

Buildings Energy Efficiency Bill

The Administration's response to Action Items at the Bills Committee meeting on 4 June 2010

Consultation with the Hong Kong Institute of Architects on draft code of practice

Having regard to the views of the Bills Committee at its meeting on 4 June 2010, the Administration has specifically invited the Hong Kong Institute of Architects ("the Institute") to comment on the draft Codes of Practice. We would report to the Bills Committee the outcome of the consultation.

Views of the Hong Kong Association of Property Management Companies

2. The Hong Kong Association of Property Management Companies ("HKAPMC") was member of the Trade Task Force and the Technical Task Force established in relation to the Bill. The HKAPMC wrote to the Administration on 16 March 2010 to enquire about the role and responsibilities of management companies under the Bill. This letter and the Administration's reply are at **Annex A**. According to the HKAPMC, among all domestic units in Hong Kong which are being managed by property management companies (around 1.2 million units), 90% (around 1.08 million units) are being managed by members of the HKAPMC. Members of the HKAPMC also manage a wide variety of commercial and industrial premises.

Publicity plan of the requirements under the Bill

3. The Administration is now devising a detailed publicity plan. Tentatively, we plan to employ a wide range of publicity measures including leaflets, posters, Announcements of Public Interests on radio and television, advertisements at public transports, seminars and workshops to enhance public awareness on requirements under the Buildings Energy Efficiency Ordinance ("the Ordinance").

An overview of the penalties for different offences under the Bill

4. A table showing the penalties for different offences under the Bill and similar provisions under other legislation is at **Annex B**.

Acknowledgement of compliance with the improvement notice

5. Having regard to the views of the Bills Committee at its meeting on 4 June 2010, the Administration has considered the proposal of issuing an acknowledgement to a person after he has complied with the directions in an improvement notice issued under clause 26 of the Bill. A person will have discharged his legal responsibility after he has complied with the directions as stipulated in an improvement notice. It is not common for the Government to specifically acknowledge a lawful act or a remedy done in order to rectify an unlawful act. We have also examined some other legislation with similar mechanism of improvement notice (e.g. the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598), the Gas Safety Ordinance (Cap. 51) and the Occupational Safety and Health Ordinance (Cap. 509)). We have not identified any mechanism of acknowledging compliance under these Ordinances. In fact, any such acknowledgement of compliance under the Bill is no guarantee of continuous compliance and might not serve much practical purpose for potential buyer / lessee of property.

Revision of the powers of authorized officers under clause 29 with reference to other similar environmental legislation, such as the Genetically Modified Organisms (Control of Release) Ordinance (Cap. 607) and the Product Eco-responsibility Ordinance (Cap. 603)

6. Clause 29 of the Bill empowers an authorized officer to –

- (a) enter any part of a prescribed building that is not a residential unit;
- (b) inspect, examine, monitor and test any building services installation;
- (c) require the relevant responsible person to produce documents; and
- (d) make copies of such documents in paragraph (c) above.

7. Clause 29(3) states that a person who, without reasonable excuse, fails to comply with such requirements or obstruct an authorized officer or his assistants in the exercise of the power commits an offence and is liable on conviction to a fine at level 5 (i.e. \$50,000) and to imprisonment for 6 months. Under clause 29(4), a person who, in purported compliance with the requirements, knowingly or recklessly provides false or misleading information commits an offence and is liable on conviction to a fine at level 6 (i.e. \$100,000) and to imprisonment for 6 months.

8. The Administration considers such penalty level reasonable. The Bill mandates the compliance of certain types of building services installations with the specified standards and requirements. This may entail extra costs. Stiff penalties will weaken the incentive to contravene the requirements and conceal such contravention. On the other hand, the Ordinance is only enforceable if government officers are empowered to enter a prescribed building and inspect the relevant building services installations and documents. Contravention of the requirements or obstruction of authorized persons in exercising their power needs to be subject to penalties of sufficient deterrent effect, lest the legal responsibilities under the Ordinance are to be taken lightly. It should be noted that clause 29 only empowers authorized officers to enter a non-residential unit for the purpose of ascertaining whether the Ordinance has been or is being complied with. Also, a person would only contravene clause 29 if he fails to comply with the requirements or obstructs any authorized officer or his assistant to exercise the power without reasonable excuse. Whether a person has reasonable excuse depends on the facts of individual cases and would be determined by the Court.

