

## **Buildings Energy Efficiency Bill**

### **Letter from Assistant Legal Adviser dated 19 March 2010 - The Administration's response to issues relating to clauses 2 to 15**

#### ***Clause 2 – Interpretation***

##### Air-conditioning installation

Question:

1. Does the definition of "air-conditioning installation" which means fixed equipment, distribution network or control devices that cool down, heat up, humidify, dehumidify, purify *or* distribute air within a building include equipment, network or devices performing more than one of these functions within the building (e.g. air-conditioning installation with both air cooling and heating functions)?

Answer:

• The definition of "air-conditioning installation" covers fixed equipment, distribution network or control devices that perform one or more than one of the following functions within the building –

- (a) cool down;
- (b) heat up;
- (c) humidify;
- (d) dehumidify;
- (e) purify; or
- (f) distribute air.

##### Common area

Question:

2. Do car parking spaces or staircases (e.g. inside a duplex unit) which have been specified in an instrument registered in the Lands Registry as being for the exclusive use, occupation or enjoyment of an owner fall within the definition of "common area"?

3. Do "staircases" and "corridors" referred to in paragraph (b) of the definition of "common area" cover "internal corridor" and "internal staircase"?

referred to in the definition of "unit" (paragraph (a)(ii))?

Answer:

- Paragraph (a) of the definition of “common area” sets out our policy intention to cover all areas of a prescribed building other than the parts that have been specified in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner. Paragraph (b) of the definition lists out examples of the “common area” that are commonly found in buildings to provide easy reference. The use of the phrase “without limiting paragraph (a), includes” makes it clear that paragraph (b) is to be read subject to paragraph (a) and serves to elaborate the main provision by setting out examples. If paragraph (b) is to be read alone, it would have the effect of limiting the scope of paragraph (a).
- An area within the examples set out in paragraph (b) would not be treated as “common area” of the prescribed building if that area has been specified in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner. The same principle applies to the internal corridor or internal staircase inside a “unit” of a prescribed building.

### Composite building

Question:

4. "Composite building" means a building that is partly for residential use / industrial use / commercial use and partly for non-residential / non-industrial / non-commercial use (as the case may be). Please explain the intended application of "residential use", "industrial use" and "commercial use".
5. Please also advise whether the interpretation of the terms "commercial building", "industrial building" and "residential building" as provided in clause 2 of the Bill has any bearing on the interpretation of "residential use", "industrial use" and "commercial use" in relation to composite building.

Answer:

- The intended application of “residential use”, “industrial use” and “commercial use” is to denote the different usage in a composite building. The interpretation of the terms "commercial building", "industrial building" and "residential building" as provided in clause 2 of the Buildings Energy Efficiency Bill (the Bill) has bearing on the interpretation of "residential use", "industrial

use" and "commercial use" in relation to composite building.

### Developer

Question:

6. "Developer", in relation to a building, means the owner of the land on which the building is built. The Bill seeks to impose various duties of buildings energy efficiency on developers and to create offences for breach of these duties. Please advise how joint owners of a land, whom are considered "developer", will be treated under the Bill in terms of duties and penalties.

Answer:

- In the case of joint developers, every one of them will be held severally liable to the requirements under the Bill. Clause 6 of the Bill provides that compliance with a requirement imposed by the Bill by one of the joint owners or responsible persons is regarded as compliance with the requirement by all joint owners or responsible persons.

### Industrial building

Question:

7. "Industrial building" means, amongst other things, a building in which "materials are transformed". Please explain the meaning of "transformed".

Answer:

- The definition of "industrial building" under the Bill is modeled on the definition of "industrial building" adopted in the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) Regulations (Cap. 123H). The expression "materials are transformed" has the same meaning as in the above Regulations. We are not aware of any judicial interpretation and believe the expression will be given ordinary dictionary meaning. According to Concise Oxford Dictionary, "transform" means "a marked change in nature, form or appearance."

### Railway station

Question:

8. Please explain why a designated rail stop of the North-west railway as defined in the Mass Transit Railway Ordinance (Cap. 556) is excluded from the

definition of "railway station".

Answer:

- As defined under section 2 of the Kowloon-Canton Railway Corporation Ordinance (Cap. 372), "North-west Railway" means the light rail system serving Tuen Mun New Town and Yuen Long and any extension thereof approved under section 20 of the Ordinance. The designated rail stops of the North-west Railway are of similar nature to bus stops and contain very few building services installations (only lighting installations are involved in most cases). Taking account of the environmental benefits involved and the compliance burden, we propose that the designated rail stops of the North-west Railway would not be covered under the Bill.

