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Bills Committee on Buildings Energy Efficiency Bill

Purpose

This paper reports on the deliberations of the Bills Committee on Buildings Energy Efficiency Bill (the Bills Committee).

Background

2. Hong Kong is a commercial city with limited industrial operations. Therefore, it has greater potential to improve energy efficiency and reduce greenhouse gas emissions by promoting energy efficiency in buildings.

3. Since 1998, the Electrical and Mechanical Services Department (EMSD) has issued five sets of Building Energy Codes (BEC), covering lighting, air-conditioning, electrical as well as lift and escalator installations, which stipulate the minimum energy performance standards of these installations. It has also launched the voluntary Hong Kong Energy Efficiency Registration Scheme for Buildings with the aim to promote the application of BEC. A registration certificate will be issued to a building that successfully meets the individual BEC standards. Up to September 2009, 2 515 registration certificates have been issued to 1 061 building venues involving 2 682 installations. Of the 1061 building venues, 72% are government premises.

4. As voluntary compliance with BEC does not appear to be forthcoming, the Administration has launched a three-month public consultation on a proposal to introduce mandatory implementation of BEC for certain new and existing buildings. Under the proposal, new commercial buildings and the communal areas of new residential and industrial buildings in both the private and public sectors as well as major retrofitting works in existing buildings should comply with BEC, energy audits will be required for certain buildings once every 10 years, and buildings which have exceeded the minimum building energy efficiency standards by a prescribed percentage will be recognized by an

energy mark through a voluntary administrative scheme. It is estimated that for new buildings, the implementation of the proposal will result in energy saving of 2.8 billion kilowatt hours (kWh) and reduction of 1.96 million tonnes of carbon dioxide (CO_2) emissions. An additional capital outlay in the region of 3% to 5% of the building construction cost may have to be incurred in return for about 10% to 15% annual saving in energy bills. On average, the payback period for the additional investment is six years.

5. The public consultation which ended in March 2008 concludes that the mandatory implementation of BEC is in the right direction for promoting energy efficiency and conservation in buildings.

The Bill

6. The Bill seeks to require compliance with codes of practice promulgated by EMSD concerning the energy efficiency of four types of building service installations, including air-conditioning, electrical, lift and escalator as well as lighting installations, and energy audits in respect of certain types of buildings.

The Bills Committee

7. At the House Committee meeting held on 11 December 2009, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Audrey EU, the Bills Committee has held 17 meetings. The membership list of the Bills Committee is in **Appendix I**. Apart from examining the Bill with the Administration, the Bills Committee has also invited views from interested parties, including green groups and related sectors. 39 groups have made written and/or oral representation to the Bills Committee. A list of these groups is in **Appendix II**.

Deliberations of the Bills Committee

8. The Bills Committee generally supports the policy intent of the Bill to enhance energy efficiency in buildings. In the course of deliberation, members have examined issues relating to environmental benefits of the proposed mandatory implementation of BEC, grading system and award scheme for buildings, scope of application, preliminary provisions, compliance procedures for Post-enactment Buildings at design stage and occupation approval stage, compliance procedures for major retrofitting works in Pre-enactment and Post-enactment Buildings, improvement notice, enforcement, registration of registered energy assessors (REA), appeal against the Director of Electrical and Mechanical Services (the Director)'s decision under the Bill, Code of Practice,

miscellaneous matters, transitional provision, Schedules, and legislative procedures and time-table.

Environmental benefits of the proposed mandatory implementation of BEC

9. Some members have expressed concern that the energy saving to be achieved as a result of the proposed mandatory implementation of BEC will be very limited since it only aims to promote energy efficiency of the four prescribed types of building services installations. To achieve greater energy saving, consideration should be given to regulating the unit electricity consumption of the building services installations. The Administration has advised that it is not aware of any overseas example in regulating the unit electricity consumption of building services installations. The amount of electricity consumption by building services installations will depend on the building type, design, size, usage pattern etc., and is not directly comparable. It would be very difficult to regulate the unit electricity consumption of the four types of prescribed building services installations without interfering with their economic and operational requirements. Besides, the proposed mandatory implementation of BEC will result in energy saving of approximately 2.8 billion kWh and reduction of 1.96 million tonnes of CO_2 emissions in the first decade of implementation.

10. The Bills Committee has enquired about the bases upon which the environmental benefits are arrived at. According to the Administration, the estimation of 2.8 million kWh of energy saving is based on the information from Hong Kong Property Review 2007 issued by the Rating and Valuation Department on the projected additional floor areas for commercial, residential and industrial buildings and the average energy saving achieved through compliance with BEC. The figure only covers the estimated energy saving in new buildings. Additional energy saving could be achieved by requiring existing buildings to comply with BEC when undergoing major retrofitting works. Based on the calculation that 0.0007 tonnes of CO_2 is emitted per kWh of electricity generated in Hong Kong, the reduction in CO_2 emissions will be in the region of 1.96 million tonnes. The Administration has further advised that in the First Sustainable Development Strategy promulgated in May 2009, it has set the target of having 1% to 2% of Hong Kong's total electricity supply to be met by renewable energy by 2012, taking into account the local social, economic and environmental conditions. Plans are being contemplated to promote energy efficiency and conservation as part of an overall sustainable energy policy. The proposed mandatory implementation of BEC is one of the measures to increase and sustain conservation of energy.

Grading system and award scheme for buildings

11. The Bills Committee has noted that in England and Wales, the Energy

Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 requires the owner of a building to make available a valid Energy Performance Certificate to a prospective buyer or tenant. Seven energy efficiency ratings (from A to G) are used in the Energy Performance Certificate where A is the best and G the worst in energy performance. The scoring is computed based on the energy use per square metre of floor area. In Singapore, the Green Mark Scheme is a green building assessment system which covers various assessment criteria on green building performance. Other than energy efficiency, the assessment criteria include other aspects such as site environment, water, indoor environmental quality etc. In respect of energy efficiency, meeting certain energy codes issued by the Singaporean Government is a pre-requisite. Bills Committee members have enquired if similar grading and award scheme could be implemented in Hong Kong to promote green buildings.

12. According to the Administration, the Building Environmental Assessment Method (BEAM) launched by the BEAM Society in 1996 is one of the commonly adopted voluntary green building systems in Hong Kong. BEAM covers various assessment criteria in respect of environmental sustainability of buildings, including site aspects, materials aspects, energy aspects, water aspects, indoor environment quality as well as innovative and performance enhancement. Compliance with BEC is the minimum energy requirement in the latest edition of BEAM. In the light of the need to develop an assessment method that caters for Hong Kong's unique environment, the Hong Kong Green Building Council[1] will develop a distinctive green building assessment method for Hong Kong, taking into consideration local characteristics, such as high-rise and high density environment as well as sub-tropical climate.

