

立法會
Legislative Council

LC Paper No. CB(1) 2548/09-10
(These minutes have been seen
by the administration)

Ref : CB1/BC/2/09/2

Bills Committee on Buildings Energy Efficiency Bill

Minutes of eleventh meeting
held on Tuesday, 15 June 2010, at 2:30 pm
in Conference Room B of the Legislative Council Building

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Abraham SHEK Lai-him, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon IP Kwok-him, GBS, JP
Hon CHAN Hak-kan
Hon Tanya CHAN
- Members absent** : Hon Vincent FANG Kang, SBS, JP
Hon LEE Wing-tat
Hon Cyd HO Sau-lan
- Public officers attending** : Environment Bureau
Miss Katharine CHOI
Principal Assistant Secretary for the Environment
(Energy)
Mr Philip HAR
Assistant Secretary for the Environment (Energy)
Electrical and Mechanical Services Department
Mr LI Kwok-keung
Acting Assistant Director/Electricity and Energy
Efficiency

Mr MAK Ka-chun
Chief Engineer/Energy Efficiency B

Department of Justice

Mr Gilbert MO
Deputy Law Draftsman
(Bilingual Drafting & Administration)

Miss Mandy NG
Government Counsel

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mr Franco KWONG
Council Secretary (1)1

I. Confirmation of minutes

(LC Paper No. CB(1) 2222/09-10 — Minutes of the meeting held on
27 May 2010)

The minutes of the meeting held on 27 May 2010 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 2245/09-10(01) — List of follow-up actions arising
from the discussion at the
meeting on 4 June 2010

LC Paper No. CB(1) 2245/09-10(02) — Administration's response to
CB(1) 2245/09-10(01)

LC Paper No. CB(1) 2245/09-10(03) — Assistant Legal Adviser's letter
dated 10 June 2010 to the
Administration)

Relevant papers

(LC Paper No. CB(3) 233/09-10 — The Bill

Ref: ENB 24/26/22 — The Legislative Council Brief

LC Paper No. CB(1) 1353/09-10(03) — Assistant Legal Adviser's letter
dated 2 March 2010 to the
Administration

- LC Paper No. CB(1) 1364/09-10(01) — Administration's response to CB(1) 1353/09-10(03)
- LC Paper No. CB(1) 1492/09-10(03) — Assistant Legal Adviser's letter dated 19 March 2010 to the Administration
- LC Paper No. CB(1) 1511/09-10(01) — Administration's response to CB(1) 1492/09-10(03) (clauses 2 to 15 only)
- LC Paper No. CB(1) 1799/09-10(01) — Administration's response to CB(1) 1492/09-10(03) (paragraphs 25 to 49 only)
- LC Paper No. CB(1) 1799/09-10(02) — Assistant Legal Adviser's letter dated 3 May 2010 to the Administration
- LC Paper No. CB(1) 2048/09-10(02) — Administration's response to CB(1) 1799/09-10(02))

2. The Bills Committee deliberated (Index of proceedings attached in **Annex**).
3. The Administration was requested to -
 - (a) review the propriety of the levels of penalty for non-compliance with clauses 18(6) and 22(9) by registered energy assessors (REAs) with reference to those applicable to owners;
 - (b) review clause 29 with reference to similar provisions under the Product Eco-responsibility Ordinance (Cap. 603), particularly on the need for search warrant to enter any part of a prescribed building that was not a residential unit;
 - (c) consider including in the Bill provisions for cancellation of registration of REAs and updating such cancellation in the Register of REAs;
 - (d) consider including in clause 34(1) a member from the legal profession in the appeal board panel to provide advice on proceedings and drafting of decisions;
 - (e) include in the speech to be delivered by the Secretary for the Environment at the resumption of Second Reading debate on the Bill that any member of the appeal board panel would not be reappointed after serving six years;
 - (f) review the composition and proceedings of appeal board under clause 36 to ensure continuity of membership for an appeal as resignation or termination of membership in the course of an appeal might give rise to legal challenges on the validity of the determination of appeal;

- (g) provide a flowchart with the logistics of appeals under the Bill. To also consider setting a time table for hearing of appeals;
- (h) consider making provisions similar to clause 33(3) of the Bill for the Director to inform an appellant the documents which the Director would rely on and any witness that the Director intended to call at the hearing of an appeal;
- (i) consider amending clause 37(3) by adding "the appeal board" before "on any matter relating to the appeal". To also consider replacing "bound to incriminate" in clause 37(7) with "tend to incriminate" which was a different standard and was commonly used in other legislation with respect to the rule of self-incrimination; and
- (j) provide any draft Committee Stage amendments for consideration by the Bills Committee once these were ready.

