

Buildings Energy Efficiency Bill

The Administration's response to Action Items at the Bills Committee meeting on 20 September 2010

To consider adding express provision in the Bill that any non-compliance will not constitute a cause for the Government to exercise its right of re-entry under the Land Grant

The Administration explained to the Bills Committee at its meeting on 20 September 2010 and also at LC Paper No. CB(1)2840/09-10(02) that the Buildings Energy Efficiency Bill ("the Bill") may only create a potential personal liability on the persons required to comply with the requirements of Certificate of Compliance Registration ("COCR"), Form of Compliance ("FOC") or Improvement Notice ("IN"). The Bill creates no charge on property.

2. 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. This also confirms with our policy intention. That said, the Law Society of Hong Kong ("the Law Society") expressed worries at the Bills Committee meeting that such policy intention lacked clear indication in the Bill.

3. After careful consideration, the Administration agrees to include in the Committee Stage Amendments ("CSAs") to the Bill to make it clear that non-compliance with the Bill would not create a charge on the property. However, it should be noted that such an express clause would be framed in such a way that it would not prejudice the Government's right as landlord in the land grant.

4. 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 we see it, the main focus was to ease the difficulties faced by the legal profession in proving good title to properties for their clients where there have been technical breaches of the lease conditions. We do not consider that the above discussion on Government's right of re-entry should be pursued during the scrutiny of this Bill which is not directly relevant. We have relayed to the Law Society our above views and suggested amendment to the Bill.

To re-consider the suggestion of withholding the issue of occupation approval until confirmation of compliance with the requirement for COCR by developers

5. Members raised at the Bills Committee meeting on 20 September 2010 that the issue of occupation approval of buildings should be withheld until the requirements for COCR have been complied with. The Administration has considered this suggestion again, and maintains the view that it is inappropriate to withhold the issue of occupational approval until confirmation of compliance with the Bill, since the requirements on issuing occupation approval are mainly related to safety requirements, the nature of which is different from the proposed scope of control of the Bill. In response to the views of the Bills Committee at earlier meetings, we have already proposed CSAs to impose a daily fine on the developers who fail to comply with clauses 8 and 9 of the Bill. We consider that this would provide deterrent against non-compliance.

To re-consider the need for including in clause 10 a time-frame within which the Director should issue or refuse to issue a COCR. To also advise the consequences/circumstances if the Director refuses to issue a COCR

6. Members raised at the Bills Committee meeting on 20 September 2010 once again whether there was a need to specify in clause 10 a time-frame within which the Director of Electrical and Mechanical Services (“DEMS”) should issue or refuse to issue a COCR. As explained in LC Paper No. CB(1)2021/09-10(02), we do not consider it appropriate to set a time frame in the legislation given the fact that complexity of cases varies from one to another. Instead, upon the enactment of the Ordinance, the Electrical and Mechanical Services Department (“EMSD”) would list out the relevant target response time in relation to the types of service required under the Ordinance in the form of performance pledge, which is a useful indicator for members of the public to evaluate the services of the Administration.

7. Under clause 8 of the Bill, developers are required to submit a stage one declaration to DEMS within two months after obtaining the consent to the commencement of building works for superstructure construction. The stage one declaration is to declare that suitable design provisions are included to enable compliance with the specified standards and requirements. Within four months after obtaining the occupation approval, developers are required to submit a stage two declaration under clause 9 of the Bill to confirm compliance. Both declarations need to be

made in the specified form (samples of which were already annexed at LC Paper No. CB(1) 1353/09-10(02)), accompanied by the documents specified in the form and certified by a Registered Energy Assessor (“REA”).

8. The requirements on what documents and information the developers need to include in the declarations have been clearly stated in the specified forms. Any submission which fails to comply with the legal requirements is invalid. In other words, if a developer fails to make declarations by providing the required information in the specified forms, or fails to submit the documents which ought to accompany the specified forms, or fails to engage an REA to certify the declarations, the developer has not fulfilled the statutory requirements of making the declarations (since those are not made in the manner stipulated in clauses 8 and 9) and hence has committed offences. On the other hand, if the developer has duly made the declarations in accordance with clauses 8 and 9, DEMS must issue a COCR to the developer.