Scope of application

13. Under Schedule 1 to the Bill, the following categories of prescribed buildings in the public and private sectors are required to comply with BEC –

(a) commercial building;

(b) non-residential or non-industrial portion of a composite building;

(c) hotel and guesthouse;

(d) common area of a residential building;

(e) common area of the residential or industrial portion of a

[1] The Hong Kong Green Building Council was inaugurated in November 2009 with four founding members, namely the Business Environment Council, BEAM Society, Professional Green Building Council and Construction Industry Council.

composite building;

(f) common area of an industrial building;

(g) building that is occupied predominantly for an education purpose;

(h) building that is occupied predominantly as a community building, including a community hall and social services centre and composite building occupied as two or more such places;

(i) building that is occupied predominantly as a municipal services building, including a market, cooked food centre, library, cultural centre and indoor games hall and composite building occupied as two or more such places;

(j) building that is occupied predominantly for medical and health care services, including a hospital, clinic and rehabilitation centre;

(k) building that is owned by the Government and used predominantly for the accommodation of people during the performance of any function of the Government;

(l) passenger terminal building of an airport; and

(m) railway station.

Different control regimes will be imposed on buildings that obtain the consent to the commencement of building works for superstructure construction from the Building Authority after the new legislation comes into operation (i.e. Post-enactment Buildings), and buildings which have obtained consent to the commencement of building works on or before the new legislation comes into operation (i.e. Pre-enactment Buildings). Developers, owners or responsible persons as appropriate will be responsible for complying with the requirements depending on the stages of the buildings or the scale of the major retrofitting works, the schematic representation of which is set out in Annex B to Legislative Council Brief issued by the Environment Bureau on 2 December 2009 (Ref: ENB 24/26/22).

14. Noting that the Bill does not apply to certain types of buildings, including areas other than common areas at residential buildings and small houses, members have enquired the reason for such an arrangement, and whether a list of these types of buildings could be provided. According to the Administration, it is not possible to give an exhaustive and accurate list of building types which are excluded from Schedule 1 to the Bill. Some buildings of special uses, such as water/sewage treatment plants, electricity

sub-stations, pump houses and radar stations etc, are excluded having regard to their specific energy requirement and relatively small number of them. Small houses constructed in accordance with the height and dimension limits as set out in the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) are not covered under the Bill because their common areas usually contain lighting installations only, and do not have air-conditioning installations or lifts. Having considered the compliance implications and the amount of potential energy saving, the Administration has proposed that those buildings mentioned above would be excluded from the application of the Bill. For individual households in residential buildings, the Administration has put in place voluntary and mandatory Energy Efficiency Labelling Schemes to inform customers of the energy performance of electrical appliances on the one hand, and encourage product suppliers to make available more energy-efficient products to meet customers' demand on the other. The initial and second phases of the mandatory Energy Efficiency Labelling Scheme, which have been implemented since 9 November 2009 and 19 March 2010 respectively, cover room air-conditioners, refrigerating appliances, compact fluorescent lamps, washing machines and dehumidifiers. These products account for some 70% of the total electricity consumption in the residential sector.

15. The Bills Committee has enquired if the Administration would consider providing financial assistance (such as loans) to facilitate compliance with the control regime under the Bill by owners, particularly those of older and smaller developments, and recovering the cost from saving in electricity tariffs. The Administration has advised that two Buildings Energy Efficiency Funding Schemes, with a total funding of $450 million, have been put in place for eligible owners of private residential, commercial and industrial buildings to apply for subsidy to carry out alteration, addition or improvement works to upgrade the energy efficiency performance of building services installations for communal use of the buildings. As at end January 2010, over 1 000 funding applications have been received and of which, 300 applications have been approved. The Administration will review the need for additional financial assistance to building owners for enhancing building energy efficiency.

16. Some members have pointed out that apart from the use of energy-efficient building services installations, building design and use of materials would also affect building energy efficiency. According to the Administration, these issues have been covered in the public engagement process launched by the Council for Sustainable Development on "Building Design to Foster a Quality and Sustainable Built Environment" from June to October 2009. Views received are being analyzed and the Council for Sustainable Development plans to submit its report and recommendations to the Administration before mid 2010. The Administration will consider the promotion of energy-efficient building design and building materials in this context, taking into consideration views collected. Meanwhile, the Buildings

Department is currently conducting a review of the control and standards to be adopted under the Building (Energy Efficiency) Regulation (Cap. 123M) on the amount of heat transferred through the external walls and roofs of certain types of buildings to reduce the energy needed for air-conditioning.

Preliminary provisions

Definition of "common area"

17. Under Clause 2 of the Bill, "Common area" in relation to a prescribed building means –

(a) any area of the building other than the parts that have been specified in an instrument registered in the Land Registry (LR) as being for the exclusive use, occupation or enjoyment of an owner; and

(b) without limiting paragraph (a), includes 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.

18. Bills Committee members have enquired whether there is a general definition of "common area" and if so, the reason for adopting a different definition for the term in the Bill. They have also requested the Administration to review the drafting formula of the definition, particularly the phrase "without limiting paragraph (a)", with a view to spelling out clearly the policy intention and the correlation between paragraphs (a) and (b). For instance, whether car parking space or staircase inside a unit which has been specified in an instrument registered in LR as being for the exclusive use of an owner falls within the definition of "common area" under the Bill.

19. According to the Administration, the proposed definition is modeled on the definition of "common parts" adopted in the Building Management Ordinance (Cap. 344) (BMO). Paragraph (a) of the definition sets out the policy intention to cover all areas of a prescribed building other than those specified, while paragraph (b) lists out the examples of "common area" that are commonly found in buildings to provide easy reference. The use of the phrase "without limiting paragraph (a), includes" makes it clear that paragraph (b) is to be read subject to paragraph (a), and serves to elaborate the main provision by setting out examples. If paragraph (b) is to be read alone, it would have the effect of limiting the scope of paragraph (a). Besides, the phrase referred to is a standard drafting formula for this kind of definition and its use will enable

readers to grasp the correlation between the two paragraphs readily. By way of illustration, an area within the examples set out in paragraph (b) would not be treated as "common area" of the prescribed building if that area has been specified in an instrument registered in LR as being for the exclusive use of an owner. The same principle applies to the internal staircase inside a "unit" of a prescribed building.

20. The Bills Committee has questioned why the definition of "common parts" provided in BMO cannot be directly adopted in the Bill. The Administration has advised that the approach taken in BMO is different from that in the Bill. In BMO, paragraph (b) of the definition of "common parts" is definitive and not for illustration purpose. Together with Schedule 1 to BMO, the provisions set out a list of places falling within the definition. Any addition will have to be effected by legislative amendment. However, the intent of paragraph (b) of the definition of "common area" in the Bill serves to give examples of any area of a prescribed building where building services installations exist and thus would normally be covered under the Buildings Energy Efficiency Ordinance, if enacted. The examples so given are not meant to be exhaustive. Hence, the items listed under paragraph (b) of the definition of "common area" of the Bill are different from those under Schedule 1 to BMO. For instance, Schedule 1 of BMO contains "external walls" which is not within the ambit of the Bill, while the definition of "common area" of the Bill contains "car parks" which is not covered under Schedule 1 to BMO.

21. On members' suggestion of replacing the phrase "without limiting paragraph (a)" with "subject to paragraph (a)", the Administration has advised that the former is a standard drafting formula for this kind of definition and its use will enable readers to grasp the correlation between the two paragraphs readily. While in this particular context adopting the phrase "subject to paragraph (a)" may also bring out the meaning, the use of non-standard formulation is not desirable since "subject to" is often used in cases where the two provisions contains elements that are different in nature. Nevertheless, the Administration has concurred with members that there is room for improvement in presenting the definition of "common area" in the Bill, and subsequently agreed to introduce Committee Stage amendment (CSA) to replace the phrase "without limiting paragraph (a), includes" with "includes, unless so specified".

