

LEGISLATIVE COUNCIL BRIEF

BUILDINGS ENERGY EFFICIENCY BILL

INTRODUCTION

A At the meeting of the Executive Council on 24 November 2009, the Council ADVISED and the Chief Executive ORDERED that the Buildings Energy Efficiency Bill (the Bill), at Annex A, should be introduced into the Legislative Council.

JUSTIFICATIONS

2. Improving building energy efficiency will help improve local air quality and alleviate the adverse effect of climate change. Since 1998, the Electrical and Mechanical Services Department (EMSD) has been operating a voluntary Hong Kong Energy Efficiency Registration Scheme for Buildings (HKEERSB) to promote compliance with BEC, which stipulates the minimum energy efficiency standards on key building services installations. However, the participation rate of the private sector in the HKEERSB has been low. As at end September 2009, EMSD has only issued a total of 2 515 certificates, covering 2 682 building services installations in 1 061 buildings. Of the 1 061 building venues, 72% are government premises.

3. Mandatory compliance with minimum building energy efficiency standards is widely practised overseas including the European Union, the Mainland China, the United States, Australia and Singapore. As voluntary compliance with BEC appears not to be forthcoming in Hong Kong, we consider it necessary to pursue mandatory compliance.

LEGISLATIVE FRAMEWORK

Coverage

4. We propose that the following categories of buildings in the public and private sectors should be required to comply with BEC –

- (a) commercial building;
- (b) non-residential or non-industrial portion of a composite building⁽¹⁾;
- (c) hotel and guesthouse;
- (d) common area of a residential building;
- (e) common area of the residential or industrial portion of a composite building;
- (f) common area of an industrial building;
- (g) educational building;
- (h) community building;
- (i) municipal building;
- (j) medical and health care services building;
- (k) building which is owned by the Government and used predominantly for accommodation of people in the course of performance of any function of the Government;
- (l) passenger terminal building of an airport; and
- (m) railway station.

Note ⁽¹⁾ Composite building means a building that is –
(a) partly for residential use and partly for non-residential use;
(b) partly for industrial use and partly for non-industrial use; or
(c) partly for commercial use and partly for non-commercial use.

5. We propose to impose different control regimes on buildings that obtain the consent to the commencement of building works for superstructure construction from the Building Authority⁽²⁾ after the new legislation comes into operation (Post-enactment Buildings), and buildings which have obtained their consent to the commencement of building works on or before the new legislation comes into operation (Pre-enactment Buildings). Developers, owners or responsible persons⁽³⁾ as appropriate will be responsible for complying with the requirements depending on the stages of the buildings or the scale of the major retrofitting works, the schematic representation of which is set out at Annex B.

B

Post-enactment Buildings

6. Developers are required to submit a stage one declaration to the Director of Electrical and Mechanical Services (DEMS) after obtaining the consent to the commencement of building works for superstructure construction. The stage one declaration is to declare that suitable design provisions have been included to enable compliance with BEC. After obtaining the occupation approval⁽⁴⁾, developers are required to submit a stage two declaration to confirm compliance with BEC. Both declarations have to be certified by registered energy assessors (paragraph 11 below refers). DEMS will issue Certificates of Compliance Registration (COCR) for buildings upon receipt of the required information and documents. A register of buildings issued with COCR will be available for public inspection. Building owners are required to apply for renewal of COCR in respect of the central building services installations once every ten years.

7. Building services installations in individual unit and common area of Post-enactment Buildings, as well as their central building services installations, are required to comply with BEC at all times.

Note ⁽²⁾ Or an approval which serves a similar purpose in relation to buildings which are not governed by the Buildings Ordinance (Cap. 123).

⁽³⁾ Responsible person means a person who occupies or is in possession or control of the building or unit.

⁽⁴⁾ Occupation approval means –

(a) an occupation permit or a temporary occupation permit issued under section 21(2) of the Buildings Ordinance (Cap. 123); or

(b) an approval or consent issued by a relevant authority to occupy a building in respect of which no occupation permit or temporary occupation permit is required under the Buildings Ordinance (Cap. 123).

Responsible persons or owners are further required to obtain Forms of Compliance (FOC), to be certified by registered energy assessors, for major retrofitting works. Responsible persons or owners are also required to maintain the building services installations concerned to standards not lower than that applied in the respective FOC. Major retrofitting works to be regulated are specified in Schedule 3 of the Bill.

Pre-enactment Buildings

8. Pre-enactment Buildings would be required to improve energy efficiency only when the buildings undergo major retrofitting works. Similar to the requirements set out in paragraph 7 above, responsible persons or owners are required to obtain FOC for major retrofitting works carried out in respect of building services installations of individual unit or common area, as well as major retrofitting works for the central building services installations, and are required to maintain the building services installations concerned to standards not lower than that applied in the respective FOC.

9. To reduce the financial burden on small and medium enterprises, retrofitting works conducted in individual unit or common area of Post-enactment and Pre-enactment Buildings that cover a floor area of less than 500 square metre or do not involve a main component of the central building services installations would not be required to obtain FOC.

Energy Audits

10. Owners of commercial buildings and commercial portion of composite buildings (both Post-enactment and Pre-enactment Buildings) are required to conduct energy audits for the common area of their buildings once every ten years. Energy audits should be carried out by registered energy assessors and the audit results should be exhibited in a conspicuous position at the main entrance of the buildings.

Registered Energy Assessors

11. Registered professional engineers or corporate members of the Hong Kong Institution of Engineers in electrical, mechanical, building

services or environmental disciplines, who possess relevant post-qualification working experience and knowledge, may apply to DEMS for registration as registered energy assessors. Detailed provisions concerning registration and regulation of registered energy assessors will be made in a piece of subsidiary legislation to be made by the Secretary for the Environment. A register of registered energy assessors will be available to the public.

Energy Efficiency Standards

12. The latest version of BEC, released in early 2007, will be used as the blueprint for the mandatory energy efficiency standards. The current BEC standards on air-conditioning installations and electrical installations are broadly comparable to the standards adopted by other jurisdictions, whereas BEC standards on lighting installations are relatively less stringent to meet the general local preference for better-illuminated interior spaces. Moreover, EMSD has put in place BEC standards on lift and escalator installations, unique to the built environment of Hong Kong which is dominated by high-rise buildings.

OTHER OPTIONS

13. Significant improvement in building energy efficiency cannot be achieved through promotion and publicity efforts alone. Given the significant share of electricity consumed by buildings in Hong Kong, the lukewarm response of the private sector to the HKEERSB, and that mandatory building energy efficiency standards have been widely adopted overseas, we consider that the mandatory implementation of BEC is the only effective means to achieve significant improvement in building energy efficiency in Hong Kong.

THE BILL

14. The Bill sets out the following main requirements -

- (a) **Part 1** contains preliminary provisions. In particular, it provides for the application of the Bill to the Government and limit of the scope of application;

- (b) **Part 2** stipulates the compliance procedures for Post-enactment Buildings at design stage and occupation approval stage;
- (c) **Part 3** stipulates the compliance procedures for major retrofitting works in Pre-enactment and Post-enactment Buildings;
- (d) **Part 4** stipulates the application, compliance procedures and other details of the requirements to conduct energy audits in Pre-enactment and Post-enactment Buildings;
- (e) **Part 5** empowers DEMS to serve an improvement notice to direct the responsible party to take remedial action where there is a contravention of a requirement under the Bill;
- (f) **Part 6** empowers DEMS to be the enforcement authority under the Bill. It provides for DEMS to authorize public officers to exercise any power and perform any duties conferred or imposed on him for the purposes of the Bill, including entering a building or an unit for inspection;
- (g) **Part 7** provides for the registration of registered energy assessors;
- (h) **Part 8** contains provisions relating to appeals against the decision of DEMS made under the Bill. It provides for the composition of the appeal board panel and the proceedings of the appeal board. It empowers the appeal board to confirm, revoke or vary the decision or direction of DEMS. The appeal board is also empowered to substitute its own decision for the decision or direction of DEMS;
- (i) **Part 9** empowers DEMS to establish a code of practice to provide practical guidance on requirements under the Bill;
- (j) **Part 10** contains miscellaneous provisions. It empowers the Secretary for the Environment to make regulations for operational matters such as fees and registration of registered energy assessors and amend any Schedule. It also empowers DEMS to delegate its power under the Bill, stipulates the arrangements for the service of notice, and provides for the details of offences relating to registered energy assessors and furnishing false information;

- (k) **Part 11** contains a transitional provision;
- (l) **Schedule 1** lists out buildings that require COCR and FOC;
- (m) **Schedule 2** lists out building services installations proposed to be exempted;
- (n) **Schedule 3** lists out the types of major retrofitting works that require FOC;
- (o) **Schedule 4** lists out buildings that are required to conduct an energy audit; and
- (p) **Schedule 5** sets out the schedule of conducting the first energy audit for buildings without COCR.

