

《建築物能源效益條例草案》

當局對二零一零年九月三十日法案委員會會議 跟進事項的回應

就在《條例草案》中加入明確時限，指明署長應在時限內發出或拒絕發出遵行規定登記證明書(「證明書」)，告知當局的決定

經考慮法案委員會在二零一零年九月三十日會議上表達的意見，當局同意建議署長應在發展者根據《建築物能源效益條例草案》(「《條例草案》」)第 9 條提交次階段聲明起計三個月內，發出或拒絕發出證明書。為此，我們會就第 10 條提出委員會審議階段修正案(「修正案」)。

要求當局重新考慮是否需要在《條例草案》說明，就違反《條例草案》的規定不會招致任何財產的押記而言，相關條文不會損害政府作為地主行使批地中重收土地的權利

2. 當局在二零一零年九月三十日法案委員會會議及立法會文件編號 CB(1)2930/09-10(03)中表示，我們將會提出修正案，闡明違反《條例草案》不會招致任何財產的押記。我們亦解釋因有人違反任何法規(包括《建築物能源效益條例》(「《條例》」))而行使重收土地權利的問題，因涉及其他政策考慮，應在其他合適場合跟進。

要求當局檢討第 50(4)條的草擬方式，因為該項條文可能過度擾民，影響相關人士的緘默權

3. 因應法案委員會在二零一零年九月三十日會議上表達的意見，我們已審視其他條例中以已作出應有的努力作為免責辯護的條文。我們留意到，《電力條例》(第 406 章第 56B 條)、《電氣產品(安全)規例》(第 406G 章第 14 條)、《玩具及兒童產品安全條例》(第 424 章第 25 條)、《消費品安全條例》(第 456 章第 24 條)及《能源效益(產品標籤)條例》(第 598 章第 46 條)相關條文亦訂明，倚賴另一人所提供的資料的被控人除非證明從整體情況而言，尤其是考慮到：

(a) 他為核實該等資料的目的而採取及按理應可採取的步驟；及

(b) 他是否有任何理由不相信該等資料，

他倚賴該等資料是合理的，否則他無權因倚賴該等資料而援引免責辯護。

4. 因此，我們認為《條例草案》第 50(4)條現時的條文草擬方法並非不合理。被控人或第 50(2)(a)或(b)條所指人士(即作出有關作為或過失的人，或提供有關資料的人)的緘默權不會受到影響。不過，當局亦會就第 50(4)條開首的句子提出修正案，以釐清辯護的內容。

要求當局告知，確認在《條例草案》第 4 部生效之前進行的能源審核是符合規定的程序

5. 在二零一零年九月三十日的會議上，法案委員會關注建築物擁有人如已按第 52 條的規定進行能源審核，當局似乎不會加以確認。

6. 根據第 52 條，任何符合第 52(a)及(b)條要求的能源審核，則自第 4 部生效起，須視為在第 4 部生效時進行的能源審核。由於在第 4 部下進行的能源審核並無確認符合規定的程序，我們認為，為符合第 52 條要求的能源審核另行訂立不同的程序，並不可取。由於關於能源審核的《守則》，應已在這些審核進行前正式發出，因此《守則》已可就如何進行符合條例要求的能源審核提供所需指引。

要求當局考慮收窄附表 2 項目 6 的範圍；告知如何確定項目 6 的照明裝置用於照明抑或裝飾；以及考慮訂明具體時段，在該時段後須關掉項目 6 的照明裝置

7. 附表 2 項目 6 訂明《條例》不適用於純粹作裝飾或某些指明用途的照明裝置。我們的政策原意是，那些既用於裝飾但又用作一般照明用途的照明裝置，仍須遵守《守則》所載的能源效益要求。但為防止有人通過錯誤劃分這些特殊照明裝置的用途而濫

用這項豁免，並在考慮法案委員會的意見後，我們計劃提出修正案，就附表 2 項目 6 豁免的特殊照明裝置類別作出更詳細的說明。

8. 為了讓相關各方更了解特殊照明裝置的範圍，我們會於立例後進行的宣傳中，提供特殊照明裝置的例子。雖然我們無法盡錄獲得豁免的特殊照明裝置例子，但我們會不時通過諮詢技術工作小組，檢討及更新這些例子，以配合實際情況。我們亦會在《守則》清楚說明，如對個別照明裝置是否能被豁免有所懷疑的話，應徵求署長的意見，否則可能會把照明裝置錯誤歸類。

9. 至於建議訂明具體時段，在該時段後須關掉項目 6 的照明裝置，這項建議規定是一項全新的及涉及照明裝置操作的規定，而且並不涵蓋於《建築物能源效益守則》範圍內。事實上，《建築物能源效益守則》只涉及能源效益的指明技術標準。我們認為在沒有諮詢業界及進一步研究可行的實施措施前，擴闊條例規定的範圍或性質，並不恰當。

要求當局告知訂明處所內照明裝置的用途如在證明書／遵行規定表格(「表格」)發出後更改，會出現何種情況

10. 如證明書／表格發出後，訂明處所內照明裝置的用途更改，而涉及的裝修工程屬《條例草案》所指的主要裝修工程，負責人須符合《條例草案》第 3 部的規定，即取得表格。如更改照明裝置用途不涉及主要裝修工程，而相關處所位於已獲發證明書的建築物內，負責人仍須遵守第 12(2)條的規定，即該裝置的標準須維持在不低於發出的首份證明書或最新表格中採用的標準。舉例來說，原本用於裝飾因而獲豁免的照明裝置，如其後改作一般照明用途，便不再獲得豁免，並須維持在不低於發出的首份證明書或最新表格中採用的標準。

