEMS has to serve a notice in writing on the specified person inviting him/her to make written representation within 14 days of the notice on why the reference number should not be removed. If DEMS does remove the reference number, the specified person is required to serve a notice in writing to inform each person to whom he/she has supplied the prescribed product of the removal within 14 days after DEMS has served on him/her the removal notice.

22. Members generally consider the 14-day periods too short. Some members opine that instead of removing the reference number, DEMS should ask the specified person to make improvement if the energy efficiency of a product model is lower than that specified in the energy label so that the product model can continue to be sold in the market. The Administration's explanation is that in practice, when DEMS suspects that a requirement under the Bill is contravened, he would first investigate

and ask for clarification, and where appropriate, serve an improvement notice or prohibition notice on the relevant person. Such arrangement provides the person with opportunities to explain or remedy the contravention. DEMS will remove the reference number from the record only when the contravention is verified or if it persists. Hence, the person should already have knowledge about the contravention involved when he receives a notice about the possible removal of a reference number. As such, the 14-day period for the person to make written representation is considered appropriate. On the 14-day period for a specified person to give notice to a person to whom he/she has supplied the prescribed product about a removal of reference number, the Administration's explanation is that as the specified person is exempted from giving notice to persons to whom the prescribed product had been sold by retail or had been supplied at least one year before the removal of reference number from the record, the 14-day period is considered appropriate.

23. The Bill provides that if DEMS has reasonable grounds to suspect that a prescribed product does not conform to the test results submitted to him by a specified person, DEMS may serve a notice on the specified person requiring the person to cause the product to be tested again in such manner as DEMS may specify in the notice.

24. There is concern about the extensive scope of "reasonable grounds" and the financial implications on the trades if they have to bear the cost of further testing. According to the Administration, DEMS plans to routinely select samples from the market for compliance monitoring testing by independent accredited laboratories, and the Government will bear the cost of such tests. DEMS will require re-testing based on information which enables him to reasonably suspect that a prescribed product does not conform to the test result submitted to him by the specified person. If the term "non-compliance" or "contravention" is used instead, DEMS would have no choice but to either serve an improvement/prohibition notice or remove the relevant reference number as required under the Bill. Besides, the trades are of the view that they should have an opportunity to prove that their products comply with the requirements under the Bill should the sample tests commissioned by DEMS suggest otherwise. Taking into account the trade's view, the Bill confers DEMS with the power to order testing of a prescribed product if he has reasonable grounds to do so, mainly if the result of its compliance monitoring testing so suggests. The power will be invoked only if certain samples of a prescribed product are tested to be not in compliance with the requirements under the Bill or under circumstances of similar nature. As the further testing in fact provides the trades with an opportunity to prove that no other enforcement action against the prescribed product should be taken, it is considered appropriate for the relevant specified person to bear the related cost. Nevertheless, the Administration has taken on board members' suggestion to include in the codes of practice arrangements on compliance monitoring testing, including that EMSD will bear the cost of testing in its routine monitoring, whereas specified persons will bear the cost of re-testing.

Prosecution and penalty

25. The Bills Committee has studied whether the usual time limit of six months for prosecution of summary offences should be extended, given that prosecution for some of the offences under the Bill can only be initiated until the completion of certain tests which may take a year or more, such as CFLs which usually have a lamp life of over 6 000 hours. According to the Legal Adviser, section 26 of the Magistrates Ordinance (Cap 227) provides that, in any case of an offence, other than an indictable offence, where no time is limited by any enactment for making any complaint or laying any information in respect of such offence, such complaint shall be made or such information shall be laid within six months from the time when the matter of such complaint or information respectively arose. The Administration has taken on board the Bills Committee's view and will move CSA to make it clear that the six-month time limit counts from the commission of the offence or from the offence being discovered or coming to the notice of DEMS. As to whether the proposed extension is sufficient in cases where DEMS has exercised his power to require further testing of a prescribed product that does not conform to the test results submitted to him, the Administration's explanation is that in implementation, DEMS will only exercise his power to allow the suppliers concerned the chance to prove their products in cases of relatively minor deviations. Where necessary, DEMS will follow up on the results of the tests submitted by the suppliers with an improvement notice or other enforcement powers. Therefore, the proposed extension of the time limit for prosecution will be sufficient.

26. Members note that the penalties for some of the offences under the Bill are inconsistent and not able to reflect the gravity of offences. They consider it necessary for the Administration to review the levels of penalties to ensure consistency. In light of members' concern, the Administration has conducted a review of the levels of penalties under the Bill. As a result, a penalty of six months' imprisonment will be included for the offence of unauthorized use of energy labels with intent to deceive or mislead to bring it in line with the penalty level for furnishing false information and document. The fine level for failing to give notice to other suppliers about the removal of a reference number will also be increased from level 1 to level 6 to reflect the importance of prohibiting the continuous sale of the concerned product.

27. While welcoming the Administration's prompt response, members stress the need to consult the relevant stakeholders on the proposed amendments. In its reply to the Bills Committee, the Administration confirms that it has consulted the relevant trade task forces set up by EMSD and members of the task forces have raised no objection to the said amendments.

Appeal

28. The Bill provides that an appeal against a decision of DEMS to refuse to issue a letter of notification, to assign a reference number, to serve an improvement notice or a prohibition notice, to remove from the record a reference number or a direction

specified in an improvement notice does not suspend the Director's decision or direction that is the subject of the appeal unless he decides otherwise.

29. Concern has been raised on the circumstances under which DEMS will decide to suspend his decision or direction which is the subject of an appeal. Members consider that the Director's decision to serve a prohibition notice should not be suspended taking into account the need to protect consumers' interest. Care should also be taken to ensure that some suppliers cannot make use of the suspension to clear the stock of the product in question. According to the Administration, DEMS will not suspend his decision or direction concerned in the interests of the consumers unless the appellant can put up a strong case or under very special circumstances, for example a CFL supplier may need more time to provide further evidence given the long lapse of time for testing of CFLs. DEMS will exercise prudence in making such an exceptional decision to ensure that the suspension will not be exploited. In light of members' concern, the Administration will include in the codes of practice the broad principles that DEMS will take into account in deciding whether or not to suspend his decisions that are under appeal, such as the nature of the contravention and the impact of the non-compliance on the public.

Transitional arrangements

30. The Bill provides that the provisions relating to the labelling of prescribed products and the prohibition notice will commence 18 months after the day on which the Ordinance, if enacted, is published in the Gazette.

31. According to the Administration, the mandatory EELS does not apply to procurement contracts of prescribed products (to be supplied as part of or in connection with the disposition of any specified premises) which have been entered into, or to room air conditioners/refrigerating appliances which have been manufactured in or imported into Hong Kong before the enactment of the Ordinance. Otherwise, the manufacturers/importers must submit the required information of their prescribed products to EMSD and attach energy labels on the prescribed products prior to supplying them 18 months after the enactment of the Bill. The transitional period has already been extended from 12 months to 18 months, taking into account the trades' views to strike a balance between the need for the trades to adapt to the new mandatory EELS and the early implementation of the scheme to promote the use of energy-efficient products.

