

立法會
Legislative Council

LC Paper No. CB(1) 58/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/09/2

Bills Committee on Buildings Energy Efficiency Bill

**Minutes of fourteenth meeting
held on Monday, 20 September 2010, at 2:30 pm
in Conference Room A 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
Hon Abraham SHEK Lai-him, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon Tanya CHAN
- Members absent** : Hon Vincent FANG Kang, SBS, JP
Hon LEE Wing-tat
Hon IP Kwok-him, GBS, JP
- 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 MAK Ka-chun
Chief Engineer/Energy Efficiency B

Department of Justice

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

Miss Mandy NG
Government Counsel

- Attendance by Invitation** : The Law Society of Hong Kong
- Mr Steven SHUM
Member of the Property Committee
- Ms Doreen KONG
Member of the Property Committee
- 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
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I. Meeting with deputation and the Administration

Meeting with deputation

The Chairman informed members that the Estate Agents Authority had declined to attend the meeting to express views on the Bill. She then invited views from The Law Society of Hong Kong.

Meeting with the Administration

(LC Paper No. CB(1) 2840/09-10(01) — List of follow-up actions arising from the discussion at the meeting on 22 July 2010

LC Paper No. CB(1) 2840/09-10(02) — Administration's response to CB(1) 2840/09-10(01))

Relevant papers

- LC Paper No. CB(3) 233/09-10 — The Bill
- Ref: ENB 24/26/22 — The Legislative Council Brief
(issued by Environment Bureau on 2 December 2009)
- LC Paper No. CB(1) 1353/09-10(03) — Assistant Legal Adviser's letter dated 2 March 2010 to the Administration
(issued for meeting on 11 March 2010)
- LC Paper No. CB(1) 1364/09-10(01) — Administration's response to
(issued for meeting on 11 March 2010) CB(1) 1353/09-10(03)
- LC Paper No. CB(1) 1492/09-10(03) — Assistant Legal Adviser's letter dated
(issued for meeting on 31 March 2010) 19 March 2010 to the Administration
- LC Paper No. CB(1) 1511/09-10(01) — Administration's response to
(issued for meeting on 31 March 2010) CB(1) 1492/09-10(03) (clauses 2 to 15 only)
- LC Paper No. CB(1) 1799/09-10(01) — Administration's response to
(issued for the meeting on 5 May 2010) 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
(English version issued for the meeting on 5 May 2010) May 2010 to the Administration
(Chinese version issued for the meeting on 27 May 2010)
- LC Paper No. CB(1) 2048/09-10(02) — Administration's response to
(issued for the meeting on 27 May 2010) CB(1) 1799/09-10(02)
- LC Paper No. CB(1) 2245/09-10(03) — Assistant Legal Adviser's letter dated
(issued for the meeting on 15 June 2010) 10 June 2010 to the Administration
- LC Paper No. CB(1) 2444/09-10(01) — Administration's response to
(issued for the meeting on 7 July 2010) CB(1) 2245/09-10(03)
- LC Paper No. CB(1) 2609/09-10(01) — Letter from Law Society of Hong Kong
(issued for the meeting on 22 July 2010) (English version only)
- LC Paper No. CB(1) 2609/09-10(02) — Administration's response to
(issued for the meeting on 22 July 2010) CB(1) 2609/09-10(01) (English version only)

2. The Bills Committee deliberated (Index of proceedings attached in **Annex**).
3. The Administration was requested to -
 - (a) consider adding express provision in the Bill that any non-compliance would not constitute a cause for the Government to exercise its right of re-entry under the Land Grant;
 - (b) re-consider the suggestion of withholding the issue of occupation approval until confirmation of compliance with the requirement for Certificate of Compliance Registration (COCR) by developers;
 - (c) re-consider the need for including in clause 10 a time-frame within which the Director should issue or refuse to issue a COCR. To also advise the consequences/circumstances if the Director refused to issue a COCR;
 - (d) provide information on the proposed registers for Form of Compliance and Improvement Notice, and to advise the types of information that would be/would not be included in the registers. To also advise the means through which searches could be made under the registers, and whether fee would be charged for searches by the public;
 - (e) review the drafting of clause 47(2) as the effect of the clause might cover all areas and not just common area of the building;
 - (f) re-consider providing positive vetting procedures for amendments to Schedules 1 to 4 under clause 43; and
 - (g) provide a marked-up copy for the proposed Committee Stage amendments.

