

## **Buildings Energy Efficiency Bill**

### **The Administration's response to Action Items at the Bills Committee meeting on 22 July 2010**

#### **Whether a breach of the requirement for Certificate of Compliance Registration (COCR), Form of Compliance (FOC) or Improvement Notice (IN) will constitute a cause for cancellation of property transactions; and measures which the Administration will take to facilitate solicitors/estate agents to ascertain compliance with COCR, FOC and IN before transactions**

The Buildings Energy Efficiency Bill (“the Bill”) may create a potential personal liability on the persons required to comply with the requirements of COCR, FOC or IN. The Bill creates no charge on property. The Administration thus considers that the potential personal liability for any breach of the requirements of COCR, FOC or IN should not be regarded as defect or encumbrance on the title of the property concerned.

2. Interested parties, such as potential buyers of the properties concerned, should enquire the vendors about the energy efficiency performance of the building services installations. If in doubt, interested parties should consider engaging professionals such as the Registered Energy Assessors to help ascertain whether the installations have complied with the Buildings Energy Efficiency Ordinance (“the Ordinance”). The Administration will roll out publicity programmes after the enactment of the Ordinance to enhance public awareness on requirements under the Ordinance.

#### **Flowchart on the application of COCR, FOC and IN as well as the penalties in the event of non-compliance**

3. A flowchart showing the duties of developers and responsible persons under the Bill to obtain COCRs and FOCs, respectively, and situations where INs are issued and followed up is at **Annex A**.

#### **The legislative policy regarding setting out the procedure for statutory appeals and other relating matters**

4. As explained in LC Paper No. CB(1) 2609/09-10(04), there are no standard arrangements for setting out the procedures of appeal boards. This may be done in principal Ordinance or by means of subsidiary

legislation. In either case, the substance of procedural matters governing the operation of the appeal mechanism are basically the same. There could be variations to address specific needs of individual legislative proposals.

**The person who is to determine when and whether major retrofitting works are completed, in particular, the difficulties which would arise if the property changes hands during the period in which major retrofitting works are carried out; and whether clause 17(2) would be amended in the light of the proposed Committee Stage Amendments (CSAs) to clause 17(1)**

5. Clause 17(1) of the Bill stipulates that if major retrofitting works are carried out in respect of any building services installation that serves any unit or common area of a prescribed building, the responsible person of the unit or the owner of the common area, must, within two months after the completion of the works, obtain an FOC issued in respect of the installation. The Administration explained in LC Paper No. CB(1)2140/09-10(02) that the legal duty only comes into place upon the completion of the major retrofitting works. The policy intention is to require the relevant party who, at the moment when this legal duty appears (i.e. at the moment when the major retrofitting works are completed), to perform such duty.

6. Clause 17(3) stipulates that, for the purposes of clauses 17(1) and (2), major retrofitting works are regarded as completed when the works “have been carried out and the installation is ready to be used for its principal function as designed”. We already explained in our response to Assistant Legal Advisor’s questions at LC Paper No. CB(1)1799/09-10(01) that the adoption of the triggering point, i.e., when the installation is ready to be used for its principal function as designed, is to minimise any ambiguity in the definition of the completion of major retrofitting works. Whether an installation is ready to be used for its principal function is a matter of fact.

7. We agreed that similar amendments to clause 17(1) should be made to clause 17(2). We will propose suitable CSAs.

**Reinstating clause 18(5)(b) in the proposed CSA to clause 18(5)**

8. Having considered the views of the Bills Committee at its meeting on 22 July 2010, the Administration agreed to reinstate clause 18(5)(b) in the proposed CSA to clause 18(5) to require a Registered

Energy Assessor who issues a FOC to send a copy of which to the property management company (or the owner, where no property management company can be found or ascertained) of the building concerned.