LEGISLATIVE TIMETABLE

15. The legislative timetable is as follows -

Publication in the Gazette	4 December 2009
First Reading and commencement of Second Reading debate	9 December 2009
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

C 16. The proposal has financial, civil service, sustainability, environmental and economic implications as set out at Annex C.

17. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The legislation will be binding on the Government. The proposal has no productivity implications.

PUBLIC CONSULTATION

18. The Government concluded a 3-month public consultation on the proposed mandatory implementation of BEC in March 2008. The majority of the views received agreed that the Government's proposal was in the right direction for promoting energy efficiency and conservation in buildings and supported the implementation of the mandatory scheme.

19. After the conclusion of the public consultation, we have been gauging views on the detailed arrangements of the legislative proposal through various channels. The Environment Bureau (ENB) and EMSD established a Trade Task Force and a Technical Task Force with representatives from professional bodies, major chambers of commerce, property management companies, real estate developers and retail associations, which served as platforms for discussing the legislative proposal. ENB has also commissioned a Business Impact Assessment on the impact of the legislative proposal on various trades. Consultation meetings have also been conducted with major stakeholders' organisations and Business Liaison Groups under the Economic Analysis and Business Facilitation Unit. Views collected and the findings of the Business Impact Assessment have been taken into account in formulating the legislative proposal.

20. The Advisory Council on the Environment, the Energy Efficiency and Conservation Sub-committee of the Energy Advisory Committee and the Business Facilitation Advisory Committee, which were consulted on 8 June, 23 June and 16 July 2009 respectively, supported the proposal. We also consulted the Panel on Environmental Affairs of the Legislative Council on 15 July 2009. Members did not raise objection to the proposal.

PUBLICITY

21. A press release will be issued on 2 December 2009 and a spokesman will be available to handle enquires.

ENQUIRIES

22. For any enquiries relating to this Brief, please contact Miss Katharine Choi, Principal Assistant Secretary for the Environment (Energy) at 2594 6728.

Environment Bureau
2 December 2009

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A BILL

To

Require compliance with codes of practice concerning the energy efficiency of air-conditioning installations, electrical installations, lift and escalator installations and lighting installations and energy audits in respect of several types of buildings and to provide for related matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Buildings Energy Efficiency Ordinance.

(2) This Ordinance comes into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

2. Interpretation

In this Ordinance –

“air-conditioning installation” (空調裝置), in relation to a building, means fixed equipment, distribution network or control devices that cool down, heat up, humidify, dehumidify, purify or distribute air within the building;

“appeal board” (上訴委員會) means a Buildings Energy Efficiency Appeal Board appointed under section 35;

“appeal board panel” (上訴委員團) means the Buildings Energy Efficiency Appeal Board Panel referred to in section 34;

“approved loading” (允許負載量) means the maximum current demand approved by an electricity supplier in respect of an electrical installation;

“authorized officer” (獲授權人員) means a person appointed as an authorized officer under section 27;

“Building Authority” (建築事務監督) means the Director of Buildings;

“building services installation” (屋宇裝備裝置) means –

- (a) an air-conditioning installation;
- (b) an electrical installation;
- (c) a lift and escalator installation; or
- (d) a lighting installation;

“central building services installation” (中央屋宇裝備裝置) means –

- (a) a building services installation in a prescribed building that does not solely serve a unit of that building; or
- (b) a building services installation in a prescribed building that has no common area except an installation that –
 - (i) solely serves a unit of that building; and
 - (ii) is owned by a person who is not the owner of that building;

“Certificate of Compliance Registration” (遵行規定登記證明書) means a Certificate of Compliance Registration issued under section 10 and, where applicable, renewed under section 13;

“code of practice” (《守則》) means any code of practice issued or approved under section 40;

“commercial building” (商業建築物) means a building that is –

- (a) used for offices, shops or entertainment facilities; or
- (b) used for the purpose of any trade, business or profession (but not used as an industrial building);

“common area” (公用地方), in relation to a prescribed building –

- (a) means any area of the 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; and
- (b) without limiting paragraph (a), includes car parks, entrance lobbies, lift lobbies, corridors, staircases, common toilets, common store rooms, plant rooms, switch rooms, pipe ducts, cable ducts, refuse rooms, material recovery chambers, covered podia, covered playgrounds, occupants’ clubhouses and building management offices;

“composite building” (綜合用途建築物) means a building that is –

- (a) partly for residential use and partly for non-residential use;
- (b) partly for industrial use and partly for non-industrial use;
or
- (c) partly for commercial use and partly for non-commercial use;

“consent to the commencement of building works” (建築工程展開同意書)

means –

- (a) a consent given by the Building Authority under section 14 of the Buildings Ordinance (Cap. 123); or
- (b) an approval given in respect of a building not governed by that Ordinance which serves, in relation to that building, a purpose similar to that of the consent;

“developer” (發展者), in relation to a building or a proposed building, means the owner of the land on which the building is built or will be built;

“Director” (署長) means the Director of Electrical and Mechanical Services;

“electrical installation” (電力裝置), in relation to a building, means fixed equipment, distribution network or accessories for electricity distribution or utilization in the building;

“electricity supplier” (供電商) means a person who generates, supplies and sells electricity at low or high voltage for use in an electrical installation;

“energy audit” (能源審核) means a systematic review of the use of energy conducted pursuant to the requirement under section 22;

“Energy Audit Form” (能源審核表格) means an Energy Audit Form issued under section 22;

“Form of Compliance” (遵行規定表格) means a Form of Compliance issued under section 17;

“hotel” and “guesthouse” (旅館) have the same meaning as in the Hotel and Guesthouse Accommodation Ordinance (Cap. 349);

“improvement notice” (敦促改善通知書) means an improvement notice issued under section 26;

“industrial building” (工業建築物) means –

- (a) a building in which –
 - (i) articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished; or
 - (ii) materials are transformed; or
- (b) a godown;

“lift and escalator installation” (升降機及自動梯裝置) means a system of equipment comprising –

- (a) a lift or an escalator as defined in section 2(1) of the Lifts and Escalators (Safety) Ordinance (Cap. 327); and
- (b) any associated installation specified in a code of practice that is used for the operation of the lift or escalator;

“lighting installation” (照明裝置), in relation to a building, means a fixed electrical lighting system in the building including –

- (a) general lighting that provides a substantially uniform level of illumination throughout an area; or
- (b) maintained type emergency lighting,

but does not include non-maintained type emergency lighting;

“major retrofitting works” (主要裝修工程) means the works specified in Schedule 3;

“occupation approval” (佔用准許) means –

- (a) an occupation permit; or
- (b) an approval or a consent issued by a relevant authority to occupy a building for which no occupation permit is required under the Buildings Ordinance (Cap. 123);

“occupation permit” (佔用許可證) means an occupation permit or a temporary occupation permit issued under section 21(2) of the Buildings Ordinance (Cap. 123);

“owner” (擁有人), in relation to a prescribed building, has the same meaning as in the Buildings Ordinance (Cap. 123);

“prescribed building” (訂明建築物) means a building of a type set out in Schedule 1;

“prescribed fee” (訂明費用) means a fee prescribed in the regulation made under section 42;

“property management company” (物業管理公司), in relation to a building, means the business entity appointed by the owner of the building to manage the building;