II. Any other business

4. There being no other business, the meeting ended at 4:30 pm.

**Bills Committee on
Buildings Energy Efficiency Bill**

**Proceedings of the fourteenth meeting
on Monday, 20 September 2010, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with deputation and the Administration</i>			
000001 - 000416	Chairman	Introductory remarks	
000417 - 001520	Mr Steven SHUM/The Law Society of Hong Kong (LSHK)	Expression of views - (a) the legislative intent of the Bill to enhance buildings energy efficiency was worth supporting; (b) as non-compliance with the Bill might entitle the Government to exercise its right of re-entry under land grants, consideration should be given to stating it clearly that contravention of the Bill would not cause the Government to re-enter the title to avoid unnecessary disruption to conveyancing transactions; and (c) efforts should be made to set up registers for Form of Compliance (FOC) and Improvement Notice (IN) to facilitate solicitors/prospective buyers to ascertain the status of compliance.	
001521 - 002705	Chairman Administration Mr Steven SHUM/LSHK	Chairman's request for clarification from the Administration on the following - (a) whether non-compliance with the requirement for Certificate of Compliance Registration (COCR), FOC or IN would affect the title of a property, thereby causing disputes in property transactions; and (b) whether there were means through which the public could ascertain the compliance status of FOC and IN.	

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		<p>Administration's response -</p> <p>(a) the Bill would create potential liabilities on the persons required to comply with the requirements for COCR, FOC and IN, but it would create no charge on the property concerned. Therefore, any breach of the requirements for COCR, FOC and IN should not be regarded as defect or encumbrance on the title of the property concerned;</p> <p>(b) after considering LSHK's views, the Electrical and Mechanical Services Department (EMSD) was prepared to set up registers for FOC and IN to enhance transparency of compliance with the Bill. However, the proposed register for FOC might not be exhaustive as it would only contain those received by EMSD. Hence, it was advisable for buyers to engage registered energy assessors (REA) to ensure compliance with the requirements under the Bill; and</p> <p>(c) Care would be taken to ensure that the proposed registers would only contain necessary information, such as address of the premises, types of building services installations involved, year in which FOC was issued etc, in order to protect owners' privacy.</p> <p>Mr Steven SHUM/LSHK's concern that a buyer would need to ensure compliance with the Bill if the owner failed to disclose the status of compliance upon property transaction.</p>	
002706 - 003352	Chairman Administration Mr Steven SHUM/LSHK ALA5	Chairman's enquiry on the clauses which specified the liabilities of the persons required to comply with the requirements of COCR, FOC and IN.	

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		<p>Administration's response that clauses 8(3), 12(4), 12(5), 17(9), 26(5) and 26(7) had specified the legal responsibilities of owners/responsible persons concerned.</p> <p>Mr Steven SHUM/LSHK's remark that demolition orders under the Buildings Ordinance (Cap. 123) (BO) were served to the owners concerned. However, such orders would also be registered in the Land Registry. Hence, new owners would be held responsible for complying with these orders upon property transactions. The same principle would apply to the Bill unless there was an express provision stating the exception. Otherwise, non-compliance with IN under the Bill would constitute a defect in the title.</p>	
003353 - 004644	<p>Ms Cyd HO Chairman Administration Mr Steven SHUM/LSHK Assistant Legal Adviser 5 (ALA5)</p>	<p>Ms Cyd HO's views/enquiries -</p> <p>(a) The difference between demolition order under BO and COCR/FOC/IN under the Bill;</p> <p>(b) the party which should be held responsible for obtaining a FOC if the property changed hands before the major retrofitting works were completed; and</p> <p>(c) publicity should be stepped up to ensure compliance with the requirements for FOC and IN by the relevant parties.</p> <p>Administration's response -</p> <p>(a) unlike demolition orders under BO, COCR/FOC/IN would not be registered in the Land Registry. The requirements for COCR/FOC/IN would only impose liability on the persons concerned;</p> <p>(b) the proposed Committee Stage amendments (CSA) to clause 17 required the person who was the responsible person or owner, as at</p>	<p>The Administration to consider adding express provision in the Bill that any non-compliance would not constitute a cause for the Government to exercise its right of re-entry under the Land Grant.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>the completion of the major retrofitting works, to obtain a FOC; and</p> <p>(c) if the property changed hands before completion of the works, the subsequent owner would be required to obtain a FOC at the time the works were completed. This was because the subsequent owner could alter the scope of the ongoing works after taking over the property.</p> <p>ALA5's advice -</p> <p>(a) under BO, if an owner failed to comply with an order to demolish or alter an unauthorized building structure, the Building Authority could carry out the demolition or alternation works and recover the cost from the owner through a charging order. The Bill did not make such provisions; and</p> <p>(b) there were precedents where the court ruled that a risk of litigation might affect the title of a property.</p> <p>Discussion on the feasibility of including an express provision to state that non-compliance with the Bill would not entitle the Government to re-enter the land.</p> <p>Administration's response that it was common for a land grant to contain terms requiring the grantee to comply with all laws and regulations from time to time in force in Hong Kong. Any deviation from such practice would require thorough consultation with the relevant bureaux and departments.</p>	
004645 - 005313	Chairman Administration Mr Steven SHUM/LSHK	<p>Discussion on the need for measures to protect individual owners in the event of failure of the developer to obtain COCR.</p> <p>Mr Steven SHUM/LSHK's view that consideration should be given to</p>	