**Replacing the phrase “not more than” in clause 34(1)(a) to (e) with “at least” to allow greater flexibility in the appointment of members to the appeal board panel; and views of the Hong Kong Institution of Engineers (“HKIE”) in respect of the appointment mechanism**

9. The Administration has reviewed clause 34(1) and the proposed CSAs to clause 34(1). As explained in LC Paper No. CB(1)2444/09-10(03), the Administration proposes to increase the maximum number of Appeal Board Panel members to be appointed by amending clause 34(1) such that each professional stream as stated in respective paragraphs may return up to 10 members, instead of five. This is to provide a larger pool of candidates in the Appeal Board Panel for appointment to specific appeal boards. The proposed maximum size of the panel is considered.

10. The HKIE supported the Bill. Please see their submission at LC Paper No. CB(1) 1064/09-10(08). The Administration has not received any views from the HKIE in respect of the appointment mechanism to the Appeal Board Panel.

**Revision to the proposed clause 34(1A) to specify the capacity in which an appeal board member is appointed, and to add “at the time of appointment” after “the Secretary” in proposed clause 34(1A)**

11. As explained in the Bills Committee meeting on 22 July 2010, the intention of the proposed clause 34(1A) is to make sure that a person, while being corporate members of the Hong Kong Institution of Engineers for more than one discipline as stated in clause 34(1), will only be appointed to the appeal board panel by virtue of his membership in one discipline as specified by SEN. The Administration will revise the proposed clause 34(1A) to make this clear.

**Revision to the proposed clauses 36(3B)(a) and (b) to provide greater flexibility to cater for the situation where three members have resigned or with their membership terminated within a short period of time; and whether to replace 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**

12. The Administration agreed to revise the proposed clause 36(3B). The intention of this clause is that when three members of an appeal board resigned or have their membership terminated, the appeal board needs to be dissolved and a new appeal board is to be formed. The resignation or termination may take effect concurrently or at different times.

13. Under clause 33 of the Bill, an appellant may lodge an appeal by issuing a notice of appeal to the Director of Electrical and Mechanical Services (“DEMS”). On receiving the notice, DEMS must deliver it to SEN, who will then, under clause 35, appoint an appeal board to hear the appeal. As explained at the Bills Committee on 22 July 2010, the proposed clause 36(3B) seeks to make it clear that when certain conditions apply and a new appeal board is to be formed, “SEN is deemed to have received a notice of appeal delivered under section 33”. This formulation provides certainty over the enabling provision (being clause 33) for SEN to appoint members to an appeal board. It also helps ensure that other follow up actions will be done in line with other relevant clauses (e.g. clause 35(1), which specifies the timeframe for setting up the Appeal Board). The Administration considers the current formulation appropriate and hence no amendments are necessary.

14. The mechanism in forming an appeal board under section 16(5) of the Product Eco-responsibility Ordinance (Cap. 603) is different from that proposed under the Bill in terms of constitution and appeal mechanism. We consider it not applicable to our case.

**Adding “and expenses” after “costs” in clause 39(2)(a) if the costs referred to are intended to not limiting to legal costs; to 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”**

15. In avoidance of doubt, the Administration already proposed CSAs at LC Paper No. CB(1)2609/09-10(04) that the Chinese text of clause 39 be suitably revised to state clearly whether the costs are referred to as 「訟費」 or more generally 「費用」. To further avoid any doubts, the Bills Committee suggested and we agreed to add the phrase “and expenses” after “costs” in clause 39(2)(a). We will also amend clause 39(3) to replace “awarded” with “and expenses ordered to be paid”.

16. The Administration considers that the meaning of “costs” in legal proceedings has been clear. CSAs to clause 41 are proposed to make clear that the proceedings before an appeal board are legal proceedings and hence the term “costs” would normally include fees, charges, disbursements, expenses and remuneration. We do not consider it necessary to include in the speech to be delivered by SEN at the resumption of Second Reading debate on the Bill the meaning of “costs”.