9. Clause 9(4) of the Bill empowers DEMS to request the developer to furnish any further information required. In the rare situations where a developer fails to respond to DEMS who seeks additional information relying on clause 9(4), and hence DEMS refuses to issue a COCR, an IN could be issued under clause 26 to the developer requiring him to comply with the request. Failure to observe the requirements at an IN is an offence. After considering the above, the Administration considers that the proposed mechanism in the Bill should work well, in particular when it has been carefully considered and supported by the trade.

To provide information on the proposed registers for Form of Compliance and Improvement Notice, and to advise the types of information that would be/would not be included in the registers. To also advise the means through which searches could be made under the registers, and whether fee would be charged for searches by the public

10. Having considered the views of the Law Society and the Bills Committee, the Administration considers that part of the records of FOCs and INs could be made available for public inspection.

FOCs

11. Clause 17 of the Bill requires a FOC be obtained by the owner or responsible person concerned within two months after the completion of

major retrofitting works. The owner or responsible person should engage an 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 a copy of it to DEMS.

12. The Administration now proposes to upload an extract of records of the FOCs received by the Director onto EMSD's website. We would suitably design the search engine to enable search by property address. Information of a FOC which we intend to provide includes:

- (a) whether a FOC has been issued in respect of the property concerned, and if so;
- (b) the date of issue and the relevant version of the Building Energy Code being referred to; and
- (c) the type(s) of building services installation involved.

To preserve personal data privacy, records of the personal information of the owners or responsible persons of the units, or the REAs who issued the FOCs, are not intended to be disclosed at the website.

13. The Administration would wish to make it clear that the provision of the above information only aims to enhance transparency. Parties to property transactions, for instance, should not rely solely on the existence or otherwise of a FOC record at EMSD's website to determine whether a FOC in respect of the property concerned has been taken out or issued. The major reason is that the Administration only keeps record of the copies of FOCs issued by REAs and there are chances 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 take some time to ascertain the accuracy of the data contained therein. As such, this arrangement is intended to be introduced administratively. Prospective property purchasers are strongly advised to check with their contracting parties for confirmation.

INs

14. 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.

15. The Administration now proposes to make administrative arrangements for uploading relevant information of INs onto EMSD's website, similar to the FOCs. We would suitably design the search engine to enable search by property address. Information of an IN which we intend to provide includes:

- (a) whether an IN is still in force in respect of the property concerned and, if so;
- (b) the date of issue and the type(s) of building services installation involved.

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

16. We have relayed to the Law Society our proposed arrangement for the provision of information of FOCs and INs.

To review the drafting of clause 47(2) as the effect of the clause may cover all areas and not just common area of the building.

17. Clause 47 provides for the manner in which notices and documents are to be issued, submitted or sent under the Bill. The Administration intends to specify in clause 47(2) that in respect of common areas of buildings, a notice issued to a corporation shall be taken as a notice issued to all owners of undivided shares in the land on which the building is situated. We agree that CSAs should be introduced to reflect this intention clearly.

To re-consider providing positive vetting procedures for amendments to Schedules 1 to 4 under clause 43.

18. Having regarded to the views of the Bills Committee at its meeting on 22 July 2010, the Administration agrees that Schedules 1 to 4 of the Bill would be amended by positive vetting procedures. We will propose CSA to clause 43 to effect this.

To provide a marked-up copy for the proposed Committee Stage amendments.

19. A list of revised CSAs is at **Annex A** and a marked-up copy of the relevant clauses showing the CSAs is at **Annex B**.

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

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 65.03m²; 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.”.

43 By deleting subclause (1) and substituting –

“(1) The Secretary may, with the approval of the Legislative Council, amend Schedule 1, 2, 3 or 4 by notice published in the Gazette.

(1A) The Secretary may amend Schedule 5 by notice published in the Gazette.”.

43(2) By deleting “subsection (1)” and substituting “this section”.

47(2) By adding “any common area of” after “in respect of”.

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.”.

BUILDINGS ENERGY EFFICIENCY BILL - CSAs
Markup version as at 30.9.2010

2. Interpretation

In this Ordinance—

...

“common area” (公用地方), in relation to a prescribed building—

- (a) means any area of the building other than the parts that have been specified in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner; and
- (b) ~~without limiting paragraph (a), includes~~ includes, unless so specified, car parks, entrance lobbies, lift lobbies, corridors, staircases, common toilets, common store rooms, plant rooms, switch rooms, pipe ducts, cable ducts, refuse rooms, material recovery chambers, covered podia, covered playgrounds, occupants' clubhouses and building management offices;

“composite building” (綜合用途建築物) means, having regard to the definitions of “commercial building”, “industrial building” and “residential building”, a building that is—

- (a) partly for residential use and partly for non-residential use;
- (b) partly for industrial use and partly for non-industrial use; or
- (c) partly for commercial use and partly for non-commercial use;

“residential building” (住宅建築物) means a building solely used for residential purposes and includes—

- (a) student hostels and staff quarters; and
- (b) ~~such parts of a composite building that are for residential use~~ a portion of a composite building that is for residential use,

but does not include a hotel or a guesthouse;

...