Definition of "composite building"

22. Under Clause 2 of the Bill, "Composite building" means 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.

23. The Bills Committee has enquired if the descriptive use of "residential", "industrial" and "commercial" etc. in relation to the use of buildings is consistent with that used in occupation permit (OP) issued under the Buildings Ordinance (Cap. 123) (BO), and if not, whether consideration will be given to classifying buildings under the Bill with reference to OP. According to the Administration, OPs generally classify buildings into two main categories viz. "domestic buildings" and "non-domestic buildings". The former includes hotels and guesthouses while the latter buildings of uses other than those for habitation. Hence, commercial buildings, industrial buildings and other non-residential buildings would be treated as "non-domestic buildings" in OPs. Such classification system does not fit the Bill well as it intends to cover all hotels, guesthouses, commercial buildings and a number of other building types as well as the common area of residential and industrial buildings. To clearly spell out the policy intention and avoid confusion, the Bill has distinctly defined "residential buildings" (which do not cover hotels and guesthouses), "commercial buildings" and "industrial buildings". Similar classification is also adopted by Regulations under BO. These include the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations (Cap. 123I) (for definition of "residential building"), Building (Energy Efficiency) Regulation (Cap. 123M) (for the definition of "commercial building"), and Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) Regulations (Cap. 123H) (for definition of "industrial building").

24. The Administration has subsequently taken on board members' view and agreed to introduce CSA to revise the definition of "composite building" to incorporate cross reference to the definitions of "residential building", "commercial building" and "industrial building" in the Bill.

Definition of "industrial building"

25. Under Clause 2 of the Bill, "Industrial building" means –

(a) a building which –

(i) articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished; or

(ii) materials are transformed; or

(b) a godown.

26. Noting that the definition of "industrial building" under the Bill is different from that under the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice (Cap. 545A), members have questioned why the same definition was not adopted for the Bill. According to the Administration, the policy intention of the said Notice is not only to cover industrial buildings aged 30 years or above within a non-industrial zone that are still in use, but also those industrial buildings which are under-utilized or have been left to disuse. Hence, the definition of "industrial building" in the Notice has taken account of that particular circumstances to tie it to the building plan approved under BO. As for industrial buildings under the Bill, only their common areas are covered. Such an arrangement is proposed since industrial processes may have specific requirements on energy usage, and it is difficult to impose generalized energy efficiency standards for different industrial processes. In order to optimize the environmental benefits, those buildings in active industrial use would be classified as "industrial building" under the Bill. Besides, the definition is also similar to that in the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) Regulations (Cap. 123H).

Definition of "lighting installation"

27. Under Clause 2 of the Bill, "lighting installation" in relation to a building means a fixed electrical lighting system in the building, including –

(a) general lighting that provides a substantially uniform level of illumination throughout an area; or

(b) maintained type emergency lighting,

but does not include non-maintained type emergency lighting.

28. Bills Committee members have enquired how to determine whether a lighting installation is a fixed electrical lighting system in the building or out of the building. They have also asked whether lighting installations mounted external to the building but connected to the lighting system in the building are covered under the definition.

29. The Administration has explained that "lighting installation" in the Bill means a fixed electrical light system in the building. The policy intention is that lighting installations mounted external to the building (external lighting) should not be covered under such definition. External lighting may include flood lighting, spot lighting or light emitting diode lighting mounted on the building external wall, on the roof or at an area external to the building for lighting up the building facades, architectural features, or signage boards, etc. On the contrary, those lighting installations mounted in a building, including its

open corridors or glass wall enclosed staircases, from where such lighting is visible from outside of the building will not be regarded as external lighting. It should be noted that some lighting installations which are outside the boundary of a building, such as a standalone light pole outside a building, may obtain electricity from the electrical system of the building. As such, the source of power supply for a lighting installation, no matter from a building or not, is not a factor to be considered in classifying whether the lighting installation is "in the building". To facilitate better understanding on the scope of lighting installations to be covered under the Ordinance, the Administration will provide examples for publicity after the new legislation is enacted.

30. Bills Committee members are not convinced of the Administration's explanation. They consider it necessary to regulate external lighting installations not only to achieve greater energy efficiency but also to mitigate the problem of excessive glare of external lighting which has been a subject of contention. Ms Audrey EU has indicated her intention to consider moving a CSA to make it clear that the definition of "lighting installation" include lighting installations mounted external to the building.

Definition of "owner"

31. Under Clause 2 of the Bill, "owner" in relation to a prescribed building has the same meaning as in BO.

32. The Bills Committee has enquired whether the definition of "owner" in the Bill includes owners' corporations. The Administration has advised that the definition of "owner" in BO includes any person holding premises direct from the Government whether under lease, licence or otherwise, any mortgagee in possession and any person receiving the rent of any premises, solely or with another, on his own behalf or that of any person, or who would receive the same if such premises were let to a tenant, and where such owner as above defined cannot be found or ascertained or is absent from Hong Kong or is under disability, the agent of such owner. While the definition does not explicitly cover owners' corporation, under section 16 of BMO, the rights, powers, privileges and duties of the owners in relation to the common parts of the building would be exercised and performed by the owners' corporation, if they are so formed under section 8 of BMO. Likewise, liabilities of the owners in relation to the common parts of the building shall also be enforced against the owners' corporation.

Compliance procedures for Post-enactment Buildings at design stage and occupation approval stage

Declaration (Clause 8 - 9)

33. Clause 8 requires developers of Post-enactment Buildings to submit a stage one declaration to the Director after obtaining the consent to the commencement of building works for superstructure construction. The stage one declaration is to declare that suitable design provisions have been included to enable compliance with BEC. After obtaining the occupation approval[2], developers are required under clause 9 to submit a stage two declaration to confirm compliance with BEC. Both declarations have to be certified by a REA.

34. The Bills Committee has expressed concern about the liability of individual owners who might not be aware of any non-compliance with BEC as the developer concerned is only required to submit the stage two declaration within four months after the issue of occupation approval. To plug the loophole, consideration should be given to withholding the issue of occupation approval until confirmation of compliance. Some members have also pointed out that the proposed penalties of $500,000 and $1 million for non-compliance with the requirements by developers to submit stage one and stage two declarations respectively are too light to have any deterrent effect. According to the Administration, developers are required under clause 8 to submit a stage one declaration to the Director 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 to confirm compliance. Clauses 8 and 9 have clearly specified that the responsibilities to submit stage one and stage two declarations lie with the developer of the building, and the duty will not be transferred to individual owners. The Administration has further advised that it is not appropriate to withhold the issue of occupation approval until confirmation of compliance with the Bill, as the requirements for issuing occupation approval are mainly related to safety requirements, the nature of which is different from the proposed scope of control of the Bill. To address members' concern about penalty, the Administration will introduce CSAs to impose a daily fine of $10,000 on developers who fail to comply with clauses 8 and 9 with a view to increasing the deterrent against non-compliance.

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[2] Occupation approval means –
(a) an OP or a temporary OP issued under section 21(2) of BO; or
(b) a approval or consent issued by a relevant authority to occupy a building in respect of which no OP or temporary OP is required under BO.

