

Buildings Energy Efficiency Bill

The Administration's response to Action Items at the Bills Committee meeting on 26 April 2010

Definition of "common area"

In light of the views of the Bills Committee on 26 April 2010, we will revise paragraph (b) of the definition of "common area" of the Bill. We are now working on the proposed revised wording.

2. Members suggested that reference should be made to the formula of the definition of "common parts" at section 2 of the Building Management Ordinance ("BMO") (Cap. 344). However, the approach taken in the BMO is different from the one taken in the Bill. In the BMO, paragraph (b) of the definition of "common parts" is definitive and not for illustration purpose. Together with Schedule 1 to the BMO, the provisions set out a list of places falling within the definition. Any addition will have to be effected by a legislative amendment. This is different from our case where paragraph (b) of "common area" of the Bill serves to give examples but not a definitive list.

Expression of "predominantly" at Schedule 1 to the Bill

3. In light of the views of Bills Committee on 26 April 2010, we will consider replacing "predominantly" by "principally" in the English version of Schedule 1 to the Bill.

Definition of "composite building"

4. In light of the views of Bills Committee on 26 April 2010, we will consider revising the definition of "composite building" to incorporate cross reference to the definitions of "residential building", "industrial building" and "commercial building" at the Bill.

Descriptive use of "residential", "commercial" and "industrial" in relation to the use of buildings

5. Members raised at the Bills Committee meeting on 26 April 2010 that the Bill might classify buildings by drawing reference to the Occupation Permits (OPs) issued under the Buildings Ordinance (Cap.

123).

6. OPs generally classify buildings into two main categories, viz. “domestic buildings” (住用建築物) and “non-domestic buildings” (非住用建築物). “Domestic buildings” includes hotels and guesthouses, while “non-domestic buildings” includes buildings of uses other than those for habitation (居住). Hence, commercial buildings, industrial buildings and other non-residential buildings would be treated as “non-domestic buildings” in OPs.

7. The classification system under OPs does not fit our case well. The Bill intends to cover all hotels, guesthouses, commercial buildings and a number of other building types, while for residential buildings and industrial buildings, only their common area would be subject to the legislation. To clearly state out the policy intention and avoid confusion, the Bill has distinctly defined “residential buildings” (which do not cover hotels or guesthouses), “commercial buildings” and “industrial buildings”. Similar classification is also adopted by Regulations under the Buildings Ordinance (for examples, please see Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations (Cap. 123I) for the definition of “residential building”; Building (Energy Efficiency) Regulation (Cap. 123M) for the definition of “commercial buildings” and Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) Regulations (Cap. 123H) for the definition of “industrial building”).

Types of buildings excluded from Schedule 1 to the Bill

8. Buildings which require Certificate of Compliance Registration and Form of Compliance have been categorically set out at Schedule 1 to the Bill, which covers the major energy consuming building types in Hong Kong.

9. It is not possible to give an exhaustive and accurate list of buildings types which are excluded from Schedule 1 to the Bill. Some buildings of special uses are excluded from Schedule 1 having regard to their specific energy requirement and the relatively small number of them. For illustration purpose, these include water/sewage treatment plants, electricity sub-stations, pump houses and radar stations, etc..

Whether the definition of “owner” in the Bill includes owners’ corporations

10. The definition of “owner” under the Bill, in relation to a prescribed building, has the same meaning as in the Buildings Ordinance (Cap. 123). The definition of “owner” in the Buildings Ordinance includes *“any person holding premises direct from the Government whether under lease, licence or otherwise, any mortgagee in possession and any person receiving the rent of any premises, solely or with another, on his own behalf or that of any person, or who would receive the same if such premises were let to a tenant, and where such owner as above defined cannot be found or ascertained or is absent from Hong Kong or is under disability, the agent of such owner.”*

11. Although the above definition does not explicitly cover owners’ corporation, under section 16 of the BMO, the rights, powers, privileges and duties of the owners in relation to the common parts of the building would be exercised and performed by the owners’ corporation, if they are so formed under section 8 of the BMO. Likewise, liabilities of the owners in relation to the common parts of the building shall also be enforced against the owners’ corporation.

Imposition of a daily fine under clause 8 of the Bill

12. In light of the views of Bills Committee on 26 April 2010, we will consider imposing a daily fine of \$10,000 for a continuing contravention of clause 8(1) of the Bill (i.e. failure of the developer to submit a stage one declaration to the Director of Electrical and Mechanical Services (“the Director”) within two months upon the issuance of the consent to the commencement of building works for the superstructure construction of the building).

13. Since clauses 8 and 9 are correlated, we also propose to impose a daily fine of \$10,000 for a continuing contravention of clause 9(1) (i.e. failure of the developer to submit a stage two declaration to the Director within four months after the day on which the occupation approval of a building is issued) and clause 9(10) (i.e. failure of the developer to comply with the direction of the Director in the notice issued under clause 9(9)).

**Environment Bureau
Electrical and Mechanical Services Department
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