**Replacing the phrase “is to” in the proposed clause 40(6A) with “must”**

17. The Administration agreed to replace “is to” in the proposed clause 40(6A) with “must”.

**Consider providing positive vetting procedure for amendments to Schedules 1 to 4 under clause 43**

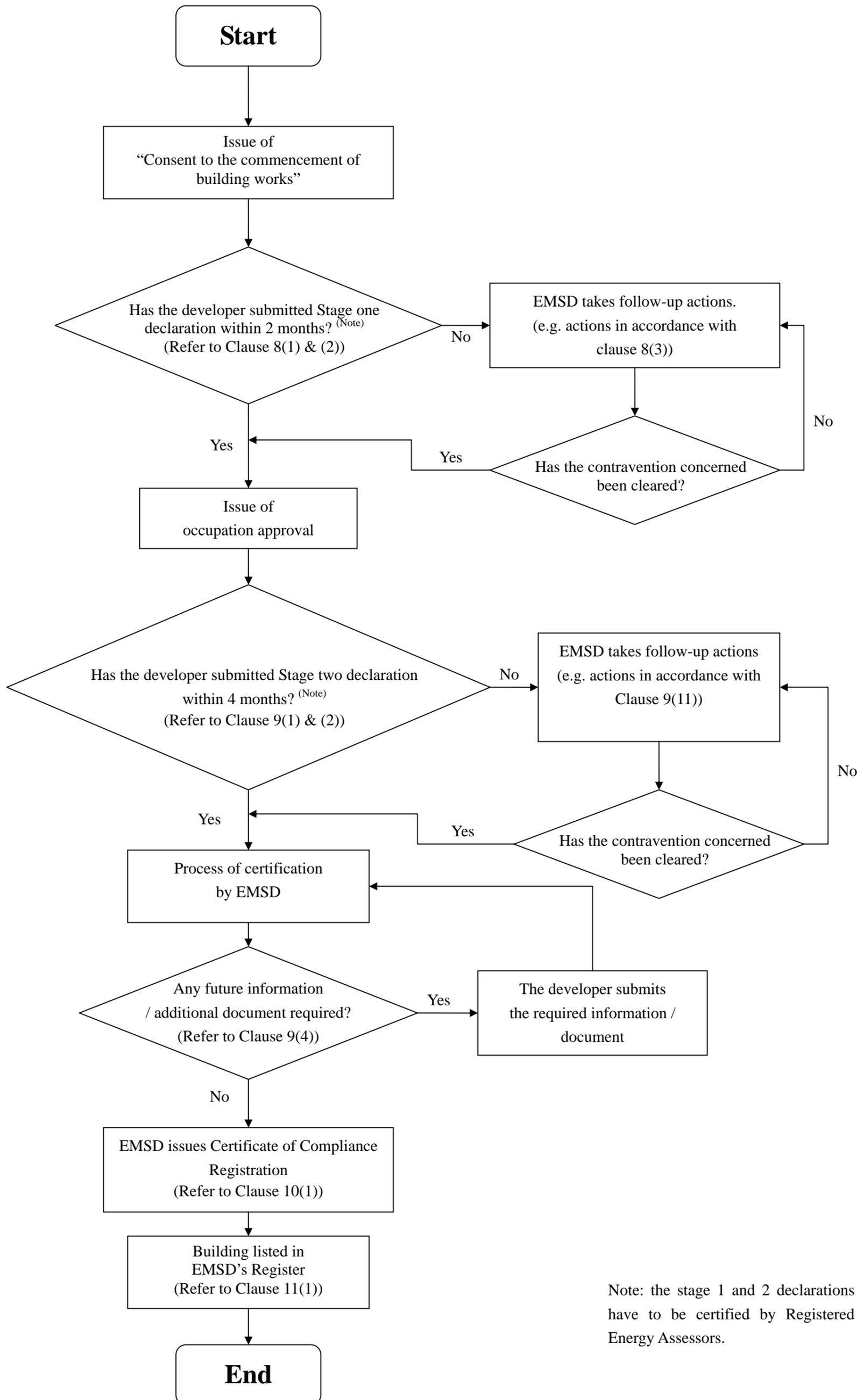
18. The Administration considers that it is not uncommon for Schedules to Ordinances to be amended by negative vetting procedure. This should apply to the Schedules to the Bill.