4. Limit of scope of application

(1) This Ordinance does not apply to—

- (a) a building of which the main electrical switch governing the electricity supply of the building has an approved loading not exceeding 100A, 1-phase or 3-phase;

- (b) ~~a building that is constructed in accordance with the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) a building –~~
 - ~~(i) of not more than 3 storeys;~~
 - ~~(ii) having a roofed-over area of not more than 65.03m²;~~
 - ~~and~~
 - ~~(iii) having a height of not more than 8.23m;~~
- (c) a proposed monument or a proposed historical building declared under section 2A of the Antiquities and Monuments Ordinance (Cap. 53); or
- (d) a monument or a historical building declared under section 3 of the Antiquities and Monuments Ordinance (Cap. 53).

(2) This Ordinance does not apply to a building if the Director is satisfied on a declaration by the owner of the building that the building will cease to exist within 12 months after the date of the declaration.

(3) This Ordinance does not apply to the building services installations specified in Schedule 2.

8. Declaration at design stage

- (1) The developer of a proposed building must—
 - (a) make a declaration to be called a stage one declaration; and
 - (b) submit the declaration to the Director within 2 months after the day on which the consent to the commencement of building works for the superstructure construction of the building is given.
- (2) A stage one declaration must—
 - (a) declare that all building services installations to be provided by the developer in the proposed building at or before the time when a stage two declaration is made in respect of the building are designed, and will be installed and completed, in accordance with the specified standards and requirements;
 - (b) be in the specified form;
 - (c) be accompanied by the documents specified in the form; and
 - (d) be certified by a registered energy assessor to the effect that suitable design provisions have been incorporated into the planning and design of the building in accordance with the specified standards and requirements.

(3) A developer who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000 and, in the case of a continuing offence, to a further daily fine of \$10,000 for each day during which the offence continues.

9. Declaration at occupation approval stage

(1) Subject to subsections (5) and (10), the developer of a building must—

- (a) make a declaration to be called a stage two declaration; and
- (b) submit the declaration to the Director within 4 months after the day on which the occupation approval is issued in respect of the building.

(2) A stage two declaration must—

- (a) declare that all building services installations provided by the developer in the building at or before the time when the declaration is made have been designed, installed and completed in accordance with the specified standards and requirements;
- (b) be in the specified form;
- (c) be accompanied by the prescribed fee and the documents specified in the form; and
- (d) be certified by a registered energy assessor to the effect that all building services installations provided by the developer in that building at or before the time when the declaration is made have been designed, installed and completed in accordance with the specified standards and requirements.

(3) A certification by a registered energy assessor made for the purposes of subsection (2) is of no effect unless the assessor has, in the 30 days before the certification, personally inspected the building services installation covered by the certification.

(4) The Director may require the developer to furnish any further information, or produce any additional document, that the Director considers reasonably necessary for the purposes of considering the making of the declaration.

(5) The Director may, on an application in writing by the developer concerned, extend the period specified in subsection (1)(b).

(6) The Director must not exercise the power under subsection (5) unless

the developer satisfies the Director that there is a reasonable ground for the extension.

(7) An extension granted under subsection (5) may be subject to any condition that the Director thinks fit.

(8) If—

(a) an extension granted under subsection (5) is subject to any condition under subsection (7) and the condition is contravened; or

(b) the ground on which the extension was granted no longer exists, the Director may, by a notice issued to the developer concerned, withdraw the extension.

(9) If the Director withdraws an extension under subsection (8), the Director may issue a notice to the developer concerned directing the developer to submit a stage two declaration within a period specified in the notice.

(10) If the Director issues a notice to a developer under subsection (9), the developer must comply with the direction in the notice.

(11) A developer who contravenes subsection (1) or (10) commits an offence and is liable on conviction to a fine of \$1,000,000 and, in the case of a continuing offence, to a further daily fine of \$10,000 for each day during which the offence continues.