### ***Clause 6 – Jointly owned etc. building***

Question:

9. Clause 6 seeks to provide that if a building or common part of a building is jointly owned by 2 or more persons, compliance with a requirement imposed under the Bill by one of the joint owners is regarded as compliance with the requirement by every other joint owner. However, what will be the treatment of the joint owners in terms of criminal liability if a requirement is not complied with?

Answer:

- Every joint owner or responsible person will be held severally liable to the requirements imposed on owner or responsible person under the Bill.

### ***Clause 7 – Application of Part 2***

Question:

10. Please explain the meaning of "superstructure construction" and provide examples of other legislation in which the term is used in relation to building works.

Answer:

- While the term "superstructure construction" is not defined under the Buildings Ordinance (Cap. 123), the expression of "superstructure" appears in various practice notes issued by the Building Authority, which denotes the part of the structure of a building above the foundation and the pile cap. Such

expression and meaning is also currently adopted when authorized persons submit superstructure plans for Building Authority's approval and apply for consent to the commencement of building works.

***Clause 9 – Declaration at occupation approval stage***

Question:

11. Clause 9(2) requires a registered energy assessor to "personally inspect" the building services installation covered by the certification with regard to a stage two declaration. Personal inspection requirement is also imposed on the registered energy assessor under other clauses, e.g. clauses 13(3) and 18(1)). Please explain why the relevant inspection duty is non-delegable (for example, to other professional colleagues within the same professional firm) but not so in some other provisions of the Bill.

Answer:

- As the certification requires professional knowledge and judgment, we consider it necessary to require a registered energy assessor to personally inspect the installation and make the certification.
- Under clause 49(2) of the Bill, a registered energy assessor who knowingly or recklessly makes any certification that is false or misleading in any material particular commits an offence, which is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

Question:

12. A developer of a building must make and submit a stage two declaration to the Director of Electrical and Mechanical Services ("the Director") within 4 months after the occupational approval is issued. Clause 9(4) provides that the Director may require the developer to furnish any further information that the Director considers reasonably necessary "for the purposes of considering *the making of the declaration*". Under clause 13(4), with respect to an application for renewal of a Certificate of Compliance Registration, the Director may require the owner of the relevant central building services installation to furnish any further information that the Director consider necessary "for the purposes of considering the application".

13. Please explain why different drafting formulae are adopted in the above situations.

Answer:

- Different drafting formulae are adopted for clauses 9(4) and 13(4) to denote the different focuses of attention in the information or document required. The phrase “for the purposes of considering the making of the declaration” is used in clause 9(4) to set out clearly that the information and document required cover the considerations involved in the making of the declaration, e.g. those considerations which the registered energy assessor has taken account of when certifying the declaration made by the developer.

Question:

14. Is there any time limit for the Director to require the developer to furnish further information about the stage two declaration under clause 9(4)?

Answer:

- As the complexity of each case and the nature of the information required vary, we do not consider it appropriate to set a time limit for the Director to require the developer to furnish further information about the stage two declaration under the Bill.

### ***Clause 10 – Certificate of Compliance Registration***

Question:

15. If the Director refuses to issue a Certificate of Compliance Registration to a developer, he must issue a notice of refusal as soon as reasonably practicable (clause 10(3)). On the other hand, is there a time requirement for the Director to issue of a Certificate of Compliance Registration?

Answer:

- As the nature of each application varies and that the Director may require the developer to furnish further information or produce additional document under clause 9(4) of the Bill, we do not consider it appropriate to set a time requirement for the Director to issue Certificate of Compliance Registration (COCR) to developers under the Bill.

### ***Clause 11 – Register of buildings issued with Certificate of Compliance Registration***

### ***Clause 31 – Register of registered energy assessors***

Question:

16. Under clause 11(3), the Director must make a register of building issued

with a Certificate of Compliance Registration available for members of the public to inspect free of charge at all reasonable times. What will be the means for making the register available to the public?

17. Please also advise on the similar provision for register of registered energy assessors under clause 31.

Answer:

- Under clauses 11(4) and 31(4), the register of buildings issued with COCR and register of registered energy assessors will be maintained in the form and manner, and updated at any interval, that the Director thinks fit. Information of the two registers will be uploaded to the webpage of the Electrical and Mechanical Services Department (EMSD) for public inspection. A copy of the two registers will also be available at the head office of EMSD.