“railway station” (鐵路車站) –

- (a) means those parts of the railway premises as defined in the Mass Transit Railway Ordinance (Cap. 556) designated by the MTR Corporation Limited as stations including any

platform, concourse, entrance, exit, adit and plant room but excluding every other part of the railway premises including any track, tunnel, viaduct, ancillary building, ventilation shaft, siding, trackside area adjacent to a platform, and other similar structures and the land on which they are situated; and

- (b) does not include a designated rail stop of the North-west Railway as defined in the Mass Transit Railway Ordinance (Cap. 556);

“Register of Registered Energy Assessors” (註冊能源效益評核人紀錄冊)
means the register kept under section 31;

“registered energy assessor” (註冊能源效益評核人) means a person who is for the time being registered under section 30;

“residential building” (住宅建築物) means a building solely used for residential purposes and includes –

- (a) student hostels and staff quarters; and
- (b) such parts of a composite building that are for residential use,

but does not include a hotel or a guesthouse;

“responsible person” (負責人), in relation to a building or a unit of a building, means a person who occupies or is in possession or control of the building or unit (whether under a lease or licence or otherwise);

“Secretary” (局長) means the Secretary for the Environment;

“specified form” (指明表格) means a form specified by the Director under section 46;

“specified standards and requirements” (指明標準及規定) means the standards and requirements for building energy efficiency or an energy audit set out in a code of practice;

“stage one declaration” (首階段聲明) means a declaration referred to in section 8(1);

“stage two declaration” (次階段聲明) means a declaration referred to in section 9(1);

“unit” (單位), in relation to a building, means –

- (a) a unit or a part of the building; or
- (b) 2 or more units or parts of the building that are –
 - (i) occupied by the same occupier for the purpose of the same undertaking; and
 - (ii) interconnected by an internal corridor, internal staircase or other internal access,

but does not include a common area of the building.

3. Application to Government

(1) Subject to this section, this Ordinance applies to the Government.

(2) Neither the Government nor any public officer in the capacity as such is liable to be prosecuted for an offence under this Ordinance.

(3) The Government is not liable to pay any fee under this Ordinance.

4. Limit of scope of application

(1) This Ordinance does not apply to –

- (a) a building of which the main electrical switch governing the electricity supply of the building has an approved loading not exceeding 100A, 1-phase or 3-phase;
- (b) a building that is constructed in accordance with the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121);
- (c) a proposed monument or a proposed historical building declared under section 2A of the Antiquities and Monuments Ordinance (Cap. 53); or

(d) a monument or a historical building declared under section 3 of the Antiquities and Monuments Ordinance (Cap. 53).

(2) This Ordinance does not apply to a building if the Director is satisfied on a declaration by the owner of the building that the building will cease to exist within 12 months after the date of the declaration.

(3) This Ordinance does not apply to the building services installations specified in Schedule 2.

5. Determination of application threshold

If the applicability of any provision of this Ordinance is to be determined by reference to any threshold including the approved loading of a main electrical switch, the rating of an installation or the floor area of any place, the calculation or measurement must, unless otherwise prescribed, be made at the time when the relevant works have been completed.

6. Jointly owned etc. building

If –

(a) this Ordinance imposes a requirement on the owner of any building, common area of a building or central building services installation or on the responsible person of a unit of a building; and

(b) the building, common area or installation is jointly owned by 2 or more persons or the unit has 2 or more responsible persons,

compliance with the requirement by one of the joint owners or responsible persons is regarded as compliance with the requirement by every other joint owner or responsible person.

PART 2

PRESCRIBED BUILDINGS AT DESIGN STAGE AND OCCUPATION APPROVAL STAGE

Division 1

Application

7. Application of Part 2

This Part applies to a prescribed building in respect of which a consent to the commencement of building works for superstructure construction is given after the commencement of this Part.

Division 2

Declaration

8. Declaration at design stage

- (1) The developer of a proposed building must –
 - (a) make a declaration to be called a stage one declaration;
and
 - (b) submit the declaration to the Director within 2 months after the day on which the consent to the commencement of building works for the superstructure construction of the building is given.
- (2) A stage one declaration must –
 - (a) declare that all building services installations to be provided by the developer in the proposed building at or before the time when a stage two declaration is made in respect of the building are designed, and will be installed and completed, in accordance with the specified standards and requirements;

- (b) be in the specified form;
- (c) be accompanied by the documents specified in the form;
and
- (d) be certified by a registered energy assessor to the effect that suitable design provisions have been incorporated into the planning and design of the building in accordance with the specified standards and requirements.

(3) A developer who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000.

9. Declaration at occupation approval stage

(1) Subject to subsections (5) and (10), the developer of a building must –

- (a) make a declaration to be called a stage two declaration;
and
- (b) submit the declaration to the Director within 4 months after the day on which the occupation approval is issued in respect of the building.

(2) A stage two declaration must –

- (a) declare that all building services installations provided by the developer in the building at or before the time when the declaration is made have been designed, installed and completed in accordance with the specified standards and requirements;
- (b) be in the specified form;
- (c) be accompanied by the prescribed fee and the documents specified in the form; and
- (d) be certified by a registered energy assessor to the effect that all building services installations provided by the developer in that building at or before the time when the

declaration is made have been designed, installed and completed in accordance with the specified standards and requirements.

(3) A certification by a registered energy assessor made for the purposes of subsection (2) is of no effect unless the assessor has, in the 30 days before the certification, personally inspected the building services installation covered by the certification.

(4) The Director may require the developer to furnish any further information, or produce any additional document, that the Director considers reasonably necessary for the purposes of considering the making of the declaration.

(5) The Director may, on an application in writing by the developer concerned, extend the period specified in subsection (1)(b).

(6) The Director must not exercise the power under subsection (5) unless the developer satisfies the Director that there is a reasonable ground for the extension.

(7) An extension granted under subsection (5) may be subject to any condition that the Director thinks fit.

(8) If –

- (a) an extension granted under subsection (5) is subject to any condition under subsection (7) and the condition is contravened; or
- (b) the ground on which the extension was granted no longer exists,

the Director may, by a notice issued to the developer concerned, withdraw the extension.

(9) If the Director withdraws an extension under subsection (8), the Director may issue a notice to the developer concerned directing the developer to submit a stage two declaration within a period specified in the notice.

(10) If the Director issues a notice to a developer under subsection (9), the developer must comply with the direction in the notice.

(11) A developer who contravenes subsection (1) or (10) commits an offence and is liable on conviction to a fine of \$1,000,000.

Division 3

Certificate of Compliance Registration

10. Certificate of Compliance Registration for buildings

(1) If a developer has submitted a stage two declaration in respect of a building, the Director must issue a Certificate of Compliance Registration to the developer in respect of the building.

(2) The Director may refuse to issue a Certificate of Compliance Registration to a developer if –

- (a) the Director has reasonable grounds to believe that the stage two declaration concerned or a document accompanying it pursuant to section 9(2)(c) is false or misleading in any material particular; or
- (b) the Director has yet to receive any information or document from the developer under section 9(4).

(3) If the Director refuses to issue a Certificate of Compliance Registration to a developer under subsection (2), the Director must, as soon as reasonably practicable –

- (a) issue a notice of the refusal to the developer; and
- (b) state the reasons for the refusal in the notice.

(4) Subject to section 13(5), a Certificate of Compliance Registration is valid for 10 years.

11. Register of buildings issued with Certificate of Compliance Registration

(1) The Director must keep a register of buildings issued with a Certificate of Compliance Registration.

(2) The register must contain, in respect of every building entered in the register –

- (a) the name and address of the building;
- (b) the registration number, the date of issue and the expiry date of the Certificate of Compliance Registration issued in respect of the building; and
- (c) any other particulars that the Director thinks fit.

(3) To enable a member of the public to ascertain whether a building is issued with a Certificate of Compliance Registration, the Director must make a register kept under subsection (1) available for members of the public to inspect free of charge at all reasonable times.

(4) The register kept under subsection (1) must be maintained in the form and manner, and updated at any interval, that the Director thinks fit.

12. Duties of owners and responsible persons of building with Certificate of Compliance Registration

(1) The owner of a building must ensure that at all times a Certificate of Compliance Registration is in force in respect of the building.