委員會審議階段修正案

11. 修正案修訂本載於附件 A；顯示各相關條文修正案的標明修訂文本載於附件 B。

環境局
機電工程署
二零一零年十月

BUILDINGS ENERGY EFFICIENCY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment

<u>Clause</u>	<u>Amendment Proposed</u>
2	In paragraph (b) of the definition of “common area”, by deleting “without limiting paragraph (a), includes” and substituting “includes, unless so specified,”.
2	In the definition of “composite building”, by adding “, having regard to the definitions of “commercial building”, “industrial building” and “residential building”,” after “means”.
2	In the definition of “residential building”, by deleting paragraph (b) and substituting – <p style="margin-left: 40px;">“(b) a portion of a composite building that is for residential use,”.</p>
4(1)	By deleting paragraph (b) and substituting –

- “(b) a building –
 - (i) of not more than 3 storeys;
 - (ii) having a roofed-over area of not more than 65.03m²; and
 - (iii) having a height of not more than 8.23m;”.

8(3) By adding “and, in the case of a continuing offence, to a further daily fine of \$10,000 for each day during which the offence continues” before the fullstop.

9(11) By adding “and, in the case of a continuing offence, to a further daily fine of \$10,000 for each day during which the offence continues” before the fullstop.

10(1) By adding “within 3 months after the day on which the declaration is received” after “the building”.

11(3) By deleting everything after “the Director” and substituting –
“must –

- (a) make a copy of the register kept under subsection (1) available for members of the public to inspect free of charge at all reasonable times; and

(b) make the content of the register available for inspection free of charge through the internet.”.

12 By adding before subclause (1) –

“(1A) This section applies in relation to a building in respect of which a Certificate of Compliance Registration has been issued.”.

17(1) By deleting “the responsible person of the unit or the owner of the common area, as may be appropriate” and substituting “a person who is the responsible person of the unit or the owner of the common area, as may be appropriate, as at the completion of the works”.

17(2) By deleting “the owner of the installation” and substituting “a person who is the owner of the installation as at the completion of the works”.

18 By deleting subclauses (7) to (10).

22(1) By deleting “common areas” and substituting “central building services installations”.

22(2) By deleting “common areas” and substituting “central building services installations”.

22(3) By deleting “common areas” and substituting “central building services installations”.

29(1) By deleting paragraph (a) and substituting –

“(a) subject to subsection (2A), enter during reasonable hours any part of a prescribed building (including a prescribed building under construction) that is not for residential use;”.

29 By adding –

“(2A) The power conferred by subsection (1)(a) may not be exercised unless –

- (a) the Director has given at least 14 days’ notice to the responsible person of the relevant part of the prescribed building;
- (b) the Director has given shorter notice to which the responsible person agrees; or
- (c) the responsible person agrees to waive any notice.

(2B) A notice given under subsection (2A) must

state the reason for the proposed entry.”.

31(3) By deleting everything after “the Director” and substituting –

“must –

(a) make a copy of the Register of Registered Energy Assessors available for members of the public to inspect free of charge at all reasonable time; and

(b) make the content of the Register available for inspection free of charge through the internet.”.

34(1) By deleting “5 members” wherever it appears and substituting “10 members”.

34 By adding –

“(1A) A person who is in 2 or more of the 5 disciplines mentioned in paragraphs (a) to (e) of subsection (1) is, for the purpose of subsections (1) and (6)(d), regarded as being in only one of those disciplines designated by the Secretary at the time of the person’s appointment.”.

35 By adding –

“(2A) Subject to section 36(3B), if a vacancy occurs

in an appeal board, the Secretary must, as soon as practicable, make appointment from among the members of the appeal board panel to fill the vacancy.”

36(1) By deleting “4 members “ and substituting “3 members”.

36 By adding –

“(3A) An appeal board may perform any of its functions, and its proceedings are valid, despite –

(a) subject to subsection (3B), a vacancy in the board; or

(b) a defect in the appointment or qualification of a person purporting to be a member of the board.

(3B) If –

(a) any vacancy occurs in the office of an original member of the appeal board; and

(b) as a result fewer than 3 original members of the appeal board remain in office,

the appeal board must be dissolved and the Secretary is deemed to have received a notice of appeal delivered under

section 33 in relation to the subject matter of the appeal.”.

- 37(3) By adding “it” after “advise”.
- 37(7) By deleting “bound” and substituting “required to give any evidence or produce any document which tends”.
- 38(1) In paragraph (b), by deleting “other than a residential unit” and substituting “that is not for residential use”.
- 39(2) In the Chinese text, by adding “或費用” before “的支付”.
- 39(2) In paragraph (a), by adding “or expenses” after “costs”.
- 39(3) By deleting “awarded” and substituting “ordered to be paid”.
- 40 By adding –

“(6A) The Director must, before exercising the power conferred by subsection (1), (4) or (6), consult as the Director thinks fit such organizations or individuals who, in the opinion of the Director, have technical expertise or professional experience in building services installations.”.

- 41 By deleting subclause (3) and substituting –
- “(3) In this section –
- “court” (法院) includes a magistrate and an appeal board;
- “legal proceedings” (法律程序) includes proceedings before an appeal board.”.
- 43 By deleting subclause (1) and substituting –
- “(1) The Secretary may, with the approval of the Legislative Council, amend Schedule 1, 2, 3 or 4 by notice published in the Gazette.
- (1A) The Secretary may amend Schedule 5 by notice published in the Gazette.”.
- 43(2) By deleting “subsection (1)” and substituting “this section”.
- 47(2) By adding “any common area of” after “in respect of”.
- 50(4) By deleting everything before “unless” and substituting –
- “(4) If the defence under subsection (1) involves an allegation that the offence was due to reliance on information given by another person, the defence is not established”.
- New By adding –

“51A. Contravention does not give rise to encumbrance

For the avoidance of doubt, a contravention of any provision of this Ordinance in relation to any premises does not of itself subject the title of the premises to any encumbrance.”.