Exemption

32. The Bill provides that DEMS may, in any particular case, by notice published in the Gazette, exempt any model type of prescribed products from any or all of the provisions of the Bill.

33. Question has been raised on the circumstances under which DEMS may grant exemptions. At members' request, the Administration has undertaken to include in the speech to be delivered by the Secretary for the Environment (SEN) at the resumption of the Second Reading debate on the Bill elaboration on these circumstances. It will also move CSA to require DEMS to state the reason for exemption in the notice.

Legislative process for making regulations and amending Schedules

34. The Bill empowers SEN to make regulations and amend Schedules.

35. Members note that the regulations and amendments to the Schedules to be made by SEN are subsidiary legislation subject to negative vetting by the Legislative Council (LegCo). Given that Part 1 of Schedule 1 relates to the addition of new prescribed products which may have far-reaching implications on stakeholders, members consider that amendments to Part 1 of Schedule 1 should be made by an amendment bill or subsidiary legislation subject to positive vetting in order to allow sufficient time for LegCo to scrutinize the amendments concerned, whereas amendments which are more technical in nature could be subject to negative vetting. In light of members' concern, the Administration will move CSA to require that amendments to Part 1 of Schedule 1 for addition of new prescribed products should be subject to positive vetting.

Codes of practice

36. The Bill empowers DEMS to approve and issue codes of practice relating to any requirement under the Bill. Codes of practice are intended to provide practical guidance in respect of the application or operation of the provisions of the Bill. The approved codes of practice are required to be identified by notice published in the Gazette.

37. The Bills Committee has studied whether it is a common practice in law to provide for "approved code of practice". According to the Administration, the provision would enable DEMS to exercise flexibility in approving codes of practice, particularly those not prepared by EMSD but in his opinion are suitable for the purpose of providing practical guidance in respect of any requirement under the Bill. Besides, the use of "approved code of practice" is common in Hong Kong laws and there are a number of precedents in other ordinances, including the Unsolicited Electronic Messages Ordinance (Cap 593), Merchant Shipping (Local Vessels) Ordinance (Cap 548), Personal Data (Privacy) Ordinance (Cap 486) and Social Workers Registration Ordinance (Cap 505).

38. In view of the far-reaching implications of the codes of practice, members consider it necessary to include in the Bill the requirement for consultation with stakeholders in the preparation of codes of practice as in the case of the Securities and Futures Ordinance (Cap 571) and Companies Ordinance (Cap 32). The

Administration's explanation is that it has been working closely with the trades. By way of illustration, trade representatives of the relevant task force have been consulted in the course of preparing the draft code of practice on energy efficiency labelling of products. Comments from the trades have been incorporated in the draft code of practice, which has been submitted for consideration by the Bills Committee. The draft code of practice has been uploaded onto EMSD's website for information of interested parties. In light of members' concern, the Administration is prepared to move CSA to include the requirement for DEMS to consult stakeholders in the course of preparing the codes of practice. It will also include in the speech to be delivered by SEN at the resumption of Second Reading debate on the Bill an undertaking to brief the relevant LegCo Panel the outcome of consultation.

Updating of energy efficiency grading

39. The Bills Committee has studied how the energy efficiency grading standards can be revised to take account of technological advancement. According to the Administration, the energy efficiency grading of prescribed products should be determined in accordance with the calculation method set out in the approved codes of practice. DEMS is empowered to revise from time to time the whole or part of any code of practice, including the calculation method for the energy efficiency grading and the grading so calculated to reflect the latest advancement of new energy efficiency and performance characteristics of products in the prevailing market. Having regard to the need to balance the interests of the trades and consumers, room air-conditioners and refrigerating appliances that have been manufactured in or imported into Hong Kong before the relevant new calculation method takes effect ("effective date") can continue to be sold with the "old" energy labels indefinitely. As CFLs do not have serial numbers for identification, all CFLs bearing original energy labels must be replaced with new energy labels after a specified date before they can be supplied. Accordingly, when updating the energy efficiency grading standards, DEMS will specify in the codes of practice that the original standards will apply to room air-conditioners and refrigerating appliances manufactured in or imported into Hong Kong before the new standards take effect. New applications will be processed in accordance with the new calculation method specified in the codes of practice. Specified persons are required to prepare energy labels for the relevant products in accordance with the new standards. They are also required to prepare and display energy labels for products that are not covered by the transitional arrangement according to the new standards after the specified date. The revised codes of practice will be identified by notice published in the Gazette. The Administration has consulted relevant trades on the proposed arrangements and they have raised no objection.

40. Given that the same product model manufactured in or imported into Hong Kong before and after the effective date may have different energy efficiency grading, members express concern that this will cause confusion to consumers. As such, there may be a need to include in the energy label the year in which the reference numbers are assigned or the new calculation method for energy efficiency grading

takes effect to facilitate consumers to make an informed decision. Consideration should also be given to consulting the relevant trades on the feasibility of setting a definite period within which supply of prescribed products with the “old” energy labels can be allowed following an updating of energy efficiency grading standards, after which new energy labels in accordance with the new energy efficiency grading standards should apply across the board.

41. The Administration has taken on board members’ suggestion and will move CSA to include in the energy label information on the year in which the reference number is assigned or the year in which the new calculation method takes effect to assist consumers in distinguishing new and “old” energy labels. The design of the energy labels will also be amended such that the year when the reference number is assigned will be more prominently displayed. Promotional efforts will be stepped up after passage of the Bill to assist consumers in understanding the information shown on the energy labels.

42. As regards the setting of a deadline after which products with “old” energy labels cannot be supplied, the Administration’s explanation is that it has consulted the task forces set up by EMSD in February 2008 on the proposal. The trade representatives have expressed concern that such a deadline will create undue compliance burden on the suppliers, in particular the retailers, since some of them may have difficulties in obtaining new energy labels. Having considered the expected environmental benefits, the compliance burden on the trades and the practicality of the requirement, the Administration considers the proposed arrangement in paragraph 39 appropriate and will move CSA accordingly.

Room air conditioner

43. Under the Bill, “room air conditioner” includes, among others, single package type and split type room air conditioners that have a rated cooling capacity not exceeding 7.5 kilowatts and does not include, among others, multiple split-system, ceiling-mounted type or floor standing type air-conditioners.

44. Having regard to the increased popularity of ceiling-mounted type and floor standing type room air conditioners with a rated cooling capacity not exceeding 7.5 kilowatts in the residential sector, the Administration is requested to solicit the trade’s view on the feasibility of including these types of room air conditioners under the regulation of the Bill. In its reply to the Bills Committee, the Administration advises that it has consulted the trade task force on room air conditioners set up by EMSD. According to the statistics provided by the trade, domestic-use ceiling-mounted type air conditioners, floor standing type air conditioners and multiple split-type air conditioners with two or three indoor units with a rated cooling capacity not exceeding 7.5 kilowatts only account for 0.26% of the total quantity sold in 2007. Having considered the small quantity of the said categories of air conditioners and the compliance burden involved, the Administration considers it not recommendable to extend the application of the Bill to these types of air conditioners at this stage.