35. While welcoming the imposition of a daily fine, some members have expressed concern that there might be genuine cases where more than four months are required to put in place all the building services installations, particularly for large-scale developments. They have enquired about the feasibility of setting different time frames and for submission of stage two declaration for different types of buildings. According to the Administration, major central building services installations of a new building are normally provided and completed at the building occupation stage. Hence, the four-month time frame is considered adequate taking into account views from the trade. Besides, the Director may extend the four-month period if he considers that there is a reasonable technical or operational ground, such as suspension of works due to site accidents or damage of building services installations due to fire, flooding or theft, after the issuance of OP. On members' request for the detailed criteria for extension to be set out in the Bill, the Administration has advised that this may not be appropriate as unexpected situation varies from one case to another.

Certificate of Compliance Registration (Clauses 10 - 14)

36. Clause 10 requires the Director to issue Certificates of Compliance Registration (COCR) for buildings upon receipt of the required information and documents. Under clause 11, a register of buildings issued with COCR will be available for public inspection. Building owners are required to apply for renewal of COCR in respect of the central building services installations once every 10 years.

37. Bills Committee members have questioned why the similar time requirement for developers to submit self-declarations is not applicable to the Director in the issuance of COCR. Without the time requirement, the Director may withhold the issue of a COCR indefinitely. For the sake of certainty, members have requested to include in the Bill a time frame within which the Director should issue or refuse to issue a COCR. The Administration has advised that the requirements on what documents and information the developers need to include in the declarations are clearly stated in the specified forms. If a developer has duly made the declarations in accordance with the statutory requirements, the Director must issue a COCR to the developer. However, 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 a REA to certify the declarations, the developer has not fulfilled the statutory requirements of making the declarations and hence committed offences.

38. The Administration has further advised that the Bill empowers the Director to request the developer to furnish any further information required.

In rare situations where a developer fails to respond to the Director's request for additional information, the Director could issue an Improvement Notice (IN) to the developer requiring him to comply with the request. Given that the proposed mechanism in the Bill should work well, particularly when this has been carefully considered and supported by the trade, and that complexity of cases varies from one to another, it is not considered appropriate to include in the Bill a time frame within which the Director should issue or refuse to issue a COCR. Instead, the Director would list out the relevant target response time in relation to the types of services required under the Ordinance, if enacted, in the form of performance pledge which is a useful indicator for members of the public to evaluate the services of the Administration. At members' repeated requests, the Administration has eventually agreed to introduce CSAs to the effect that the Director should issue or refuse to issue a COCR within three months upon the submission of the stage two declaration. A CSA will also be moved to require the Director to make available the register of COCR on the internet for access by members of the public.

39. Clause 12 requires building services installations in individual units and common areas of Post-enactment Buildings, as well as their central building services installations to comply with BEC. Responsible persons or owners are required to ensure that COCR in respect of a building is in force at all times, and to obtain Forms of Compliance (FOC), to be certified by REA, for major retrofitting works. They are also required to maintain the building services installations concerned to standards not lower than that applied in the respective COCR and FOC.

40. The Bills Committee has noted that under the Electricity (Wiring) Regulations (Cap. 406E), an owner of a fixed electrical installation is required to inspect, test and certify the installation at least once every 12 months, or once every five years, depending on its approved loading and types of premises. The owner is only required to submit the certificate to the Director for endorsement within two weeks after the date of the certificate. Some members have questioned why the Bill requires an owner of a building to ensure that a COCR is in force at all times. The Administration has explained that the policy intent is to highlight the responsibilities of building owners to not only submit application to renew COCR in time, but also ensure that they can obtain the renewed COCR in time to ensure that COCR is in force at all times.

41. The Bills Committee has asked how an owner of a building and a responsible person of a unit of a building could ensure that the central building services installations and other services installations are maintained to a certain standard, given that the performance of these installations will decline as a result of normal wear and tear. Some members have also enquired about the responsibilities of new owners for building services installations inside an individual unit in a building. According to the Administration, the policy

intent is to prevent the building services installations from being subsequently altered or replaced with less energy efficient components, and to ensure that the installations can be properly maintained to prevent undue decline in energy efficiency. The specified standards set out in BEC are standards and requirements on design parameters rather than those on daily operational performance. In general, normal wear and tear of the installations should not have great impact on their energy efficiency performance when they are properly maintained.

42. The Administration has further advised that under the Bill, the Director must issue a COCR to the developer in respect of the building if the developer has submitted a stage two declaration 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. Hence, for building services installations which are provided by the developer for individual units, these should have been certified compliance with the specified standard or requirement. In other words, the responsible person (which may include owner) need not ascertain whether a particular building services installation serving his/her unit is covered under the first COCR. He/she is only required to maintain all building services installations serving the unit to a certain standard, and he/she may refer to the register on buildings with COCR on the standard to which he/she should adhere to. It should also be noted that the renewal of a COCR only concerns central building services installations covered by COCR, but not those building services installations serving individual units. For those responsible persons who intend to use the existing building services installations in that unit which have been left by their predecessors, they must ensure that such installations meet the specified requirement. It is advisable for the responsible person to seek advice from a REA to ensure compliance. If non-compliance is identified, the relevant installations should be upgraded or replaced to meet the specified standards and requirements.

43. Clause 12 stipulates that a renewed COCR is effective from the date of renewal. However, if an application for renewal of a COCR is made during the 12 months preceding the expiry of COCR, the renewed COCR is effective from the date of expiry. Some members questioned the reason for not including in the Bill or the Code of Practice a specific time frame within which a COCR should be renewed before its expiry. The Administration has explained that in many cases, the property management companies are the responsible persons in respect of a building. The buildings under their management might have been issued with COCR which have different effective dates. For more effective management, the property management companies may arrange the different COCR to be renewed in one go, so as to align the different effective dates of COCR. The Bill as drafted would allow flexibility

for the responsible persons to do so. For individual cases, the renewal arrangement would encourage the responsible persons only to submit applications within the 12 months preceding the expiry of the existing COCR. Besides, EMSD would issue reminders to the responsible persons approaching the expiry of COCR, and inform them of the usual time frame required to process the renewal applications. Therefore, it is considered not necessary to specify in the Bill or the Code a time frame within which a COCR should be renewed before its expiry.

Compliance procedures for major retrofitting works in Pre-enactment and Post-enactment Buildings (Clauses 17 - 20)

44. Clause 17 provides that if major retrofitting works are carried out in respect of any building services installation serving any unit/common area of a building or any central building services installation, the respective responsible person/owner of the common area or owner of the installation must, within two months after the completion of the works, obtain a FOC issued in respect of the installation.

45. The Bills Committee has enquired about the person who is to determine when and whether major retrofitting works are completed, in particular, the difficulties which would arise if the property changes hands during the period in which major retrofitting works are carried out. According to the Administration, the legal duty for obtaining FOC only comes into place upon the completion of the major retrofitting works. The policy intention is to require the relevant party who, at the moment when this legal duty appears (i.e. at the moment when the major retrofitting works are completed), to perform such duty. The Administration has also provided an example in that a Mr X, being the owner of a unit of a prescribed building, initiated a major retrofitting works on the lighting installation of his unit. Before the major retrofitting works were completed, Mr X sold the unit to Mr Y, who was the owner when the works were completed. According to the policy intent, Mr Y would be required to comply with the requirement for obtaining FOC. If Mr Y failed to obtain a FOC and, within two months after the major retrofitting works were completed, he sold the unit to a Mr Z, the duty to obtain a FOC should still rest with Mr Y as he was the responsible person at the time the works were completed. Mr Y is held responsible instead of Mr X because Mr Y could possibly alter the scope of the ongoing major retrofitting works after he took over the unit. Mr Z is not held responsible because he may not even know that a major retrofitting works project had been conducted in that unit.