III. Any other business

4. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
13 July 2010

**Bills Committee on
Buildings Energy Efficiency Bill**

**Proceedings of the eleventh meeting
on Tuesday, 15 June 2010, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000730- 000756	Chairman	The minutes of the meeting held on 27 May 2010 (LC Paper No. CB(1) 2222/09-10) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000757 - 003400	Chairman Administration	Administration's explanation on its response to members' concerns raised at the meeting on 4 June 2010 (LC Paper No. CB(1) 2245/09-10(02)).	
003401 - 005440	Prof Patrick LAU Administration Chairman Mr Abraham SHEK	<p>Discussion on Annex B to CB(1) 2245/09-10(02) - Table of offences and penalties.</p> <p>Chairman, Prof Patrick LAU and Mr Abraham SHEK's enquiries -</p> <p>(a) the standards for determining the levels of penalty for different offences;</p> <p>(b) direct comparison between clause 8(3) with section 14 of the Buildings Ordinance (Cap. 123) not appropriate as the former only related to energy efficiency of buildings while the latter related to safety of buildings;</p> <p>(c) rationale for including a defence in clause 18(10); and</p> <p>(d) reason for imposing different penalties for non-compliance with clauses 18(6) and 22(9) by registered energy assessors (REA) and owners.</p>	The Administration to review the propriety of the levels of penalty for non-compliance with clauses 18(6) and 22(9) by REAs with reference to those applicable to owners.

Time marker	Speaker	Subject(s)	Action required
		<p>Administration's response -</p> <p>(a) in general, levels of penalty were determined according to the severity of offences. For example, offences involving forgery and fraud would be subject to imprisonment while offences related to poor energy efficiency performance of building services installations would be subject to fine;</p> <p>(b) in the light of the views of the Bills Committee, a daily fine would be included in clauses 8(3) and 9(11) to achieve greater deterrent against late submission of declarations by developers;</p> <p>(c) apart from clauses 18(6) and 22(9), REAs who knowingly or recklessly issued any FOC or Energy Audit Form or made any certification which was false or misleading in any material particular would be subject to a fine at level six (\$100,000) and imprisonment for six months under clause 49(4). The penalty provisions for REAs under the Bill were considered sufficient; and</p> <p>(d) the defence under clause 18(10) was included after further consultation with the Hong Kong Association of Property Management Companies (HKAPMC) to alleviate the concern of property management companies (PMC) that they might not know that major retrofitting works had been carried out in their buildings. Therefore, clause 18(10) would be amended to the effect that PMC would only breach the relevant requirement if PMC, without reasonable excuse, had</p>	

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		not informed the Director that it had not received a copy of a FOC.	
005441 - 005917	Chairman Administration Mr Abraham SHEK Prof Patrick LAU ALA5	Members' concern about the inconsistency of the definitions of residential unit/building/use as raised in ALA's letter to the Administration dated 10 June 2010 (LC Paper No. CB(1) 2245/09-10(03)). Administration's response that legal advice was being sought and a reply would be provided in due course.	
005918 - 010019	Chairman Administration	Chairman's enquiry on the progress of consultation with the Law Society of Hong Kong regarding the possible impacts of the Bill on future conveyancing practices. Administration's explanation that the Law Society would hold a meeting to consider the Administration's response. Further consultation would be held if necessary.	
010020 - 011720	Chairman Administration Mr Abraham SHEK Prof Patrick LAU ALA5	Continuation of clause-by-clause examination Clause 29 - Power of authorized officers (LC Paper No. CB(1) 1799/09-10(01)) Chairman and Mr Abraham SHEK's concern about the excessive power of authorized officers. Administration's response - (a) clause 29 only empowered authorized officers to enter non-residential units for the purpose of ascertaining whether the Bill had been or was being complied with; and (b) similar empowering provisions also existed in other legislation.	The Administration to review clause 29 with reference to similar provisions under the Product Eco-responsibility Ordinance (Cap. 603), particularly on the need for search warrant to enter any part of a prescribed building that was not a residential unit.

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		<p>These included section 24 of the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598), section 31(1) of the Genetically Modified Organisms (Control of Release) Ordinance (Cap. 607), and section 7 of the Product Eco-responsibility Ordinance (Cap. 603) (PERO).</p> <p>Chairman's remark that there were specific conditions, such as entering the premises at reasonable time and on reasonable suspicion, or entering a place where the public were permitted to have access etc, which authorized officers had to observe under the ordinances referred to.</p> <p>ALA5's advice that PERO provided different powers for -</p> <p>(a) random inspection for compliance; and</p> <p>(b) entry and search with warrant on suspicion of offences.</p>	
011721 - 011756	Chairman Administration	Clause 30 - Registration of registered energy assessor	
011757 - 011904	Chairman Administration	Clause 31 - Register of Registered Energy Assessors	
011905 - 013121	Chairman Administration Mr KAM Nai-wai	<p>Clause 32 - Appeal to appeal board</p> <p>Mr KAM Nai-wai's enquiries -</p> <p>(a) circumstances under which the registration of REAs would be cancelled; and</p> <p>(b) whether the cancellation would be updated in the Register.</p> <p>Administration's response that the drafting of the subsidiary legislation in relation to the registration of REAs was underway and Mr KAM's views would be taken into account.</p>	The Administration to consider including in the Bill provisions for cancellation of registration of REAs and updating such cancellation in the Register of REAs.

