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24 September 2010

Mr Steven Shum and Ms Doreen Kong  
c/o Ms Christine Chu  
Property Committee  
The Law Society of Hong Kong  
3/F Wing On House  
71 Des Voeux Road  
Central  
Hong Kong

**By Fax (2845 0387) and By Mail**

Dear Mr Shum and Ms Kong,

**Buildings Energy Efficiency Bill  
Bills Committee meeting on 20 September 2010**

You represented the Property Committee of the Law Society of Hong Kong (“the Law Society”) and offered views on the Buildings Energy Efficiency Bill (“the Bill”) at the Bills Committee meeting on 20 September 2010. I am writing to follow up on the deliberation of the meeting.

**Enhancing transparency**

The Law Society considered that transparency should be further enhanced by making available information about Certificates of Compliance Registration (“COCRs”), Forms of Compliance (“FOCs”) and Improvement Notices (“INs”). Clause 11 of the Bill already

stipulates that the Director of Electrical and Mechanical Services (“the Director”) must keep a register of buildings issued with COCRs and make available of the register for members of the public to inspect free of charge at reasonable times. The Administration has also thoroughly considered the Law Society’s views and agreed that, for transparency sake, part of the records of FOCs and INs could be made available for public inspection.

### FOCs

Clause 17 of the Bill requires an owner of a building services installation or responsible person of a unit to obtain a FOC within two months after the completion of major retrofitting works. The owner or responsible person should engage a Registered Energy Assessor (“REA”) who, under clause 18, would issue a FOC after personally inspected the installations concerned and being satisfied that the installations concerned comply with the specified standard and requirements. The REA who issues a FOC must send of a copy of it to the Director.

The Administration now proposes to make available an extract of records of the FOCs received by the Director at the website of the Electrical and Mechanical Services Department (“EMSD”). We would suitably design the search page to enable search by property addresses. Information from a FOC which we intend to provide includes:

- (a) whether there have been an FOC issued in respect of the property concerned and if yes;
- (b) the date of its issue and the year (and version) of the Building Energy Code being referred to; and
- (c) the building services installation(s) involved.

Records of the personal information of the owners or responsible persons of the units or the REAs who issued the FOCs, would not be disclosed at the website.

The Administration would wish to make clear that the provision of the above information only aims to enhance transparency. The existence or non-existence of a record of an FOC at EMSD’s website shall not be taken as the primary reference by parties to property transactions. The major reason is that the Administration only keeps record of the copies of FOCs issued by REAs and there are always risks that no FOC is issued for a major retrofitting works or some FOCs are not copied to the Director. Also, on receipt of the FOCs, the Administration would not be able to immediately ascertain the accuracy of the data

contained therein. As such, this arrangement is intended to be introduced administratively.

### INs

Clause 26(6) of the Bill provides that if an IN is issued to a developer, owner or responsible person (“the former party”) by the Director but before the period specified in the IN expires and before any contravention of the concerned is remedied, another person replaces the former party as the developer, owner or responsible person, then the former party must inform DEMS within seven days after the change and the IN issued to the former party ceases to have effect. The former party commits an offence if he fails to notify DEMS, without reasonable excuse, of the change.

The Law Society considered that some records of INs should be made available to members of the public, so that parties to property transactions may have a clearer picture whether the property concerned is being enforced against. While the Administration has no plans to register INs issued under the Bill at the Land Registry, we agreed to explore the possibility of disclosing information in respect of INs on the Internet.

After serious consideration, the Administration proposes to make available information of INs on EMSD’s website, similar to the treatment of FOCs. We would suitably design the search page to enable search by property addresses. Information from an IN which we intend to provide includes:

- (a) whether there have been an IN issued in respect of the property concerned and if yes; and
- (b) the date of its issue and the building services installation(s) involved.

The record would be removed if the non-compliance has been rectified to the satisfaction of the Director. On the other hand, details of the non-compliance and personal information of the persons whom the INs are addressed to would not be disclosed. If in need, interested parties of the property concerned should always seek full disclosure from the existing owner or responsible person of the property. The Administration plans to implement this arrangement administratively.

### **Charge on property**

The Law Society also raised questions on whether

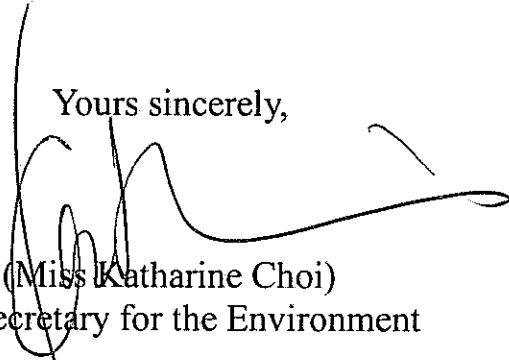
non-compliance under the Bill would constitute a charge on the property concerned. Our legal advice is that the Bill would only create a potential personal liability on the persons required to comply with the requirements of COCR, FOC or IN but no charge on property. Hence, the potential personal liability 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. This confirms with our policy intention. That said, the Law Society expressed worries at the Bills Committee meeting on 20 September 2010 that such policy intention lacked clear indication in the Bill.

After serious consideration, the Administration now plans to propose a CSA to the Bill to make it clear that non-compliance with the Bill would not create any charge on the property. However, it should be noted that such express clause would be framed in such a way that it would not prejudice the Government's right as landlord in the land grant.

We understand that the Law Society has been in close deliberation with the Lands Department on the issue of Government's right of re-entry in the past few years. As such deliberation concerns the Government's overarching land policy, we do not consider the scrutiny of the captioned Bill an appropriate forum to pursue this issue. You may wish to follow up the matter with the Lands Department at other occasions.

As the Bills Committee will discuss proposals raised in this letter at its coming meeting on 30 September 2010, should you have any views on the proposals, grateful if you could revert by **noon, 28 September 2010 (Tuesday)**. Thank you again for your constructive advice on the captioned Bill.

Yours sincerely,



(Miss Katharine Choi)

for Secretary for the Environment

c.c.

Clerk to the Bills Committee on Buildings Energy Efficiency Bill  
Mr K K Li, Electrical and Mechanical Services Department  
Mr Gilbert Mo, Department of Justice  
Miss Joyce Wong, Lands Department