

立法會
Legislative Council

LC Paper No. CB(1) 2077/09-10
(These minutes have been seen
by the administration)

Ref : CB1/BC/2/09/2

Bills Committee on Buildings Energy Efficiency Bill

**Minutes of eighth meeting
held on Wednesday, 5 May 2010, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon CHAN Hak-kan
Hon IP Kwok-him, GBS, JP
- Members absent** : Hon Abraham SHEK Lai-him, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon LEE Wing-tat
Hon Cyd HO Sau-lan
- Public officers attending** : Environment Bureau

Miss Katharine CHOI
Principal Assistant Secretary for the Environment
(Energy)

Mr Philip HAR
Assistant Secretary for the Environment (Energy)

Electrical and Mechanical Services Department

Mr LI Kwok-keung
Acting Assistant Director/Electricity and Energy
Efficiency

Mr Ken YEUNG
Senior Engineer/Energy Efficiency B5

Department of Justice

Mr Gilbert MO
Deputy Law Draftsman
(Bilingual Drafting & Administration)

Miss Mandy NG
Government Counsel

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mr Franco KWONG
Council Secretary (1)1

I. Confirmation of minutes

(LC Paper No. CB(1) 1753/09-10 — Minutes of the meeting held on
31 March 2010)

The minutes of the meeting held on 31 March 2010 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 1492/09-10(03) — Assistant Legal Adviser's letter
dated 19 March 2010 to the
Administration

LC Paper No. CB(1) 1511/09-10(01) — Administration's response to
CB(1) 1492/09-10(03) (clauses 2
to 15 only)

LC Paper No. CB(1) 1799/09-10(01) — Administration's response to
CB(1) 1492/09-10(03)
(paragraphs 25 to 49 only)

LC Paper No. CB(1) 1799/09-10(02) — Assistant Legal Adviser's letter
dated 3 May 2010 to the
Administration

LC Paper No. CB(1) 1799/09-10(03) — Submission from The Law
Society of Hong Kong (English
version only)

LC Paper No. CB(1) 1799/09-10(04) — List of follow-up actions arising
from the discussion at the
meeting on 26 April 2010

LC Paper No. CB(1) 1799/09-10(05) — Administration's response to CB(1) 1799/09-10(04))

Relevant papers

(LC Paper No. CB(3) 233/09-10 — The Bill

Ref: ENB 24/26/22 — The Legislative Council Brief

LC Paper No. LS 24/09-10 — Legal Service Division Report

LC Paper No. CB(1) 840/09-10(01) — Background brief on Buildings Energy Efficiency Bill

LC Paper No. CB(1) 1353/09-10(03) — Assistant Legal Adviser's letter dated 2 March 2010 to the Administration

LC Paper No. CB(1) 1364/09-10(01) — Administration's response to CB(1) 1353/09-10(03))

2. The Bills Committee deliberated (Index of proceedings attached in **Annex**).
3. The Administration was requested to -
 - (a) seriously re-consider adopting the definition of "common parts" provided in the Building Management Ordinance (Cap. 344) (BMO) for the Bill. To also re-consider the question of imposing liability on incorporated owners by virtue of legal operation under the Bill and section 16 of BMO (in the absence of express provision or cross reference) in view of the different definitions of "common parts" under BMO and the Bill;
 - (b) advise the feasibility of providing different time frames under clause 9(1)(b) for submission of stage-two declaration for different types of buildings with different situations (e.g. according to the size of building). To also advise the criteria for and circumstances under which extension would be granted under clause 9(5), and to consider setting out the criteria in the Bill;
 - (c) consider including in clause 10 a time frame within which the Director should issue or refuse to issue a Certificate of Compliance Registration (COCR). To also review the clauses of the Bill to replace phrases say "at all reasonable times" by definite time frames;
 - (d) include in clause 11 a requirement for the Director to make available the register of COCR on the internet for access by the public; and
 - (e) provide the draft Committee Stage amendments for consideration by the Bills Committee once available.

III. Any other business

4. There being no other business, the meeting ended at 10:00 am.

Council Business Division 1
Legislative Council Secretariat
31 May 2010

**Bills Committee on
Buildings Energy Efficiency Bill**

**Proceedings of the eighth meeting
on Wednesday, 5 May 2010, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000045 - 000105	Chairman	The minutes of the meeting held on 31 March 2010 (LC Paper No. CB(1) 1753/09-10) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000106 - 001005	Administration	Administration's explanation on its response to members' concerns raised at the meeting on 26 April 2010 (LC Paper No. CB(1) 1799/09-10(05)).	
001006 - 003016	Chairman Mr IP Kwok-him Administration ALA5	<p>Chairman's views -</p> <p>(a) the definition of "common parts" under the Building Management Ordinance ("BMO") (Cap. 344) should be adopted for the Bill;</p> <p>(b) it should be made clear in the Bill that incorporated owners were covered under the definition of "owner" if that was the policy intention; and</p> <p>(c) draft Committee Stage amendments should be provided for consideration by the Bills Committee once available.</p> <p>Administration's response -</p> <p>(a) the approach taken in BMO was different from that in the Bill. Paragraph (b) of the definition of "common parts" in BMO was definitive and not for illustration purpose, whereas paragraph (b) of</p>	<p>The Administration to -</p> <p>(a) seriously re-consider adopting the definition of "common parts" provided in BMO for the Bill;</p> <p>(b) also re-consider the question of imposing liability on incorporated owners by virtue of legal operation under the Bill and section 16 of BMO (in the absence of express provision or cross reference) in view of the different definitions of "common parts" under BMO and the Bill; and</p>