Time marker	Speaker	Subject(s)	Action required
013122 - 013240	Chairman Administration	Clause 33 - How to lodge an appeal	
013241 - 014735	Chairman Administration Miss Tanya CHAN ALA5	<p>Clause 34 - Appeal board panel</p> <p>Administration's advice that a CSA to clause 34(1) regarding the membership of the appeal board panel was being prepared.</p> <p>Chairman and Miss Tanya CHAN's views and enquiries -</p> <p>(a) whether members of the appeal board panel could be reappointed after serving for six years;</p> <p>(b) a member from the legal profession should be appointed in the appeal board panel to provide advice on proceedings and drafting of decisions;</p> <p>(c) whether the Director should be required to inform an appellant the documents which the Director would rely on and any witness that the Director intended to call at the hearing of an appeal; and</p> <p>(d) whether a time table could be set for hearing of appeals.</p> <p>Administration's response -</p> <p>(a) under clause 37(3), an appeal board might engage any barrister or solicitor to attend a hearing of the board to advise on any matter relating to the appeal;</p> <p>(b) under clause 39(4), an appeal board had to issue to the appellant and the Director a notice of its determination and the reasons for it; and</p> <p>(c) clause 35(1) provided a timeframe to form an appeal</p>	<p>The Administration to -</p> <p>(a) consider including in clause 34(1) a member from the legal profession in the appeal board panel to provide advice on proceedings and drafting of decisions;</p> <p>(b) consider making provisions similar to clause 33(3) of the Bill for the Director to inform an appellant the documents which the Director would rely on and any witness that the Director intended to call at the hearing of an appeal;</p> <p>(c) provide a flowchart with the logistics of appeals under the Bill;</p> <p>(d) consider setting a time table for hearing of appeals;</p> <p>(e) include in the speech to be delivered by the Secretary for the Environment at the resumption of Second Reading debate on the Bill that any member of the appeal board panel would not be reappointed after</p>

Time marker	Speaker	Subject(s)	Action required
		board to hear an appeal.	<p>serving six years; and</p> <p>(f) provide any draft CSAs for consideration by the Bills Committee once these were ready.</p>
014736 - 014955	Chairman Administration	<p>Clause 35 - Appeal Board</p> <p>Chairman's enquiries -</p> <p>(a) whether a member from each of the five disciplines was required to attend a hearing of appeal; and</p> <p>(b) remuneration of members of appeal board</p> <p>Administration's response -</p> <p>(a) the quorum for a meeting of an appeal board was four members; and</p> <p>(b) the proposed remuneration for each meeting was around \$800.</p>	
014956 - 015632	Chairman Administration Miss Tanya CHAN	<p>Clause 36 - proceedings of appeal board</p> <p>Chairman and Miss Tanya CHAN's views/concerns -</p> <p>(a) the quorum might be set too high, particularly in view of the busy schedules of members; and</p> <p>(b) need to ensure the continuity of membership for an appeal as resignation or termination of membership in the course of an appeal might give rise to legal challenges on the validity of the determination of appeal.</p> <p>Administration's agreement to review the requirement for quorum.</p>	The Administration to review the composition and proceedings of appeal board under clause 36 to ensure continuity of membership for an appeal as resignation or termination of membership in the course of an appeal might give rise to legal challenges on the validity of the determination of appeal.

Time marker	Speaker	Subject(s)	Action required
015633 - 020314	Chairman Administration ALA5	Clause 37 - Hearing Chairman and ALA5's views - (a) there might be a need to add the phrase "the appeal board" before "on any matter relating to the appeal" in clause 37(3) for the sake of clarity; and (b) consideration should be given to replacing "bound to incriminate" in clause 37(7) with "tend to incriminate" which was a different standard and was commonly used in other legislation with respect to the rule of self-incrimination.	The Administration to - (a) consider amending clause 37(3) by adding "the appeal board" before "on any matter relating to the appeal"; and (b) consider replacing "bound to incriminate" in clause 37(7) with "tend to incriminate" which was a different standard and was commonly used in other legislation with respect to the rule of self-incrimination.
020315 - 020330	Chairman	Schedule of next meetings	