

立法會
Legislative Council

LC Paper No. CB(1) 2715/09-10
(These minutes have been seen
by the administration)

Ref : CB1/BC/2/09/2

Bills Committee on Buildings Energy Efficiency Bill

**Minutes of thirteenth meeting
held on Thursday, 22 July 2010, at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Hon Vincent FANG Kang, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon Tanya CHAN
- Members absent** : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LEE Wing-tat
Hon CHAN Hak-kan
Hon IP Kwok-him, GBS, JP
- Public officers attending** : Environment Bureau

Miss Katharine CHOI
Principal Assistant Secretary for the Environment
(Energy)

Mr Philip HAR
Assistant Secretary for the Environment (Energy)3

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) 2548/09-10 — Minutes of the meeting held on
15 June 2010)

The minutes of the meeting held on 15 June 2010 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 2609/09-10(01) — Letter from Law Society of
Hong Kong (English version
only)

LC Paper No. CB(1) 2609/09-10(02) — Administration's response to
CB(1) 2609/09-10(01) (English
version only)

LC Paper No. CB(1) 2609/09-10(03) — List of follow-up actions arising
from the discussion at the
meeting on 7 July 2010

LC Paper No. CB(1) 2609/09-10(04) — Administration's response to
CB(1) 2609/09-10(03))

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)
- LC Paper No. CB(1) 2245/09-10(03) — Assistant Legal Adviser's letter dated 10 June 2010 to the Administration
- LC Paper No. CB(1) 2444/09-10(01) — Administration's response to CB(1) 2245/09-10(03))

2. The Bills Committee deliberated (Index of proceedings attached in **Annex**).
3. The Administration was requested to -
 - (a) advise whether a breach of the requirement for Certificate of Compliance Registration (COCR), Form of Compliance (FOC) or Improvement Notice (IN) would constitute a cause for cancellation of property transactions. To also advise the measures which the Administration would take to facilitate solicitors/estate agents to ascertain compliance with COCR, FOC and IN before transactions;
 - (b) provide a flowchart on the application of COCR, FOC and IN as well as the penalties in the event of non-compliance;
 - (c) advise whether it was the current legislative policy to set out the procedures for statutory appeals and other relating matters in subsidiary legislation;
 - (d) advise who was to determine when and whether major retrofitting works were completed, in particular, the difficulties which would arise if the property changed hands during the period in which major

retrofitting works were carried out. To also advise whether clause 17(2) would be amended in the light of the proposed Committee Stage amendments (CSAs) to clause 17(1);

- (e) consider reinstating clause 18(5)(b) in the proposed CSA to clause 18(5);
- (f) consider replacing the phrase "not more than" in clauses 34(1)(a) to (e) with "at least" to allow greater flexibility in the appointment of members to the appeal board panel. To also advise the views of the Hong Kong Institution of Engineers in respect of the appointment mechanism;
- (g) consider revising proposed clause 34(1A) to specify the capacity in which an appeal board member was appointed, and to add "at the time of appointment" after "the Secretary" in proposed clause 34(1A);
- (h) review proposed clauses 36(3B)(a) and (b) to provide greater flexibility to cater for the situation where three members had resigned or with their membership terminated within a short period of time. To consider replacing the phrase "is deemed to have received a notice of appeal delivered" with a provision similar to section 16(5) of the Product Eco-responsibility Ordinance (Cap. 603) or other statutory provisions for fresh hearing on dissolution of the appeal board;
- (i) consider adding "and expenses" after "costs" in clause 39(2)(a) if the costs referred to were intended to not limiting to legal costs. To also include in the speech to be delivered by the Secretary for the Environment at the resumption of Second Reading debate on the Bill the exact coverage of "costs of the appeal proceedings";
- (j) consider replacing the phrase "is to" in proposed clause 40(6A) with "must"; and
- (k) consider providing positive vetting procedure for amendments to Schedules 1 to 4 under clause 43.