**CSAs**

19. A list of revised CSAs is at **Annex B**.

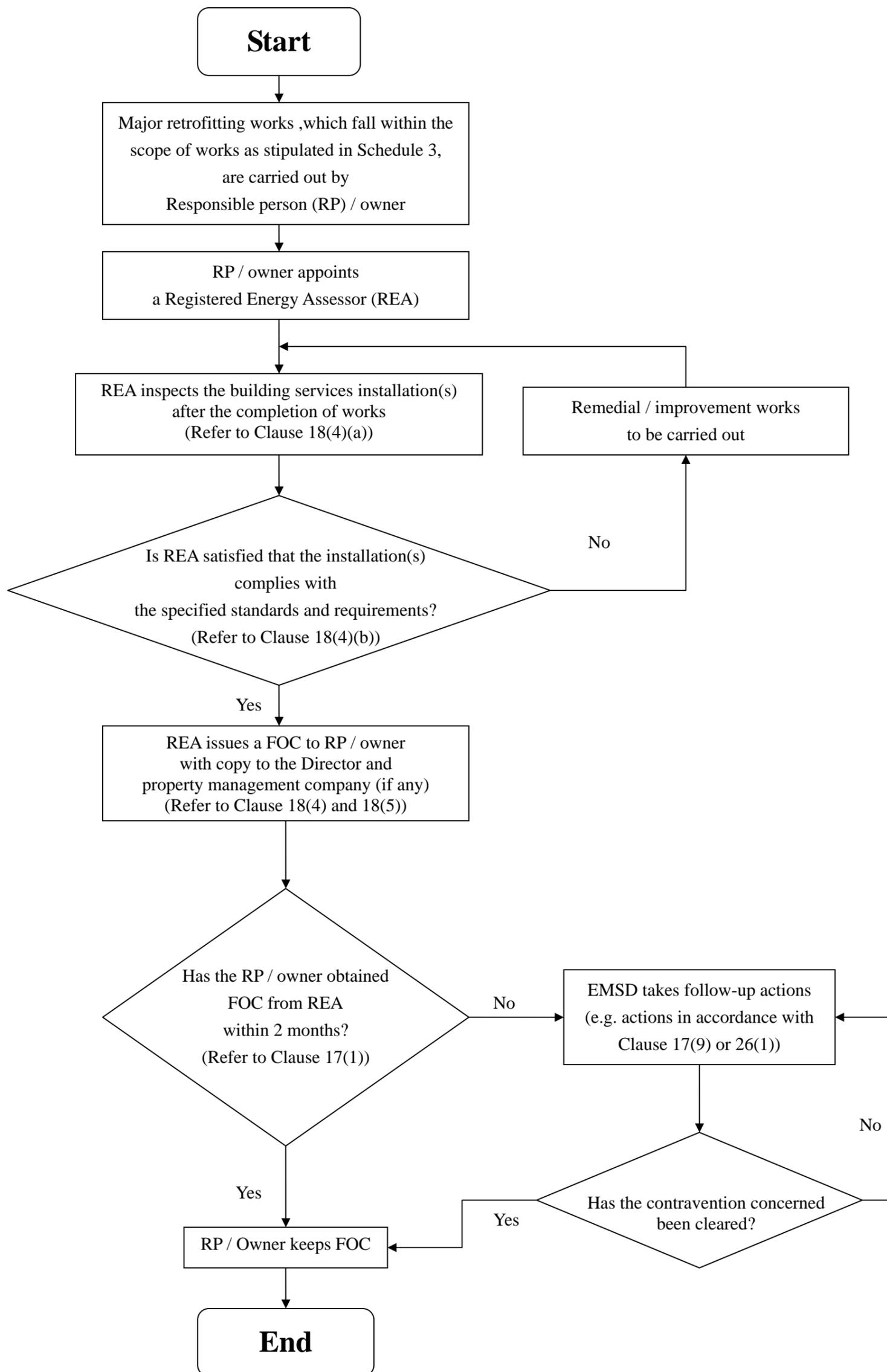
**Environment Bureau  
Electrical and Mechanical Services Department  
September 2010**