***Clause 12 – Duties of owners and responsible persons of building with Certificate of Compliance Registration***

Question:

18. Clause 12(2) requires that the owner of a building must ensure that the central building services installations in the building are maintained to "a standard not lower than" that applied in the first Certificate of Compliance Registration issued in respect of the building. The Certificate of Compliance Registration is issued on submission of a stage two declaration. The stage two declaration declares that all building services installations provided by the developer have been designed, installed and completed in the accordance with the specified standards and requirements (clause 9) as set out in a code of practice (clause 2 interpretation).

19. It seems that whether the owner of a building complies with clause 12(2) largely depends on the interpretation of the standards as set out in the relevant code of practice. In the *Code of Practice for Energy Efficiency of Electrical Installations 2007*, for example -

**"Requirements for efficient utilisation of power**

**5.1 Lamps and Luminaries**

All lamps and luminaries forming part of an electrical installation in a building should *preferably* comply with the

latest edition of Code of Practice for Energy Efficiency of Lighting Installations.

## 5.5 Power Factor Improvement

... The correction device should be installed at the source motor control centre or distribution board just upstream of the circuit in question... .

## 5.6 Other Good Practice

5.6.1 Office consumers *should be encouraged* to select and purchase office machinery/equipment ... complete with 'power management' or 'energy saving feature' which...".

20. The standards contained in the provisions of the above Code of Practice do not seem to be absolute or numerical standards. Please explain what would be expected with respect to the requirement of "maintained to a standard not lower than" in clause 12(2).

21. Please also explain the above in the light of the similar requirement under clauses 12(3)), 13(2)(c) and 18(2).

Answer:

- As explained in LC Paper CB(1) 1492/09-10(02), the policy intent of clause 12(2) is to prevent the building services installations from being altered or replaced with less energy efficient components subsequently, and that the installations can be properly maintained to prevent undue decline in energy efficiency. The same policy intent applies to similar requirements under clauses 12(3), 13(2)(c) and 18(2).

- The specified standards set out in Building Energy Codes are standards and requirements on design parameters, rather than those on daily operational performance. In general, normal wear and tear of the installations should not have great impact on their energy efficiency performance when they are properly maintained. Owners and responsible persons may refer to equipment catalogue or in doubt, seek advice from competent technicians in selecting proper replacement for the equipment and in conducting proper maintenance. EMSD will prepare concise guidelines to facilitate compliance by owners and responsible persons.



- The existing code of practice 2007 edition mentioned in paragraph 19 above is being adopted by the voluntary Hong Kong Energy Efficiency Registration Scheme for Buildings and is only used as the blueprint for the draft code of practice to be issued under clause 40 of Bill. The draft code of practice has been uploaded to the website of EMSD. Suitable modifications have been made to the draft code of practice to more explicitly reflect the specified standards and requirements under the Bill.

***Clause 13 – Renewal of Certificate of Compliance Registration***

Question:

22. Who may apply for a renewal of Certificate of Compliance Registration under clause 13?

Answer:

- Clause 12(1) of the Bill requires the owner of a building to ensure that a COCR is in force in respect of the building. The application for renewal of COCR could be made by the owner of the building or any representative of the owner.

Question:

23. Whilst the renewed certificate is effective from the date of expiry if the application is made during the preceding 12 months, is there a time frame for such application?

Answer:

- The Bill does not specify a time frame on the application for renewal of COCR. Clause 13(6) of the Bill states that if an application for renewal of COCR is made during the 12 months preceding the expiry of the COCR, the renewed COCR is effective from the date of that expiry. For application made before 12 months preceding the expiry of the COCR, the renewed COCR is effective from the date of renewal under clause 13(5).

***Clause 15 – Exemption from specific standards and requirements***

Question:

24. Is there a time frame or time limitation for applying for exemption of building services installation?

Answer:

- Clause 15 makes provision for the exemption of building services installations from the specified standards and requirements if the Director is satisfied that it is, for heritage conservation or technical or operational reasons, undesirable or impractical for the installation to comply with the provision of specified standards and requirements. As the nature of each application varies, we do not consider it appropriate to set a time frame or time limitation for applying an exemption under the Bill.