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		<p>"common area" in the Bill served to give examples but not a definitive list. The Bill as drafted aimed at providing greater flexibility for covering additional types of common area in the future if necessary. Legislative amendment to Schedule 1 would be required for such inclusion; and</p> <p>(b) while the definitions of "owner" under both the Bill and the Building Ordinance (Cap. 123) did not explicitly cover owners' corporation, section 16 of BMO provided that 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 were so formed under section 8 of BMO. Likewise, liabilities of the owners in relation to the common parts of the building should also be enforced against owners' corporation. This was also in line with the established practice of the Buildings Department to issue building orders to owners' corporations if so formed.</p> <p>ALA5's query that the Administration might need to reconsider the question of imposing liability on incorporated owners by virtue of legal operation under the Bill and section 16 of BMO (in the absence of express provision or cross reference) in view of the different definitions of "common parts" under BMO and the Bill.</p>	<p>(c) provide the draft Committee Stage amendments for consideration by the Bills Committee once available.</p>
003017 - 005930	<p>Chairman Administration Prof Patrick LAU Dr Raymond HO Mr IP Kwok-him</p>	<p><u>Continuation of clause-by-clause examination</u></p> <p>Clause 8 - Declaration at design stage</p> <p>Members' support for the imposition of a daily fine for failure of a developer to</p>	<p>The Administration to -</p> <p>(a) advise the feasibility of providing different time frames under clause 9(1)(b) for submission of</p>

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		<p>submit a stage one declaration.</p> <p>Clause 9 - Declaration at occupation approval stage</p> <p>Chairman's concern whether all building services installations were ready for inspection by a registered energy assessor (REA) within four months after the issue of occupation approval and if not, extension would be necessary.</p> <p>Prof Patrick LAU's view that it might take more than four months to put in place all the building services installations, particularly for large-scale developments.</p> <p>Administration's response -</p> <p>(a) the Trade Taskforce and Technical Taskforce had been consulted on the timeframe;</p> <p>(b) occupation approval would be issued if all the statutory building safety requirements were complied with. Developers would be required under clause 9(2)(a) to declare compliance with the prescribed standards and requirements for all building services installations provided by them at or before the time when the declaration was made. Owners/tenants would be required to obtain a Form of Compliance (FOC) for subsequent major retrofitting works;</p> <p>(c) REAs did not necessarily need to operate the building services installations in order to ascertain their compliance. REAs could refer to the suppliers' technical specifications of the installations. The Electrical and Mechanical Services Department would also</p>	<p>stage two declaration for different types of buildings with different situations (e.g. according to the size of building); and</p> <p>(b) also advise the criteria for and circumstances under which extension would be granted under clause 9(5), and to consider setting out the criteria in the Bill.</p>

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		<p>conduct sample inspections on site to ensure compliance; and</p> <p>(d) extension for submission of stage two declaration by developers would be considered on a case-by-case basis.</p> <p>Prof Patrick LAU and Dr Raymond HO's view that the Hong Kong Construction Association, comprising representatives from main construction contractors, should be consulted on the timeframe.</p>	
005931 - 010614	<p>Chairman Administration ALA5 Mr IP Kwok-him</p>	<p>Administration's explanation on its response to ALA5's letter dated 19 March 2010 (LC Paper No. CB(1) 1511/09-10(01)).</p> <p>Mr IP Kwok-him's concern about the requirement for a REA to personally inspect the building services installations covered by the certification under clause 9(2).</p> <p>Administration's response that as the certification required professional knowledge, it was necessary to require a REA to personally inspect the installations and make the certification. Besides, a REA was personally liable for providing false or misleading certification.</p>	
010615 - 012540	<p>Chairman Administration ALA5 Mr IP Kwok-him Prof Patrick LAU</p>	<p>Clause 10 - Certificate of Compliance Registration for buildings</p> <p>Chairman's enquiries -</p> <p>(a) whether the Director could withhold the issue of a Certificate of Compliance Registration (COCR) indefinitely in the absence of a time requirement for issue of COCR;</p> <p>(b) whether a provision with penalty could be included in clause 9 to</p>	<p>The Administration to consider including in clause 10 a time frame within which the Director should issue or refuse to issue a COCR.</p>

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		<p>require the mandatory provision of additional information by developers; and</p> <p>(c) the liability of owners/tenants if developers were unable to obtain COCR after intake.</p> <p>Administration's response -</p> <p>(a) it might not be appropriate to set a time frame within which the Director should issue a COCR, given the different nature of each submission. Developers might also be required to furnish further information and supporting documents;</p> <p>(b) developers were required to submit stage two declaration according to the requirements under clause 9(2). Failure to do so would be liable on conviction to a fine of \$1 million; and</p> <p>(c) in the light of the comments of the Bills Committee in previous meetings, clause 12(1) would be revised to set out clearly that only owners of buildings which had obtained COCR would need to observe that clause.</p> <p>Mr IP Kwok-him's enquiry on whether developers could appeal against the delay in issuance of COCR by the Director.</p> <p>The Administration's confirmation that an appeal mechanism for refusal to issue COCR was provided under clause 32.</p>	
012541 - 012811	Chairman Administration Mr IP Kwok-him Prof Patrick LAU	Clause 11 - Register of buildings issued with Certificate of Compliance Registration	The Administration to - (a) review the clauses of the Bill to replace phrases say "at all

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		Members' requests - (a) to review the clauses of the Bill to replace phrases say “at all reasonable times” by definite time frames; and (b) include in clause 11 a requirement for the Director to make available the register of COCR on the internet for access by the public.	reasonable times” by definite time frames; and (b) include in clause 11 a requirement for the Director to make available the register of COCR on the internet for access by the public.
012812 - 012855	Chairman	Schedule of meetings.	