(2) The owner of a building must ensure that –

- (a) 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; and

- (b) if a Form of Compliance has been issued in respect of any central building services installation in the building, the installation is maintained to a standard not lower than that applied in the latest Form of Compliance issued in respect of the installation.
- (3) The responsible person of a unit of a building must ensure that –
- (a) the building services installations serving the unit that are not the central building services installations in the building meet, and are maintained to, a standard not lower than that applied in the first Certificate of Compliance Registration issued in respect of the building; and
 - (b) if a Form of Compliance has been issued in respect of any building services installation serving the unit, the installation is maintained to a standard not lower than that applied in the latest Form of Compliance issued in respect of the installation.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6.

(5) A person who contravenes subsection (2) or (3) commits an offence and is liable on conviction to a fine at level 5.

13. Renewal of Certificate of Compliance Registration

(1) The Director may, on an application, renew a Certificate of Compliance Registration.

(2) An application for the renewal of a Certificate of Compliance Registration must –

- (a) be in the specified form;

- (b) be accompanied by the prescribed fee and the documents specified in the form; and
- (c) be certified by a registered energy assessor to the effect that –
 - (i) the central building services installations in the building concerned are maintained to a standard not lower than that applied in the first Certificate of Compliance Registration issued in respect of the building; and
 - (ii) if a Form of Compliance has been issued in respect of any central building services installation in the building, the installation is maintained to a standard not lower than that applied in the latest Form of Compliance issued in respect of the installation.

(3) A certification by a registered energy assessor made for the purposes of subsection (2) is of no effect unless the assessor has, in the 30 days before the certification, personally inspected the building services installation covered by the certification.

(4) The Director may require the owner of the relevant central building services installation to furnish any further information, or produce any additional document, that the Director considers reasonably necessary for the purposes of considering the application.

(5) Subject to subsection (6), a renewed Certificate of Compliance Registration is effective from the date of renewal.

(6) If an application for renewal of a Certificate of Compliance Registration is made during the 12 months preceding the expiry of the certificate, the renewed certificate is effective from the date of that expiry.

14. Duplicate of Certificate of Compliance Registration available

(1) The Director may, on an application by the developer of a building, the responsible person of a unit of a building or the owner of a central building services installation in a building, issue to the applicant a duplicate of a Certificate of Compliance Registration issued in respect of the building.

- (2) An application under subsection (1) must –
- (a) be in the specified form; and
 - (b) be accompanied by the prescribed fee and the documents specified in the form.

Division 4

Exemption from specified standards and requirements

15. Exemption from specified standards and requirements

(1) The developer or owner of a building or the responsible person of a unit of a building may apply to the Director for an exemption of any building services installation in the building from any provision of the specified standards and requirements.

(2) An application under subsection (1) must be in writing.

(3) The Director may, on an application under subsection (1), grant an exemption from any provision of the specified standards and requirements in respect of any building services installation if the Director is satisfied that it is, for heritage conservation or technical or operational reasons, undesirable or impracticable for the installation to comply with the provision.

(4) An exemption may be granted under subsection (3) in respect of all building services installations covered by an application or any of the installations.

(5) An exemption granted under subsection (3) may be subject to any condition that the Director thinks fit.

- (6) If –
- (a) an exemption granted under subsection (3) is subject to any condition under subsection (5) and the condition is contravened; or
 - (b) the ground on which the exemption was granted no longer exists,

the Director may, by a notice issued to the developer, owner or responsible person concerned, withdraw the exemption.

(7) A notice under subsection (6) must not take effect before the expiry of 28 days after the day on which it is issued.

PART 3

MAJOR RETROFITTING WORKS IN PRESCRIBED BUILDINGS

16. Application of Part 3

This Part applies to a prescribed building.

17. Duty to obtain Form of Compliance for major retrofitting works

(1) Subject to subsection (4), if major retrofitting works are carried out in respect of any building services installation that serves any unit or common area of a building, the responsible person of the unit or the owner of the common area, as may be appropriate, must, within 2 months after the completion of the works, obtain a Form of Compliance issued in respect of the installation.

(2) Subject to subsection (4), if major retrofitting works are carried out in respect of any central building services installation, the owner of the installation must, within 2 months after the completion of the works, obtain a Form of Compliance issued in respect of the installation.

(3) For the purposes of subsections (1) and (2), major retrofitting works carried out in respect of any building services installation are regarded as completed when –

- (a) the works have been carried out and the installation is ready to be used for its principal function as designed; or
- (b) if the works involve 2 or more installations, the works have been carried out and all the installations are ready to be used for their principal functions as designed.

(4) The Director may, on an application in writing by the responsible person or owner concerned, extend the period specified in subsection (1) or (2) if the Director is satisfied that there is a reasonable ground for the extension.

(5) An extension granted under subsection (4) may be subject to any condition that the Director thinks fit.

- (6) If –
- (a) an extension granted under subsection (4) is subject to any condition under subsection (5) and the condition is contravened; or
 - (b) the ground on which the extension was granted no longer exists,

the Director may, by a notice issued to the responsible person or owner concerned, withdraw the extension.

(7) If the Director withdraws an extension under subsection (6), the Director may issue a notice to the responsible person or owner concerned directing the responsible person or owner to obtain a Form of Compliance issued in respect of the building services installation within a period specified in the notice.

(8) If the Director issues a notice to a person under subsection (7), the person must comply with the direction in the notice.

(9) A person who fails to comply with subsection (1), (2) or (8) commits an offence and is liable on conviction to a fine at level 5.

18. Requirements applicable to Form of Compliance

- (1) A Form of Compliance must –
 - (a) be issued by a registered energy assessor;
 - (b) be in the specified form;
 - (c) be accompanied by the documents specified in the form;
 - (d) contain a declaration by the assessor that –
 - (i) the assessor has, in the 30 days before the declaration, personally inspected the building services installations in respect of which the major retrofitting works were carried out and which are specified in the Form of Compliance; and
 - (ii) the assessor is satisfied that the installations comply with the specified standards and requirements.
- (2) If a Form of Compliance is issued in respect of any building services installation, the responsible person of the relevant unit or the owner of the relevant common area of the building or, in the case of a central building services installation, the owner of the installation must maintain the installation to a standard not lower than that applied in that Form of Compliance.
- (3) A responsible person or an owner who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 5.
- (4) A registered energy assessor who –
 - (a) inspects a building services installation in any building or any unit of a building on the instruction of a responsible person or an owner acting in compliance with section 17(1) or (2); and
 - (b) is satisfied that the installation complies with the specified standards and requirements,

must issue a Form of Compliance accordingly and comply with subsection (5).

(5) A registered energy assessor who issues a Form of Compliance must –

- (a) send a copy of it together with the document specified in the Form of Compliance to the Director; and
- (b) send another copy of it to –
 - (i) the property management company of the building concerned; or
 - (ii) if there is no such property management company or the property management company cannot be found or ascertained, the owner of the building.

(6) A registered energy assessor who fails to comply with subsection (5) commits an offence and is liable on conviction to a fine at level 3.

(7) If a property management company or, if subsection (5)(b)(ii) applies, an owner of a building does not receive a copy of a Form of Compliance from a registered energy assessor within 2 months after the completion date of the major retrofitting works concerned, the company or owner must issue a notice of the fact to the Director.

(8) Subsection (7) does not apply to a person who, at the time when the person applied for an extension under section 17(4), declared himself or herself to be the owner of the relevant building.

(9) A notice under subsection (7) must –

- (a) be in the specified form; and
- (b) be issued to the Director within 30 days after the 2-month period referred to in that subsection.

(10) A property management company or an owner who fails to comply with subsection (7) commits an offence and is liable on conviction to a fine at level 2.

19. Duplicate of Form of Compliance available

(1) The Director may, on an application by a responsible person of a unit of a building or the owner of a common area of a building or a central building services installation in a building, issue to the applicant a duplicate of the copy of a Form of Compliance sent to the Director under section 18(5) in respect of any building services installation serving that unit or common area or that central building services installation.

(2) An application under subsection (1) must –

(a) be in the specified form; and

(b) be accompanied by the prescribed fee and the documents specified in the form.