9. Similar arrangements could be found under section 24 of the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) where an authorized person may enter any premises (except domestic premises) or any specified premises (whether or not domestic premises) at any reasonable time if he reasonably believes that there is a prescribed product in the premises. The officer may then examine any process or procedure in connection with the testing of prescribed products and require production of such products or other relevant documents. A person who, without reasonable excuse, fails to comply with the requirements or obstructs an authorized officer in the exercise of his power commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

10. The Bills Committee, at its meeting on 4 June 2010, asked the Administration to compare similar power for authorized officers under other environmental legislation, such as the Genetically Modified Organisms (Control of Release) Ordinance (Cap. 607) and the Product Eco-responsibility Ordinance (Cap. 603).

11. Under section 31(1) of Cap. 607, if an authorized officer reasonably suspects that a genetically modified organism is being kept in any place or premise, he may, without notice, enter and inspect a place or premise (which is not wholly or principally used for dwelling purpose)

during reasonable hours and examine any thing that the authorized officer reasonably suspects to be or contain a genetically modified organism. The authorized officer may also require production of any relevant documents. Under section 44 of Cap. 607, a person who wilfully obstructs an authorized person to perform his duty under that ordinance, or without reasonable excuse fails to comply with the requirement by the authorized officer commits an offence and is liable to a fine at level 6 and to imprisonment for 6 months. This arrangement is also similar to clause 29 of the Bill.

12. Section 7 of Cap. 603 empowers an authorized officer to require a person to produce a record or document for inspection, and remove and retain such record or document for such period as may be reasonably necessary for further examination or reproduction. For the purposes of ascertaining whether Cap. 603 has been or is being complied with, an authorized person may, at any reasonable time, enter a place to which the public are permitted to have access, to observe and inspect any activity, operation, process or procedure and require a person in charge to produce relevant documents. Under section 10 of Cap. 603, a person who wilfully obstructs an authorized officer to perform his duty under that ordinance commits an offence and is liable on conviction to a fine at level 5. A person who, without reasonable excuse, fails to comply with a requirement by an authorized officer commits an offence and is liable on conviction to a fine at level 4 (i.e. \$25,000).

13. It should be noted that for the empowerment of public officers, different powers have been provided for under different legislation to meet their specific requirements. For the purpose of the Bill, the Administration considers that the power for authorized officers under clause 29 are appropriate and essential for the implementation of the Ordinance, when enacted.

Environment Bureau
Electrical and Mechanical Services Department
June 2010

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26 April 2010

Mr. Andrew Lee
Chairman, Professional Practice Committee
The Hong Kong Association of Property Management Companies
2709-11, 27/F Shui On Centre
6-8 Harbour Road
Wanchai
Hong Kong

Dear Mr. Lee,

**Trade Task Force on the Mandatory Implementation
of the Building Energy Codes**

Thanks a lot for your letter dated 16 March 2010.

As defined in section 2 of the Buildings Energy Efficiency Bill, "responsible person", in relation to a building or a unit of a building, means a person who occupies or is in possession or control of the building or unit (whether under a lease or licence or otherwise). It is not our policy intention to cover property management companies (PMC) under the definition of "responsible person", in their exercising of property management functions for a building. We expect that the requirement for responsible person to obtain FOC would be fulfilled mostly by property owners or tenants.

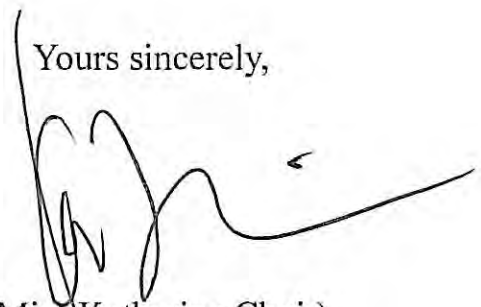
Under the Bill, the only responsibility that specifically falls on a PMC is that, if it does not receive a copy of a FOC from a registered energy assessor (REA) within 2 months after the completion date of major retrofitting works that took place in the building managed by the PMC, the PMC must issue a notice to the Director of Electrical and Mechanical Services informing the Director that it has not received a copy of the FOC (clause 18(7) of the Bill).