11. Register of buildings issued with Certificate of Compliance Registration

(1) The Director must keep a register of buildings issued with a Certificate of Compliance Registration.

(2) The register must contain, in respect of every building entered in the register—

(a) the name and address of the building;

(b) the registration number, the date of issue and the expiry date of the Certificate of Compliance Registration issued in respect of the building; and

(c) any other particulars that the Director thinks fit.

(3) To enable a member of the public to ascertain whether a building is issued with a Certificate of Compliance Registration, the Director ~~must~~

~~make a register kept under subsection (1) available for members of the public to inspect free of charge at all reasonable times.~~

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.

(4) The register kept under subsection (1) must be maintained in the form and manner, and updated at any interval, that the Director thinks fit.

12. Duties of owners and responsible persons of building with Certificate of Compliance Registration

(1A) This section applies in relation to a building in respect of which a Certificate of Compliance Registration has been issued.

(1) The owner of a building must ensure that at all times a Certificate of Compliance Registration is in force in respect of the building.

(2) The owner of a building must ensure that—

- (a) the central building services installations in the building are maintained to a standard not lower than that applied in the first Certificate of Compliance Registration issued in respect of the building; and
- (b) if a Form of Compliance has been issued in respect of any central building services installation in the building, the installation is maintained to a standard not lower than that applied in the latest Form of Compliance issued in respect of the installation.

(3) The responsible person of a unit of a building must ensure that—

- (a) the building services installations serving the unit that are not the central building services installations in the building meet, and are maintained to, a standard not lower than that applied in the first Certificate of Compliance Registration issued in respect of the building; and
- (b) if a Form of Compliance has been issued in respect of any building services installation serving the unit, the installation is maintained to a standard not lower than that applied in the latest Form of Compliance issued in respect of the installation.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6.

(5) A person who contravenes subsection (2) or (3) commits an offence and is liable on conviction to a fine at level 5.

17. Duty to obtain Form of Compliance for major retrofitting works

(1) Subject to subsection (4), if major retrofitting works are carried out in respect of any building services installation that serves any unit or common area of a building, ~~the responsible person of the unit or the owner of the common area, as may be appropriate~~ 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, must, within 2 months after the completion of the works, obtain a Form of Compliance issued in respect of the installation.

(2) Subject to subsection (4), if major retrofitting works are carried out in respect of any central building services installation, ~~the owner of the installation~~ a person who is the owner of the installation as at the completion of the works must, within 2 months after the completion of the works, obtain a Form of Compliance issued in respect of the installation.

(3) For the purposes of subsections (1) and (2), major retrofitting works carried out in respect of any building services installation are regarded as completed when—

- (a) the works have been carried out and the installation is ready to be used for its principal function as designed; or
- (b) if the works involve 2 or more installations, the works have been carried out and all the installations are ready to be used for their principal functions as designed.

(4) The Director may, on an application in writing by the responsible person or owner concerned, extend the period specified in subsection (1) or (2) if the Director is satisfied that there is a reasonable ground for the extension.

(5) An extension granted under subsection (4) may be subject to any condition that the Director thinks fit.

(6) If—

- (a) an extension granted under subsection (4) is subject to any

condition under subsection (5) and the condition is contravened;
or

- (b) the ground on which the extension was granted no longer exists, the Director may, by a notice issued to the responsible person or owner concerned, withdraw the extension.

(7) If the Director withdraws an extension under subsection (6), the Director may issue a notice to the responsible person or owner concerned directing the responsible person or owner to obtain a Form of Compliance issued in respect of the building services installation within a period specified in the notice.

(8) If the Director issues a notice to a person under subsection (7), the person must comply with the direction in the notice.

(9) A person who fails to comply with subsection (1), (2) or (8) commits an offence and is liable on conviction to a fine at level 5.

18. Requirements applicable to Form of Compliance

(1) A Form of Compliance must—

- (a) be issued by a registered energy assessor;
- (b) be in the specified form;
- (c) be accompanied by the documents specified in the form;
- (d) contain a declaration by the assessor that—
 - (i) the assessor has, in the 30 days before the declaration, personally inspected the building services installations in respect of which the major retrofitting works were carried out and which are specified in the Form of Compliance; and
 - (ii) the assessor is satisfied that the installations comply with the specified standards and requirements.

(2) If a Form of Compliance is issued in respect of any building services installation, the responsible person of the relevant unit or the owner of the relevant common area of the building or, in the case of a central building services installation, the owner of the installation must maintain the installation to a standard not lower than that applied in that Form of Compliance.