20. Exemption from specified standards and requirements

(1) The responsible person of a unit of a building or the owner of a common area of a building may apply to the Director for an exemption of any building services installation serving the unit or common area from any provision of the specified standards and requirements.

(2) The owner of a central building services installation in a building may apply to the Director for an exemption of the installation from any provision of the specified standards and requirements.

(3) An application under subsection (1) or (2) must be in writing.

(4) The Director may, on an application under subsection (1) or (2), grant an exemption from any provision of the specified standards and requirements in respect of any building services installation if the Director is satisfied that it is, for heritage conservation or technical or operational reasons, undesirable or impracticable for the installation to comply with the provision.

(5) An exemption may be granted under subsection (4) in respect of all building services installations covered by an application or any of the installations.

(6) An exemption granted under subsection (4) may be subject to any condition that the Director thinks fit.

(7) If –

(a) an exemption granted under subsection (4) is subject to any condition under subsection (6) and the condition is contravened; or

(b) the ground on which the exemption was granted no longer exists,

the Director may, by a notice issued to the responsible person or owner concerned, withdraw the exemption.

(8) A notice under subsection (7) must not take effect before the expiry of 28 days after the day on which it is issued.

PART 4

ENERGY AUDIT

21. Application of Part 4

(1) Subject to subsection (2), this Part applies to a building specified in Schedule 4.

(2) This Part does not apply to a building if the Director is satisfied on a declaration by the owner of the building that the building will cease to fall within Schedule 4 within 12 months after the date of the declaration.

22. Energy audit requirement

(1) The owner of a building must cause an energy audit to be carried out in accordance with this section at intervals no longer than 10 years in respect of the common areas of the building.

(2) The first energy audit for the common areas of a building issued with a Certificate of Compliance Registration must be carried out within 10 years after the building is first issued with a Certificate of Compliance Registration.

(3) The first energy audit for the common areas of a building without a Certificate of Compliance Registration must be carried out according to the schedule specified in Schedule 5.

- (4) An energy audit must be carried out –
- (a) by a registered energy assessor; and
 - (b) in accordance with a code of practice.

(5) A registered energy assessor who carries out an energy audit in respect of a building must, within 30 days after issuing an Energy Audit Form, send a copy of the Energy Audit Form and an energy audit report on the audit to the Director.

- (6) An Energy Audit Form issued under subsection (5) must –
- (a) be in the specified form; and
 - (b) be accompanied by the documents specified in the form.

(7) An Energy Audit Form issued in respect of a building ceases to have effect on the issue of another Energy Audit Form in respect of the building.

(8) An owner of a building who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

(9) A registered energy assessor who contravenes subsection (5) commits an offence and is liable on conviction to a fine at level 3.

23. Owner to exhibit Energy Audit Form

(1) The owner of a building in respect of which an Energy Audit Form is in force must exhibit a copy of the form in a conspicuous position at the main entrance of the building.

(2) An owner who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

24. Duplicate of Energy Audit Form available

(1) The Director may, on an application by the owner of a building, issue to the applicant a duplicate of the copy of an Energy Audit Form issued in respect of the building.

- (2) An application under subsection (1) must –
 - (a) be in the specified form; and
 - (b) be accompanied by the prescribed fee and the documents specified in the form.

25. Exemption from energy audit requirement

(1) The owner of a building may apply to the Director for an exemption of any building services installation in the building from the requirement under section 22.

(2) An application under subsection (1) must be in writing.

(3) The Director may, on an application under subsection (1), grant an exemption from the requirement under section 22 in respect of any building services installation if the Director is satisfied that it is, for heritage conservation or technical or operational reasons, undesirable or impracticable for the installation to comply with the requirement.

(4) An exemption may be granted under subsection (3) in respect of all building services installations covered by an application or any of the installations.

(5) An exemption granted under subsection (3) may be subject to any condition that the Director thinks fit.

- (6) If –
 - (a) an exemption granted under subsection (3) is subject to any condition under subsection (5) and the condition is contravened; or
 - (b) the ground on which the exemption was granted no longer exists,

the Director may, by a notice issued to the owner concerned, withdraw the exemption.

(7) A notice under subsection (6) must not take effect before the expiry of 28 days after the day on which it is issued.

PART 5

IMPROVEMENT NOTICE

26. Director may issue improvement notice

(1) The Director may issue an improvement notice to the developer or owner of a prescribed building, the owner of a common area of a prescribed building or the responsible person of a unit of a prescribed building if the Director is of the opinion that the developer, owner or responsible person –

- (a) is contravening a requirement under this Ordinance; or
- (b) has contravened a requirement under this Ordinance in circumstances that make it likely that the contravention will continue or be repeated.

(2) An improvement notice issued to a person must –

- (a) state the Director's opinion referred to in subsection (1);
- (b) specify the requirement that is being or has been contravened; and
- (c) contain a direction directing the person to remedy the contravention within the period specified in the notice.

(3) An improvement notice may contain directions about measures to be taken which may be framed wholly or partly by reference to any code of practice.

(4) The Director may amend or withdraw an improvement notice by issuing a notice to the developer, owner or responsible person concerned.

(5) A person who contravenes any direction contained in an improvement notice under subsection (2) or (3) commits an offence and is liable –

- (a) on conviction to a fine at level 4; and
- (b) in the case of a continuing offence, to a further fine of \$1,000 for every day during which the offence continues.

(6) If, after an improvement notice has been issued to a developer, owner or responsible person (“the former party”) but before the period specified in the notice under subsection (2)(c) expires and before the contravention concerned is remedied, a person replaces the former party as the developer, owner or responsible person of the relevant building, common area or unit, the following provisions apply –

- (a) the former party must, within 7 days after the change, inform the Director of the change; and
- (b) the improvement notice issued to the former party ceases to have effect.

(7) A person who, without reasonable excuse, contravenes subsection (6)(a) commits an offence and is liable on conviction to a fine at level 3.

PART 6

ENFORCEMENT

27. Authorized officers

The Director may appoint any public officer in the Electrical and Mechanical Services Department at or above the rank of Assistant Building Services Inspector as an authorized officer.

28. Authorized officers to prove identity

An authorized officer must, if so requested, produce written proof of his or her identity as an authorized officer before exercising any power conferred on an authorized officer by this Ordinance.

29. Powers of authorized officers

(1) An authorized officer may, for the purposes of ascertaining whether this Ordinance has been or is being complied with –

- (a) enter any part of a prescribed building (including a prescribed building under construction) that is not a residential unit;
 - (b) inspect, examine, monitor and test any building services installation in a prescribed building;
 - (c) require the responsible person of any prescribed building or any unit of a prescribed building or any person who has been involved in the installation of any building services installation in any prescribed building to produce –
 - (i) any document relating to the building services installations in the building including any drawing, test record on the energy efficiency performance of the building services installations, purchasing order and works contract; or
 - (ii) any other document, information or article that the officer reasonably believes to be relevant to an offence or a suspected offence under this Ordinance; and
 - (d) take a copy of any drawing, record, order, contract, document or information referred to in paragraph (c).
- (2) An authorized officer may take with him or her any assistant and equipment as may be necessary for the exercise of any power under subsection (1).
- (3) A person who, without reasonable excuse –
- (a) fails to comply with a requirement made under subsection (1)(c); or
 - (b) obstructs any authorized officer or any assistant referred to in subsection (2) in the exercise of any power under this Ordinance,

commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(4) A person who, in purported compliance with a requirement made under subsection (1)(c), knowingly or recklessly provides any false or misleading information commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

PART 7

REGISTRATION OF REGISTERED ENERGY ASSESSORS

30. Registration of registered energy assessor

The Director may, on an application, register as a registered energy assessor any person who meets the criteria provided for in the regulation made under section 42.

31. Register of Registered Energy Assessors

(1) The Director must keep a Register of Registered Energy Assessors.

(2) The Register of Registered Energy Assessors must contain such information as may be provided for in the regulation made under section 42.

(3) To enable a member of the public to ascertain whether any person is a registered energy assessor, the Director must make the Register of Registered Energy Assessors available for members of the public to inspect free of charge at all reasonable times.