Schedule 1 By deleting the item and substituting –
item 2

“2. A portion of a composite building that is not for residential or industrial use.”.

Schedule 1 By deleting the item and substituting –
item 5

“5. Common area of a portion of a composite building that is for residential or industrial use.”.

Schedule 1 In the English text, by deleting “predominately” and substituting
item 7
“principally”.

Schedule 1 In the English text, by deleting “predominantly” and substituting
item 8
“principally”.

Schedule 1 In the English text, by deleting “predominantly” and substituting
item 9
“principally”.

Schedule 1 In the English text, by deleting “predominantly” and substituting
item 10 “principally”.

Schedule 1 In the English text, by deleting “predominantly” and substituting
item 11 “principally”.

Schedule 2 By deleting paragraphs (a), (b) and (c) and substituting –
item 6

- “(a) illumination of an exhibit or product on display including special lighting for illuminating merchandise or art work;
- (b) decoration including special lighting for architectural feature or festival decoration effect;
- (c) visual production including special lighting for performance, entertainment or television broadcasting; or”.

Schedule 3 In the English text, in Note (1)(a), by deleting “carpark” and substituting “car park”.

Schedule 4 By deleting the item and substituting –
item 2

- “2. A portion of a composite building that is for commercial use.”.

BUILDINGS ENERGY EFFICIENCY BILL - CSAs
Markup version as at 30.9.2010

2. Interpretation

In this Ordinance—

...

“common area” (公用地方), in relation to a prescribed building—

- (a) means any area of the building other than the parts that have been specified in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner; and
- (b) ~~without limiting paragraph (a), includes~~ includes, unless so specified, car parks, entrance lobbies, lift lobbies, corridors, staircases, common toilets, common store rooms, plant rooms, switch rooms, pipe ducts, cable ducts, refuse rooms, material recovery chambers, covered podia, covered playgrounds, occupants’ clubhouses and building management offices;

“composite building” (綜合用途建築物) means, having regard to the definitions of “commercial building”, “industrial building” and “residential building”, a building that is—

- (a) partly for residential use and partly for non-residential use;
- (b) partly for industrial use and partly for non-industrial use; or
- (c) partly for commercial use and partly for non-commercial use;

“residential building” (住宅建築物) means a building solely used for residential purposes and includes—

- (a) student hostels and staff quarters; and
- (b) ~~such parts of a composite building that are for residential use~~ a portion of a composite building that is for residential use,

but does not include a hotel or a guesthouse;

...

4. Limit of scope of application

(1) This Ordinance does not apply to—

- (a) a building of which the main electrical switch governing the electricity supply of the building has an approved loading not exceeding 100A, 1-phase or 3-phase;
- (b) ~~a building that is constructed in accordance with the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121)~~ a building –
 - (i) of not more than 3 storeys;
 - (ii) having a roofed-over area of not more than 65.03m²;
 - and
 - (iii) having a height of not more than 8.23m;
- (c) a proposed monument or a proposed historical building declared under section 2A of the Antiquities and Monuments Ordinance (Cap. 53); or
- (d) a monument or a historical building declared under section 3 of the Antiquities and Monuments Ordinance (Cap. 53).

(2) This Ordinance does not apply to a building if the Director is satisfied on a declaration by the owner of the building that the building will cease to exist within 12 months after the date of the declaration.

(3) This Ordinance does not apply to the building services installations specified in Schedule 2.

8. Declaration at design stage

- (1) The developer of a proposed building must—
 - (a) make a declaration to be called a stage one declaration; and
 - (b) submit the declaration to the Director within 2 months after the day on which the consent to the commencement of building works for the superstructure construction of the building is given.
- (2) A stage one declaration must—
 - (a) declare that all building services installations to be provided by the developer in the proposed building at or before the time when a stage two declaration is made in respect of the building are designed, and will be installed and completed, in accordance with the specified standards and requirements;
 - (b) be in the specified form;
 - (c) be accompanied by the documents specified in the form; and
 - (d) be certified by a registered energy assessor to the effect that suitable design provisions have been incorporated into the planning and design of the building in accordance with the

specified standards and requirements.

(3) A developer who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000 and, in the case of a continuing offence, to a further daily fine of \$10,000 for each day during which the offence continues.

9. Declaration at occupation approval stage

(1) Subject to subsections (5) and (10), the developer of a building must—

- (a) make a declaration to be called a stage two declaration; and
- (b) submit the declaration to the Director within 4 months after the day on which the occupation approval is issued in respect of the building.

(2) A stage two declaration must—

- (a) declare that all building services installations provided by the developer in the building at or before the time when the declaration is made have been designed, installed and completed in accordance with the specified standards and requirements;
- (b) be in the specified form;
- (c) be accompanied by the prescribed fee and the documents specified in the form; and
- (d) be certified by a registered energy assessor to the effect that all building services installations provided by the developer in that building at or before the time when the declaration is made have been designed, installed and completed in accordance with the specified standards and requirements.

(3) A certification by a registered energy assessor made for the purposes of subsection (2) is of no effect unless the assessor has, in the 30 days before the certification, personally inspected the building services installation covered by the certification.

(4) The Director may require the developer to furnish any further information, or produce any additional document, that the Director considers reasonably necessary for the purposes of considering the making of the declaration.

(5) The Director may, on an application in writing by the developer concerned, extend the period specified in subsection (1)(b).

(6) The Director must not exercise the power under subsection (5) unless the developer satisfies the Director that there is a reasonable ground for the extension.