Compact fluorescent lamp

45. The Bills Committee notes that there is concern on the environmental impacts associated with the improper disposal of used CFLs which contain mercury. The Administration's explanation is that according to the Waste Disposal (Chemical Waste) (General) Regulation (Cap 354C), the waste producer is required to make suitable arrangements for the storage, collection and disposal of chemical waste if large quantities of mercury-containing waste, including CFLs, are disposed of. The waste producer has to arrange for the delivery of chemical waste to the Chemical Waste Treatment Centre (CWTC) in Tsing Yi for proper treatment. At present, a number of organizations, including Government departments, education institutions and private companies, have put in place a collection scheme for used CFLs/fluorescent tubes. They will collect and store the used CFLs/fluorescent tubes and arrange delivery to CWTC when these have accumulated to a certain quantity. CWTC will charge a disposal fee of \$1,130 per tonne. As CFLs for domestic use usually have a long lifespan and will not be generated in large quantities, residents may dispose of them together with other solid waste, which will be delivered to the landfills for disposal. The landfills are equipped with impermeable liner, leachate collection and treatment system, and surface water and groundwater management systems, which provide effective means for the treatment of pollutants to prevent land and groundwater contamination.

46. Query is raised on the effectiveness of the collection scheme given that only 435 000 units of CFLs/fluorescent tubes were collected and treated at CWTC in 2006 as opposed to the sale of 3.5 million units of CFLs and 34.5 million units of incandescent lamps over the same period. Members further point out that according to the information provided by the Administration, more people will switch to use CFLs after the commencement of the mandatory EELS. It is estimated that about 2.6 million installations of incandescent lamps will be replaced by CFLs. Hence, there is a need to strengthen the collection scheme for used CFLs to ensure proper treatment of the toxic mercury content before disposal to protect both the environment and public health. Consideration should be given to providing financial incentives, including free delivery to CWTC and waiving of the disposal fee etc, to encourage the setting up of a voluntary collection scheme at housing estates for used CFLs/fluorescent tubes. Publicity should also be stepped up on the proper handling of used CFLs/fluorescent tubes with emphasis on the need for safety.

47. The Administration's explanation is that the Environmental Protection Department (EPD) will continue to encourage public and private organizations which may need to dispose of large quantities of used CFLs to deliver their used CFLs to CWTC for treatment. In light of members' concern, EPD plans to write to property management companies with a view to introducing to them the guideline on "A Guide to Waste Producers for Handling and Disposing Spent Mercury-Containing Lamps" and encouraging them to implement a voluntary collection scheme at housing estates for used CFLs/fluorescent tubes, including the setting up of facilities for collection and storage of used CFLs/fluorescent tubes as well as engaging licensed chemical

waste collectors to deliver used CFLs/fluorescent tubes to CWTC for treatment. EPD will provide technical advice to property management companies on matters relating to the implementation of the said scheme. It will also produce posters to facilitate property management companies to promote the proper way to handle used CFLs and the collection system to the residents.

48. Given that the disposal fee collected in 2006 for treatment of used CFLs/fluorescent tubes is \$15,897, members hold the view that this should be waived to encourage the setting up of the voluntary collection scheme for used CFLs/fluorescent tubes. According to the Administration, the average lamp lives of CFLs in residential and commercial sectors are four and two years respectively. Assuming that all used CFLs are to be sent to CWTC for treatment and disposal, a maximum of 6.1 million units will be treated and disposed of by CWTC in one year and the maximum total charge involved in that year would be around \$600,000. While it is not an overly large amount, the payment is in line with the polluter-pays principle. In this connection, EPD has started discussion with the trades for the setting up of voluntary collection arrangement by them.

49. In its reply to the Bills Committee, the Administration advises that EPD has formed a Working Group with representatives of fluorescent lamp suppliers in October 2007 to consider how to promote the proper collection and recycling of used CFLs. The Working Group has agreed in November 2007 to set up a voluntary Fluorescent Lamp Recycling Programme (the Programme) to collect all brands of used fluorescent lamps, including CFLs and fluorescent tubes, from domestic households. To facilitate the public to make use of the service of the Programme, a combination of collection modes will be adopted, including regular collection service at participating housing estates, collection points set up at retail outlets and service centres of the participating companies, and mobile collection vehicle. The costs of collection and treatment of used fluorescent lamps at CWTC will be shared by the participating companies. A Programme Committee comprising all participating companies will be set up to finalize the logistical arrangements of the Programme, such as the setting up of collection network, appointment of used fluorescent lamp collector, and design of publicity materials and collection boxes, with a view to launching the Programme in March 2008. Apart from the trade-wide Programme, individual suppliers are also encouraged to organize their own pilot collection schemes.

50. While welcoming the trade-wide Programme, members consider that financial incentives should be provided to encourage public participation in the Programme. According to the Administration, the Working Group has considered whether incentives, such as discount coupon, should be provided to encourage public participation in the Programme. Trade representatives observe that financial incentives are usually adopted by individual suppliers as a short-term marketing strategy to promote their brands. A trade-wide financial incentive under the Programme could at best have a short-term effect in encouraging public participation and is unlikely to be sustainable. However, individual participating companies may

offer financial incentives for their products if they see fit. Continuing education on the benefits of using CFLs and their proper disposal would be the best means to encourage the public to switch to CFLs and participate in the Programme.

Publicity efforts

51. The Bills Committee holds the view that the Administration should step up publicity on the benefit of using energy-efficient products. In particular, more emphasis should be put on the durability and saving which CFLs could achieve to encourage switching to CFLs. Consideration should also be given to requesting the Consumer Council (CC) to conduct another round of testing of CFLs to promote the use of CFLs on the one hand and help consumers to choose the suitable CFLs on the other. The Administration's explanation is that publicity effort would be stepped up to tie in with the passage of the Bill. It has also relayed the Bills Committee's request to CC in November 2007.

52. The Bills Committee has also examined other technical aspects of the Bill.

Committee Stage amendments

53. A set of Committee Stage amendments to be moved by the Administration is in **Appendix V**.

Recommendation

54. The Bills Committee supports the resumption of Second Reading debate on the Bill on 30 April 2008.

Advice sought

55. Members are requested to support the recommendation of the Bills Committee in paragraph 54 above.

**Bills Committee on
Energy Efficiency (Labelling of Products) Bill**

Membership list

Chairman Hon Audrey EU Yuet-mee, SC, JP

Members Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon SIN Chung-kai, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Vincent FANG Kang, JP
Hon WONG Ting-kwong, BBS

(Total : 9 Members)