(3) A responsible person or an owner who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 5.

(4) A registered energy assessor who—

- (a) inspects a building services installation in any building or any unit of a building on the instruction of a responsible person or an owner acting in compliance with section 17(1) or (2); and
 - (b) is satisfied that the installation complies with the specified standards and requirements, must issue a Form of Compliance accordingly and comply with subsection (5).
- (5) A registered energy assessor who issues a Form of Compliance must—
- (a) send a copy of it together with the document specified in the Form of Compliance to the Director; and
 - (b) send another copy of it to—
 - (i) the property management company of the building concerned; or
 - (ii) if there is no such property management company or the property management company cannot be found or ascertained, the owner of the building.
- (6) A registered energy assessor who fails to comply with subsection (5) commits an offence and is liable on conviction to a fine at level 3.

~~(7) If a property management company or, if subsection (5)(b)(ii) applies, an owner of a building does not receive a copy of a Form of Compliance from a registered energy assessor within 2 months after the completion date of the major retrofitting works concerned, the company or owner must issue a notice of the fact to the Director.~~

~~(8) Subsection (7) does not apply to a person who, at the time when the person applied for an extension under section 17(4), declared himself or herself to be the owner of the relevant building.~~

~~(9) A notice under subsection (7) must—~~

- ~~(a) be in the specified form; and~~
- ~~(b) be issued to the Director within 30 days after the 2-month period referred to in that subsection.~~

~~(10) A property management company or an owner who fails to comply with subsection (7) commits an offence and is liable on conviction to a fine at level 2.~~

22. Energy audit requirement

(1) The owner of a building must cause an energy audit to be carried out in accordance with this section at intervals no longer than 10 years in respect of the central building services installations ~~common areas~~ of the building.

(2) The first energy audit for the central building services installation ~~common areas~~ of a building issued with a Certificate of Compliance Registration must be carried out within 10 years after the building is first issued with a Certificate of Compliance Registration.

(3) The first energy audit for the central building services installation ~~common areas~~ of a building without a Certificate of Compliance Registration must be carried out according to the schedule specified in Schedule 5.

(4) An energy audit must be carried out—
(a) by a registered energy assessor; and
(b) in accordance with a code of practice.

(5) A registered energy assessor who carries out an energy audit in respect of a building must, within 30 days after issuing an Energy Audit Form, send a copy of the Energy Audit Form and an energy audit report on the audit to the Director.

(6) An Energy Audit Form issued under subsection (5) must—
(a) be in the specified form; and
(b) be accompanied by the documents specified in the form.

(7) An Energy Audit Form issued in respect of a building ceases to have effect on the issue of another Energy Audit Form in respect of the building.

(8) An owner of a building who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

(9) A registered energy assessor who contravenes subsection (5) commits an offence and is liable on conviction to a fine at level 3.

29. Powers of authorized officers

(1) An authorized officer may, for the purposes of ascertaining whether this Ordinance has been or is being complied with—

~~(a) enter any part of a prescribed building (including a prescribed building under construction) that is not a residential unit;~~

(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;

(b) inspect, examine, monitor and test any building services installation in a prescribed building;

(c) require the responsible person of any prescribed building or any unit of a prescribed building or any person who has been involved in the installation of any building services installation in any prescribed building to produce—

(i) any document relating to the building services installations in the building including any drawing, test record on the energy efficiency performance of the building services installations, purchasing order and works contract; or

(ii) any other document, information or article that the officer reasonably believes to be relevant to an offence or a suspected offence under this Ordinance; and

(d) take a copy of any drawing, record, order, contract, document or information referred to in paragraph (c).

(2) An authorized officer may take with him or her any assistant and equipment as may be necessary for the exercise of any power under subsection (1).

(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.

(3) A person who, without reasonable excuse—

- (a) fails to comply with a requirement made under subsection (1)(c);
or
- (b) obstructs any authorized officer or any assistant referred to in subsection (2) in the exercise of any power under this Ordinance, commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(4) A person who, in purported compliance with a requirement made under subsection (1)(c), knowingly or recklessly provides any false or misleading information commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

31. Register of Registered Energy Assessors

(1) The Director must keep a Register of Registered Energy Assessors.

(2) The Register of Registered Energy Assessors must contain such information as may be provided for in the regulation made under section 42.