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		<p>withholding the issue of occupation approval or requesting developers to provide stakeholding money until confirmation of compliance with the requirement for COCR by developers.</p> <p>Chairman's remark that the Bills Committee had also suggested the withholding of occupation approval, and in return the Administration had proposed CSAs to include a daily fine in clause 8(3) for delay in obtaining COCR, and set out in clause 12 the liabilities of owners of the buildings with COCR.</p> <p>Administration's response that the proposed CSAs aimed to deter delay in obtaining COCR by developers on the one hand and protecting individual owners on the other.</p>	
005314 - 005739	Mr Steven SHUM/LSHK Administration Chairman Ms Cyd HO	<p>In response to Mr Steven SHUM/LSHK's enquiry, the Administration confirmed that that the proposed registers for FOC and IN would be uploaded onto EMSD's website for public inspection.</p> <p>Chairman and Ms Cyd HO's request for a paper setting out the types of information that would be/would not be included in the registers, the means through which searches could be made, and the relevant fee.</p>	<p>The Administration to -</p> <p>(a) provide information on the proposed registers for FOC and IN, and to advise the types of information that would be/would not be included in the registers; and</p> <p>(b) advise the means through which searches could be made under the registers, and whether fee would be charged for searches by the public.</p>
005740 - 011603	Chairman Administration	Administration's explanation on its response to members' concerns raised at the meeting on 22 July 2010 (LC Paper No. CB(1) 2840/09-10(02)).	

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011604 - 013839	Prof Patrick LAU Administration Chairman	<p>Prof Patrick LAU's view that a time-frame should be set for the Director to issue or refuse to issue a COCR. Administration's response -</p> <p>(a) it might not be appropriate to set a time-frame in the Bill given that the complexity of each case varied from one to another;</p> <p>(b) EMSD would list out the relevant target response time in relation to the types of service required in the form of performance pledge; and</p> <p>(c) in the event of delay in providing information in COCR application, EMSD could issue an IN to request the developer to provide the requisite information within a specified period of time.</p> <p>In response to Chairman's enquiry, the Administration confirmed that the requirements under clause 12 only applied to buildings issued with COCR, and that IN would not be issued to subsequent owner.</p> <p>Given that land grants contained terms requiring grantees to comply with all laws in force, Chairman and Prof Patrick LAU held the view that the Administration should re-consider the suggestion of withholding the issue of occupation approval until confirmation of compliance with the requirement for COCR by developers.</p>	<p>The Administration to -</p> <p>(a) re-consider the need for including in clause 10 a time-frame within which the Director should issue or refuse to issue a COCR;</p> <p>(b) advise the consequences /circumstances if the Director refused to issue a COCR; and</p> <p>(c) re-consider the suggestion of withholding the issue of occupation approval until confirmation of compliance with the requirement for COCR by developers.</p>
013840 - 014420	Chairman Administration Prof Patrick LAU Mr KAM Nai-wai	<p>Chairman, Prof Patrick LAU and Mr KAM Nai-wai's views that the positive vetting procedure should apply to amendments to Schedules 1 to 4 as these related to the scope of application of the Bill.</p>	<p>The Administration to re-consider providing positive vetting procedures for amendments to Schedules 1 to 4 under clause 43.</p>

Time marker	Speaker	Subject(s)	Action required
014421 - 014446	Chairman Administration	Continuation of clause-by-clause examination Clause 44 - Periods may be extended after expiry	
014447 - 014507	Chairman Administration	Clause 45 - Director may delegate power	
014508 - 014534	Chairman Administration	Clause 46 - Director may specify forms	
014535 - 015354	Chairman Administration	Clause 47 - Issue of notice etc. Chairman's enquiry on whether clause 47(2) only applied to common area of a building. Administration's response that further information would be provided at the next meeting.	The Administration to review the drafting of clause 47(2) as the effect of the clause might cover all areas and not just common area of the building.
015355 - 015515	Chairman Administration	Clause 48 - False information etc. prohibited	
015516 - 015906	Chairman Administration	Clause 49 - Offence relating to registered energy assessors Chairman's concern about the propriety of the level of penalty under clause 49(4) Administration's response that reference had been made to section 21 of the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598), and section 31 of the Architects Registration Ordinance (Cap. 408)	
015907 - 020001	Chairman ALA5 Administration	Chairman's request for a marked-up copy for the proposed CSAs.	The Administration to provide a marked-up copy for the proposed CSAs.
020002 - 020010	Chairman	Date of next meeting.	