Clerk Miss Becky YU

Legal Adviser Mr Timothy TSO

**List of organizations which have made
written and/or oral representations to the Bills Committee**

- (a) Advisory Council on the Environment
- (b) Association of Engineering Professionals in Society Ltd
- (c) Business Facilitation Advisory Committee Retail Task Force
- (d) Consumer Council
- (e) Energy Efficiency and Conservation Subcommittee of the Energy Advisory Committee
- (f) Federation of Hong Kong Industries
- (g) Friends of the Earth (HK)
- (h) Fu Sun Engineering Ltd
- (i) Green Council
- (j) Green Power
- (k) Green Sense
- (l) Goodway Electrical Enterprise Ltd
- (m) Hong Kong Electrical Appliances Manufacturers Association
- (n) Hong Kong & Kowloon Electrical Appliances Merchants Association
- (o) Hong Kong & Kowloon Electric Trade Association
- (p) Hong Kong Retail Management Association
- (q) Hong Kong Suppliers Association Ltd
- (r) Osram Asia Pacific
- (s) Pilot Lighting (HK) Ltd
- (t) Professor Ron HUI, City University of Hong Kong
- (u) Real Estate Developers Association of Hong Kong
- (v) Shun Hing Electric Works & Engineering Co Ltd
- (w) The Hongkong Electric Co Ltd
- (x) The Hong Kong Institute of Education
- (y) The Hong Kong Institution of Engineers

Appendix III

List of the 18 products and their penetration rates under the voluntary Energy Efficiency Labelling Scheme

	Market penetration (on sales quantity)
Room coolers	82%
Refrigerators	65%
Compact fluorescent lamps	14%
Multifunction devices	50%
Electric storage water heaters	35%
Dehumidifiers	25%
Photocopiers	20%
Washing machines	15%
Laser printers	15%
Television sets	< 15%
Domestic gas instantaneous water heaters	< 10%
Electric rice-cookers	< 5%
Petrol passenger cars	< 5%
LCD monitors	< 5%
Electronic ballasts	< 5%
Fax machines	< 5%
Electric clothes dryers	0%
Computers	0%

Eligibility criteria for testing laboratory

4. Requirements on Testing Laboratory

4.1. When a specified person submits the specified information and specified document under section 6 of the Ordinance, the Director will accept the test reports issued by a test laboratory which meets any one of the following criteria:

- (a) The laboratory is accredited —
 - (i) under the Hong Kong Laboratory Accreditation Scheme (HOKLAS) operated by the Hong Kong Accreditation Service (HKAS) for the relevant test; or
 - (ii) under an accreditation scheme operated by a laboratory accreditation body in other economies with which HKAS has concluded a mutual recognition agreement / arrangement (MRA) for the relevant test.
- (b) The laboratory has been assessed and evaluated by a recognized independent certification body, and is certified by the certification body to be competent for carrying out the relevant test.
- (c) The laboratory has been assessed and recognized by the Director under the voluntary Energy Efficiency Labelling Scheme for conducting the relevant test, and is certified under ISO 9001 or equivalent standards for quality system.

ENERGY EFFICIENCY (LABELLING OF PRODUCTS) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In the definition of “Secretary”, by deleting “, Transport and Works”.</p> <p>(b) In the English text, in the definition of “test report”, in paragraph (b), by deleting the full stop and substituting a semicolon.</p> <p>(c) By adding – ““excepted product” (例外產品) means a prescribed product to which section 11A(3) does not apply by virtue of section 11A(4); “updating notice” (更新通知書) means a notice served by the Director under section 11A(1).”.</p>
3(1)	<p>In the Chinese text, by deleting everything after “作為” and before “有關連” and substituting “某項指明處所的處置的一部分而供應的訂明產品，或是在與該項處置”.</p>
3(2)(f)	<p>In the Chinese text, by deleting everything after “作為” and before “有關連” and substituting “某項指明處所以外的處所的處置的一部分而供應的訂明產品，或是在與該項處置”.</p>
4(1)	<p>(a) In the English text, by deleting “that product” after “unless”.</p> <p>(b) In paragraph (a), in the English text, by adding “that product”</p>

before “is a product of”.

- (c) In paragraph (a)(ii), by deleting “and”.
- (d) In paragraph (b), in the English text, by adding “that product” before “bears an energy label”.
- (e) In paragraph (b)(i), by adding “and” at the end.
- (f) By deleting paragraph (b)(ii).
- (g) In paragraph (b)(iii), by deleting the full stop and substituting “; and”.
- (h) By adding –
 - “(c) the information set out on the energy label of that prescribed product conforms with the specified information submitted by the manufacturer or importer to the Director in respect of the model or, if the specified information has been amended pursuant to section 9 or 10, the specified information as read subject to section 9 or 10.”.

5(1)

- (a) In the English text, by deleting “that the product” after “has ensured”.
- (b) In paragraph (a), in the English text, by adding “that the product” before “is a product of”.
- (c) In paragraph (a), by deleting “and”.
- (d) In paragraph (b), in the English text, by adding “that the product” before “bears an energy label”.
- (e) In paragraph (b)(i), by adding “and” at the end.
- (f) By deleting paragraph (b)(ii).
- (g) In paragraph (b)(iii), by deleting the full stop and substituting “; and”.
- (h) By adding –
 - “(c) that the information set out on the energy label of the product conforms with the information included in the record.”.

5

(a) By adding –

“(1A) Subsection (1)(b) does not apply to a compact fluorescent lamp that is supplied as part of or in connection with the disposition of any specified premises.”.

(b) By adding –

“(3) Subsection (1) does not apply to a person who –

(a) is an employee who does not exercise managerial functions; and

(b) supplies a prescribed product in accordance with the instructions given to him by his employer in the course of his employment.

(4) If an employee who does not exercise managerial functions supplies a prescribed product knowing that the product –

(a) is not a product of a listed model; or

(b) does not bear an energy label,

he commits an offence and is liable on conviction to a fine at level 6.”.

6(3)(b)(iv)

In the English text, by deleting “approved” and substituting “recognized”.

6(3)(d)

By adding “and the year” after “reference number”.

6(4)

By deleting paragraph (b) and substituting –

“(b) a document showing that the institution has met the criteria for recognition set by the Director;”.

9(1)

By deleting “specified information or a specified document submitted to the Director under section 6” and substituting “information submitted to the Director under section 6 occurs”.

9(2)

In the English text, by deleting “from that” and substituting “from

those”.

10(2) By deleting paragraph (c) and substituting –

“(c) whether the specified person still supplies the model in Hong Kong; and”.

10(6) By deleting “a listed model is no longer available in the market” and substituting “he no longer supplies a listed model in Hong Kong”.

New By adding –

“11A. Specified person to update energy efficiency grading on initiative of Director

(1) If the Director revises or approves any revisions to the calculation method of the energy efficiency grading of a prescribed product specified in the approved code of practice, the Director is to serve an updating notice on every specified person to whom a reference number that is included in the record has been assigned in respect of the product.

(2) In an updating notice, the Director is to –

(a) notify the specified person of –

- (i) the new calculation method of the energy efficiency grading of the prescribed product that has been specified in the approved code of practice; and
- (ii) the date on which the new calculation method will take effect (“effective date”);

(b) specify a date for the purposes of paragraph (c) and subsection (3) (“the specified date”); and

(c) require the specified person to submit the following information in a specified form

to the Director before the specified date unless he no longer supplies the prescribed product or the prescribed product is an excepted product –

- (i) the reference number assigned to the model of the prescribed product; and
- (ii) the calculation of the energy efficiency grading of the prescribed product in accordance with the new calculation method, and the grading so calculated.

