

For discussion on  
15 July 2009

## **Legislative Council Panel on Environmental Affairs**

### **Legislative Framework of Mandatory Implementation of the Building Energy Codes**

#### **PURPOSE**

This paper seeks Members' views on the legislative framework of the mandatory implementation of the Building Energy Codes (BEC).

#### **BACKGROUND**

2. The Government concluded a public consultation on the proposed mandatory implementation of the BEC in March 2008. The majority of the views received agreed that the Government's proposal is in the right direction for promoting energy efficiency and conservation in buildings and supported the implementation of the mandatory scheme. As part of the public consultation exercise, we consulted the Legislative Council Panel on Environmental Affairs on 28 January 2008 (LC Paper No. CB(1) 504/07-08(01)) and the Panel raised no objection to the proposal. Results of the public consultation exercise were reported to the same Panel on 26 May 2008 (LC Paper No. CB(1) 1595/07-08(04)).

3. After the conclusion of the public consultation exercise, we have been gauging views through various means on the detailed arrangements of the legislative proposal -

- (a) we have established a Trade Task Force and a Technical Task Force with representatives from professional bodies, major chambers of commerce, property management companies, real estate developers and retail associations;
- (b) we have conducted a Business Impact Assessment on the impact of the

legislative proposal. We have sent out more than 520 invitations to invite stakeholders from various sectors, including property developers, property managers, professional bodies, retailers, the catering sector, small and medium enterprises (SMEs), green groups, hospitals, hotels etc. to express their views on the legislative proposal; and

- (c) we have conducted consultation meetings with other bodies such as the Hong Kong Association of Property Management Companies, Hong Kong Federation of Restaurants and Related Trades, and Business Liaison Groups under the Economic Analysis and Business Facilitation Unit.

We have taken into account the views collected and the findings of the Business Impact Assessment in formulating the legislative proposal, the framework of which is set out below.

## **LEGISLATIVE FRAMEWORK**

### Coverage

4. The following categories of buildings in the public and private sectors will be governed by the proposed mandatory scheme –

- (a) commercial buildings;
- (b) commercial portion and common areas of composite buildings;
- (c) common areas of residential buildings;
- (d) common areas of industrial buildings;
- (e) hotels and guesthouses;
- (f) educational buildings;
- (g) community buildings;
- (h) institutional buildings;
- (i) municipal buildings; and
- (j) hospitals and clinics.

5. Different control regimes will be imposed on buildings that obtain the consent for commencement of works for superstructure construction from the Building Authority after the new legislation comes into operation (Post-enactment Buildings), and buildings which have obtained their consent for commencement of

works on or before the new legislation comes into operation (Pre-enactment Buildings).

### Post-enactment Buildings

6. Developers are required to submit the first self-declaration to the Director of Electrical and Mechanical Services (DEMS) after obtaining the consent for commencement of works for superstructure construction. The first self-declaration is to declare that suitable design provisions have been included to meet the BEC requirements. After obtaining the occupation permit, developers are required to submit a second self-declaration to confirm compliance with the requirements. Both declarations will have to be certified by competent persons (paragraph 10 below refers). DEMS will issue Certificates of Compliance Registration (COCR) to developers upon receipt of the required information and document. A list of buildings issued with COCR will be made available for public inspection. Subsequent building owners are required to apply for renewal of the COCR once every ten years.

7. Building services installations in individual premises and common areas of Post-enactment Buildings are required to comply with the BEC requirements at all times. For certain major retrofitting works carried out in premises and common areas with an internal floor area of 500 m<sup>2</sup> or above, responsible persons (e.g. owners, tenants) will be further required to obtain a Form of Compliance (FOC) certified by a competent person on such compliance, and to maintain the building services installations concerned to standards not lower than that applicable in the FOC. Major retrofitting works include retrofitting works of building services installations covering a floor area of 500 m<sup>2</sup> or above, or addition or replacement of main components of building services installations (e.g. a complete electrical circuit at rating 400A or above, unitary air-conditioner or air-conditioning chiller cooling or heating rating at 350kW or above, or motor drive and mechanical drive of a lift or escalator). Responsible persons of premises or common areas with an internal floor area of less than 500 m<sup>2</sup> will not be required to obtain a FOC, to avoid overburdening SMEs with relevant cost.

### Pre-enactment Buildings

8. Pre-enactment buildings would be required to improve energy efficiency

whenever the buildings undergo certain major retrofitting works (scope of major retrofitting works as set out in paragraph 7 above). Responsible persons are required to obtain a FOC certified by a competent person on such compliance, and to maintain the building services installations concerned to standards not lower than that applicable in the FOC. Those retrofitting works which fall outside the scope of major retrofitting works as specified in the proposed legislation, or which are conducted in premises or common areas with a total internal floor area of less than 500 m<sup>2</sup>, would not be required to comply with relevant requirement.

### Energy Audits

9. Owners of commercial buildings (both Post-enactment and Pre-enactment Buildings) are required to arrange energy audits for the common area in their buildings once every ten years. Energy audits should be carried out by competent persons and the results should be exhibited in a conspicuous place at the main entrance of the building.

### Competent Persons

10. Registered professional engineers and corporate members of the Hong Kong Institution of Engineers in electrical, mechanical, building services or environmental discipline, who possess relevant post-qualification working experience and knowledge, could register with the Electrical and Mechanical Services Department as competent persons under the proposed mandatory scheme. The list of registered competent persons will be made available to the public. Competent persons failing to comply with requirements as imposed on them under the mandatory scheme may be subject to disciplinary actions.

### Exemptions

11. The following categories of buildings will be exempted from the mandatory scheme –

- (a) buildings with total ratings of their main electrical switch not exceeding 100A, 1-phase or 3-phase;
- (b) New Territories exempted houses; and

- (c) declared monuments under the Antiquities and Monuments Ordinance (Cap. 53).

12. Certain categories of building services installations that are impractical to comply with the BEC requirements owing to operational or technical grounds, such as installations for fire suppression or surgical operations, are exempted from the mandatory scheme. Responsible persons may also apply to DEMS in writing with justifications for exempting individual building services installation from the BEC requirements.

### Penalties

13. Penalty provisions are proposed for the non-compliance under the mandatory scheme, taking account of the nature and seriousness of the offences. Monetary penalties will be imposed for most of the offences, from a maximum fine of \$1,000 (competent persons failing to inform DEMS of changes in particulars) to \$2,000,000 (developers failing to obtain a COCR). Penalties of imprisonment are proposed for furnishing false information or documents, as well as obstructing authorized officers in exercising the conferred power without reasonable excuse.

### **WAY FORWARD**

14. We will introduce the proposed legislation into the Legislative Council by end 2009.

### **ADVICE SOUGHT**

15. Members are invited to comment on the proposal.

**Environment Bureau**  
**July 2009**