46. In the light of members' concern, the Administration has agreed to introduce CSAs to make it clear that a person who is the responsible person of the unit/owner of the common area or the owner of the installation as at the completion of the major retrofitting works is required to obtain FOC.

Improvement notice (Clause 26)

47. Clause 26 empowers the Director to serve an IN to direct the responsible party to take remedial action where there is a contravention of a requirement under the Bill.

48. The Bills Committee has enquired whether a certificate will be issued upon compliance with an IN. According to the Administration, a person will have discharged his legal responsibility after he has complied with the directions stipulated in an IN. It is not common for the Administration to specifically acknowledge a lawful act or a remedy done in order to rectify an unlawful act. The Administration has also examined some other legislation with similar mechanism of IN, including the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598), Gas Safety Ordinance (Cap. 51) and Occupational Safety and Health Ordinance (Cap. 509), and has not identified any mechanism of acknowledging compliance under these Ordinances. The Administration considers that any such acknowledgment of compliance is no guarantee of continuous compliance and might not serve much practical purpose for potential buyer/lessee of property.

49. Bills Committee members are not convinced of the Administration's response. They have pointed out The Law Society of Hong Kong (LSHK)'s repeated concerns that non-compliance with the requirement for COCR, FOC or IN may not only give rise to disputes and litigation in conveyancing transactions, but also entitle the Government to re-enter the premises under land grant, which requires compliance with all the laws and regulations in force in Hong Kong. Some members have enquired whether measures are in place to facilitate solicitors/estate agents to ascertain compliance with COCR, FOC or IN, and whether a breach of the requirement for COCR, FOC or IN will constitute a cause for cancellation of property transactions.

50. According to the Administration, clause 11 already stipulates that the Director must keep a register of buildings issued with COCR and make available the register for inspection by members of the public. Nevertheless, the Administration agrees that there is room to improve transparency in respect of FOC and IN, and consideration is being given to making available an extract of records of FOC received by the Director at the website of EMSD. The search page of EMSD's website would be suitably designed to enable search by property addresses. Information intended to be disclosed includes whether a FOC has been issued in respect of the property concerned and if so, the date of issue and relevant version of BEC being referred to, and also the type(s) of building services installation involved. To preserve data privacy, records of personal information of owners or responsible persons of the units, or REA who issued the FOC concerned will not be disclosed. As regards IN, the Administration has proposed to make administrative arrangements for

uploading relevant information of IN onto EMDS's website, similar to that of FOC. The record will be removed when the non-compliance has been rectified to the satisfaction of the Director. As personal information and details of the non-compliance will not be disclosed, interested parties of the property concerned should seek full disclosure from the existing owner or responsible person of the property.

51. The Administration has further advised that the Bill may only create a potential personal liability on the persons required to comply with the requirement for COCR, FOC or IN. The Bill creates no charge on property. The Administration therefore considers that the potential personal liability for any breach of the requirement for COCR, FOC or IN should not be regarded as defect or encumbrance on the title of the property concerned. This also confirms with the Government's policy intention. Interested parties, such as potential buyers of the properties concerned, should require the vendors about the energy efficiency performance of the building services installations. If in doubt, interested parties should consider engaging professionals, such as REA, to help ascertain whether the installations have complied with the Ordinance, if enacted. The Administration will roll out publicity programmes after the enactment of the Ordinance to enhance public awareness on requirements under the Ordinance. To facilitate better understanding, the Administration has provided a flowchart showing the duties of developers and responsible persons under the Bill to obtain COCR, FOC respectively, and situations where IN are issued and followed up in Annex A to LC Paper No. CB(1) 2840/09-10(02).

52. Bills Committee members have pointed out that the policy intention is not clearly spelt out in the Bill. They have enquired if consideration could be given to including an express provision in the Bill to make it clear that any non-compliance will not constitute a cause for the Government to exercise its right of re-entry under the land grant. According to the Administration, the issue of Government's right of re-entry as a result of non-compliance with any laws and regulations, including the Bill, may have wider policy implications and should be pursued separately at other appropriate forum. Nevertheless, the Administration has agreed to introduce CSA to make it clear that a contravention of any provision of the Bill in relation to any premises does not itself subject the title of the premises to any encumbrance.

53. LSHK has been invited to comment on the Administration's proposed CSA. LSHK remains of the view that the proposed CSA is not able to fully address the problem. To put the matter beyond doubt and to prevent unnecessary future litigation, LSHK has proposed to add the phrase "any provision in the Land Grant notwithstanding" at the end of the proposed CSA. Ms Audrey EU has indicated her intention to consider moving a CSA based on LSHK's proposal. However, LSHK has subsequently informed the Bills Committee that it has reached a consensus with the Lands Department regarding

the issue of Government's right of re-entry, and that the proposed CSA is no longer necessary. After consultation with the Administration, the Bills Committee has agreed that the proposed CSA should not be moved.

Enforcement (Clauses 27 - 29)

54. The Bills Committee has expressed concern about the extensive power of authorized officers under clause 29. For example, there is no time prescription for authorized officers in exercising their powers of entry and inspection. Unlike the Product Eco-responsibility Ordinance (Cap. 603), the Bill does not require search warrant to enter any part of a prescribed building that is not a residential unit.

55. According to the Administration, different powers have been provided for public officers under different legislation to meet specific requirements. For the purpose of the Bill, the power for authorized officers under clause 29 is considered appropriate and essential for the implementation of the Ordinance, if enacted. The Administration has explained that it is impractical to introduce a warrant system under the Bill or set a reasonable threshold for the grant of a warrant by Magistrates. To apply a warrant to enter any part of a prescribed building that is not a residential unit, it should be reasonably expected that the Director should have reasonable suspicion that some relevant building services installations do not comply with the legislation. The purpose for an authorized officer to enter a prescribed building to inspect and examine any building services installations is to ascertain whether the legislation has been or is being complied with. It would be very difficult to gather evidence of non-compliance with the relevant provisions only by making observation outside the premises or making simple enquiries. It is therefore very difficult, if not impossible, for the Director to prove the reasonableness of his suspicion of non-compliance before an authorized officer ever enters a building and inspects the relevant building services installations. On the other hand, if the "reasonable suspicion" element is not required for the issuance of a warrant, or the threshold for issuance is set too low, then virtually each and every inspection requires backup of a warrant. The Administration considers this undesirable and would cause undue burden on both the Administration and the Judiciary.

56. To address members' concerns, the Administration is prepared to move CSA to specify that authorized officers would only enter any part of a prescribed building that is not a residential unit during reasonable hours. It will introduce a "notice system" under which an authorized officer should be given entry into the premises after a two-week notice. Under the proposed approach, a person will only be liable for obstructing an authorized officer in exercising the power under the Bill, if that person refuses the officer's entry after receiving the two-week notice. Relevant CSAs would be introduced.