(3) Where an updating notice is served on a specified person in respect of a prescribed product, for the purposes of complying with section 4(1)(b)(i), the energy efficiency grading that is to be shown on the energy label of such prescribed product, supplied by that person on or after the specified date, is the energy efficiency grading calculated in accordance with the new calculation method referred to in subsection (2)(a)(i).

(4) Subsections (2)(c) and (3) do not apply in respect of a prescribed product if it meets any condition specified in Schedule 3.

(5) For the avoidance of doubt –

- (a) a specified person to whom a reference number has been assigned in respect of an excepted product; and
- (b) any person to whom a specified person has supplied a prescribed product (whether or not it is an excepted product),

may continue to supply the product in the same manner the product could have been supplied under this Ordinance before the effective date.”.

- 13(2) By deleting paragraph (d) and substituting –
“(d) any change in the information referred to in paragraphs (a), (b) and (c);”.
- 13(2)(f) By deleting the full stop and substituting “and any change in such particulars.”.
- 14(3) By deleting “section 33” and substituting “section 33(2)(a) and may be extended by the Director if he considers that there are reasonable grounds for doing so”.
- 14(7) By adding “or by an extension under subsection (3)” after “modified after an appeal”.
- 15(1) By deleting “is supplying” and substituting “supplies”.
- 16(1)(c) In the English text, by deleting “from that” and substituting “from those”.
- 18(3) By deleting “level 1” and substituting “level 6”.
- 21 By adding “not below the rank of assistant electrical inspector” after “public officer”.
- 24 By adding –
“(1A) Where an authorized officer enters any premises under a warrant, if so requested, he is to produce the warrant for inspection.”.
- 28(3) In the Chinese text, by deleting “送達第(2)款所指的通知書的 30 日內被認領” and substituting “第(2)款所指的通知書送達的 30 日內被領

回”.

30(1) By deleting “the action” and substituting “either or both of the actions”.

30(2) (a) In the English text, by deleting “action that the Director may take under subsection (1) is” and substituting “actions that the Director may take under subsection (1) are”.

(b) In paragraph (a)(iii), by adding “and” at the end.

37 By adding –

“(5) The hearing of the appeal is to be open to the public unless the appeal board determines that there is good reason for it to be held in camera.”.

38(6) By deleting “due to the Government”.

38(7) In the Chinese text, by deleting “違罪” and substituting “犯罪”.

New By adding –

“38A. Privileges and immunities of members of appeal board and witnesses

(1) The chairman and members of the appeal board have, in the performance of their functions under this Part, the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that Court.

(2) A witness, party to any appeal or representative appearing before the appeal board is entitled to the same privileges and immunities as he would have in civil proceedings in the Court of First Instance.”.

40 By adding –

“(5A) The Director is to, before exercising the powers under subsections (1), (3) and (5), consult as the Director thinks fit such organizations which, in the opinion of the Director, represent the interests of –

- (a) manufacturers, importers and other suppliers, where applicable; and
- (b) consumers,

of energy-using products to which the code of practice applies.”.

41(3) In the Chinese text, by adding “經核准” before “實務守則”.

43 By deleting the clause and substituting –

“43. Liability of employers

(1) Any act done or omission made by a person in the course of his employment (“employee”) is treated for the purposes of this Ordinance as done or made by his employer, as well as by him.

(2) In any proceedings for an offence under this Ordinance brought against an employer in respect of an act or omission of his employee, the employer is liable to be convicted of and be punished for that offence unless he establishes the defence described in subsection (3).

(3) Where any proceedings are brought against an employer by virtue of this section, it is a defence for the employer to show that –

- (a) the act was done or the omission was made without his knowledge or consent; and
- (b) he exercised all due diligence to prevent his employee from doing the act or making the omission, or doing an act or making an omission of that description, in the course of his employment.”.

- 44 By deleting the clause.
- 46(a)(i) By adding “addressed to the Director and” before “delivered”.
- 46(a) In the Chinese text, by adding “將” after “而言，”.
- 46(b)(i) By deleting “delivered to the individual” and substituting “addressed to the individual and delivered to him”.
- 46(c)(i) By adding “addressed to the company and” before “delivered”.
- 46(d)(i) (a) By adding “addressed to the body and” before “delivered”.
 (b) In the English text, by deleting “giving it” and substituting “given”.
- 46(e)(i) (a) By adding “addressed to the partnership and” before “delivered”.
 (b) In the English text, by deleting “giving it” and substituting “given”.
- New By adding –
- “47A. Time limit for prosecution of offences**
- Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), a complaint may be made or an information laid in respect of an offence under this Ordinance –
- (a) within 6 months after the commission of the offence; or
- (b) within 6 months after the offence is discovered by or comes to the notice of the Director.”.

49 By adding –

“(1A) The Director is to state in the notice referred to in subsection (1)(b) the reasons for granting the exemption.”.

- 51(2) By deleting everything after “make copies” and substituting –
“available –
- (a) at the office of the Electrical and Mechanical Services Department during normal office hours; and
 - (b) through such other means as the Director considers appropriate.”.
- 52
- (a) By renumbering the clause as clause 52(1).
 - (b) In subclause (1), by deleting “1 and 2” and substituting “1, 2 and 3”.
 - (c) By adding –
 - “(2) An order made under this section may contain such incidental, consequential, supplemental, transitional or savings provisions as may be necessary or expedient in consequence of the order.
 - (3) An order made under this section to amend Part 1 of Schedule 1 is subject to the approval of the Legislative Council.”.
- 54(1)(c)(iv) By adding “and the year” after “reference number”.
- 54(2) In the Chinese text, by deleting everything after “作為” and before “有關連” and substituting “某項指明處所的處置的一部分而供應的，或是在與該項處置”。
- Schedule 1 Within the square brackets, by adding “& Sch. 3” after “54”.

Schedule 1
Part 2,
Division 1,
section 4

By deleting “is assembled in factory and”.