(7) An extension granted under subsection (5) may be subject to any condition that the Director thinks fit.

(8) If—

- (a) an extension granted under subsection (5) is subject to any condition under subsection (7) and the condition is contravened; or
- (b) the ground on which the extension was granted no longer exists, the Director may, by a notice issued to the developer concerned, withdraw the extension.

(9) If the Director withdraws an extension under subsection (8), the Director may issue a notice to the developer concerned directing the developer to submit a stage two declaration within a period specified in the notice.

(10) If the Director issues a notice to a developer under subsection (9), the developer must comply with the direction in the notice.

(11) A developer who contravenes subsection (1) or (10) commits an offence and is liable on conviction to a fine of \$1,000,000 and, in the case of a continuing offence, to a further daily fine of \$10,000 for each day during which the offence continues.

10. Certificate of Compliance Registration for buildings

(1) If a developer has submitted a stage two declaration in respect of a building, the Director must issue a Certificate of Compliance Registration to the developer in respect of the building within 3 months after the day on which the declaration is received.

(2) The Director may refuse to issue a Certificate of Compliance Registration to a developer if –

- (a) the Director has reasonable grounds to believe that the stage two declaration concerned or a document accompanying it pursuant to section 9(2)(c) is false or misleading in any material particular; or

(b) the Director has yet to receive any information or document from the developer under section 9(4).

(3) If the Director refuses to issue a Certificate of Compliance Registration to a developer under subsection (2), the Director must, as soon as reasonably practicable –

(a) issue a notice of the refusal to the developer; and

(b) state the reasons for the refusal in the notice.

(4) Subject to section 13(5), a Certificate of Compliance Registration is valid for 10 years.

11. Register of buildings issued with Certificate of Compliance Registration

(1) The Director must keep a register of buildings issued with a Certificate of Compliance Registration.

(2) The register must contain, in respect of every building entered in the register—

(a) the name and address of the building;

(b) the registration number, the date of issue and the expiry date of the Certificate of Compliance Registration issued in respect of the building; and

(c) any other particulars that the Director thinks fit.

(3) To enable a member of the public to ascertain whether a building is issued with a Certificate of Compliance Registration, the Director ~~must make a register kept under subsection (1) available for members of the public to inspect free of charge at all reasonable times.~~

must –

(a) make a copy of the register kept under subsection (1) available for members of the public to inspect free of charge at all reasonable times; and

(b) make the content of the register available for inspection free of charge through the internet.

(4) The register kept under subsection (1) must be maintained in the form and manner, and updated at any interval, that the Director thinks fit.

12. Duties of owners and responsible persons of building with Certificate of Compliance Registration

(1A) This section applies in relation to a building in respect of which a Certificate of Compliance Registration has been issued.

(1) The owner of a building must ensure that at all times a Certificate of Compliance Registration is in force in respect of the building.

(2) The owner of a building must ensure that—

(a) the central building services installations in the building are maintained to a standard not lower than that applied in the first Certificate of Compliance Registration issued in respect of the building; and

(b) if a Form of Compliance has been issued in respect of any central building services installation in the building, the installation is maintained to a standard not lower than that applied in the latest Form of Compliance issued in respect of the installation.

(3) The responsible person of a unit of a building must ensure that—

(a) the building services installations serving the unit that are not the central building services installations in the building meet, and are maintained to, a standard not lower than that applied in the first Certificate of Compliance Registration issued in respect of the building; and

(b) if a Form of Compliance has been issued in respect of any building services installation serving the unit, the installation is maintained to a standard not lower than that applied in the latest Form of Compliance issued in respect of the installation.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6.

(5) A person who contravenes subsection (2) or (3) commits an offence and is liable on conviction to a fine at level 5.

17. Duty to obtain Form of Compliance for major retrofitting works

(1) Subject to subsection (4), if major retrofitting works are carried out in respect of any building services installation that serves any unit or common area of a building, ~~the responsible person of the unit or the owner of the common area, as may be appropriate~~ a person who is the

responsible person of the unit or the owner of the common area, as may be appropriate, as at the completion of the works, must, within 2 months after the completion of the works, obtain a Form of Compliance issued in respect of the installation.

(2) Subject to subsection (4), if major retrofitting works are carried out in respect of any central building services installation, ~~the owner of the installation~~ a person who is the owner of the installation as at the completion of the works must, within 2 months after the completion of the works, obtain a Form of Compliance issued in respect of the installation.

(3) For the purposes of subsections (1) and (2), major retrofitting works carried out in respect of any building services installation are regarded as completed when—

- (a) the works have been carried out and the installation is ready to be used for its principal function as designed; or
- (b) if the works involve 2 or more installations, the works have been carried out and all the installations are ready to be used for their principal functions as designed.

(4) The Director may, on an application in writing by the responsible person or owner concerned, extend the period specified in subsection (1) or (2) if the Director is satisfied that there is a reasonable ground for the extension.

(5) An extension granted under subsection (4) may be subject to any condition that the Director thinks fit.

(6) If—

- (a) an extension granted under subsection (4) is subject to any condition under subsection (5) and the condition is contravened; or
- (b) the ground on which the extension was granted no longer exists, the Director may, by a notice issued to the responsible person or owner concerned, withdraw the extension.

(7) If the Director withdraws an extension under subsection (6), the Director may issue a notice to the responsible person or owner concerned directing the responsible person or owner to obtain a Form of Compliance issued in respect of the building services installation within a period specified in the notice.

(8) If the Director issues a notice to a person under subsection (7), the person must comply with the direction in the notice.

(9) A person who fails to comply with subsection (1), (2) or (8) commits an offence and is liable on conviction to a fine at level 5.