We share views in paragraph 3 of your letter that, owners who conduct major retrofitting works should bear the onus of ensuring compliance with requirements of the Bill. It is under this principle that the owners have the responsibilities to engage their REA to certify the major retrofitting works and the REA, who issues the FOC, has the responsibility to ensure their certified work be in compliance with the BEC. However, we also note that the PMC, as part of their duties entrusted by the building owners in managing their buildings, will likely know the major retrofitting works being carried out in the building under their management and may also be required to facilitate the processing of the retrofitting works in order to minimize their disturbance, if any, to the building users. Thus, in general the PMC should not have much difficulty to deliver their responsibilities requested by the Bill.

However, we appreciate a lot views raised in your letter that, under certain circumstances, there may not be a way for the PMC to know that major retrofitting works have been undertaken in its building. To address such concerns, we intend to move an amendment to clause 18(7) of the Bill, to the effect that the PMC would only breach relevant requirement if the PMC, *without reasonable excuse*, has not informed the Director of Electrical and Mechanical Services that it has not received a copy of a FOC. Moreover, to promote your members' understanding on the proposed requirement, the Government will provide guidance notes and will arrange briefing sessions before the new legislation comes into effect.

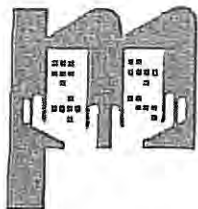
Thanks a lot and looking forward to working closely with you to promote building energy efficiency.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Katharine Choi', with a long horizontal flourish extending to the right.

(Miss Katharine Choi)
for Secretary for the Environment

c.c. DEMS (Attn.: Mr. Alfred Sit)
DOJ (Attn.: Mr. Gilbert Mo)



Our Ref: HKAPMC/EB/2.2/012/2010

By Fax and By Post

(Fax no. 2147 5834)

Ms Katharine Choi
Principal Assistant Secretary
Environment Bureau
Energy Division
46/F, Revenue Tower
5 Gloucester Road
Wanchai, Hong Kong

16th March, 2010

Dear Ms. Choi,

**Re: Trade Task Force on the Mandatory Implementation
of the Building Energy Codes**

We note that under the draft bill, any *responsible persons* are required to obtain the Form of Compliance from registered energy assessors in cases of building services installations serving individual units with floor area larger than 500M², property management companies managing buildings with major retrofitting works in progress appear to fall within this category and are therefore bound by the proposed legislation. Failure to obtain the required Form of Compliance would be an offence under the proposed legislation.

The Hong Kong Association of Property Management Companies (HKAPMC) has reservation on this practice as property management companies do not normally know what building services installations are being fitted within the *individual units*. Furthermore, property management companies do not have the authority to decide which facilities should or should not be installed. In fact, if the workers or contractors or the ones doing major retrofitting works do not inform the property management companies, there is simply no way of knowing any works being undertaken. To put the property management companies (which are a third party) in charge of due compliance with the proposed legislation is not practicable.

The Hong Kong Association of Property Management Companies

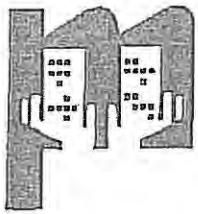
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We therefore propose that the onus of ensuring compliance should fall on the owners (or the project architects acting on behalf of the owners) of the *individual units* with floor area larger than 500M². They (the owners or their project architects) have an interest in the full compliance with the proposed legislation.

We would be most grateful if you would consider our concern and look forward to receiving your early reply.

Thank you for your attention.

Yours sincerely,
For and on behalf of
The Hong Kong Association of Property Management Companies

