

**Buildings Energy Efficiency (Fees) Regulation and the Buildings Energy Efficiency (Registered Energy Assessors) Regulation**

**The Administration’s response to Action Items at the Subcommittee meeting on 28 February 2011**

**(a) Information on the registration fees and registration renewal fees payable by other professionals (e.g. marine surveyors)**

As requested by Members at the Subcommittee meeting held on 28 February 2011, the Administration has prepared the table below comparing relevant registration and renewal fees of some professionals.

| <b>Name of profession</b>             | <b>Ordinance under which the registration is held</b> | <b>Registration fee</b>         | <b>Renewal fee</b>              |
|---------------------------------------|---|---------------------------------|---------------------------------|
| Authorized Person                     | Buildings Ordinance (Cap. 123)                        | \$4,150 for a period of 5 years | \$1,200 for a period of 5 years |
| Registered Structural Engineer        |   |                                 |                                 |
| Registered Lift / Escalator Engineers | Lift and Escalators (Safety) Ordinance (Cap. 327)     | \$4,490                         | Not applicable                  |

2. Section 7 and of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) empowers the Director of Marine to authorize in writing a person, or a person belonging to a class of persons, who is not a public officer to be a surveyor for the purposes of carrying out the work under the Ordinance on approval of plans, inspection and survey of local vessels under Cap. 548. These authorized surveyors, now totaling only 15 in number, are not required to pay registration fees to the Government.

**(b) Whether an avenue of appeal should be provided for any aggrieved REA against decisions of the Director or a disciplinary board in disciplinary proceedings against REAs**

3. As explained in our letters to the Assistant Legal Advisor

("ALA") dated 8 and 11 February 2011 and at the Subcommittee meeting dated 22 February 2011, 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.

**(c) Whether the effective date of registration of REAs should also be included in the Register of REAs**

4. Members raised at the Subcommittee meeting of 28 February 2011 that members of the public may wish to know the seniority of the Registered Energy Assessors ("REAs"), and asked the Administration to consider including in the Register of REAs the effective date of registration of REAs. Having considered Members' views again, the Administration agree to include in the Register the relevant dates. Proposed amendments to the REA Regulation is at **Annex**.

**(d) Whether a grace period may need to be granted to applicants for renewal of registration under section 6(3)(b) of the REA Regulation, so as to put it beyond doubt that the declarations certified and forms of compliance/energy audit forms issued by an REA during the "time gap" of 28 days are also valid**

5. The policy intention is that a registration of an REA, on its expiry, shall become invalid. The REA shall seek to renew his registration before he continues to perform the functions of REA as required under the Buildings Energy Efficiency Ordinance ("the Ordinance"). As the Electrical and Mechanical Services Department is going to issue reminder letters to REAs months before the expiry of registration, REA should have sufficient time to plan for renewal. As such, we do not propose to have any grace period arrangement to avoid any possible confusion.

**(e) Whether sections 5(5) and 9 of the REA Regulation as currently drafted may give rise to ambiguity**

6. The Administration explained in our letter to the ALA on 8 February 2011 and at the Subcommittee meeting on 28 February 2011 that, section 9(5) specifies that on the removal of the name of the person, the registration ceases to be valid. Section 9(5) does not have the effect of extending the validity period of a registration that has already expired. It only provides that once a name is removed, the registration ceases to be valid (notwithstanding the fact that the validity period of 10 years has not expired). Members raised at the Subcommittee meeting held on 28 February 2011 that sections 5(5) and 9(5), when read together, appear unclear in this point. Having considered Members' views, the Administration agrees to propose amendments to the REA Regulation, and the proposed amendments are at Annex.

**(f) Whether to expressly provide that a person directed by a disciplinary board to produce any document under section 18(6)(b) is protected by legal professional privilege**

7. The draft committee stage amendments are at Annex. As explained in our letters to the ALA dated 8 and 11 February 2011 and at the Subcommittee meeting dated 22 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. Since Members strongly requested that such protection be expressly provided in the REA Regulation, the Administration proposes to make such amendments.