III. Any other business

4. There being no other business, the meeting ended at 12:45 pm.

**Bills Committee on
Buildings Energy Efficiency Bill**

**Proceedings of the thirteenth meeting
on Thursday, 22 July 2010, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000001 - 000220	Chairman	The minutes of the meeting held on 15 June 2010 (LC Paper No. CB(1) 2548/09-10) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000221 - 002355	Chairman Administration	<p>Members' attention was drawn to the Law Society of Hong Kong (LS)'s further submission in response to Administration's reply to its earlier submission (LC Paper No. CB(1) 2609/09-10(01)).</p> <p>Administration's explanation on its response to LS's further submission (LC Paper No. CB(1) 2609/09-10(02)).</p> <p>Chairman's and Mr KAM Nai-wai's concerns and enquiries -</p> <p>(a) prospective buyers might be caught under the Bill if they were not aware of the need to comply with the requirement for Certificate of Compliance Registration (COCR), Form of Compliance (FOC) and Improvement Notice (IN);</p> <p>(b) whether a breach of the requirement for COCR, FOC or IN would constitute a cause for cancellation of property transactions;</p> <p>(c) whether consideration would be given to excluding the Bill from the application of re-entry provision under the Land Grant, since the Bill only aimed to enhance energy efficiency of buildings; and</p>	<p>The Administration to</p> <p>(a) advise whether a breach of the requirement for COCR, FOC or IN would constitute a cause for cancellation of property transactions; and</p> <p>(b) provide a flowchart on the application of COCR, FOC and IN as well as the penalties in the event of non-compliance.</p>

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		<p>(d) differences between COCR/FOC/IN and the certificates issued under the Electricity (Wiring) Regulation (Cap. 406E), Fire Safety (Buildings) Ordinance (Cap. 572) and Lifts and Escalators (Safety) Ordinance (Cap. 327).</p> <p>Administration's response -</p> <p>(a) it was the responsibility of a developer to obtain a COCR for a post-enactment building. Prospective buyers could check the register of buildings issued with COCR to ensure the availability of COCR. For post-enactment and pre-enactment buildings, prospective buyers could ascertain compliance with FOC or IN with the existing owners. It was also advisable for buyers to engage registered energy assessors (REA) to ascertain compliance with the requirements under the Bill;</p> <p>(b) legal advice would need to be sought as to whether a breach of the requirement for COCR, FOC or IN would constitute a cause for cancellation of property transactions;</p> <p>(c) the proposed exclusion of the Bill from the application of Land Grant could only be considered if there was a change in the existing land policy; and</p> <p>(d) COCR, FOC and IN were similar to the certificates or notices under other legislation, except for building orders under the Buildings Ordinance (Cap. 123) (BO) which might need to be registered in the Land Registry.</p>	
002356 - 002917	Prof Patrick LAU Administration Chairman	Prof Patrick LAU's views that solicitors and estate agents should be required to check compliance with COCR, FOC	The Administration to advise the measures to be taken to facilitate

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		<p>and IN for clients before transactions, and that measures should be taken to facilitate them to discharge their duties.</p> <p>Administration's response that it might not be possible to include all the requirements in the provisional agreement for sale and purchase, which would be included in the formal sale and purchase agreement.</p> <p>Chairman's views -</p> <p>(a) disputes in relation to property transactions often took place before the signing of formal agreement for sale and purchase; and</p> <p>(b) consideration should be given to making COCR, FOC and IN part of the pre-requisite information to be provided in the course of property transactions.</p>	<p>solicitors/estate agents to ascertain compliance with COCR, FOC and IN before transactions.</p>
002918 - 003840	Ms Cyd HO Administration Chairman	<p>Chairman and Ms Cyd HO's views and concerns -</p> <p>(a) a list of items, including COCR, FOC and IN, to be checked by buyers, solicitors and estate agents in the course of property transactions should be provided to protect the interest of consumers;</p> <p>(b) it might be difficult to ascertain the compliance status of IN in the absence of a certificate of satisfaction; and</p> <p>(c) prospective buyers might be held responsible for obtaining FOC in respect of the major retrofitting works being carried out by the owners after the sale of premises under clause 17.</p> <p>Administration's response -</p> <p>(a) consideration would be given to requiring registration of IN with the</p>	