(4) The Register of Registered Energy Assessors must be maintained in the form and manner, and updated at any interval, that the Director thinks fit.

PART 8

APPEAL

32. Appeal to appeal board

- (1) A person who is aggrieved by –
 - (a) a decision of the Director to refuse to issue a Certificate of Compliance Registration under section 10;
 - (b) a decision of the Director to refuse to renew a Certificate of Compliance Registration under section 13;
 - (c) a decision of the Director to issue or amend an improvement notice under section 26;
 - (d) a direction contained in an improvement notice under section 26(2)(c) or (3);
 - (e) a decision of the Director to refuse to grant an extension under section 9 or 17;
 - (f) a decision of the Director to withdraw an extension under section 9 or 17;
 - (g) a decision of the Director to refuse to grant an exemption under section 15, 20 or 25;
 - (h) a decision of the Director to withdraw an exemption under section 15, 20 or 25;
 - (i) a decision of the Director to refuse to register a person as a registered energy assessor under section 30;
 - (j) a decision of the Director to issue a notice under section 9(9) or 17(7);
 - (k) a decision of the Director to impose a condition under section 9(7), 15(5), 17(5), 20(6) or 25(5);

- (l) a decision of the Director to refuse to renew the registration of a registered energy assessor under the regulation made under section 42; or
- (m) a decision of the Director to take disciplinary action against a registered energy assessor under the regulation made under section 42,

may appeal to an appeal board against the decision or direction.

(2) An appeal under subsection (1) against a decision or direction does not suspend the decision or direction unless the Director decides otherwise.

33. How to lodge an appeal

(1) An appellant may lodge an appeal by issuing a notice of appeal to the Director.

(2) A notice of appeal must be issued within –

- (a) 14 days after the date on which the appellant is notified of the decision or direction appealed against; or
- (b) such longer period as the Director may allow.

(3) A notice of appeal must –

- (a) be in the specified form;
- (b) be accompanied by a copy of any document the appellant intends to rely on; and
- (c) contain the particulars of any witness that the appellant intends to call at the hearing.

(4) On receiving a notice of appeal, the Director must deliver it to the Secretary as soon as reasonably practicable.

34. Appeal board panel

(1) The Secretary is to appoint the members of a Buildings Energy Efficiency Appeal Board Panel which is to consist of –

- (a) not more than 5 members who are corporate members of the Hong Kong Institution of Engineers and are in the electrical discipline;
 - (b) not more than 5 members who are corporate members of the Hong Kong Institution of Engineers and are in the mechanical discipline;
 - (c) not more than 5 members who are corporate members of the Hong Kong Institution of Engineers and are in the building services discipline;
 - (d) not more than 5 members who are corporate members of the Hong Kong Institution of Engineers and are in the environmental discipline; and
 - (e) not more than 5 members who are members of the Engineers Registration Board established under the Engineers Registration Ordinance (Cap. 409).
- (2) A person is not eligible for appointment under subsection (1) if the person –
- (a) is a public officer; or
 - (b) has not practised in the engineering profession in Hong Kong for at least 10 years.
- (3) A member of the appeal board panel is to be appointed for a term of 3 years and may be reappointed on the expiry of a term.
- (4) The Secretary must give notice in the Gazette of any appointment or reappointment under this section.
- (5) A member of the appeal board panel may, at any time, resign by issuing a notice in writing to the Secretary.
- (6) The Secretary may terminate the office of a member of the appeal board panel if the Secretary is satisfied that the member –

- (a) has become a public officer;
- (b) has become bankrupt or has entered into a voluntary arrangement within the meaning of section 2 of the Bankruptcy Ordinance (Cap. 6) with his or her creditors;
- (c) is incapacitated by physical or mental illness;
- (d) has ceased to be of the capacity by virtue of which he or she was appointed; or
- (e) is otherwise unable or unfit to perform the functions of a member.

(7) The Secretary must give notice in the Gazette of any termination of office under this section.

35. Appeal board

(1) Within 21 days after receiving a notice of appeal delivered under section 33, the Secretary must appoint from among the members of the appeal board panel a Buildings Energy Efficiency Appeal Board to hear the appeal.

(2) An appeal board is to consist of 5 members appointed from all 5 categories of members specified in section 34(1).

(3) The members of an appeal board must elect a Chairperson from among themselves to preside at the hearing of the appeal.

(4) The members of an appeal board may be paid out of the general revenue any remuneration that the Financial Secretary determines.

36. Proceedings of appeal board

(1) The quorum for a meeting of an appeal board is 4 members.

(2) Any question before an appeal board must be determined by a majority of the members.

(3) If there is an equality of votes in respect of any question to be determined in an appeal, the Chairperson of an appeal board has a casting vote in addition to his or her original vote.

(4) In the performance of their functions under this Ordinance, the members of an appeal board have the same privileges and immunities as a judge of the Court of First Instance has in civil proceedings in that court.

(5) A person appearing before an appeal board as a witness, a party to an appeal or a representative of a party to an appeal is entitled to the same privileges and immunities as he or she would have in civil proceedings in the Court of First Instance.

(6) Subject to this Ordinance, an appeal board may determine its own procedure.

37. Hearing

(1) The Chairperson of an appeal board must notify the appellant and the Director of the date, time and place of the hearing of the appeal at least 14 days before the hearing.

(2) At any proceedings before an appeal board –

(a) the appellant may be represented by –

(i) a barrister or solicitor; or

(ii) (if the appellant is a body corporate) an individual authorized by the appellant; and

(b) the Director may be represented by –

(i) a barrister or solicitor; or

(ii) a public officer.

(3) An appeal board may engage any barrister or solicitor to attend a hearing of the board to advise on any matter relating to the appeal.

(4) The hearing of an appeal must be open to the public unless the appeal board determines that there is a good reason for it to be held in camera.

(5) An appeal 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.
- (6) A person who fails to comply with a direction under subsection (5) commits an offence and is liable on conviction to a fine at level 5.
- (7) Despite subsection (5), no person to whom a direction is given under that subsection is bound to incriminate himself or herself.

38. Appeal board may authorize inspection of building services installation

- (1) If an appeal board reasonably believes that a building services installation is relevant to the determination of an appeal, the board may, by an authorization signed by the Chairperson of the board –
- (a) authorize a person to inspect the installation; and
 - (b) authorize the person to enter any unit other than a residential unit for the purposes of the inspection.
- (2) A person who, without reasonable excuse, obstructs a person authorized under subsection (1) in the inspection commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

39. Determination of appeal

- (1) An appeal board may –
- (a) confirm, vary or revoke the decision or direction appealed against; or
 - (b) substitute its own decision or direction for the decision or direction appealed against.
- (2) An appeal board may make any order that it thinks fit with regard to the payment of –
- (a) costs of the appeal proceedings; or
 - (b) costs of the Director or any other person in the proceedings.

(3) The costs awarded under subsection (2) are recoverable as a civil debt.

(4) An appeal board must issue to the appellant and the Director a notice of its determination and the reasons for it.

PART 9

CODE OF PRACTICE

40. Code of practice

(1) To provide practical guidance in respect of any standard or requirement under this Ordinance, the Director may –

- (a) issue any code of practice that the Director thinks fit; or
- (b) approve any code of practice issued by any body or authority that the Director thinks fit.

(2) A code of practice may include –

- (a) building energy efficiency standards and requirements;
- (b) the requirements for assessment of the energy efficiency performance of a building services installation; and
- (c) the requirements for carrying out an energy audit.

(3) The Director must –

- (a) by a notice published in the Gazette identify a code of practice issued or approved under subsection (1);
- (b) specify in the notice the commencement date of the code of practice; and
- (c) specify the requirement under this Ordinance for which the code of practice is issued or approved.