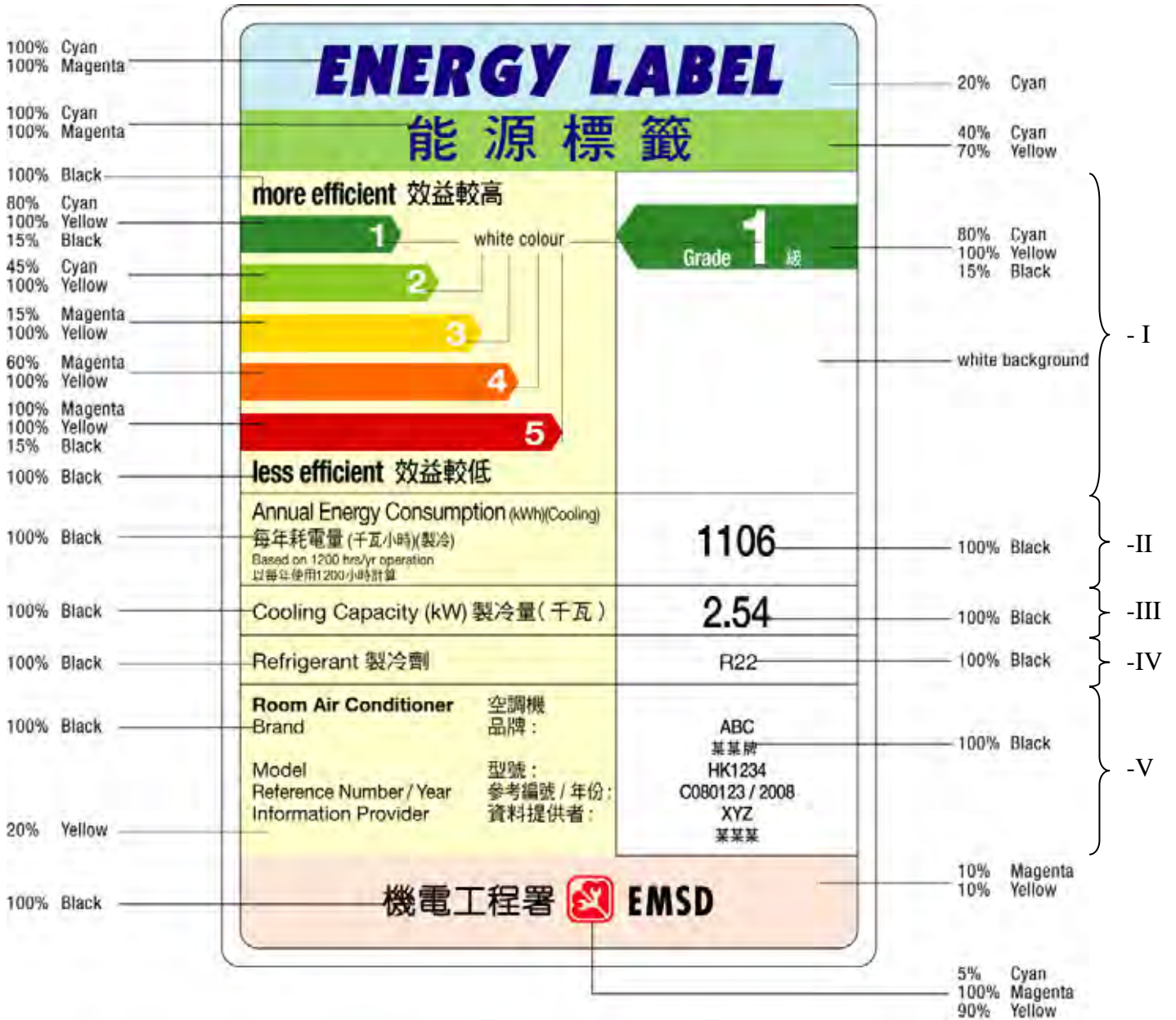
Schedule 1,
Part 2,
Division 3,
section 3

In the Chinese text, in the definition of “非整合式熒光燈”, by deleting “震流器” and substituting “鎮流器”.

Schedule 2,
Part 2,
section 1

By deleting the energy label and substituting –

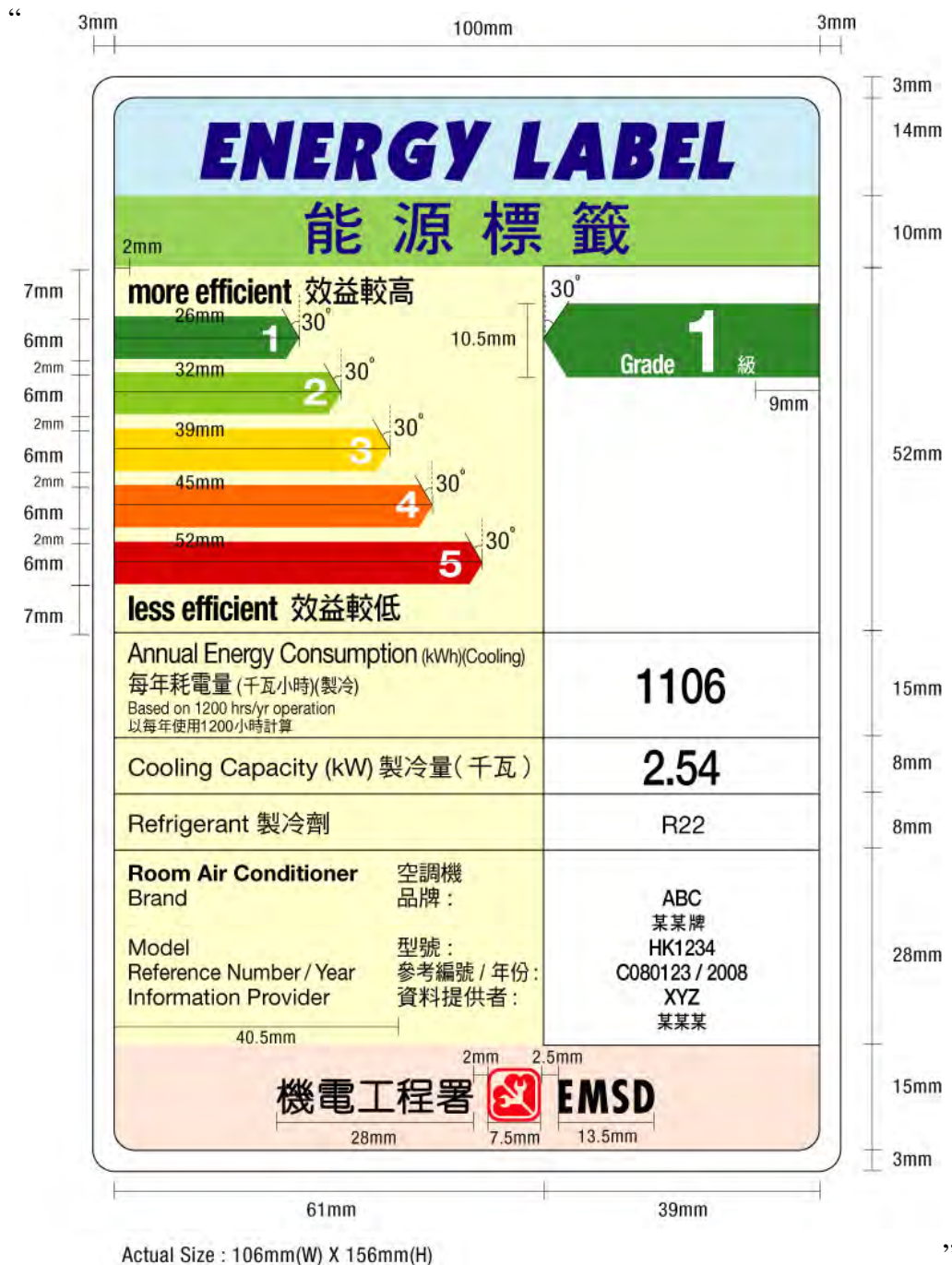
“



”

Schedule 2,
Part 2,
section 2

By deleting the energy label and substituting –



Schedule 2,
Part 2,
section 3,
Table A

In column 2 opposite to Area V, by adding “, the year in which the reference number is assigned or, where the energy efficiency grading is calculated in accordance with the new calculation method under section 11A of this Ordinance, the year in which the new calculation method takes effect” after “assigned by the Director”.