(3) To enable a member of the public to ascertain whether any person is a registered energy assessor, the Director ~~must make the Register of Registered Energy Assessors available for members of the public to inspect free of charge at all reasonable times.~~

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.

(4) The Register of Registered Energy Assessors must be maintained in the form and manner, and updated at any interval, that the Director thinks fit.

34. Appeal board panel

(1) The Secretary is to appoint the members of a Buildings Energy Efficiency Appeal Board Panel which is to consist of—

(a) not more than 10 members~~5 members~~ who are corporate members of the Hong Kong Institution of Engineers and are in the electrical discipline;

(b) not more than 10 members~~5 members~~ who are corporate

members of the Hong Kong Institution of Engineers and are in the mechanical discipline;

- (c) not more than 10 members~~5 members~~ who are corporate members of the Hong Kong Institution of Engineers and are in the building services discipline;
- (d) not more than 10 members~~5 members~~ who are corporate members of the Hong Kong Institution of Engineers and are in the environmental discipline; and
- (e) not more than 10 members~~5 members~~ who are members of the Engineers Registration Board established under the Engineers Registration Ordinance (Cap. 409).

(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.

(2) A person is not eligible for appointment under subsection (1) if the person—

- (a) is a public officer; or
- (b) has not practised in the engineering profession in Hong Kong for at least 10 years.

(3) A member of the appeal board panel is to be appointed for a term of 3 years and may be reappointed on the expiry of a term.

(4) The Secretary must give notice in the Gazette of any appointment or reappointment under this section.

(5) A member of the appeal board panel may, at any time, resign by issuing a notice in writing to the Secretary.

(6) The Secretary may terminate the office of a member of the appeal board panel if the Secretary is satisfied that the member—

- (a) has become a public officer;
- (b) has become bankrupt or has entered into a voluntary arrangement within the meaning of section 2 of the Bankruptcy Ordinance (Cap. 6) with his or her creditors;
- (c) is incapacitated by physical or mental illness;
- (d) has ceased to be of the capacity by virtue of which he or she was appointed; or
- (e) is otherwise unable or unfit to perform the functions of a member.

(7) The Secretary must give notice in the Gazette of any termination of office under this section.

35. Appeal board

(1) Within 21 days after receiving a notice of appeal delivered under section 33, the Secretary must appoint from among the members of the appeal board panel a Buildings Energy Efficiency Appeal Board to hear the appeal.

(2) An appeal board is to consist of 5 members appointed from all 5 categories of members specified in section 34(1).

(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.

(3) The members of an appeal board must elect a Chairperson from among themselves to preside at the hearing of the appeal.

(4) The members of an appeal board may be paid out of the general revenue any remuneration that the Financial Secretary determines.

36. Proceedings of appeal board

(1) The quorum for a meeting of an appeal board is 3 members~~4 members~~.

(2) Any question before an appeal board must be determined by a majority of the members.

(3) If there is an equality of votes in respect of any question to be determined in an appeal, the Chairperson of an appeal board has a casting vote in addition to his or her original vote.

(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.

(4) In the performance of their functions under this Ordinance, the members of an appeal board have the same privileges and immunities as a judge of the Court of First Instance has in civil proceedings in that court.

(5) A person appearing before an appeal board as a witness, a party to an appeal or a representative of a party to an appeal is entitled to the same privileges and immunities as he or she would have in civil proceedings in the Court of First Instance.

(6) Subject to this Ordinance, an appeal board may determine its own procedure.

37. Hearing

(1) The Chairperson of an appeal board must notify the appellant and the Director of the date, time and place of the hearing of the appeal at least 14 days before the hearing.

(2) At any proceedings before an appeal board—

(a) the appellant may be represented by—

(i) a barrister or solicitor; or

(ii) (if the appellant is a body corporate) an individual authorized by the appellant; and

(b) the Director may be represented by—

(i) a barrister or solicitor; or

(ii) a public officer.

(3) An appeal board may engage any barrister or solicitor to attend a hearing of the board to advise it on any matter relating to the appeal.

(4) The hearing of an appeal must be open to the public unless the appeal board determines that there is a good reason for it to be held in camera.

(5) An appeal board may, by a notice signed by the Chairperson and issued to a person—

- (a) direct the person to attend before the board and to give evidence;
- or
- (b) direct the person to produce documents.

(6) A person who fails to comply with a direction under subsection (5) commits an offence and is liable on conviction to a fine at level 5.

(7) Despite subsection (5), no person to whom a direction is given under that subsection is bound required to give any evidence or produce any document which tends to incriminate himself or herself.