Registration of registered energy assessors (Clause 31)

57. The Bills Committee has expressed concern about the lack of provisions in the Bill to require update of the Register of Registered Energy Assessors upon cancellation of registration of REAs.

58. The Administration has advised that clause 31 requires the Director to keep a Register of REAs and make the Register available for inspection by members of the public, with a view to ascertaining whether any person is a REA. Clause 31(4) also requires the Director to update the Register at any intervals. Hence, those REAs whose registrations have been cancelled will be removed from the Register. Besides, clause 42 of the Bill empowers the Secretary for the Environment (SEN) to make regulations providing for the registration, regulation and disciplinary matters in respect of REAs. This includes the cancellation of registration of REAs. The Legislature Council would be able to deal with details regarding cancellation of registration of REAs when the relevant legislation is introduced, as part and parcel of a whole package of registration matters. Notwithstanding, the Administration will move a CSA requiring the Director to make available the Register on the internet for access by members of the public.

Appeals against the Director's decision (Clauses 32 - 39)

59. Clause 33 requires that a notice of appeal must be made to the Director in specified form, to be accompanied by a copy of any document the appellant intends to rely on and the particulars of any witness that the appellant intends to call at the hearing.

60. The Bills Committee has enquired if the Director would be subject to the same requirement. The Administration has advised that the requirements under clause 33(3) aim to discourage unreasonable requests of appeal. Hence, it is not necessary for the Director to inform the appellant of the same. This is also in line with the arrangement under existing law, including the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598).

61. Clause 34 provides for the appointment of a Buildings Energy Efficiency Appeal Board Panel. The appeal board panel is to consist of not more than five members from each of the five prescribed professional streams.

62. Bills Committee members have noted that all members of the appeal board panel are to be appointed from the engineering profession, and that a member of the appeal board panel may be reappointed on the expiry of a three-year term. They have asked whether a member from the legal profession should be appointed to the appeal board panel to provide advice on proceedings and drafting of decisions, and whether the reappointment of appeal board

members is subject to the existing "Six-year Rule" and "Six-board Rule" (6-6 Rules) applicable to appointments to advisory and statutory bodies.

63. According to the Administration, it will consider a host of factors, including a candidate's ability, expertise, experience, integrity and commitment to public service, function and nature of the board or committee concerned etc, in making appointments to advisory and statutory bodies in order to secure the services of the most suitable persons to meet the requirements of the board and committee concerned. When appointing members to the appeal board panel under the Bill, the Administration will observe the 6-6 Rules as far as possible, and will also increase the number of female members in the appeal board panel in line with the policy on gender mainstreaming. In this connection, SEN will include in his speech at the resumption of Second Reading debate on the Bill that the 6-6 Rules as well as the policy on gender mainstreaming will be followed as far as practicable when appointing members to the appeal board panel.

64. On the suggestion of including a member from the legal profession in the appeal board panel, the Administration has advised that both an appellant and the Director may be represented by a barrister or solicitor at a hearing of the appeal board. The appeal board may also engage any barrister or solicitor to advise the board on any matter relating to the appeal. There is therefore no need to specifically appoint legal professionals to the appeal board panel. While an appeal board is required under clause 39(4) to issue to both the appellant and the Director a notice of its determination and reasons, it is not necessary for these to be drafted by a legal professional. Such arrangements are consistent with some other appeal boards under existing legislation, such as the Gas Safety Ordinance (Cap. 51) and the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598).

65. Clause 35 requires SEN to appoint a Buildings Energy Efficiency Appeal Board from among members of the appeal board panel within 21 days after receiving a notice of appeal. An appeal board is to consist of five members.

66. Bills Committee members have noted that procedures of appeal boards are either provided in the principal ordinances, or subsidiary legislation as authorized in the principle ordinances, or to be left to the appeal boards to decide if the procedures are not provided in the laws. The Bills Committee has enquired the rationale for not setting out the procedure of appeal board under the Bill by means of subsidiary legislation. According to the Administration, there is no universal treatment across the board regarding the procedures of appeal boards. Irrespective of where the provisions appear (whether or not by means of subsidiary legislation), the procedural matters provided in legislation are more or less the same, including a reasonable notice by the appeal board to

the appeal parties regarding the date, time and place of the hearing, the proceedings, whether the appeal is open to the public, means of representation of different parties etc. All these matters have already been provided for under clauses 35 to 39 of the Bill. A flowchart showing the logistics of appeal is given in Annex A to LC Paper No. CB(1) 2444/09-10(03). To ensure consistency in practices of these appeal boards, members have requested the matter be referred to the Panel on Administration of Justice and Legal Services (AJLS Panel) for further discussion.

67. Clause 36 sets out the proceedings of appeal board, including the quorum for a meeting of an appeal board which is four members. Bills Committee members have expressed concern that the quorum may be too high having regard to the busy schedules of members. It is also necessary to ensure the continuity of membership as resignation or termination of membership in the course of an appeal may give rise to legal challenges on the validity of the determination of appeal.

68. In the light of members' concerns, the Administration has reviewed the composition and proceedings of an appeal board. To facilitate formation of an appeal board, a CSA will be moved to increase the maximum number of appeal board panel members to be appointed from each professional stream from five to 10. Another CSA will be moved to lower the quorum for an appeal board meeting from four members to three members to allow greater flexibility for the conduct of an appeal meeting. In the event of a member of an appeal board resigns or has his/her membership terminated during the course of an appeal, the Administration would appoint a new member from the appeal board replace the original member. The appeal being heard shall continue unless more than two out of the five original members of the appeal board have resigned or have their membership terminated. If such case arises, the appeal board must be dissolved and a new appeal board will be formed to hear the appeal afresh. CSAs will be introduced to this effect.

69. Clause 39 empowers an appeal board to make any order that it thinks fit with regard to the payment of costs of the appeal proceedings. Bills Committee members have enquired about the coverage of "costs of the appeal proceedings" in clause 39(2)(a). The Administration has explained that the "costs" in clause 39 is not limited to legal costs but generally all relevant costs to an appeal. The "costs of the appeal proceedings" in clause 39(2)(a) refers to the costs relevant to the conduct of the appeal board proceedings, including expenses for the use of venue and other miscellaneous items such as stationery etc. For the loss of income of witnesses or any other costs relevant to an appellant of the appeal, these should be covered under clause 39(2)(b). For avoidance of doubt, CSAs will be moved to make this clear. Noting that there is no uniform definition for "cost of appeal proceedings", members have requested the matter to be referred to the AJLS Panel for further discussion.

70. To ensure that an appeal may not drag on for too long, members have enquired about the feasibility of setting a time frame for hearing of appeals. The Administration has explained that it is impractical to specify in the Bill a time frame for hearing of appeals, since the circumstances of each case would vary.

Code of Practice (Clauses 40 - 41)

71. Clause 40 provides for the issue and approval of codes of practice. The Bills Committee has noted that the Director may from time to time revise and approve any revision of any code of practice. Given that the code of practice aims to provide practical guidance in respect of any standard or requirement under the Bill, members have pointed out the need for consultation before issuing or revising the code of practice. There should also be express provisions in the Bill to provide for such consultation.

