Buildings Energy Efficiency Bill

The Administration's response to the letter by the Law Society of Hong Kong dated 11 November 2010

The Law Society of Hong Kong ("the Law Society") wrote to the Administration on 11 November 2010 regarding matters of the Buildings Energy Efficiency Bill ("the Bill"). This paper sets out the Administration's responses.

Clause 51A

2. It has always been the Administration's policy intention that the Bill should not create any charge on property. The Bill may only give rise to liability on the developers, owners or responsible persons concerned, for any breach of the requirements of Certificate of Compliance Registration ("COCR"), Form of Compliance or Improvement Notice ("IN"), which should not be regarded as defect or encumbrance on the title of the property concerned. This issue was carefully deliberated at the Bills Committee at its meeting on 20 September 2010, at which the Law Society was represented by two members, who held different views with the Administration. The Law Society expressed worries at the Bills Committee meeting that our policy intention lacked clear indication in the Bill. Since Members of the Bills Committee shared the same view, the Administration, after serious consideration, proposed clause 51A to make it clear that any contravention of the Bill would not subject the title of the property concerned to any encumbrances. The draft clause 51A was then submitted to the Bills Committee and was endorsed.

3. Regarding Government's right of re-entry as a landlord in the land grant, Members of the Bills Committee are fully aware that the Law Society has been in close deliberation with the Lands Department on this issue of right of re-entry in the past few years. As explained in LC Paper No. CB(1) 2930/09-10(03), we see that the main focus between the two parties was to ease the difficulties faced by the legal profession in providing good title to properties for their clients where there have been technical breaches of the lease conditions. The Administration has already made it clear that such discussion, having no direct relation to the Bill, should not be pursued during the scrutiny of this Bill. Hence, it should also be made clear that the proposed 51A was not meant, as

suggested in the first paragraph of Law Society's letter on 11 November 2010, "*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*".

4. The Administration notes from Law Society's letter of 11 November 2010 that it has reached consensus with the Lands Department regarding the issue of Government's right of re-entry. The Law Society, on reflection, considers that the proposed 51A is no longer necessary. The Administration takes note of the Law Society's latest position and agrees that clause 51A could be removed from the Committee Stage Amendments, subject to the agreement of the Bills Committee.

Clause 12(1A) – responsibility of developers

5. The Law Society, at its latest letter of 11 November 2010, seeks 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.*"

6. Clause 26 of the Bill stipulates that the Director of Electrical and Mechanical Services ("DEMS") may issue an IN to the developer or owner or responsible person of a building or a unit of the building, if DEMS is of the opinion that the developer, owner or responsible person is contravening or has contravened a requirement under the Buildings Energy Efficiency Ordinance (when enacted). According to clauses 8 and 9 of the Bill, the responsibilities of submitting the two declarations for obtaining the COCR only fall onto the developers. The proposed 12(1A) also makes clear that only owners of buildings which have obtained COCR will have the responsibility under clause 12. In other words, if no COCR is issued in respect of a building, its owners or responsible persons would neither be responsible for obtaining the COCR, nor contravene "*any provisions of the Bill resulting from the lack of a COCR*". Given there is no contravention in the first place, it is also obvious that DEMS would not issue an IN resulting from a lack of COCR.

7. By way of background, clause 12 of the Bill requires an owner of a building and a responsible person of a unit of a building to ensure that the central building services installations and other building services installations are maintained to a certain standard, and a COCR is in force

in respect of the building at all times. In response to the views of the Bills Committee at its meeting of 11 March 2010, the Administration has proposed clause 12(1A) to make clear that only owners of buildings which have obtained COCR will have such responsibility.

8. The Administration, in response to Law Society's questions raised at its letter dated 9 July 2010 (LC Paper No. CB(1) 2609/09-10(01)), already explained on 20 July 2010 that "*In case the developer fails to obtain a COCR, we do not propose to shift the burden to building owners as it should be the developers' legal responsibility to do so. Hence, with the endorsement of the Bills Committee, the Administration is prepared to amend clause 12 of the bill to make it clear that only the owners of a building issued with a COCR have a duty to ensure that a COCR is in force at all times.*" (Paragraph 5 of LC Paper No. CB(1) 2609/09-10(02)).

Environment Bureau
Electrical and Mechanical Services Department
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