18. Requirements applicable to Form of Compliance

(1) A Form of Compliance must—

- (a) be issued by a registered energy assessor;
- (b) be in the specified form;
- (c) be accompanied by the documents specified in the form;
- (d) contain a declaration by the assessor that—
 - (i) the assessor has, in the 30 days before the declaration, personally inspected the building services installations in respect of which the major retrofitting works were carried out and which are specified in the Form of Compliance; and
 - (ii) the assessor is satisfied that the installations comply with the specified standards and requirements.

(2) If a Form of Compliance is issued in respect of any building services installation, the responsible person of the relevant unit or the owner of the relevant common area of the building or, in the case of a central building services installation, the owner of the installation must maintain the installation to a standard not lower than that applied in that Form of Compliance.

(3) A responsible person or an owner who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 5.

(4) A registered energy assessor who—

- (a) inspects a building services installation in any building or any unit of a building on the instruction of a responsible person or an owner acting in compliance with section 17(1) or (2); and
- (b) is satisfied that the installation complies with the specified standards and requirements, must issue a Form of Compliance accordingly and comply with subsection (5).

(5) A registered energy assessor who issues a Form of Compliance must—

- (a) send a copy of it together with the document specified in the Form of Compliance to the Director; and
- (b) send another copy of it to—
 - (i) the property management company of the building

concerned; or

- (ii) if there is no such property management company or the property management company cannot be found or ascertained, the owner of the building.

(6) A registered energy assessor who fails to comply with subsection (5) commits an offence and is liable on conviction to a fine at level 3.

~~(7) If a property management company or, if subsection (5)(b)(ii) applies, an owner of a building does not receive a copy of a Form of Compliance from a registered energy assessor within 2 months after the completion date of the major retrofitting works concerned, the company or owner must issue a notice of the fact to the Director.~~

~~(8) Subsection (7) does not apply to a person who, at the time when the person applied for an extension under section 17(4), declared himself or herself to be the owner of the relevant building.~~

~~(9) A notice under subsection (7) must—~~

~~(a) be in the specified form; and~~

~~(b) be issued to the Director within 30 days after the 2 month period referred to in that subsection.~~

~~(10) A property management company or an owner who fails to comply with subsection (7) commits an offence and is liable on conviction to a fine at level 2.~~

22. Energy audit requirement

(1) The owner of a building must cause an energy audit to be carried out in accordance with this section at intervals no longer than 10 years in respect of the central building services installations ~~common areas~~ of the building.

(2) The first energy audit for the central building services installation ~~common areas~~ of a building issued with a Certificate of Compliance Registration must be carried out within 10 years after the building is first issued with a Certificate of Compliance Registration.

(3) The first energy audit for the central building services installation ~~common areas~~ of a building without a Certificate of Compliance Registration must be carried out according to the schedule specified in Schedule 5.

- (4) An energy audit must be carried out—
 - (a) by a registered energy assessor; and
 - (b) in accordance with a code of practice.

- (5) A registered energy assessor who carries out an energy audit in respect of a building must, within 30 days after issuing an Energy Audit Form, send a copy of the Energy Audit Form and an energy audit report on the audit to the Director.

- (6) An Energy Audit Form issued under subsection (5) must—
 - (a) be in the specified form; and
 - (b) be accompanied by the documents specified in the form.

- (7) An Energy Audit Form issued in respect of a building ceases to have effect on the issue of another Energy Audit Form in respect of the building.

- (8) An owner of a building who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

- (9) A registered energy assessor who contravenes subsection (5) commits an offence and is liable on conviction to a fine at level 3.

29. Powers of authorized officers

- (1) An authorized officer may, for the purposes of ascertaining whether this Ordinance has been or is being complied with—
 - ~~(a) enter any part of a prescribed building (including a prescribed building under construction) that is not a residential unit;~~
 - (a) subject to subsection (2A), enter during reasonable hours any part of a prescribed building (including a prescribed building under construction) that is not for residential use;
 - (b) inspect, examine, monitor and test any building services installation in a prescribed building;
 - (c) require the responsible person of any prescribed building or any unit of a prescribed building or any person who has been involved in the installation of any building services installation in any prescribed building to produce—
 - (i) any document relating to the building services installations in the building including any drawing, test record on the energy efficiency performance of the

- building services installations, purchasing order and works contract; or
- (ii) any other document, information or article that the officer reasonably believes to be relevant to an offence or a suspected offence under this Ordinance; and
- (d) take a copy of any drawing, record, order, contract, document or information referred to in paragraph (c).

(2) An authorized officer may take with him or her any assistant and equipment as may be necessary for the exercise of any power under subsection (1).

(2A) The power conferred by subsection (1)(a) may not be exercised unless –

- (a) the Director has given at least 14 days' notice to the responsible person of the relevant part of the prescribed building;
- (b) the Director has given shorter notice to which the responsible person agrees; or
- (c) the responsible person agrees to waive any notice.

(2B) A notice given under subsection (2A) must state the reason for the proposed entry.

- (3) A person who, without reasonable excuse—
- (a) fails to comply with a requirement made under subsection (1)(c); or
 - (b) obstructs any authorized officer or any assistant referred to in subsection (2) in the exercise of any power under this Ordinance, commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(4) A person who, in purported compliance with a requirement made under subsection (1)(c), knowingly or recklessly provides any false or misleading information commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

31. Register of Registered Energy Assessors

- (1) The Director must keep a Register of Registered Energy Assessors.
- (2) The Register of Registered Energy Assessors must contain such information as may be provided for in the regulation made under section 42.

(3) To enable a member of the public to ascertain whether any person is a registered energy assessor, the Director ~~must make the Register of Registered Energy Assessors available for members of the public to inspect free of charge at all reasonable times.~~

must –

(a) make a copy of the Register of Registered Energy Assessors available for members of the public to inspect free of charge at all reasonable time; and

(b) make the content of the Register available for inspection free of charge through the internet.