Andrew Lee
Chairman, Professional Practice Committee

c.c. Dr. Edmond Cheng – President, HKAPMC

**Buildings Energy Efficiency Bill
Table of Offences and Penalties**

Clause No.	Offences	Penalty levels	References of similar situations in other legislations
8(3)	A developer fails to submit a stage one declaration.	Fine at \$500,000 (and a daily fine of \$10,000 is being proposed, having regard to the comments of the Bills Committee	Section 14, Buildings Ordinance (Cap. 123) – failure to obtain the approval and consent for commencement of building works [Fine of \$400,000 and imprisonment for 2 years; and a daily fine of \$20,000 in the case of continuing offence]
9(11)	A developer fails to submit a stage two declaration.	Fine at \$1,000,000 (and a daily fine of \$10,000 is being proposed, having regard to the comments of the Bills Committee)	Section 21, Buildings Ordinance (Cap. 123) – occupation of a new building before issuance of occupation permit [Fine of \$100,000 and imprisonment for 2 years; and a daily fine of \$5,000 in the case of continuing offence]
12(4)	An owner fails to ensure that at all times a Certificate of Compliance Registration is in force in respect of the building.	Fine at Level 6 (\$100,000)	Sections 4 and 5, Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) – supply of prescribed products without reference number and energy labels [Fine at Level 6 (\$100,000)]

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12(5)	An owner / a responsible person fails to ensure that the central building services installations / building services installations of a unit meet and are maintained to the respective energy efficiency standards.	Fine at Level 5 (\$50,000)	Section 12, Electrical Products (Safety) Regulations (Cap. 406G) – supply of electrical products which fails to comply with applicable safety requirements [Fine at Level 6 (\$100,000) and imprisonment for 1 year; Subsequent conviction: fine of \$500,000 and imprisonment for 2 years]
17(9)	An owner / a responsible person fails to obtain a Form of Compliance issued in respect of major retrofitting works.	Fine at Level 5 (\$50,000)	Section 13, Lifts and Escalators (Safety) Ordinance (Cap. 327) – failure to deliver a certificate to the Director of Electrical and Mechanical Services (“DEMS”), indicating that major alterations are in safe working order [Fine of \$5,000 (level 2) and imprisonment for 6 months]
18(3)	An owner / a responsible person fails to maintain the building services installation covered in a Form of Compliance to the respective energy efficiency standards.	Fine at Level 5 (\$50,000)	(no similar offences are identified)
18(6)	A registered energy assessor fails to submit a copy of the Form of Compliance to DEMS.	Fine at Level 3 (\$10,000)	Sections 13 and 26, Lifts and Escalators (Safety) Ordinance (Cap. 327) – failure to deliver a certificate issued by registered engineer to DEMS [Fine of \$5,000 (level 2) and imprisonment for 6 months]

Buildings Energy Efficiency Bill
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Clause No.	Offences	Penalty levels	References of similar situations in other legislations
18(10)	A property management company / an owner fails to notify DEMS of the outstanding Form of Compliance.	Fine at Level 2 (\$5,000)	(no similar offences are identified)
22(8)	An owner fails to cause an energy audit to be carried out.	Fine at Level 5 (\$50,000) (set on par with other similar offences under the Bill, e.g. clauses 12(5) and 18(3))	Section 20, Electricity (Wiring) Regulations (Cap. 406E) – failure to conduct periodic inspection, testing and certification [Fine of \$10,000 (level 3)]
22(9)	A registered energy assessor fails to submit a copy of the Energy Audit Form and an associated energy audit report to DEMS.	Fine at Level 3 (\$10,000)	Sections 13 and 26, Lifts and Escalators (Safety) Ordinance (Cap. 327) – failure to deliver a certificate issued by registered engineer to DEMS [Fine of \$5,000 (level 2) and imprisonment for 6 months]
23(2)	An owner fails to exhibit a copy of the Energy Audit Form.	Fine at Level 5 (\$50,000)	(a) Sections 39, Lifts and Escalators (Safety) Ordinance (Cap. 327) – fail to post a certificate in a conspicuous position of landing door of a lift [Fine of \$5,000 (level 2) and imprisonment for 6 months]

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			<p>(b) Section 8, Karaoke Establishments (Licensing) Regulation (Cap. 573A) – failure to display a permit or licence [First conviction: fine at level 3 (\$10,000) and imprisonment for 3 months; Second or subsequent conviction: fine at level 5 (\$50,000) and imprisonment for 6 months]</p> <p>(c) Section 170B, Places of Public Entertainment Regulations (Cap. 172A) – failure to exhibit a licence [Upon summary conviction, liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months]</p>
26(5)	A person contravenes any direction contained in an improvement notice.	Fine at Level 4 (\$25,000) and daily fine of \$1,000 for a continuing offence	Section 15, Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) – contravention of directions in an improvement notice [Level 4 (\$25,000) and further daily fine of \$1,000 for a continuing offence]
26(7)	A developer / owner / responsible person fails to inform DEMS of change in ownership after being issued an improvement notice.	Fine at Level 3 (\$10,000)	<p>(a) Section 53, Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F) – failure to notify the Director of Marine change of ownership of vessels [Level 3 (\$10,000)]</p> <p>(b) Section 22, Shipping and Port Control Ordinance (Cap. 313) – failure to notify the Director of Marine change of ownership of stranded, abandoned or sunken vessels [Fine of \$10,000 (level 3)]</p>