(4) The Director may, from time to time, by a notice published in the Gazette –

- (a) revise any code of practice issued under subsection (1);
and
 - (b) approve any revision of any code of practice approved under subsection (1).
- (5) A notice under subsection (4) must specify –
- (a) the code of practice being revised;
 - (b) the commencement date of the revision; and
 - (c) if applicable, the requirement under this Ordinance for which the revision is made or approved.
- (6) The Director may, at any time, by a notice published in the Gazette withdraw any code of practice approved under subsection (1).
- (7) A notice under subsection (6) must specify the date on which the withdrawal takes effect.
- (8) A reference to a code of practice is a reference to the code of practice as revised from time to time in accordance with this section.
- (9) A notice under subsection (3), (4) or (6) is not subsidiary legislation.

41. Admissibility of code of practice in evidence

- (1) If, in any legal proceedings, the court is satisfied that a provision of a code of practice is relevant to the determination of a matter that is in issue in the proceedings –
- (a) the code of practice is admissible in evidence in the proceedings; and
 - (b) proof that the person contravened or did not contravene a relevant provision of the code of practice may be relied on by any party to the proceedings as tending to establish or negate the matter.

(2) In any legal proceedings, the production of a Government Printer's copy of an issue of the Gazette in which a code of practice is identified is sufficient proof of the content of the code of practice.

(3) In this section, "court" (法院) includes a magistrate.

PART 10

MISCELLANEOUS MATTERS

42. Secretary may make regulations

(1) The Secretary may make regulations –

- (a) prescribing fees payable under this Ordinance;
- (b) providing for the registration and regulation of, and disciplinary matters in respect of, registered energy assessors; and
- (c) providing for such matters as are necessary for giving full effect to the provisions of this Ordinance.

(2) Regulations made under subsection (1) may prescribe a penalty of a fine at level 6 and imprisonment for 1 year for an offence under the regulations.

43. Secretary may amend Schedules

(1) The Secretary may, by notice published in the Gazette, amend any Schedule.

(2) A notice made under subsection (1) may contain such incidental, consequential, supplemental, transitional or saving provisions as may be necessary or expedient in consequence of the notice.

44. Periods may be extended after expiry

A period which the Director is empowered under this Ordinance to extend may be extended either before or after its expiry.

45. Director may delegate power

The Director may in writing authorize any public officer to exercise any power vested in the Director or to perform any duty imposed on the Director by any provision of this Ordinance.

46. Director may specify forms

(1) The Director may specify any form to be used for the purposes of any provision of this Ordinance.

(2) If the Director specifies a form under subsection (1), the Director must make copies of the form available –

- (a) at the office of the Electrical and Mechanical Services Department during normal office hours; and
- (b) in any other manner that the Director thinks fit.

47. Issue of notice etc.

(1) Subject to subsection (2), a notice or any other document required to be issued, submitted or sent under this Ordinance is to be regarded as having been duly issued, submitted or sent if –

- (a) in the case of the Director –
 - (i) it is addressed to the Director and delivered to the head office of the Electrical and Mechanical Services Department; or
 - (ii) it is sent to the Director by registered post addressed to the Director at the head office of the Electrical and Mechanical Services Department;
- (b) in the case of an individual –
 - (i) it is delivered by hand to the individual; or
 - (ii) it is sent to the individual by registered post addressed to the individual at the individual's last known address;
- (c) in the case of a company –

- (i) it is delivered by hand to any officer of the company; or
- (ii) it is left at, or sent by registered post to, the registered office of the company within the meaning of the Companies Ordinance (Cap. 32);
- (d) in the case of a body corporate other than a company –
 - (i) it is delivered by hand to any place in Hong Kong at which the body carries on business and given to a person apparently concerned in the management of, or apparently employed by, the body; or
 - (ii) it is sent to the body by registered post addressed to the body at the body's last known address; or
- (e) in the case of a partnership –
 - (i) it is delivered by hand to any place in Hong Kong at which the partnership carries on business and given to a person apparently concerned in the management of, or apparently employed by, the partnership; or
 - (ii) it is sent to the partnership by registered post addressed to the partnership at the partnership's last known address.

(2) A notice issued to a corporation registered under section 8 of the Building Management Ordinance (Cap. 344) in respect of a building is deemed to be a notice issued to all owners of undivided shares in the land on which the building is situated.

48. False information etc. prohibited

(1) A person who forges any declaration, Certificate of Compliance Registration, Form of Compliance or Energy Audit Form or any other document required by, under or for the purposes of this Ordinance commits an offence.

(2) A person who knowingly or recklessly provides any false or misleading information to a registered energy assessor to procure the issue of a Form of Compliance or an Energy Audit Form or the making of a certification commits an offence.

(3) A person who knowingly or recklessly provides any false or misleading information to the Director to –

- (a) procure the issue or renewal of a Certificate of Compliance Registration;
- (b) procure the grant of any exemption under this Ordinance by the Director; or
- (c) procure the grant of any extension of period under this Ordinance by the Director,

commits an offence.

(4) A person who commits an offence under this section is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

49. Offences relating to registered energy assessors

(1) A person who knowingly or recklessly provides any false or misleading information to –

- (a) procure the registration of any person as a registered energy assessor; or
- (b) procure a renewal of registration of any person as a registered energy assessor,

commits an offence.

(2) A registered energy assessor who knowingly or recklessly issues any Form of Compliance or Energy Audit Form, or makes any certification, that is false or misleading in any material particular commits an offence.

(3) A person who not being a registered energy assessor –

- (a) falsely takes or uses any name, title or description suggesting or implying that the person is a registered energy assessor;
- (b) uses or knowingly permits the use of in connection with his or her business or profession any description, initials, abbreviations or words intended to cause, or which may reasonably cause, any person to believe that the person is a registered energy assessor; or
- (c) advertises or represents himself or herself as a registered energy assessor or knowingly permits himself or herself to be so advertised or represented,

commits an offence.

(4) A person who commits an offence under this section is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

50. Defence of due diligence

(1) In any legal proceedings against a person for an offence under this Ordinance, it is a defence for the person to show that he or she took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) If the defence under subsection (1) involves an allegation that the offence was due to –

- (a) the act or default of another person; or
- (b) reliance on information given by another person,

the person charged is not, without the leave of the court, entitled to rely on the defence unless the person has issued a notice in accordance with subsection (3).

- (3) A notice issued for the purposes of subsection (2) must –
- (a) identify or assist in the identification of the person who committed the act or default or gave the information; and
 - (b) be issued to the person bringing the legal proceedings at least 7 working days before the hearing of the proceedings.

(4) A person charged is not entitled to rely on the defence under subsection (1) by reason of the person's reliance on information given by another person unless the person charged shows that it was reasonable in all the circumstances for him or her to rely on the information, having regard in particular to –

- (a) the steps which the person took, and those which might reasonably have been taken by the person, for the purpose of verifying the information; and
- (b) whether the person had any reason not to believe the information.

51. Protection of public officers

(1) A public officer does not incur any personal civil liability for any act done or omitted to be done by the officer if the officer did or omitted to do the act in the honest belief that the act or omission was required or authorized by or under this Ordinance.

(2) The protection conferred by subsection (1) does not in any way affect the liability of the Government for the act or omission of the public officer.

PART 11

TRANSITIONAL PROVISION

52. Energy audit carried out before Part 4 commences

If –

- (a) an energy audit is carried out on or after the date on which a code of practice concerning an energy audit in respect of a building is identified by the Director under section 40(3) but before the commencement of Part 4; and
- (b) the person who carried out the audit possesses the qualifications required for registration as a registered energy assessor,

the audit is regarded, on the commencement of Part 4, as an energy audit carried out on the commencement of Part 4.

SCHEDULE 1

[ss. 2 & 43]

**BUILDINGS THAT REQUIRE CERTIFICATE OF COMPLIANCE
REGISTRATION AND FORM OF COMPLIANCE**

1. Commercial building.
2. Non-residential or non-industrial portion of a composite building.
3. Hotel and guesthouse.
4. Common area of a residential building.
5. Common area of the residential or industrial portion of a composite building.
6. Common area of an industrial building.
7. Building that is occupied predominately for an education purpose.
8. Building that is occupied predominantly as a community building including a community hall and social services centre and composite building occupied as 2 or more such places.
9. Building that is occupied predominantly as a municipal services building including a market, cooked food centre, library, cultural centre and indoor games hall and composite building occupied as 2 or more such places.
10. Building that is occupied predominantly for medical and health care services including a hospital, clinic and rehabilitation centre.
11. Building that is owned by the Government and used predominantly for the accommodation of people during the performance of any function of the Government.