(4) The Register of Registered Energy Assessors must be maintained in the form and manner, and updated at any interval, that the Director thinks fit.

34. Appeal board panel

(1) The Secretary is to appoint the members of a Buildings Energy Efficiency Appeal Board Panel which is to consist of—

(a) not more than 10 members~~5 members~~ who are corporate members of the Hong Kong Institution of Engineers and are in the electrical discipline;

(b) not more than 10 members~~5 members~~ who are corporate members of the Hong Kong Institution of Engineers and are in the mechanical discipline;

(c) not more than 10 members~~5 members~~ who are corporate members of the Hong Kong Institution of Engineers and are in the building services discipline;

(d) not more than 10 members~~5 members~~ who are corporate members of the Hong Kong Institution of Engineers and are in the environmental discipline; and

(e) not more than 10 members~~5 members~~ who are members of the Engineers Registration Board established under the Engineers Registration Ordinance (Cap. 409).

(1A) A person who is in 2 or more of the 5 disciplines mentioned in paragraphs (a) to (e) of subsection (1) is, for the purpose of subsections (1) and (6)(d), regarded as being in only one of those disciplines designated by the Secretary at the time of the person's appointment.

(2) A person is not eligible for appointment under subsection (1) if the person—

- (a) is a public officer; or
 - (b) has not practised in the engineering profession in Hong Kong for at least 10 years.
- (3) A member of the appeal board panel is to be appointed for a term of 3 years and may be reappointed on the expiry of a term.
- (4) The Secretary must give notice in the Gazette of any appointment or reappointment under this section.
- (5) A member of the appeal board panel may, at any time, resign by issuing a notice in writing to the Secretary.
- (6) The Secretary may terminate the office of a member of the appeal board panel if the Secretary is satisfied that the member—
- (a) has become a public officer;
 - (b) has become bankrupt or has entered into a voluntary arrangement within the meaning of section 2 of the Bankruptcy Ordinance (Cap. 6) with his or her creditors;
 - (c) is incapacitated by physical or mental illness;
 - (d) has ceased to be of the capacity by virtue of which he or she was appointed; or
 - (e) is otherwise unable or unfit to perform the functions of a member.
- (7) The Secretary must give notice in the Gazette of any termination of office under this section.

35. Appeal board

(1) Within 21 days after receiving a notice of appeal delivered under section 33, the Secretary must appoint from among the members of the appeal board panel a Buildings Energy Efficiency Appeal Board to hear the appeal.

(2) An appeal board is to consist of 5 members appointed from all 5 categories of members specified in section 34(1).

(2A) Subject to section 36(3B), if a vacancy occurs in an appeal board, the Secretary must, as soon as practicable, make appointment from among the members of the appeal board panel to fill the vacancy.

(3) The members of an appeal board must elect a Chairperson from

among themselves to preside at the hearing of the appeal.

(4) The members of an appeal board may be paid out of the general revenue any remuneration that the Financial Secretary determines.

36. Proceedings of appeal board

(1) The quorum for a meeting of an appeal board is 3 members~~4 members~~.

(2) Any question before an appeal board must be determined by a majority of the members.

(3) If there is an equality of votes in respect of any question to be determined in an appeal, the Chairperson of an appeal board has a casting vote in addition to his or her original vote.

(3A) An appeal board may perform any of its functions, and its proceedings are valid, despite –

(a) subject to subsection (3B), a vacancy in the board; or

(b) a defect in the appointment or qualification of a person purporting to be a member of the board.

(3B) If –

(a) any vacancy occurs in the office of an original member of the appeal board; and

(b) as a result fewer than 3 original members of the appeal board remain in office,

the appeal board must be dissolved and the Secretary is deemed to have received a notice of appeal delivered under section 33 in relation to the subject matter of the appeal.

(4) In the performance of their functions under this Ordinance, the members of an appeal board have the same privileges and immunities as a judge of the Court of First Instance has in civil proceedings in that court.

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

(6) Subject to this Ordinance, an appeal board may determine its own procedure.

37. Hearing

(1) The Chairperson of an appeal board must notify the appellant and the Director of the date, time and place of the hearing of the appeal at least 14 days before the hearing.

(2) At any proceedings before an appeal board—

(a) the appellant may be represented by—

- (i) a barrister or solicitor; or
- (ii) (if the appellant is a body corporate) an individual authorized by the appellant; and

(b) the Director may be represented by—

- (i) a barrister or solicitor; or
- (ii) a public officer.

(3) An appeal board may engage any barrister or solicitor to attend a hearing of the board to advise it on any matter relating to the appeal.

(4) The hearing of an appeal must be open to the public unless the appeal board determines that there is a good reason for it to be held in camera.

(5) An appeal board may, by a notice signed by the Chairperson and issued to a person—

- (a) direct the person to attend before the board and to give evidence;
- or
- (b) direct the person to produce documents.

(6) A person who fails to comply with a direction under subsection (5) commits an offence and is liable on conviction to a fine at level 5.

(7) Despite subsection (5), no person to whom a direction is given under that subsection is bound-required to give any evidence or produce any document which tends to incriminate himself or herself.

38. Appeal board may authorize inspection of building services installation

(1) If an appeal board reasonably believes that a building services installation is relevant to the determination of an appeal, the board may, by an authorization signed by the Chairperson of the board—

- (a) authorize a person to inspect the installation; and
- (b) authorize the person to enter any unit that is not for residential

~~use other than a residential unit~~ for the purposes of the inspection.