38. Appeal board may authorize inspection of building services installation

(1) If an appeal board reasonably believes that a building services installation is relevant to the determination of an appeal, the board may, by an authorization signed by the Chairperson of the board—

- (a) authorize a person to inspect the installation; and
- (b) authorize the person to enter any unit that is not for residential use other than a residential unit for the purposes of the inspection.

(2) A person who, without reasonable excuse, obstructs a person authorized under subsection (1) in the inspection commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

39. 上訴的裁定

(1) 上訴委員會可——

- (a) 確認、更改或推翻上訴所針對的決定或指示；或
- (b) 以該委員會本身的決定或指示，取代上訴所針對的決定或指示。

(2) 上訴委員會可就以下訟費或費用的支付，作出它認為合適的任何命令——

- (a) 上訴法律程序的訟費；或
- (b) 署長或在該等法律程序中的任何其他人的訟費。

(3) 根據第(2)款判給或判付的訟費，可作為民事債項追討。

(4) 上訴委員會須向上訴人及署長發出關於其裁定及作出該項裁定的理由的通知。

39. Determination of appeal

(1) An appeal board may—

- (a) confirm, vary or revoke the decision or direction appealed against; or
- (b) substitute its own decision or direction for the decision or direction appealed against.

(2) An appeal board may make any order that it thinks fit with regard to the payment of—

- (a) costs or expenses of the appeal proceedings; or
- (b) costs of the Director or any other person in the proceedings.

(3) The costs awarded—ordered to be paid under subsection (2) are recoverable as a civil debt.

(4) An appeal board must issue to the appellant and the Director a notice of its determination and the reasons for it.

40. Code of practice

(1) To provide practical guidance in respect of any standard or requirement under this Ordinance, the Director may—

- (a) issue any code of practice that the Director thinks fit; or
- (b) approve any code of practice issued by any body or authority that the Director thinks fit.

(2) A code of practice may include—

- (a) building energy efficiency standards and requirements;
- (b) the requirements for assessment of the energy efficiency performance of a building services installation; and
- (c) the requirements for carrying out an energy audit.

(3) The Director must—

- (a) by a notice published in the Gazette identify a code of practice issued or approved under subsection (1);
- (b) specify in the notice the commencement date of the code of practice; and

- (c) specify the requirement under this Ordinance for which the code of practice is issued or approved.
- (4) The Director may, from time to time, by a notice published in the Gazette—
- (a) revise any code of practice issued under subsection (1); and
 - (b) approve any revision of any code of practice approved under subsection (1).
- (5) A notice under subsection (4) must specify—
- (a) the code of practice being revised;
 - (b) the commencement date of the revision; and
 - (c) if applicable, the requirement under this Ordinance for which the revision is made or approved.
- (6) The Director may, at any time, by a notice published in the Gazette withdraw any code of practice approved under subsection (1).

(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.

- (7) A notice under subsection (6) must specify the date on which the withdrawal takes effect.
- (8) A reference to a code of practice is a reference to the code of practice as revised from time to time in accordance with this section.
- (9) A notice under subsection (3), (4) or (6) is not subsidiary legislation.

41. Admissibility of code of practice in evidence

- (1) If, in any legal proceedings, the court is satisfied that a provision of a code of practice is relevant to the determination of a matter that is in issue in the proceedings—
- (a) the code of practice is admissible in evidence in the proceedings; and
 - (b) proof that the person contravened or did not contravene a relevant provision of the code of practice may be relied on by any party to the proceedings as tending to establish or negate

the matter.

(2) In any legal proceedings, the production of a Government Printer's copy of an issue of the Gazette in which a code of practice is identified is sufficient proof of the content of the code of practice.

~~(3) In this section, "court" (法院) includes a magistrate. 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.~~

43. Secretary may amend Schedules

~~(1) The Secretary may, by notice published in the Gazette, amend any Schedule.~~

(1) The Secretary may, with the approval of the Legislative Council, amend Schedule 1, 2, 3 or 4 by notice published in the Gazette.

(1A) The Secretary may amend Schedule 5 by notice published in the Gazette.

(2) A notice made under this section~~subsection (1)~~ may contain such incidental, consequential, supplemental, transitional or saving provisions as may be necessary or expedient in consequence of the notice.

