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29 September 2010

Miss Katharine Choi,
 Office for the Secretary for the Environment,
 Environment Bureau,
 Government Secretariat,
 46/F., Revenue Tower,
 5 Gloucester Road,
 Wan Chai, Hong Kong.

Dear Miss Choi,

Buildings Energy Efficiency Bill – Bills Committee meeting on 30 September 2010

Thank you for your letter dated 24 September 2010 to two members of our Property Committee who attended the last Bills Committee meeting on 20 September. The Committee has considered the Administration's further proposals and has the following comments:

Civil Consequences of Non-compliance of the Bill

The Committee noted with regret that the Administration has not addressed our concerns on this issue. It was suggested by the Administration that the civil consequences of non-compliance should more appropriately be provided for in the sale and purchase agreement or lease and determined under the law of contract. However, as we have pointed out at our recent joint meeting, solicitors normally find their hands tied and could not insert any additional terms in the formal Sale and Purchase Agreement for the protection of their clients against the wishes of the other parties, as usually binding preliminary agreements would have already been signed at the estate agent's office. In order that the new legislation will not give rise to unnecessary disputes and litigation in property transactions, we maintain the view that the legislation should provide clearly for the incidence of liability although this may be subject to any express contrary intention of the parties in their contract.

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Records of Certificate of Compliance Registration (“COCRs”), Forms of Compliance (“FOCs”) and Improvement Notices (“INs”) and duties and responsibilities of a subsequent owner and responsible person

The Committee is pleased to note that the Administration has taken on board the Society’s concerns and agreed to further enhance the transparency on the COCRs, FOCs and INs by making the relevant register or records available for public inspection. We understand that searches of the registers and records will be made available on-line. This is certainly a positive step in the right direction.

However, as the owners and responsible persons are required to maintain the building services installations to a standard not lower than the last FOC, sufficient information on the FOCs should be made available on the website to enable the interested parties to know what they are required to do to comply with the statute.

While we agree that the personal information of the relevant parties should not be disclosed, there is no reason why the details of the INs should not be made known. Potential purchasers and tenants will need more information to make an informed decision to purchase or rent premises in respect of which IN has been issued.

Effect of Non-compliance and Issues regarding Land Grant

The Committee noted that there will be an amendment to the Bill to the effect that non-compliance with the Bill would not create any charge on the property. However, it has concern on your further indication that *“such express clause would be framed in such a way that it would not prejudice the Government’s rights as landlord in the land grant.”*

Again, as explained at our recent joint meeting, *“re-entry”* is a heavy penalty for breaches of Government Grant terms. Clearly not breaches of *“any”* law should entitle the Government to exercise its right of re-entry under the Land Grant. We believe that linking this heavy penalty with breaches of the present legislation will be totally disproportional.

The general re-entry provision in the Land Grant has been causing problems to owners in proving property title in conveyancing transaction as non-compliance of *“any law”* will trigger the Government’s right to enter the premises and could constitute a blot on title. We have been urging the Lands Department to clarify its enforcement policy for the sake of the bulk of property owners in Hong Kong for a prolonged period of time but still to no avail as of the time of this writing.

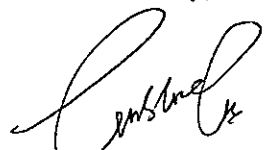
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We maintain the view that in introducing this new piece of legislation, instead of simply saying that *“as such deliberation concerns the Government’s overarching land policy, we do not consider the scrutiny of the captioned Bill an appropriate forum to pursue this issue. You may wish to follow up the matter with the Lands Department at other occasions”*, our responsible Government should clearly pronounce its policy as to whether non-compliance of the new law, which it said would only give rise to *“minor obligations”* and thus should not affect the developers’ right to sell the property, would entitle the Government to take re-entry action under the Land Grant.

The Bill, as it now stands, would likely create unintended problems and undesirable consequences (such as risk of potential litigation) to the property owners and conveyancers.

Yours sincerely,



Christine W. S. Chu
Assistant Director of Practitioners Affairs

c.c. Hon Audrey Eu, Chairman of the Bills Committee