(2) A person who, without reasonable excuse, obstructs a person authorized under subsection (1) in the inspection commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

39. 上訴的裁定

(1) 上訴委員會可——

- (a) 確認、更改或推翻上訴所針對的決定或指示；或
- (b) 以該委員會本身的決定或指示，取代上訴所針對的決定或指示。

(2) 上訴委員會可就以下訟費~~或費用~~的支付，作出它認為合適的任何命令——

- (a) 上訴法律程序的訟費；或
- (b) 署長或在該等法律程序中的任何其他人的訟費。

(3) 根據第(2)款判給或判付的訟費，可作為民事債項追討。

(4) 上訴委員會須向上訴人及署長發出關於其裁定及作出該項裁定的理由的通知。

39. Determination of appeal

(1) An appeal board may—

- (a) confirm, vary or revoke the decision or direction appealed against; or
- (b) substitute its own decision or direction for the decision or direction appealed against.

(2) An appeal board may make any order that it thinks fit with regard to the payment of—

- (a) costs ~~or expenses~~ of the appeal proceedings; or
- (b) costs of the Director or any other person in the proceedings.

(3) The costs ~~awarded—ordered to be paid~~ under subsection (2) are recoverable as a civil debt.

(4) An appeal board must issue to the appellant and the Director a notice

of its determination and the reasons for it.

40. Code of practice

(1) To provide practical guidance in respect of any standard or requirement under this Ordinance, the Director may—

- (a) issue any code of practice that the Director thinks fit; or
- (b) approve any code of practice issued by any body or authority that the Director thinks fit.

(2) A code of practice may include—

- (a) building energy efficiency standards and requirements;
- (b) the requirements for assessment of the energy efficiency performance of a building services installation; and
- (c) the requirements for carrying out an energy audit.

(3) The Director must—

- (a) by a notice published in the Gazette identify a code of practice issued or approved under subsection (1);
- (b) specify in the notice the commencement date of the code of practice; and
- (c) specify the requirement under this Ordinance for which the code of practice is issued or approved.

(4) The Director may, from time to time, by a notice published in the Gazette—

- (a) revise any code of practice issued under subsection (1); and
- (b) approve any revision of any code of practice approved under subsection (1).

(5) A notice under subsection (4) must specify—

- (a) the code of practice being revised;
- (b) the commencement date of the revision; and
- (c) if applicable, the requirement under this Ordinance for which the revision is made or approved.

(6) The Director may, at any time, by a notice published in the Gazette withdraw any code of practice approved under subsection (1).

(6A) The Director must, before exercising the power conferred by subsection (1), (4) or (6), consult as the Director thinks fit such organizations or individuals who, in the opinion of the Director, have

technical expertise or professional experience in building services installations.

(7) A notice under subsection (6) must specify the date on which the withdrawal takes effect.

(8) A reference to a code of practice is a reference to the code of practice as revised from time to time in accordance with this section.

(9) A notice under subsection (3), (4) or (6) is not subsidiary legislation.

41. Admissibility of code of practice in evidence

(1) If, in any legal proceedings, the court is satisfied that a provision of a code of practice is relevant to the determination of a matter that is in issue in the proceedings—

(a) the code of practice is admissible in evidence in the proceedings;
and

(b) proof that the person contravened or did not contravene a relevant provision of the code of practice may be relied on by any party to the proceedings as tending to establish or negate the matter.

(2) In any legal proceedings, the production of a Government Printer's copy of an issue of the Gazette in which a code of practice is identified is sufficient proof of the content of the code of practice.

~~(3) In this section, “court” (法院) includes a magistrate. In this section –~~
“court” (法院) includes a magistrate and an appeal board;
“legal proceedings” (法律程序) includes proceedings before an appeal board.

43. Secretary may amend Schedules

~~(1) The Secretary may, by notice published in the Gazette, amend any Schedule.~~

(1) The Secretary may, with the approval of the Legislative Council, amend Schedule 1, 2, 3 or 4 by notice published in the Gazette.

(1A) The Secretary may amend Schedule 5 by notice published in the Gazette.

(2) A notice made under ~~this section subsection (1)~~ may contain such incidental, consequential, supplemental, transitional or saving provisions as may be necessary or expedient in consequence of the notice.

47. Issue of notice etc.

(1) Subject to subsection (2), a notice or any other document required to be issued, submitted or sent under this Ordinance is to be regarded as having been duly issued, submitted or sent if—

(a) in the case of the Director—

- (i) it is addressed to the Director and delivered to the head office of the Electrical and Mechanical Services Department; or
- (ii) it is sent to the Director by registered post addressed to the Director at the head office of the Electrical and Mechanical Services Department;

(b) in the case of an individual—

- (i) it is delivered by hand to the individual; or
- (ii) it is sent to the individual by registered post addressed to the individual at the individual's last known address;

(c) in the case of a company—

- (i) it is delivered by hand to any officer of the company; or
- (ii) it is left at, or sent by registered post to, the registered office of the company within the meaning of the Companies Ordinance (Cap. 32);

(d) in the case of a body corporate other than a company—

- (i) it is delivered by hand to any place in Hong Kong at which the body carries on business and given to a person apparently concerned in the management of, or apparently employed by, the body; or
- (ii) it is sent to the body by registered post addressed to the body at the body's last known address; or

(e) in the case of a partnership—

- (i) it is delivered by hand to any place in Hong Kong at which the partnership carries on business and given to a person apparently concerned in the management of, or apparently employed by, the partnership; or
- (ii) it is sent to the partnership by registered post addressed to the partnership at the partnership's last

known address.

(2) A notice issued to a corporation registered under section 8 of the Building Management Ordinance (Cap. 344) in respect of any common area of a building is deemed to be a notice issued to all owners of undivided shares in the land on which the building is situated.