72. According to the Administration, the code of practice under the Bill is prepared with reference to BEC (2007 Edition) under the voluntary Hong Kong Energy Efficiency Registration Scheme for Buildings together with suitable modifications taking into account the views and suggestions from the Technical Task Force and Trade Task Force set up under EMSD and comprising representatives from professional bodies and trade associations in relation to the design, installation, operation or maintenance of building services installations. While the Bill does not provide for a legal consultation requirement on the issue or approval of code of practice, EMSD will continue to consult the Technical Task Force in future on the review of the code of practice to reflect the latest technological development and trade practices. In the light of members' view, the Administration is prepared to introduce CSA to make relevant consultation a statutory requirement.

73. Clause 41 provides for the admissibility of codes of practice in evidence in any legal proceedings. Bills Committee members have enquired whether it is a common practice for codes of practices to be admissible in evidence in legal proceedings, and whether the soft copy of the code of practice is also admissible as the Bill has stipulated the production of a Government Printer's copy. They have further enquired whether appeals under the Bill also fall within the meaning of legal proceedings.

74. According to the Administration, there are numerous examples in existing legislation across different subjects where codes of practices are admissible in evidence. These include the Public Health and Municipal Service Ordinance (Cap. 132), Unsolicited Electronic Messages Ordinance (Cap. 598) and Entertainment Special Effects Ordinance (Cap. 560). It is also worth noting that the phrase "Government Printer's copy" does not necessarily mean a particular set of hardcopy printed by the Government Printer.

Government Gazettes, including legal notices, have already been available at the website of the Government Logistics Department. Therefore, a printout of an electronic version of a Gazette, which is published online by the Government's Printer, is still a "Government Printer's copy". The Administration has further advised that it is the policy intention that appeals under the Bill would fall within the meaning of legal proceedings. CSA will be moved to clearly reflect such intention.

Miscellaneous matters

Secretary may amend Schedules (Clause 43)

75. Clause 43 provides that SEN may, by notice published in the Gazette, amend any Schedule. As Schedules 1 to 4 relate to the application of the Bill, members held the view that any amendment to these Schedules should be subject to the positive vetting procedure. However, this may not be the case for Schedule 5 which only deals with the schedule of the first energy audits for buildings without COCR. According to the Administration, it is not uncommon for schedules to ordinances to be amended by the negative vetting procedure, and this should also apply to the Schedules to the Bill. At members' repeated requests, the Administration has eventually agreed that amendments to Schedules 1 to 4 to the Bill would be subject to the positive vetting procedure, and will introduce CSAs to this effect.

Issue of notice etc (Clause 47)

76. Clause 47(2) provides that a notice issued to a corporation registered under section 8 of BMO in respect 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.

77. Some members have enquired whether clause 47(2) only applies to common areas of a building since the clause as drafted may cover all areas and not just common areas of the building. According to the Administration, the policy intention is to specify in clause 47(2) that in respect of common areas of a building, 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. CSAs would be moved to clearly reflect such intention.

Defence of due diligence (Clause 50)

78. Clause 50 provides for a defence of due diligence for a person charged with an offence under the Bill. Noting that a person charged is not entitled to rely on the defence by reason of the person's reliance on information given by another person unless the person charged shows that it was reasonable in all the circumstances for him or her to rely on the information, members have

expressed concern that the effect of the provision may be too intrusive and may affect the right of silence of the person concerned.

79. According to the Administration, section 56B of the Electricity Ordinance (Cap. 406), section 14 of the Electrical Products (Safety) Regulation (Cap. 406G), section 35 of the Toys and Children's Products Safety Ordinance (Cap. 424), section 24 of the Consumer Goods Safety Ordinance (Cap. 456), and section 46 of the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598) also have similar provisions. To clarify the content of defence, the Administration will move a CSA to the effect that if the defence involves an allegation that the offence was due to reliance on information given by another person, the defence is not established unless the person charged shows that it was reasonable in all circumstances for him or her to rely on the information.

Transitional provision (Clause 52)

80. Clause 52 stipulates the transitional provision for an energy audit carried out on or after the date on which a code of practice concerning an energy audit is identified by the Director but before the commencement of Part 4 of the Ordinance, if enacted.

81. Bills Committee members are concerned that there seems to be a lack of confirmation from the Administration to the building owners for having carried out the energy audits in compliance with clause 52. According to the Administration, an energy audit that meets the criteria set out in clause 52(a) and (b) is regarded, on the commencement of Part 4, as an energy audit carried out on the commencement of Part 4. As energy audits conducted under Part 4 do not involve any procedure to confirm compliance, it is considered not advisable for energy audits that meet the criteria in clause 52 to depart from the procedures in Part 4. The Code of Practice concerning an energy audit, which should have been formally issued by the time such energy audits are conducted, would provide the necessary guidance on how to conduct an energy audit in compliance with the Bill.

82. In the light of members' concern that clause 52 is not clear on whether the person who carried out the energy audit before the commencement of Part 4 has to be a REA after Part 4 commences, the Administration will introduce a CSA to set out clearly that the person concerned has to be a REA on the commencement of Part 4.

Schedule 2

83. Schedule 2 sets out the building services installations to which the Bill does not apply. These include lighting installation that is solely used for illumination of an exhibit/product on display, decoration, visual production, or

any combination of the prescribed purposes under item 6.

84. While not opposing to exempting lighting installation that is solely used for visual production, members disagreed that lighting installations solely used for illumination of an exhibit/product on display or decoration (decorative lighting) should be exempted as these are usually of excessive glare. Exempting decorative lighting may run contrary to the policy intent of the Bill to enhance energy efficiency. Besides, a person may circumvent the energy efficiency requirements by claiming that the lighting installations are used for both decorative and general lighting purposes. The Bills Committee has explored the feasibility of narrowing down the scope of item 6.

85. According to the Administration, proposed exemption under item 6 is in line with the voluntary Hong Kong Energy Efficiency Registration Scheme for Buildings, which also does not apply to light installations solely used for decoration or other special specified purposes. The policy intent is that lighting installations used for both decorative and general lighting purpose will still be required to comply with the energy efficiency requirements as set out in the Code of Practice. To avoid possible abuse of the scope of exemption by misclassifying the purpose of these special lighting installations, and having considered members' concern, the Administration is prepared to introduce a CSA to further narrow down the scope by including more specific types of special lighting that are to be exempted under item 6 of Schedule 2. To enable a better understanding of the scope of special lighting installations, the Administration will provide examples of these lighting installations in publicity when the new legislation is enacted. It will also state in the Code of Practice that, in case of uncertainty on whether specific lighting installations fall within the scope of exemption, clarification should be sought from the Director on whether relevant lighting installations fall within the scope of exemption, or else there may be risks of misclassifying the lighting installation.