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		<p>Land Registry;</p> <p>(b) the proposed Committee Stage amendment (CSA) to clause 17(1) aimed to make it clear that a person who was the responsible person of the unit or the owner of the common area as at the completion of the retrofitting works must obtain a FOC in respect of the prescribed installations. Subsequent owners were required to ensure the installations were maintained to a standard not lower than that applied in the latest FOC; and</p> <p>(c) publicity would be stepped up following the enactment of the Bill.</p> <p>The Bills Committee decided to invite LS and the Estate Agents Authority to attend the next meeting.</p>	
003841 - 004705	Chairman Administration ALA5	Administration's explanation on its response to members' concerns raised at the meeting on 7 July 2010 (LC Paper No. CB(1) 2609/09-10(04)).	
004706 - 005240	Chairman Administration Ms Cyd HO	<p>Discussion on procedures of the proceedings of appeal boards.</p> <p>Ms Cyd HO's enquiry on the criteria for determining whether procedural matters relating to appeal boards should be set out in the principal ordinance or in subsidiary legislation.</p> <p>Administration's response that it was equally common in setting out the procedural matters of appeal boards either in the principal ordinances or subsidiary legislation. However, the legislative process and lead time taken to amend subsidiary legislation were relatively simpler.</p>	The Administration to advise whether it was the current legislative policy to set out the procedures for statutory appeals and other relating matters in subsidiary legislation.
005241 - 005713	Chairman Administration Ms Cyd HO ALA5	Discussion on the coverage of "costs of the appeal proceedings" in clause 39(2)(a).	The Administration to - (a) consider adding "and expenses" after

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		<p>Chairman and Ms Cyd HO's views that there should be a uniform definition for "costs of appeal proceedings". The issue should be referred to the Administration of Justice and Legal Services Panel for consideration.</p> <p>ALA's suggestion to add "and expenses" after "costs" in clause 39(2)(a) if the "costs" were not limited to legal costs.</p>	<p>"costs" in clause 39(2)(a) if the costs referred to were intended to not limiting to legal costs; and</p> <p>(b) include in the speech to be delivered by the Secretary for the Environment at the resumption of Second Reading debate on the Bill the exact coverage of "costs of the appeal proceedings".</p>
005714 - 010030	<p>Chairman Administration ALA5 Ms Cyd HO</p>	<p>Discussion on the need for consultation before making or revising the code of practice.</p> <p>Chairman and Ms Cyd HO's view that the phrase "is to" in the proposed clause 40(6A) should be replaced with "must".</p>	<p>The Administration to consider replacing the phrase "is to" in proposed clause 40(6A) with "must".</p>
010031 - 011050	<p>Chairman Administration Mr Vincent FANG Ms Cyd HO Prof Patrick LAU Mr KAM Nai-wai</p>	<p>Discussion on the propriety of using the negative vetting procedures for amendments to Schedules under clause 43.</p> <p>Members' views that Schedules 1 to 4 related to the application of the Bill and hence any amendments should be subject to the positive vetting procedure. However, this might not be the case for Schedule 5 which only dealt with the schedule of the first energy audit for buildings without COCR.</p>	<p>The Administration to consider providing positive vetting procedure for amendments to Schedules 1 to 4 under clause 43.</p>
011051 - 011110	<p>Chairman Administration</p>	<p>Chairman's enquiry on the outcome of consultation with The Hong Kong Institute of Architects (HKIA) on the draft codes of practices.</p> <p>Administration's response that HKIA had not yet submitted any comments on the draft.</p>	

