

政府總部
環境局
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11 February 2011

Mr YICK Wing-kin
Assistant Legal Advisor
Legislative Council
8 Jackson Road
Central
Hong Kong

By Fax (2877 5029) and By Mail

Dear Mr YICK,

**Buildings Energy Efficiency (Registered Energy Assessors)
Regulation (L.N. 19 of 2011) (“the Regulation”)**

Thank you for your letter dated 9 February 2011. I hereby set out our responses to your questions raised in the letter.

In response to your paragraph (a):

As explained in our earlier letter dated 8 February 2011, in relation to a hearing before a disciplinary board, protection of legal professional privilege is provided under common law principles and consistent with Article 35 of the Basic Law. We do not consider it necessary to make express provisions in statute. In fact, section 18 of the Regulation is modeled on section 37 of the principal legislation, viz. the Buildings Energy Efficiency Ordinance (“the Ordinance”).

In response to your paragraph (b):

We see it fit for the Director of Electrical and Mechanical Services (“the Director”) and the disciplinary board to determine the disciplinary cases, depending on the nature and seriousness of the matter concerned.

As soon as the Director decides to take disciplinary action against a Registered Energy Assessor (“REA”), the REA, feeling aggrieved, may appeal against that decision pursuant to section 32(1)(m) of the Ordinance. The appeal will then be heard and determined by an appeal board formed under section 35 of the Ordinance.

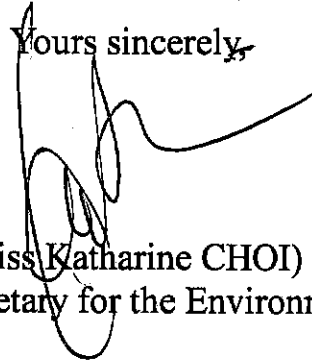
In determining a disciplinary case, the Director may only order that the REA be reprimanded, whereas a disciplinary board may also order that the name of the REA be removed from the Register of Registered Energy Assessors or a fine be imposed on the REA (see section 19 for details). We envisage that the Director will only determine relatively minor or routine cases. That said, even for minor cases, if an REA requests that the case be heard by a disciplinary board, he can do so at any time before the Director determines the case under section 14(3) of the Regulation. The Director will give a notice to the REA specifying the ground for instituting the disciplinary proceedings and advising the REA to make written submission within 28 days after the date of such notice. The Director will only determine the case after considering the written submission, if any.

As explained in our previous reply, safeguards to ensure procedural fairness in disciplinary proceedings have been built into the Regulation. By virtue of sections 13(3)(a) and 14(4)(a) of the Regulation, the powers of the Director to determine a case against a REA and to censure a REA is limited. Hence, we do not consider it necessary to provide for an appeal mechanism against the orders made by the Director in a disciplinary proceeding.

A disciplinary board is an independent body established by law. We do not consider it necessary to provide for an appeal mechanism against the orders made by a disciplinary board. This is also in line with

the relevant arrangements of the appeal board under the Ordinance. However, the decisions of the appeal board and the disciplinary board will be subject to judicial review by the Court of First Instance.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Katharine Choi', written over the typed name below.

(Miss Katharine CHOI)
for Secretary for the Environment

c.c.

Electrical & Mechanical Services Department (Attn.: Mr K K LI)
Department of Justice (Attn.: Miss Selina Lau
Ms Mandy Ng)