86. To address the problem of excessive glare, Ms Cyd HO has indicated her intention to move a CSA to specify the duration after which decorative lighting should be switched off. According to the Administration, the proposal to circumscribe the exemption for decorative lighting to a specific period of time during the day seems to be a new regulation over the operation of lighting installations not currently featured in BECs, which now only deals with the specification of technical standards on energy efficiency. The proposed CSA would have the effect that the Bill should apply to decorative lighting outside the specified duration. Such application would call for the establishment of energy efficiency standards, mainly in terns of lighting power density for decorative lighting. It is worth noting that at present, there have not been any widely adopted international standards on lighting power density for decorative lighting. It may take considerable time to establish a standard for Hong Kong given the time required for consultation with relevant stakeholders and task

force, as well as collection of baseline date for mapping such standards which may vary under different circumstances depending on the specific function and purpose of such lighting. Given that the regulatory nature of the proposed CSA is fundamentally different from other requirements under the Bill, the Administration has to carefully assess the compatibility of the proposal with the regulatory framework of the Bill as a whole. The Administration has also advised that a study on excessive glare from external lighting was underway, and that the findings would be presented to the Panel on Environmental Affairs in due course.

87. Bills Committee members have expressed concern that the exemption under item 6 will contradict the policy intention of future legislation governing excessive glare of external lighting. They enquired whether consideration can be given to deleting item 6 with the effect that any exemption would be provided in the Code of Practice issued or approved by the Director. According to the Administration, the exemption in question would not, as a matter of legal principle, preclude any future legislative control governing excessive glare of external lighting, whether or not the control is imposed through the Bill or any other legislation. If necessary, consequential amendments may be made in any future legislation if external lighting is subject to statutory control. On the suggestion of removing item 6 while keeping all other exemption items intact in Schedule 2, the Administration has advised that a consistent approach should be adopted for all exempted items under the Bill. Hence, so long as other exempted items are specified in Schedule 2, the same arrangement should also apply to the exemption for lighting installation i.e. item 6 should be specified in Schedule 2. Besides, it is worth noting that the Code of Practice can be amended by non-statutory means. Mr KAM Nai-wai is not convinced of the Administration's response and has indicated his intention to introduce CSA to remove item 6(b) from Schedule 2.

Schedule 3

88. Schedule 3 defines major retrofitting works. Noting that major retrofitting works refer to 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 of total floor area of not less than 500 square metres (m^2) under the same series of works within 12 months in a unit or a common area of a prescribed building, members have enquired about the basis upon which the threshold of 500 m^2 is arrived at, and the differences in energy saving and CO_2 reduction if the threshold is reduced.

89. The Administration has advised that the proposed threshold has taken into account of extensive consultation with relevant trades, and aimed to achieve a balance between the promotion of energy saving and compliance implication on business environment. For Post-enactment Buildings, their

central services installations as well as other building services installation in individual units and common areas, where applicable, will be required to comply with BECs at all times. Any change to the 500 m^2 threshold would only affect the number of major retrofitting works projects that require a FOC. For Pre-enactment Buildings, any change in the 500 m^2 would affect the number of major retrofitting works that will be required to comply with the proposed mandatory scheme. However, as the extent of change in saving in electricity and CO_2 emissions by changing the threshold would depend on the frequency, scale and nature of major retrofitting works to be conducted, such extent of change can hardly be estimated.

Schedule 5

90. Schedule 5 specifies the schedule of the first energy audit for buildings without COCR. Bills Committee members have noted that buildings with occupation approval issued on or before 31 December 1969 are required to carry out the first energy audit within 48 months from the commencement of Part 4. They have pointed out that greater energy efficiency could be achieved if energy audits were to start with the oldest buildings. According to the Administration, the Technical Task Force has discussed the subject in detail. It is worth noting that newer buildings usually have the requisite information for energy audits ready, which would help REA to acquire the necessary experience in assessing compliance with the Code of Practice. Besides, owners could decide to conduct energy audits for their buildings before the respective prescribed periods in Schedule 5.

Legislative procedures and implementation time-table

91. The Bills Committee notes that after enactment of the Buildings Energy Efficiency Ordinance, the Administration plans to proceed with the following –

(a) to submit the subsidiary legislation on the prescribed fees of the Ordinance and registration of REA to the Legislative Council for negative vetting; and

(b) after the enactment of the subsidiary legislation, to allow a 18-month period for registration by REA, before other requirements under the Ordinance come into effect.

92. The Bills Committee has also examined other technical aspects of the Bill.

Committee Stage amendments

93. The Bills Committee has no objection to the CSAs to be moved by the Administration, and will not move any CSAs in its name. However Hon Audrey EU, Hon KAM Nai-wai and Hon Cyd HO have indicated intention to move CSAs to the Bill.

Recommendation

94. The Bills Committee supports the Administration's proposal to resume the Second Reading debate on the Bill on 24 November 2010.

Consultation with the House Committee

95. The House Committee at its meeting on 12 November 2010 supported the recommendation of the Bills Committee in paragraph 94.

Prepared by
Council Business Division 1
Legislative Council Secretariat
19 November 2010

Appendix I

Bills Committee on Buildings Energy Efficiency Bill

Membership list

Chairman	Hon Audrey EU Yuet-mee, SC, JP
Members	Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP Hon Abraham SHEK Lai-him, SBS, JP Hon Vincent FANG Kang, SBS, JP Hon LEE Wing-tat Prof Hon Patrick LAU Sau-shing, SBS, JP Hon KAM Nai-wai, MH Hon Cyd HO Sau-lan Hon CHAN Hak-kan Hon IP Kwok-him, GBS, JP Hon Tanya CHAN (up to 28 January 2010)(rejoined on 18 May 2010) (Total : 11 Members)
Clerk	Miss Becky YU
Legal Adviser	Miss Kitty CHENG
Date	19 May 2010

Appendix II

List of organizations which have made written and/or oral representations to the Bills Committee

1. Advisory Council on the Environment
2. Asian Institute of Intelligent Buildings
3. ASHRAE Hong Kong Chapter
4. BEAM Society
5. Building Services Operation and Maintenance Executives Society
6. CIE (Hong Kong) Ltd
7. Civic Party
8. CLP Power Hong Kong Ltd
9. Construction Industry Council
10. Energy Efficiency and Conservation Subcommittee of the Energy Advisory Committee
11. Energy Institute (Hong Kong Branch)
12. Estates Offices/Facilities Management Offices of Universities
13. Federation of Hong Kong Industries
14. Friends of the Earth (HK)
15. Greeners Action
16. Green Council
17. Greenpeace China
18. Green Sense
19. Hong Kong Association of Energy Engineers
20. Hong Kong Electrical Contractors' Association Ltd
21. Hong Kong General Chamber of Commerce
22. Hong Kong Hotels Association − Hotel Engineers Committee
23. Hong Kong Institute of Surveyors
24. Institution of Mechanical Engineers (Hong Kong Branch)
25. Lift and Escalator Contractors Association
26. Professor Francis YIK, The Hong Kong Polytechnic University
27. Professional Green Building Council
28. Professor Stephen LAU, The University of Hong Kong
29. Real Estate Developers Association of Hong Kong
30. The Association of Consulting Engineers of Hong Kong
31. The Chartered Institution of Building Services Engineers (Hong Kong Branch)
32. The Federation of Hong Kong Hotel Owners
33. The Hong Kong Air Conditioning and Refrigeration Association Ltd
34. The Hong Kong Federation of Electrical and Mechanical Contractors Ltd
35. The Hong Kong Institution of Engineers
36. The Hong Kong Institute of Facility Management
37. The Institution of Engineering and Technology Hong Kong
38. The Law Society of Hong Kong
39. WWF Hong Kong