



THE  
**LAW SOCIETY**  
OF HONG KONG  
香港律師會

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Our Ref : PPTY  
Your Ref : ENB 24/26/22  
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BY FAX (21475834) AND BY POST

11 November 2010

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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**

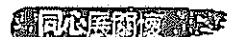
**Clause 51A**

The Government has proposed to introduce Clause 51A to the above Bill to deal with the Law Society's concern that non-compliance of the Bill would trigger the Government's right of re-entry under the Land Grant.

The Law Society has concern that the proposed Clause 51A is insufficient to deal with the concern raised and proposed to add the phrase "*any provision in the Government Lease relating to such premises notwithstanding*" at the end of the proposed clause. We understand that the Government does not accept our proposed amendments to Clause 51A.

Through the helpful arrangement of Ms. Audrey Eu, the Chairman of the Bills Committee, we have met with the Director of Lands and representatives of the Lands Department recently and obtained the Government's assurance that it is not the Government's policy to exercise its right of re-entry under the Land Grant for breaches of any provisions of the Bill. The Lands Department has also agreed to confirm its policy in writing to the Society upon the passage of the Bill.

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**The Law Society of Hong Kong**

- 2 -

On the basis of the aforesaid assurances by the Director of Lands, we are of the view that our concern on the Government's re-entry point has been resolved. As such, we do not think the introduction of the new Clause 51A, which may give rise to other unintended interpretations, will be necessary. We would invite the Administration to withdraw its proposal to introduce Clause 51A on the basis of the above understanding between the Law Society and the Lands Department.

**Compliance of the Bill by Developers: CSA – Clause 12(1A)**

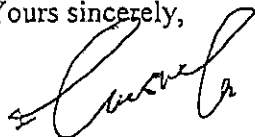
We noted that the Administration has proposed another Committee Stage Amendment under a new Clause 12 (1A) which reads: "*This section applies in relation to a building in respect of which a Certificate of Compliance Registration ("COCR") has been issued.*"

We understand that the Administration has introduced this CSA to address the Law Society's concern on the effect of non-compliance by the developer of the requirement to obtain a COCR under the Bill upon the subsequent owners of the property.

For the protection of the subsequent owners, we would like to seek the Administration's clarification that in the event the developer has failed to obtain a COCR in the first place, *the Government will not issue any improvement notice upon the subsequent owners under Clause 26 of the Bill for non-compliance of any provisions of the Bill resulting from the lack of a COCR.*

As the second reading of the Bill will resume shortly, we shall appreciate your confirmation of the Administration's stance on the above issues as a matter of urgency by tomorrow.

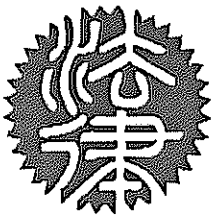
Yours sincerely,



Christine W. S. Chu  
Assistant Director of Practitioners Affairs

c.c. Hon Audrey Eu, Chairman of the Bills Committee  
Dr Hon Margaret Ng, Representative of Legal Functional Constituency  
Miss Annie Tam, Director of Lands

I: No.139299



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Miss Annie Tam,  
 Director of Lands,  
 Lands Department,  
 20<sup>th</sup> Floor,  
 North Point Government Offices,  
 333 Java Road,  
 North Point, Hong Kong.

Dear Miss Tam,

**BUILDINGS ENERGY EFFICIENCY BILL**

**Government's Right to Re-enter – Clause 51A**

Thank you for attending the recent joint meetings with us on discussion of the proposed new Clause 51A of the above Bill.

On the basis of your assurance at the meeting that the Government will not exercise its right of re-entry under the relevant Land Grant for any breaches of the provision of the Bill and that the Lands Department will confirm such policy in writing to the Law Society upon the passage of the Bill, we do not think that the introduction of Clause 51A is necessary. We have written to the Environment Bureau to invite them to withdraw Clause 51A based on the Government's assurance and attach a copy of our letter to them of even date for your attention.

**Compliance by Developers of the requirements of the Bill**

As we have proposed at the recent meetings, to ensure effective implementation of the Bill and sufficient protection to subsequent owners, compliance of the Bill by the developers should be made a pre-condition of the issuance of Pre-sale Consent or

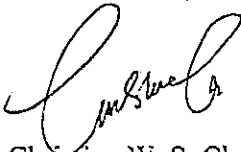
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- 2 -

Consent to Assign under the Government's Consent Scheme. We understand that the Transport and Housing Bureau and the Lands Department will further consider this proposal of ours and revert on the Government's position in this regard. We shall be look forward to hearing further from you on this.

Yours sincerely,



Christine W. S. Chu  
Assistant Director of Practitioners Affairs

Encls.

c.c. Ms. Katharine Choi, Principal Assistant Secretary for the Environment (Energy)  
Ms. Angora Ngai, Administrative Officer (Private Housing)  
Hon Audrey Eu, Chairman of the Bills Committee  
Dr Hon Margaret Ng, Representative of Legal Functional Constituency

P.15

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