# Flowchart of Certificate of Compliance Registration (COCR)

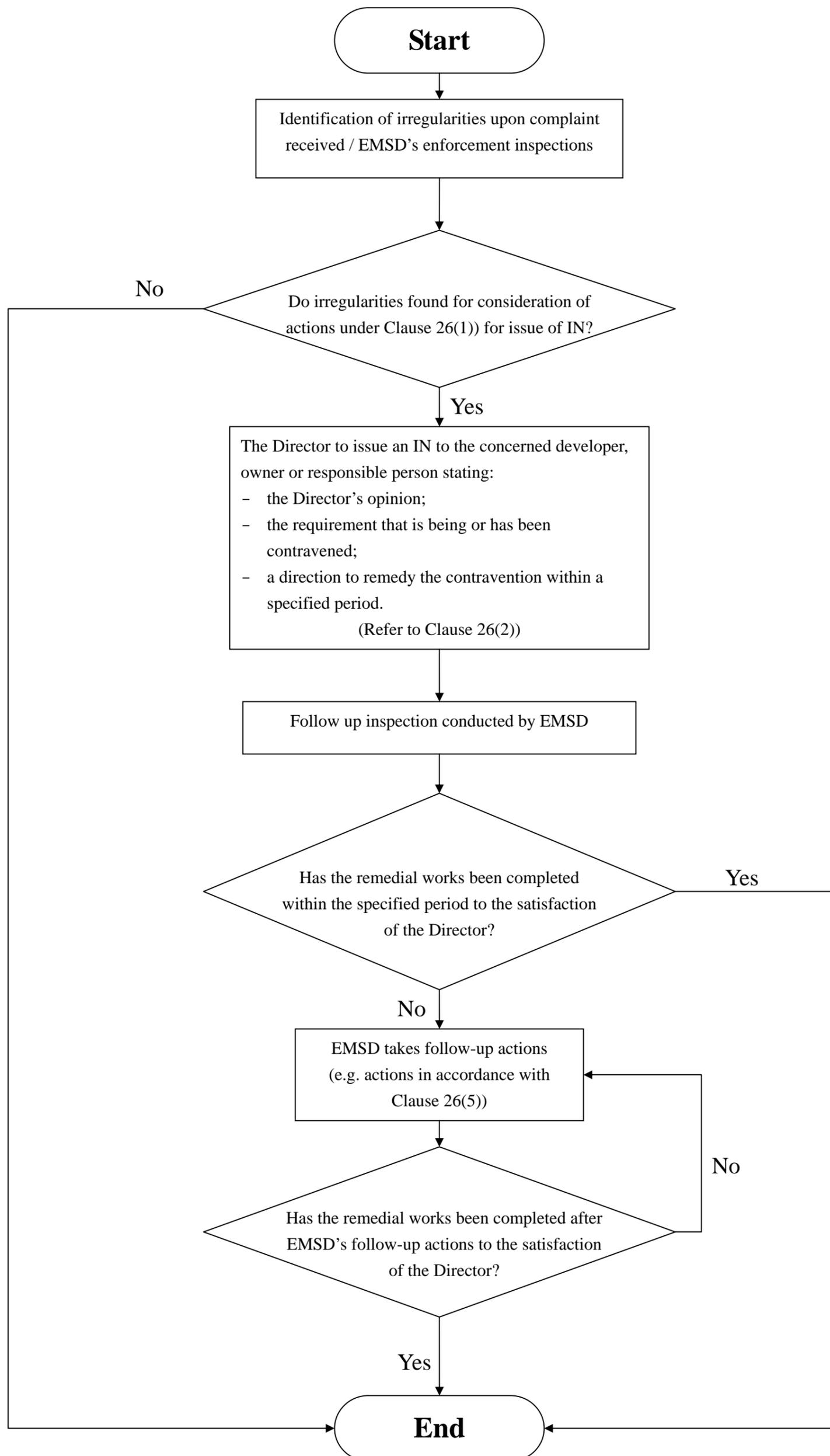


Note: the stage 1 and 2 declarations have to be certified by Registered Energy Assessors.

# Flowchart of Form of Compliance (FOC)



## Flowchart of Improvement Notice (IN)



**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 –  “(b) a portion of a composite building that is for residential use,”.

- 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 65.03m<sup>2</sup>; 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.
- 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.”.
- 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”.

