

立法會
Legislative Council

LC Paper No. CB(1) 191/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/09/2

Bills Committee on Buildings Energy Efficiency Bill

Minutes of fifteenth meeting
held on Thursday, 30 September 2010, at 10:45 am
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
Hon Vincent FANG Kang, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
- Members absent** : Hon LEE Wing-tat
Hon CHAN Hak-kan
Hon IP Kwok-him, GBS, JP
Hon Tanya CHAN
- 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

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. Meeting with the Administration

- (LC Paper No. CB(1) 2930/09-10(01) — Administration's letter dated 24 September 2010 to The Law Society of Hong Kong (English version only)
- LC Paper No. CB(1) 2930/09-10(02) — List of follow-up actions arising from the discussion at the meeting on 20 September 2010
- LC Paper No. CB(1) 2930/09-10(03) — Administration's response to CB(1) 2930/09-10(02))

Relevant papers

- (LC Paper No. CB(3) 233/09-10 — The Bill
Ref: ENB 24/26/22 — The Legislative Council Brief
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)
- 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) 2048/09-10(02) — Administration's response to CB(1) 1799/09-10(02)
- LC Paper No. CB(1) 2245/09-10(03) — Assistant Legal Adviser's letter dated 10 June 2010 to the Administration
- LC Paper No. CB(1) 2444/09-10(01) — Administration's response to CB(1) 2245/09-10(03))
2. The Bills Committee deliberated (Index of proceedings attached in **Annex**).
3. The Administration was requested to -
- (a) advise the Administration's decision on the proposed inclusion of a definite time-frame within which the Director should issue or refuse to issue a Certificate of Compliance Registration (COCR);
 - (b) re-consider the need to spell out in the Bill that the non-creation of a charge on the property as a result of non-compliance with the Bill would not prejudice the Government's right as landlord in the land grant;
 - (c) review the drafting of clause 50(4) as the effect of the clause might be too intrusive and might affect the right of silence of the person concerned;
 - (d) advise the procedures required to confirm compliance of energy audits carried out before the commencement of Part 4 of the Bill;
 - (e) consider narrowing down the scope of item 6 of Schedule 2. To advise how to ascertain whether lighting installations under item 6 were used for lighting or decorative purpose. To also consider setting a specific duration after which lighting installations under item 6 should be switched off; and
 - (f) advise the circumstance under which the purpose of lighting installations in a prescribed premises had been changed after the issuance of a COCR/Form of Compliance.