Schedule 2,
Part 2,

In column 1 –

section 4

- (a) by deleting “Reference Number” and substituting “Reference Number / Year”;
- (b) by deleting “參考編號：” and substituting “參考編號 / 年份：”;
- (c) by deleting “reference number and” and substituting “reference number, year and”.

Schedule 2,
Part 2

By deleting section 5 and substituting –

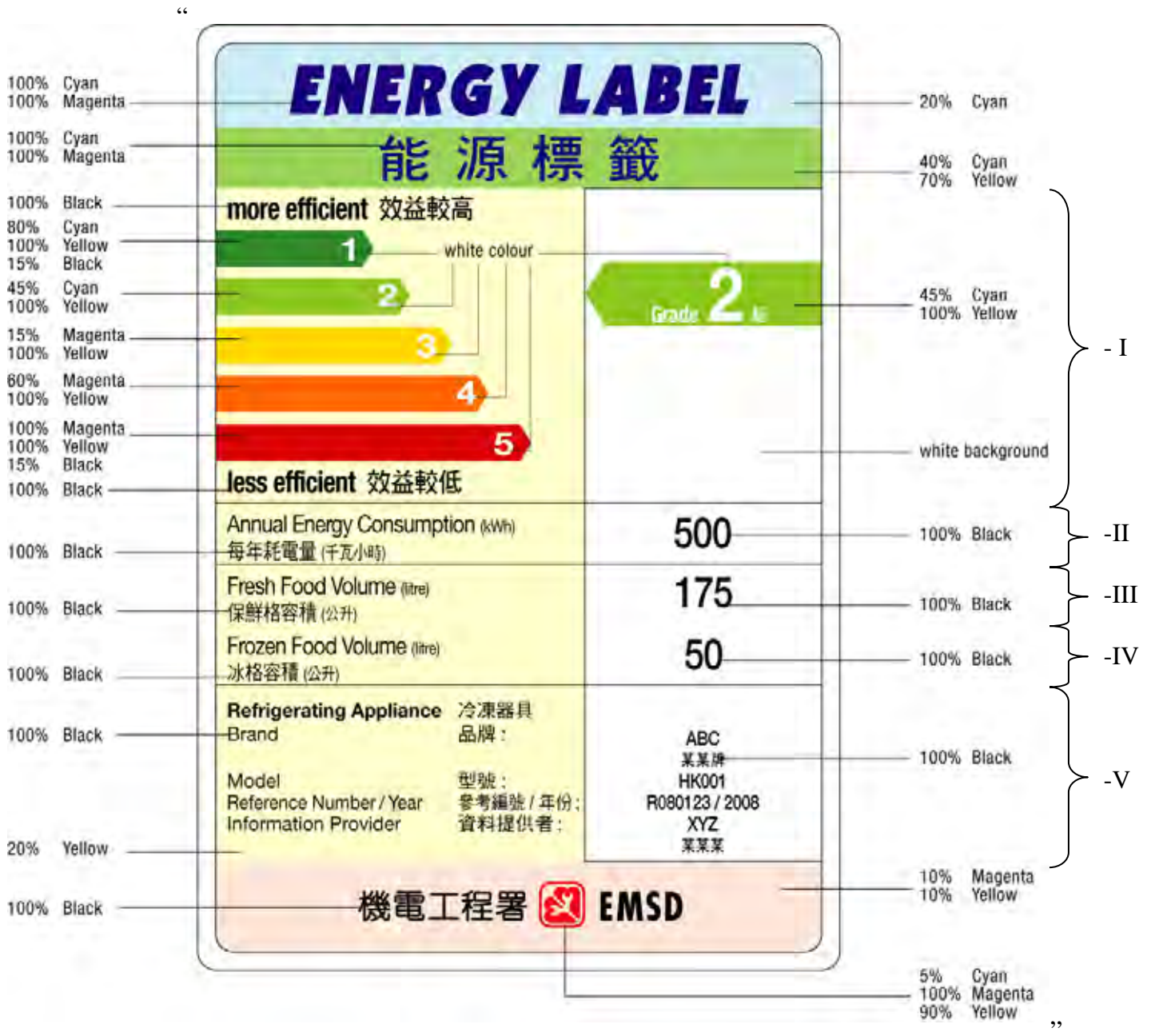
“5. (1) Subject to subsection (3), the energy label is to be attached or affixed to a prominent position of the room air conditioner and is to be clearly visible.

(2) For the avoidance of doubt, if only part of the room air conditioner is being exhibited, the energy label is to be attached or affixed to a prominent position of that part and is to be clearly visible.

(3) The energy label may be attached to the room air conditioner or its packaging in a manner specified by the Director where the Director has approved its being so attached.”.