**Environment Bureau  
Electrical and Mechanical Services Department  
March 2011**

## Buildings Energy Efficiency (Registered Energy Assessors) Regulation

### 3. Register of Registered Energy Assessors

The Register of Registered Energy Assessors must contain in respect of every registered energy assessor—

- (a) the name of the assessor;
- (b) the registration number of the assessor;
- (c) the validity periods of all certificates of registration issued to the assessor under section 5(4)(b) or 6(6)(b); and the expiry date of the registration of the assessor; and
- (d) any other details as the Director thinks fit.

### 5. Determination of application

(1) The Director may allow an application under section 4 if the Director is satisfied that—

- (a) the applicant—
  - (i) is a registered professional engineer within the meaning of section 2(1) of the Engineers Registration Ordinance (Cap. 409) and is registered in the electrical, mechanical, environmental or building services discipline under that Ordinance;
  - (ii) has had at least 2 years practical experience in engineering works relating to energy efficiency in buildings acquired while being so registered;
  - (iii) has the knowledge required for the performance of the duties and functions of a registered energy assessor under the Ordinance; and
  - (iv) is a fit and proper person to be registered; or
- (b) the applicant—
  - (i) is a corporate member of the Hong Kong Institution of Engineers in the electrical, mechanical, environmental or building services discipline, or has an equivalent qualification recognized by the Institution as being of a standard not lower than that of a corporate member of the Institution in any of those disciplines;
  - (ii) has had at least 3 years practical experience in engineering works relating to energy efficiency in buildings acquired while being such a member;
  - (iii) has the knowledge required for the performance of the duties and functions of a registered energy assessor under the Ordinance; and
  - (iv) is a fit and proper person to be registered.

(2) The Director may also allow the application if the Director is satisfied that—

- (a) the applicant's knowledge, qualification, education, experience and training, if considered as a whole—

- (i) are comparable to those matters set out in subsection (1)(a) or (b); and
- (ii) enable the applicant to perform the duties and functions of a registered energy assessor under the Ordinance; and
- (b) the applicant is a fit and proper person to be registered.
- (3) In determining whether the applicant is a fit and proper person to be registered for the purposes of subsection (1)(a)(iv) or (b)(iv) or (2)(b), the Director may take into account—
  - (a) whether the applicant has been—
    - (i) convicted in Hong Kong or elsewhere of any offence which, if committed by a registered energy assessor, may bring the profession of registered energy assessor into disrepute; and
    - (ii) sentenced to imprisonment, whether suspended or not; and
  - (b) whether the applicant has committed any misconduct or neglect in a professional respect.
- (4) If the Director allows the application, the Director must register the applicant under section 30 of the Ordinance by—
  - (a) entering in the Register of Registered Energy Assessors the details specified in section 3 in respect of the applicant; and
  - (b) issuing a certificate of registration to the applicant.
- (5) ~~Subject to section 9, the registration is valid for a period of 10 years beginning on the date on which the certificate of registration is issued.~~  
The registration is valid for the period beginning on the date on which the certificate of registration is issued and ending on the day before—
  - (a) the 10th anniversary of the date on which the certificate is issued; or
  - (b) the date on which the name of the applicant is removed from the Register of Registered Energy Assessors under section 9,  
whichever is the earlier.
- (6) If the Director refuses the application, the Director must notify the applicant in writing of the refusal and give reasons for the decision.

## 7. Validity of renewed registration

- (1) ~~Subject to section 9, a~~ registration renewed under section 6 is valid—
  - (a) if the application for the renewal was submitted within the period of 4 months immediately before the expiry of the current registration, for the period beginning on the date on which a certificate under section 6(6)(b) is issued in respect of the application and ending on—
    - (i) the 10th anniversary of the expiry date of the current registration; or

(ii) the day before the date on which the name of the applicant is removed from the Register of Registered Energy Assessors under section 9,

whichever is the earlier;

(b) if the application for the renewal was submitted more than 4 months before the expiry of the current registration, for ~~a~~ the period of 10 years beginning on the date on which a certificate under section 6(6)(b) is issued in respect of the application and ending on the day before —

(i) the 10th anniversary of the date on which the certificate is issued; or

(ii) the date on which the name of the applicant is removed from the Register of Registered Energy Assessors under section 9,

whichever is the earlier; or

(c) if the application for the renewal was submitted within the period specified in section 6(3)(b), for the period beginning on the date on which a certificate under section 6(6)(b) is issued in respect of the application and ending on —

(i) the 10th anniversary of the expiry date of the current registration; ~~or~~

(ii) the day before the date on which the name of the applicant is removed from the Register of Registered Energy Assessors under section 9,

whichever is the earlier.