50. Defence of due diligence

(1) In any proceedings against a person for an offence under this Ordinance, it is a defence for the person to show that he or she took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) If, in any proceedings, the defence under subsection (1) involves an allegation that the offence was due to –

(a) the act or default of another person; or

(b) reliance on information given by another person,

the person charged is not, without the leave of the court, entitled to rely on the defence unless the person has issued a notice in accordance with subsection (3).

(3) A notice issued for the purposes of subsection (2) must –

(a) identify or assist in the identification of the person who committed the act or default or gave the information; and

(b) be issued to the person bringing the proceedings at least 7 working days before the hearing of the proceedings.

(4) If the defence under subsection (1) involves an allegation that the offence was due to reliance on information given by another person, the defence is not established ~~A person charged is not entitled to rely on the defence under subsection (1) by reason of the person's reliance on information given by another person~~ unless the person charged shows that it was reasonable in all the circumstances for him or her to rely on the information, having regard in particular to –

(a) the steps which the person took, and those which might reasonably have been taken by the person, for the purpose of verifying the information; and

(b) whether the person had any reason not to believe the information.

51A. Contravention does not give rise to encumbrance

For the avoidance of doubt, a contravention of any provision of this Ordinance in relation to any premises does not of itself subject the title of the premises to any encumbrance.

SCHEDULE 1 [ss. 2 & 43]

Buildings that Require Certificate of Compliance Registration and Form of Compliance

1. Commercial building.
2. ~~Non-residential or non-industrial portion of a composite building. A portion of a composite building that is not for residential or industrial use.~~
3. Hotel and guesthouse.
4. Common area of a residential building.
5. ~~Common area of the residential or industrial portion of a composite building. Common area of a portion of a composite building that is for residential or industrial use.~~
6. Common area of an industrial building.
7. Building that is occupied principallypredominately for an education purpose.
8. Building that is occupied principallypredominantly as a community building including a community hall and social services centre and composite building occupied as 2 or more such places.
9. Building that is occupied principallypredominantly as a municipal services building including a market, cooked food centre, library, cultural centre and indoor games hall and composite building occupied as 2 or more such places.
10. Building that is occupied principallypredominantly for medical and health care services including a hospital, clinic and rehabilitation centre.
11. Building that is owned by the Government and used principallypredominantly for the accommodation of people during the performance of any function of the Government.
12. Passenger terminal building of an airport.
13. Railway station.

SCHEDULE 2 [ss. 4 & 43]

Building Services Installations to which this Ordinance does not Apply

1. An installation that is solely used for –
 - (a) fire suppression;
 - (b) fire extinguishing; or
 - (c) fire suppression and extinguishing.

2. An installation that is solely used for –
 - (a) surgical operation;
 - (b) clinical treatment;
 - (c) blood processing;
 - (d) providing or maintaining appropriate environment settings for life protection; or
 - (e) any combination of the purposes specified in paragraphs (a), (b), (c) and (d).

3. An installation that is used in a construction site for construction work only.

4. An installation that is solely used for industrial manufacturing.

5. An installation that is solely used for research in an educational institution.

6. A lighting installation that is solely used for –
 - ~~(a) illumination of an exhibit or product on display;~~
 - ~~(b) decoration;~~
 - ~~(c) visual production; or~~
 - (a) illumination of an exhibit or product on display including special lighting for illuminating merchandise or art work;
 - (b) decoration including special lighting for architectural feature or festival decoration effect;
 - (c) visual production including special lighting for performance, entertainment or television broadcasting; or
 - (d) any combination of the purposes specified in paragraphs (a), (b) and (c).

7. An installation that is solely used for –
 - (a) air traffic regulation;
 - (b) air traffic safety;
 - (c) air traffic control; or

- (d) any combination of the purposes specified in paragraphs (a), (b) and (c).
8. An installation that is solely used for –
- (a) railway traffic regulation;
 - (b) railway traffic safety;
 - (c) railway traffic control; or
 - (d) any combination of the purposes specified in paragraphs (a), (b) and (c).

SCHEDULE 3 [ss. 2 & 43]

Major Retrofitting Works

1. Works involving addition or replacement of a building services installation specified in a code of practice that covers one or more places with a floor area or total floor area of not less than 500 m² under the same series of works within 12 months in a unit or a common area of a prescribed building.
2. Addition or replacement of a main component of a central building services installation, including—
 - (a) addition or replacement of a complete electrical circuit at rating of 400A or above;
 - (b) addition or replacement of a unitary air-conditioner or airconditioning chiller of a cooling or heating rating at or exceeding 350 kW; or
 - (c) addition or replacement of the motor drive and mechanical drive of a lift, an escalator or a passenger conveyer.

Notes

- (1) For the purposes of item 1 of this Schedule—
 - (a) an occupants' clubhouse or a ~~carpark~~ car park is to be regarded as a separate common area within the building; and
 - (b) all other common areas are to be regarded together as a separate common area.
- (2) If works are carried out for more than one place in a unit or a common area of a prescribed building and, having regard to all relevant factors of the case, the works should reasonably be regarded as being under the same series of works, the reference to floor area in item 1 of this Schedule is a reference to the aggregate of the floor area of all those places.
- (3) In Note (2), “relevant factors” (有關因素) means—

- (a) whether the works are carried out by a single contractor;
- (b) whether the works are carried out under a single agreement;
- (c) whether the works are carried out pursuant to a single works order;
- (d) the time at which and the period during which the works are carried out;
- (e) the manner in which the contractor is paid; and
- (f) whether the works are treated as a single project in the plans and works programme.

SCHEDULE 4 [ss. 21 & 43]

Buildings that Require Energy Audit

1. Commercial building.
2. ~~Commercial portion of a composite building.~~ A portion of a composite building that is for commercial use.