II. Any other business

4. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
25 October 2010

**Bills Committee on
Buildings Energy Efficiency Bill**

**Proceedings of the fifteenth meeting
on Thursday, 30 September 2010, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
000331 - 001453	Chairman Administration	Administration's explanation on its response to members' concerns raised at the meeting on 20 September 2010 (LC Paper No. CB(1) 2930/09-10(03)).	
001454 - 002541	Chairman Prof Patrick LAU Administration	<p>Prof Patrick LAU's view that there was a need to enhance the transparency of the compliance status of buildings.</p> <p>Chairman's recap of the concerns raised by the Law Society of Hong Kong (LSHK) that non-compliance with the requirements for Certificate of Compliance Registration (COCR), Form of Compliance (FOC), and Improvement Notice (IN) would entitle the Government to re-enter the premises under the land grant. To avoid unnecessary disruption to conveyancing transactions, there should be clear provisions in the Bill stating that non-compliance with the Bill would not entitle the Government to exercise its right of re-entry (LC Paper No. CB(1) 2958/09-10(01)).</p> <p>Administration's response -</p> <p>(a) apart from the register on COCR, the Electrical and Mechanical Services Department was prepared to upload relevant information on FOCs and INs onto its website for public inspection; and</p> <p>(b) consideration was being given to including in the Committee Stage amendments (CSAs) to the Bill to make it clear that non-compliance</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>with the Bill would not create a charge on the property with a view to minimizing the uncertainty in conveyancing transactions. However, it should be noted that the express provision would be framed in such a way that it would not prejudice the Government's right as landlord in the land grant.</p>	
002542 - 010635	<p>Prof Patrick LAU Administration Chairman Ir Dr Raymond HO Mr Abraham SHEK</p>	<p>Chairman, Prof Patrick LAU and Ir Dr Raymond HO's views and enquiries -</p> <p>(a) to ensure compliance with the requirement for COCR by developers, consideration should be given to withholding the issue of occupation approval so that individual owners would not be held responsible for obtaining COCR;</p> <p>(b) whether site inspections would be carried out to ascertain compliance with the Bill as in the case of issuance of occupation approval by the Buildings Department (BD); and</p> <p>(c) a time-frame should be set for the Director to issue or refuse to issue a COCR.</p> <p>Administration's response -</p> <p>(a) under the Bill, developers were only required to submit declarations with relevant information in order to obtain a COCR. The declarations would be submitted in prescribed forms to facilitate compliance. The Electrical and Mechanical Services Department would carry out sample inspections for enforcement purpose;</p> <p>(b) there were strong objections to pegging occupation approval to compliance with the Bill during</p>	<p>The Administration to -</p> <p>(a) advise its decision on the proposed inclusion of a definite time-frame within which the Director should issue or refuse to issue a COCR; and</p> <p>(b) re-consider the need to spell out in the Bill that the non-creation of a charge on the property as a result of non-compliance with the Bill would not prejudice the Government's right as landlord in the land grant.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>consultation with the trades;</p> <p>(c) the proposed clause 12(1A) had made it clear that the duties of owners and responsible persons in respect of COCR only applied if the building had been issued with a COCR; and</p> <p>(d) a CSA would be moved to impose a daily fine on developers who failed to comply with the requirement for COCR under clauses 8 and 9 of the Bill.</p> <p>Prof Patrick LAU and Ir Dr Raymond HO's enquiry on whether the Hong Kong Institute of Architects (HKIA) and the Hong Kong Institution of Engineers (HKIE) had been consulted on the Bill.</p> <p>Administration's response -</p> <p>(a) a Trade Task Force and a Technical Task Force comprising representatives from different sectors had been set up to gauge views on the detailed arrangements of the Bill over the past two years; and</p> <p>(b) HKIA and HKIE were consulted and they supported the Bill.</p> <p>Mr Abraham SHEK's grave concern that non-compliance with the Bill would constitute a cause for the Government to exercise its right of re-entry under land grant.</p> <p>Administration's response that LSHK had been in close deliberation with the Lands Department on the issue of Government's right of re-entry in the past few years. As the focus was to ease the difficulties faced by the legal provision in proving good title, such discussion should not be pursued during the scrutiny of the Bill which</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>was not directly relevant. Besides, the Administration would move a CSA to include an express clause to make it clear that non-compliance with the Bill would not create a charge on the property.</p> <p>Chairman's query on the need to spell out in the Bill that the non-creation of a charge on the property as a result of non-compliance with the Bill would not prejudice the Government's right as landlord in the land grant.</p>	
010636 - 012129	<p>Chairman Administration Assistant Legal Adviser 5 (ALA5) Mr Abraham SHEK Prof Patrick LAU</p>	<p><u>Continuation of clause-by-clause examination</u></p> <p>Clause 50 - Defence of due diligence</p> <p>Discussion on the requirement under clause 50(4) for a person charged to issue a notice at least seven working days before the hearing of the proceedings. Otherwise, he was not entitled to rely on the defence by reason of his reliance on information given by another person.</p> <p>Chairman's concern that clause 50(4) as drafted was too intrusive in that the person charged was not only required to give notice but also disclose his defence, which should be decided by the court. This might affect the right of silence of the person.</p>	<p>The Administration to review the drafting of clause 50(4) as the effect of the clause might be too intrusive and might affect the right of silence of the person concerned</p>
012130 - 012359	<p>Chairman Administration ALA5</p>	<p>Clause 51 - Protection of public officers</p> <p>Administration's explanation on the difference between clauses 3 and 51.</p>	
012400 - 013756	<p>Chairman Administration</p>	<p>Clause 52 - Energy audit carried out before Part 4 commences</p> <p>Discussion on the need for procedures to ascertain the compliance of energy audit carried out before the commencement of Part 4.</p>	

Time marker	Speaker	Subject(s)	Action required
013757 - 014023	Chairman Administration Mr Abraham SHEK	Schedule 1 - Buildings that required Certificate of Compliance Registration and Form of Compliance	
014024 - 015932	Chairman Administration Ms Cyd HO	<p>Schedule 2 - Buildings services installations to which this Ordinance does not apply</p> <p>Chairman's enquiries/views -</p> <p>(a) the rationale for including item 6 in Schedule 2;</p> <p>(b) how to ascertain whether lighting installations under item 6 were used for lighting or decorative purpose;</p> <p>(c) the circumstance under which the purpose of lighting installations in a prescribed premises had been changed after the issuance of a COCR/FOC; and</p> <p>(d) consideration should be given to narrowing down the scope of item 6 of Schedule 2.</p> <p>Administration's response -</p> <p>(a) exempting lighting installations under item 6 from the application of the Bill was in line with the voluntary Hong Kong Energy Efficiency Registration Scheme for Buildings, which also did not cover display lighting;</p> <p>(b) lighting power density of display lighting could vary very much depending on the type and usage of that lighting installation. It was not practicable to set an energy efficiency standard for such lighting installations;</p> <p>(c) building owners were required under the Building Energy Code to install independent control switches for display lighting</p>	<p>The Administration to -</p> <p>(a) consider narrowing down the scope of item 6 of Schedule 2;</p> <p>(b) advise how to ascertain whether lighting installations under item 6 were used for lighting or decorative purpose;</p> <p>(c) consider setting a specific duration after which lighting installations under item 6 should be switched off; and</p> <p>(d) advise the circumstance under which the purpose of lighting installations in a prescribed premises had been changed after the issuance of a COCR/FOC.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>installations so that these could be turned on only when needed, thereby achieving greater energy savings;</p> <p>(d) whether lighting installations were used for general or decorative purpose would be decided by REA;</p> <p>(e) if major retrofitting works in respect of lighting installations were carried out, the owner concerned was required to obtain a FOC; and</p> <p>(f) a separate study on external lightings was underway.</p> <p>Ms Cyd HO's views -</p> <p>(a) a separate legislation should be introduced to regulate the energy efficiency of lighting installations;</p> <p>(b) there was a need to set a specific duration after which lighting installations under item 6 should be switched off; and</p> <p>(c) if a lighting installation was used for both lighting and decorative purposes, it should not be exempted from the Bill.</p>	
015933 - 015953	Chairman	Date of next meeting	