(2) In this section—

***current registration*** (現有註冊), in relation to an application for the renewal of a registration under section 6, means the registration sought to be renewed.

## 9. Removal from Register of Registered Energy Assessors

(1) The Director may remove from the Register of Registered Energy Assessors the name of any person if—

(a) the person has died;

(b) the person has requested to discontinue the person's registration;

(c) where the person is registered by virtue of section 5(1)(a), the person does not meet or no longer meets the criterion set out in section 5(1)(a)(i);

(d) where the person is registered by virtue of section 5(1)(b), the person does not meet or no longer meets the criterion set out in section 5(1)(b)(i);

(e) where the person is registered by virtue of section 5(2), the person does not hold or no longer holds a submitted qualification;

(f) where the person is registered under section 8, the person is no longer a public officer, or the official duties of the person no longer require the person to perform the duties and functions of a registered energy assessor under the Ordinance;

- (g) the registration of the person has expired; or
  - (h) the disciplinary board has made an order under section 19(1)(a) for the removal of the person's name from the Register of Registered Energy Assessors.
- (2) If the Director intends to remove the name of any person under subsection (1)(b), (c), (d), (e), (f), (g) or (h), the Director must—
    - (a) notify the person in writing of the intention and the ground for the removal by registered post addressed to the correspondence address of the person; and
    - (b) specify in the notice the date on which the name will be removed, which date must not be earlier than 28 days after the date of posting the notice.
  - (3) If the Director gives notice to the person, the person (other than a person mentioned in subsection (1)(b) or (h)) may make representation to the Director before the date specified in the notice to show cause why the person's name should not be removed.
  - (4) If, after considering the representation (if any), the Director is satisfied that—
    - (a) in the case of a removal under subsection (1)(c), the person meets the criterion set out in section 5(1)(a)(i);
    - (b) in the case of a removal under subsection (1)(d), the person meets the criterion set out in section 5(1)(b)(i);
    - (c) in the case of a removal under subsection (1)(e), the person holds the submitted qualification concerned;
    - (d) in the case of a removal under subsection (1)(f), the person is still a public officer, and the official duties of the person still require the person to perform the duties and functions of a registered energy assessor under the Ordinance; or
    - (e) in the case of a removal under subsection (1)(g), the registration of the person has not expired,
 the Director must not remove the name of the person on the ground set out in the notice.

~~(5) On the removal of the name of the person, the registration of the person ceases to be valid.~~

## 18. Hearing

- (1) At a hearing before a disciplinary board in respect of a registered energy assessor, the Director and the assessor are parties to the hearing.
- (2) The Chairperson of a disciplinary board must notify the parties of the date, time and place of the hearing at least 14 days before the hearing.
- (3) At a hearing before a disciplinary board—
  - (a) the registered energy assessor may be represented by a barrister or solicitor; and
  - (b) the Director may be represented by—
    - (i) a barrister or solicitor; or
    - (ii) a public officer.

- (4) A disciplinary board may engage any barrister or solicitor to attend a hearing of the board to advise it on any matter relating to the hearing.
- (5) The hearing must be open to the public unless the disciplinary board determines that there is a good reason for it to be held in camera.
- (6) A disciplinary board may, by a notice signed by the Chairperson and issued to a person—
  - (a) direct the person to attend before the board and to give evidence; or
  - (b) direct the person to produce documents.
- (7) A person who fails to comply with a direction under subsection (6) commits an offence and is liable on conviction to a fine at level 5.
- (8) Despite subsection (6), no person to whom a direction is given under that subsection is required to give any evidence or produce any document which—
  - (a) tends to incriminate himself or herself; or
  - (b) the person would on grounds of legal professional privilege be entitled to refuse to give or produce.