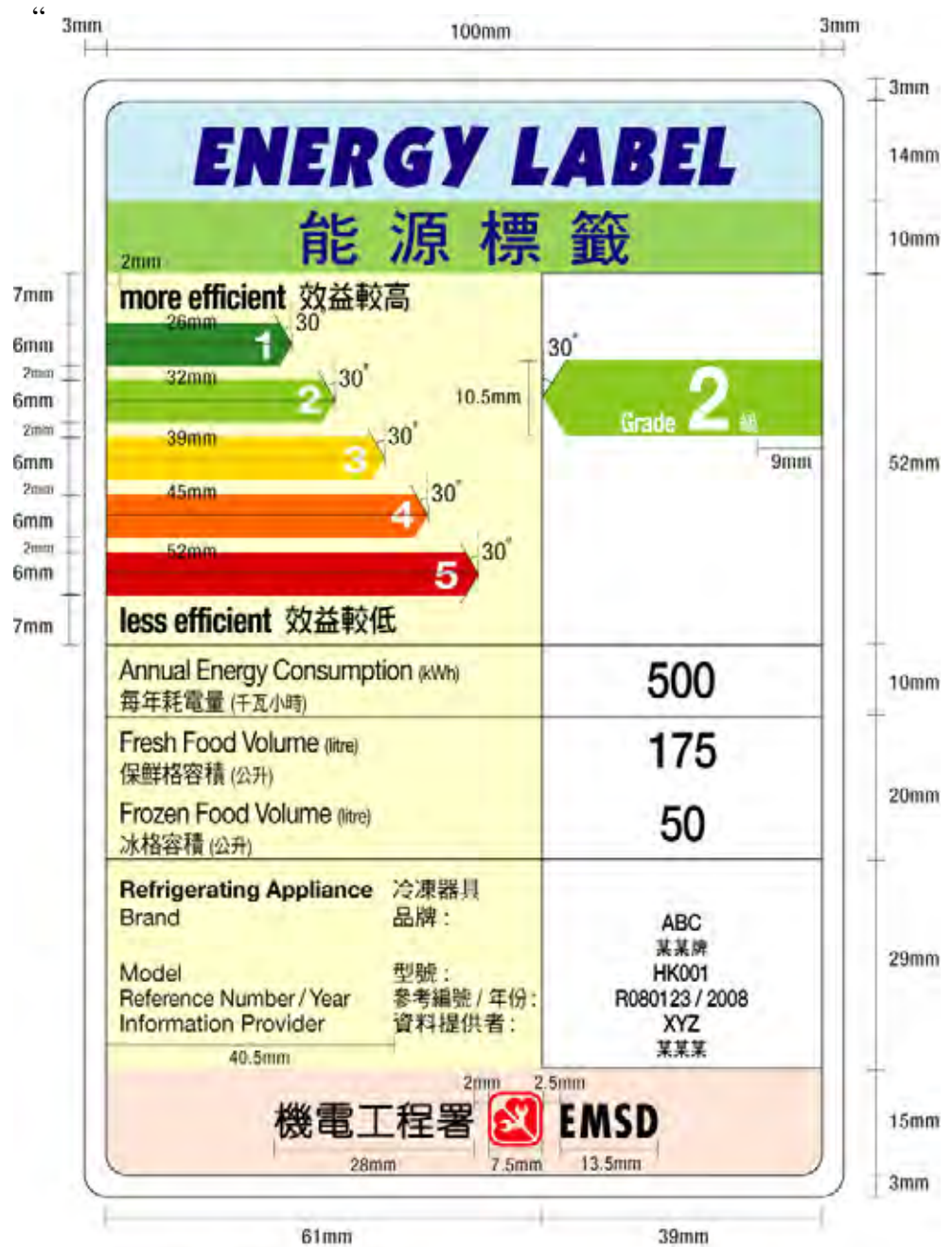
Schedule 2,
Part 3,
section 1

By deleting the energy label and substituting –



Schedule 2,
Part 3,
section 2

By deleting the energy label and substituting –



”

Schedule 2,
Part 3,
section 3,
Table B

In column 2 opposite to Area V, by adding “, the year in which the reference number is assigned or, where the energy efficiency grading is calculated in accordance with the new calculation method under section 11A of this Ordinance, the year in which the new calculation method takes effect” after “assigned by the Director”.

Schedule 2,
Part 3,
section 4

In column 1 –

- (a) by deleting “Reference Number” and substituting “Reference Number / Year”;
- (b) by deleting “參考編號：” and substituting “參考編號 / 年份：”;
- (c) by deleting “reference number and” and substituting “reference number, year and”.

Schedule 2,
Part 3

By deleting section 5 and substituting –

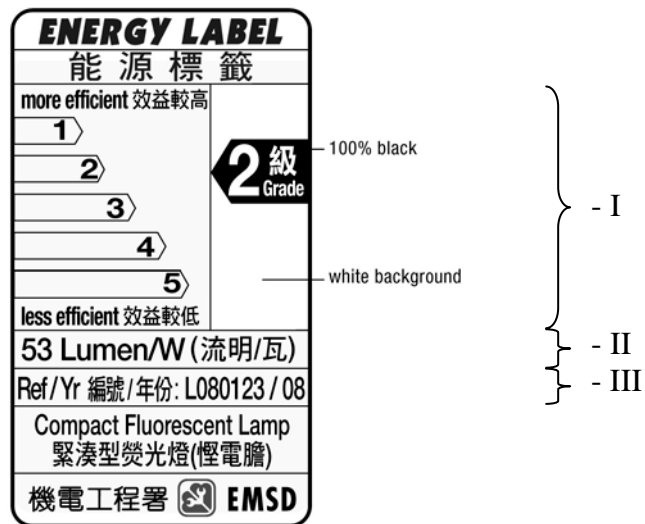
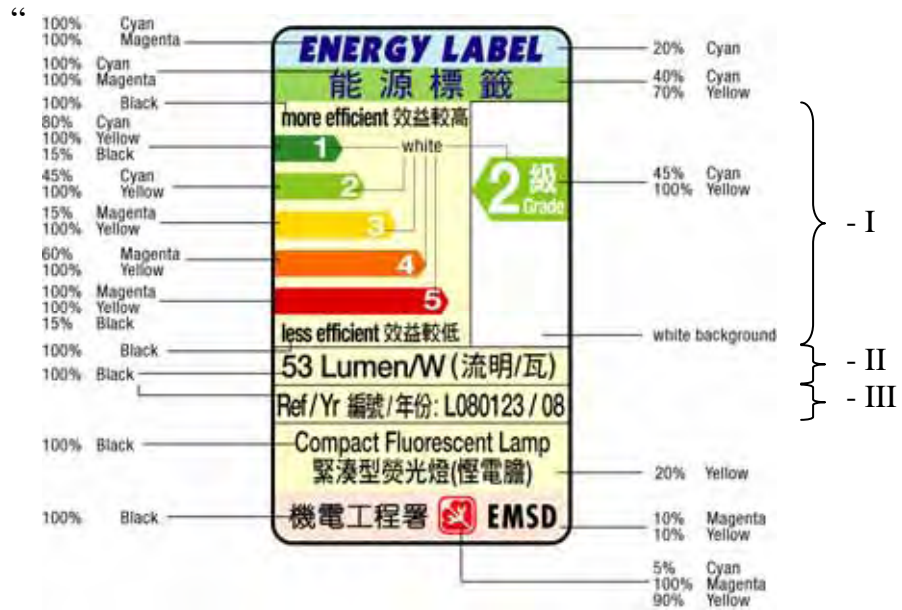
“5. (1) Subject to subsection (3), the energy label is to be attached or affixed to the top front door or a prominent position of the refrigerating appliance and is to be clearly visible.

(2) For the avoidance of doubt, if only part of the refrigerating appliance is being exhibited, the energy label is to be attached or affixed to a prominent position of that part and is to be clearly visible.

(3) The energy label may be attached to the refrigerating appliance or its packaging in a manner specified by the Director where the Director has approved its being so attached.”.

Schedule 2,
Part 4,
section 1

By deleting the energy labels and substituting –



”

Schedule 2,
Part 4,
section 2

By deleting the energy label and substituting –



Schedule 2,
Part 4,
section 3,
Table C

In column 2 opposite to Area III, by adding “, the year in which the reference number is assigned or, where the energy efficiency grading is calculated in accordance with the new calculation method under section 11A of this Ordinance, the year in which the new calculation method takes effect” after “assigned by the Director”.

Schedule 2,
Part 4,
section 4

In column 1 –

- (a) by deleting “Ref.” and substituting “Ref / Yr”;
- (b) by deleting “編號:” and substituting “編號 / 年份:”;
- (c) by deleting “Character of reference number” and substituting “Characters of reference number and year”.

New

By adding –

“SCHEDULE 3 [ss. 11A & 52]
CONDITIONS

1. The conditions specified for the purposes of section 11A(4) of this Ordinance are that –

- (a) the prescribed product is a room air conditioner or refrigerating appliance that is specified respectively in section 1 or 2 in Part 1 of Schedule 1 and has been manufactured in or imported into Hong Kong before the effective date; or
- (b) the prescribed product is the subject of a contract –
 - (i) that has been entered into before the effective date for the procurement of the product; and
 - (ii) under which the product is to be supplied as part of or in connection with the disposition of any specified premises.

2. In this Schedule, “effective date” (生效日期) means the date stated by the Director in an updating notice under section 11A(2)(a)(ii) of this Ordinance as the date on which the new calculation method of the energy efficiency grading of a prescribed product takes effect.”.