47. Issue of notice etc.

(1) Subject to subsection (2), a notice or any other document required to be issued, submitted or sent under this Ordinance is to be regarded as having been duly issued, submitted or sent if—

(a) in the case of the Director—

- (i) it is addressed to the Director and delivered to the head office of the Electrical and Mechanical Services Department; or
- (ii) it is sent to the Director by registered post addressed to the Director at the head office of the Electrical and Mechanical Services Department;

(b) in the case of an individual—

- (i) it is delivered by hand to the individual; or
- (ii) it is sent to the individual by registered post addressed to the individual at the individual's last known

- address;
- (c) in the case of a company—
- (i) it is delivered by hand to any officer of the company; or
 - (ii) it is left at, or sent by registered post to, the registered office of the company within the meaning of the Companies Ordinance (Cap. 32);
- (d) in the case of a body corporate other than a company—
- (i) it is delivered by hand to any place in Hong Kong at which the body carries on business and given to a person apparently concerned in the management of, or apparently employed by, the body; or
 - (ii) it is sent to the body by registered post addressed to the body at the body's last known address; or
- (e) in the case of a partnership—
- (i) it is delivered by hand to any place in Hong Kong at which the partnership carries on business and given to a person apparently concerned in the management of, or apparently employed by, the partnership; or
 - (ii) it is sent to the partnership by registered post addressed to the partnership at the partnership's last known address.

(2) A notice issued to a corporation registered under section 8 of the Building Management Ordinance (Cap. 344) in respect of any common area of a building is deemed to be a notice issued to all owners of undivided shares in the land on which the building is situated.

SCHEDULE 1 [ss. 2 & 43]

Buildings that Require Certificate of Compliance Registration and Form of Compliance

1. Commercial building.
2. ~~Non-residential or non-industrial portion of a composite building.~~ A portion of a composite building that is not for residential or industrial use.
3. Hotel and guesthouse.
4. Common area of a residential building.
5. ~~Common area of the residential or industrial portion of a composite building.~~ Common area of a portion of a composite building that is for residential or industrial use.
6. Common area of an industrial building.

7. Building that is occupied ~~principally~~predominately for an education purpose.
8. Building that is occupied ~~principally~~predominantly as a community building including a community hall and social services centre and composite building occupied as 2 or more such places.
9. Building that is occupied ~~principally~~predominantly as a municipal services building including a market, cooked food centre, library, cultural centre and indoor games hall and composite building occupied as 2 or more such places.
10. Building that is occupied ~~principally~~predominantly for medical and health care services including a hospital, clinic and rehabilitation centre.
11. Building that is owned by the Government and used ~~principally~~predominantly for the accommodation of people during the performance of any function of the Government.
12. Passenger terminal building of an airport.
13. Railway station.

SCHEDULE 3 [ss. 2 & 43]

Major Retrofitting Works

1. Works involving addition or replacement of a building services installation specified in a code of practice that covers one or more places with a floor area or total floor area of not less than 500 m² under the same series of works within 12 months in a unit or a common area of a prescribed building.
2. Addition or replacement of a main component of a central building services installation, including—
 - (a) addition or replacement of a complete electrical circuit at rating of 400A or above;
 - (b) addition or replacement of a unitary air-conditioner or airconditioning chiller of a cooling or heating rating at or exceeding 350 kW; or
 - (c) addition or replacement of the motor drive and mechanical drive of a lift, an escalator or a passenger conveyor.

Notes

- (1) For the purposes of item 1 of this Schedule—
 - (a) an occupants' clubhouse or a ~~carpark~~car park is to be regarded as a separate common area within the building; and
 - (b) all other common areas are to be regarded together as a separate common area.

- (2) If works are carried out for more than one place in a unit or a common area of a prescribed building and, having regard to all relevant factors of the case, the works should reasonably be regarded as being under the same series of works, the reference to floor area in item 1 of this Schedule is a reference to the aggregate of the floor area of all those places.
- (3) In Note (2), “relevant factors” (有關因素) means—
- (a) whether the works are carried out by a single contractor;
 - (b) whether the works are carried out under a single agreement;
 - (c) whether the works are carried out pursuant to a single works order;
 - (d) the time at which and the period during which the works are carried out;
 - (e) the manner in which the contractor is paid; and
 - (f) whether the works are treated as a single project in the plans and works programme.

SCHEDULE 4 [ss. 21 & 43]
Buildings that Require Energy Audit

1. Commercial building.
2. ~~Commercial portion of a composite building.~~ A portion of a composite building that is for commercial use.