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011111 - 013210	<p>Chairman Administration ALA5 Ms Cyd HO Mr KAM Nai-wai</p>	<p>Proposed CSAs set out in Annex B to LC Paper No. CB(1) 2609/09-10(04)</p> <p>Discussion on the proposed CSA to clause 17(1).</p> <p>Chairman, Mr KAM Nai-wai and ALA5's views and enquiries -</p> <p>(a) the amendments as drafted was still unclear on whether subsequent owners would need to obtain FOC for the major retrofitting works being carried out by former owners;</p> <p>(b) who was to determine when and whether major retrofitting works were completed, in particular, the difficulties which would arise if the property changed hands during the period in which major retrofitting works were carried out; and</p> <p>(c) whether clause 17(2) should be similarly amended in the light of the proposed amendment to clause 17(1) since all building owners should be held responsible for major retrofitting works in common areas.</p> <p>Administration's response –</p> <p>(a) subsequent owners were not required to obtain FOC in respect of the retrofitting works completed by former owners. The proposed CSA to clause 17(1) was made to hold the person who carried out the retrofitting works responsible for obtaining a FOC upon the completion of works; and</p> <p>(b) subsequent owners were required to maintain the installations to a standard not lower than that applied in the latest FOC under clause 18(2).</p>	<p>The Administration to –</p> <p>(a) advise who was to determine when and whether major retrofitting works were completed, in particular, the difficulties which would arise if the property changed hands during the period in which major retrofitting works were carried out; and</p> <p>(b) advise whether clause 17(2) would be amended in the light of the proposed CSAs to clause 17(1).</p>

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013211 - 013655	Chairman Administration Mr KAM Nai-wai	Discussion on the proposed CSA to clause 18. Chairman's view that clause 18(5)(b) should not be deleted since the property management company of the building concerned should be informed of the issuance of a FOC.	The Administration to consider reinstating clause 18(5)(b) in the proposed CSA to clause 18(5).
013656- 014345	Chairman Administration Prof Patrick LAU Ms Cyd HO	Discussion on the proposed CSA to clause 34. Chairman and Prof Patrick LAU's views - (a) consideration should be given to replacing the phrase "not more than" in clauses 34(1)(a) to (e) with "at least" to allow greater flexibility in the appointment of members to the appeal board panel; and (b) whether the Hong Kong Institution of Engineers was consulted on the appointment mechanism.	The Administration to - (a) consider replacing the phrase "not more than" in clauses 34(1)(a) to (e) with "at least" to allow greater flexibility in the appointment of members to the appeal board panel; and (b) advise the views of the Hong Kong Institution of Engineers in respect of the appointment mechanism.
014346 - 014910	Chairman Administration ALA5 Prof Patrick LAU	Discussion on the proposed CSA to clause 34(1A). In response to Chairman's enquiry, the Administration confirmed that the letter of appointment would specify the capacity in which an appeal board member was appointed. If a member ceased to hold the capacity, his membership would be terminated under clause 34(6)(d). Chairman and ALA5's views that there was a need to specify the capacity in which an appeal board member was appointed, and to add "at the time of appointment" after "the Secretary" in proposed clause 34(1A)	The Administration to consider revising proposed clause 34(1A) to specify the capacity in which an appeal board member was appointed, and to add "at the time of appointment" after "the Secretary" in proposed clause 34(1A)

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014911 - 020340	Chairman Administration Ms Cyd HO ALA5	Discussion on the proposed CSA to clause 36. Chairman and ALA5's views - (a) proposed clauses 36(3B)(a) and (b) should be reviewed to provide greater flexibility to cater for the situation where three members had resigned or with their membership terminated within a short period of time; and (b) consideration should be given to replacing the phrase "is deemed to have received a notice of appeal delivered" with a provision similar to section 16(5) of the Product Eco-responsibility Ordinance (Cap. 603) or other statutory provisions for fresh hearing on dissolution of the appeal board.	The Administration to - (a) review proposed clauses 36(3B)(a) and (b) to provide greater flexibility to cater for the situation where three members had resigned or with their membership terminated within a short period of time; and (b) consider replacing the phrase "is deemed to have received a notice of appeal delivered" with a provision similar to section 16(5) of the Product Eco-responsibility Ordinance (Cap. 603) or other statutory provisions for fresh hearing on dissolution of the appeal board.
020341 - 020400	Chairman	Schedule of meetings	