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Clause No.	Offences	Penalty levels	References of similar situations in other legislations
29(3)	A person, without reasonable excuse, fails to comply with a requirement to produce the document requested by an authorized officer.	Fine at Level 5 (\$50,000) and imprisonment for 6 months	Section 24, Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) – failure to comply with a requirement to produce a prescribed product or document requested by an authorized officer [Level 5 (\$50,000) and imprisonment for 6 months]
29(3)	A person, without reasonable excuse, obstructs any authorized officer in exercising any power under that clause.	Fine at Level 5 (\$50,000) and imprisonment for 6 months	Section 24, Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) – obstruction of any authorized officer in exercising any power under that section [Level 5 (\$50,000) and imprisonment for 6 months]
29(4)	A person knowingly or recklessly provides any false or misleading information in producing a document requested by an authorized officer.	Fine at Level 6 (\$100,000) and imprisonment for 6 months	Section 21, Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) – furnishing of any information or production of any document which the relevant person knows or ought reasonably to have known was false or misleading in a material respect [Level 6 (\$100,000) and imprisonment for 6 months]
37(6)	A person fails to comply with a direction of the appeal board.	Fine at Level 5 (\$50,000)	Section 39, Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) – failure to comply with orders of appeal board [Level 5 (\$50,000)]

Buildings Energy Efficiency Bill
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Clause No.	Offences	Penalty levels	References of similar situations in other legislations
38(2)	A person, without reasonable excuse, obstructs an authorized officer in inspecting a unit other than a residential unit under an authorization signed by the Chairperson of the appeal board.	Fine at Level 5 (\$50,000) and imprisonment for 6 months	Section 24, Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) – obstruction of any authorized officer in exercising any power under that section [Level 5 (\$50,000) and imprisonment for 6 months]
48(4)	A person forges any document required by, under, or for the purposes of the Bill.	Fine at Level 6 (\$100,000) and imprisonment for 6 months	Section 21, Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) – provision of false information [Level 6 (\$100,000) and imprisonment for 6 months]
48(4)	A person knowingly or recklessly provides false or misleading information to a registered energy assessor for the purpose of obtaining a Form of Compliance or an Energy Audit Form.	Fine at Level 6 (\$100,000) and imprisonment for 6 months	Section 21, Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) – provision of false information [Level 6 (\$100,000) and imprisonment for 6 months]
48(4)	A person knowingly or recklessly provides false or misleading information to DEMS.	Fine at Level 6 (\$100,000) and imprisonment for 6 months	Section 21, Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) – provision of false information [Level 6 (\$100,000) and imprisonment for 6 months]

Buildings Energy Efficiency Bill
Table of Offences and Penalties

Clause No.	Offences	Penalty levels	References of similar situations in other legislations
49(4)	A person knowingly or recklessly provides false or misleading information for the purpose of procuring registration / renewal of registration as registered energy assessors.	Fine at Level 6 (\$100,000) and imprisonment for 6 months	Section 21, Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) – provision of false information [Level 6 (\$100,000) and imprisonment for 6 months]
49(4)	A registered energy assessor knowingly or recklessly issues any Form of Compliance or Energy Audit Form or makes any certification, which is false or misleading in any material particular.	Fine at Level 6 (\$100,000) and imprisonment for 6 months	Section 21, Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) – provision of false information [Level 6 (\$100,000) and imprisonment for 6 months]
49(4)	A person who not being a registered energy assessor, falsely takes or uses the name, title or description of a registered energy assessor.	Fine at Level 6 (\$100,000) and imprisonment for 6 months (set on par with other similar offences under clause 49)	Section 31, Architects Registration Ordinance (Cap. 408) – falsely takes or uses any name, initials, title, addition or description of an architect [Level 5 (\$50,000) and imprisonment for 1 year]