12. Passenger terminal building of an airport.
13. Railway station.

SCHEDULE 2

[ss. 4 & 43]

BUILDING SERVICES INSTALLATIONS TO WHICH THIS
ORDINANCE DOES NOT APPLY

1. An installation that is solely used for –
 - (a) fire suppression;
 - (b) fire extinguishing; or
 - (c) fire suppression and extinguishing.
2. An installation that is solely used for –
 - (a) surgical operation;
 - (b) clinical treatment;
 - (c) blood processing;
 - (d) providing or maintaining appropriate environment settings for life protection; or
 - (e) any combination of the purposes specified in paragraphs (a), (b), (c) and (d).
3. An installation that is used in a construction site for construction works only.
4. An installation that is solely used for industrial manufacturing.
5. An installation that is solely used for research in an educational institution.
6. A lighting installation that is solely used for –
 - (a) illumination of an exhibit or product on display;
 - (b) decoration;

- (c) visual production; or
 - (d) any combination of the purposes specified in paragraphs (a), (b) and (c).
7. An installation that is solely used for –
- (a) air traffic regulation;
 - (b) air traffic safety;
 - (c) air traffic control; or
 - (d) any combination of the purposes specified in paragraphs (a), (b) and (c).
8. An installation that is solely used for –
- (a) railway traffic regulation;
 - (b) railway traffic safety;
 - (c) railway traffic control; or
 - (d) any combination of the purposes specified in paragraphs (a), (b) and (c).

SCHEDULE 3

[ss. 2 & 43]

MAJOR RETROFITTING WORKS

1. Works involving addition or replacement of a building services installation specified in a code of practice that covers one or more places with a floor area or total floor area of not less than 500 m² under the same series of works within 12 months in a unit or a common area of a prescribed building.
2. Addition or replacement of a main component of a central building services installation, including –
 - (a) addition or replacement of a complete electrical circuit at rating of 400A or above;

- (b) addition or replacement of a unitary air-conditioner or air-conditioning chiller of a cooling or heating rating at or exceeding 350 kW; or
- (c) addition or replacement of the motor drive and mechanical drive of a lift, an escalator or a passenger conveyor.

Notes

- (1) For the purposes of item 1 of this Schedule –
 - (a) an occupants' clubhouse or a carpark is to be regarded as a separate common area within the building; and
 - (b) all other common areas are to be regarded together as a separate common area.

- (2) If works are carried out for more than one place in a unit or a common area of a prescribed building and, having regard to all relevant factors of the case, the works should reasonably be regarded as being under the same series of works, the reference to floor area in item 1 of this Schedule is a reference to the aggregate of the floor area of all those places.

- (3) In Note (2), “relevant factors” (有關因素) means –
 - (a) whether the works are carried out by a single contractor;
 - (b) whether the works are carried out under a single agreement;
 - (c) whether the works are carried out pursuant to a single works order;
 - (d) the time at which and the period during which the works are carried out;
 - (e) the manner in which the contractor is paid; and

- (f) whether the works are treated as a single project in the plans and works programme.

SCHEDULE 4 [ss. 21 & 43]

BUILDINGS THAT REQUIRE ENERGY AUDIT

1. Commercial building.
2. Commercial portion of a composite building.

SCHEDULE 5 [ss. 22 & 43]

**SCHEDULE OF THE FIRST ENERGY AUDIT FOR BUILDINGS
WITHOUT CERTIFICATE OF COMPLIANCE REGISTRATION**

Date of issue of occupation approval in respect of the building	Period within which the first energy audit must be carried out
On or after 1 January 1988	12 months from the commencement of Part 4 of this Ordinance
After 31 December 1977 but before 1 January 1988	24 months from the commencement of Part 4 of this Ordinance
After 31 December 1969 but before 1 January 1978	36 months from the commencement of Part 4 of this Ordinance
On or before 31 December 1969	48 months from the commencement of Part 4 of this Ordinance

Explanatory Memorandum

The object of this Bill is to require compliance with codes of practice promulgated by the Electrical and Mechanical Services Department concerning the energy efficiency of 4 types of building services installations and energy

audits. Those installations are air-conditioning installations, electrical installations, lift and escalator installations and lighting installations.

2. This Bill is divided into 11 Parts and 5 Schedules.

Part 1 of the Bill

3. Part 1 provides for preliminary matters.

4. Clause 1 provides for the short title and commencement of the Ordinance (when enacted).

5. The Ordinance (when enacted) will come into operation on a day to be appointed by the Secretary for the Environment.

6. Clause 2 contains the definitions of the words and expressions used in this Bill.

7. Clause 3 provides for the application of the Ordinance (when enacted) to the Government.

8. Clause 4 prescribes the buildings and building services installations to which the Ordinance (when enacted) does not apply.

9. Clause 5 provides that if the applicability of any provision is to be determined by reference to any threshold, the calculation or measurement must be made when the relevant works have been completed.

10. Clause 6 provides that compliance with a requirement imposed by the Ordinance (when enacted) in respect of a jointly owned or jointly occupied property by one of the joint owners or joint occupiers is regarded as compliance with the requirement by all joint owners or joint occupiers.

Part 2 of the Bill

11. Clause 7 prescribes the scope of application of this Part. This Part only applies to buildings for which a consent to the commencement of building works for superstructure construction has been obtained after the commencement of this Part.

12. Under clause 8, the developer of a proposed building must make a declaration that all building services installations to be provided by the developer in that building at or before the time when a stage two declaration is made are designed, and will be installed and completed, in accordance with a code of practice. The declaration must be certified by a registered energy assessor.

13. Under clause 9, the developer of a building must, after an occupation approval is issued in respect of the building, make a declaration that all building services installations provided by the developer in that building at or before the time when the declaration is made have been designed, installed and completed in accordance with a code of practice. The declaration must also be certified by a registered energy assessor.

14. Clause 10 requires the Director of Electrical and Mechanical Services (“Director”) to issue a Certificate of Compliance Registration to a developer who has submitted a declaration under clause 9.

15. Clause 11 provides that the Director must keep a register of buildings issued with a Certificate of Compliance Registration.

16. Clause 12 requires the owner of a building and the responsible person (defined in clause 2) of a unit of a building to ensure that building services installations are maintained to a certain standard. The owner of a building must ensure that a Certificate of Compliance Registration is in force in respect of the building.

17. Clause 13 makes provision for the renewal of Certificates of Compliance Registration.

18. Clause 14 empowers the Director to issue duplicates of Certificates of Compliance Registration.

19. Clause 15 makes provision for the exemption of building services installations from the specified standards and requirements set out in a code of practice as applicable in this Part.

Part 3 of the Bill

20. Clause 16 prescribes the scope of application of this Part.

21. Clause 17 imposes a duty to obtain a Form of Compliance after major retrofitting works have been carried out in respect of building services installations.

22. Clause 18 provides that a Form of Compliance must be issued by a registered energy assessor. The responsible person or owner concerned must maintain the relevant building services installations to a certain standard.

23. Clause 19 empowers the Director to issue duplicates of copies of Forms of Compliance.

24. Clause 20 makes provision for the exemption of building services installations from the specified standards and requirements set out in a code of practice as applicable in this Part.

Part 4 of the Bill

25. Clause 21 prescribes the scope of application of this Part.

26. Clause 22 imposes a duty to carry out an energy audit in respect of the common areas of a building every 10 years. A registered energy assessor must send a copy of an Energy Audit Form and an energy audit report to the Director.

27. Clause 23 imposes a duty to exhibit a copy of an Energy Audit Form.

28. Clause 24 empowers the Director to issue duplicates of copies of Energy Audit Forms.

29. Clause 25 makes provision for the exemption of building services installations from the requirement of an energy audit.

Part 5 of the Bill

30. Clause 26 empowers the Director to issue an improvement notice to developers, owners and responsible persons to direct the recipient of the notice to remedy the contravention of any requirement under the Ordinance (when enacted).

Part 6 of the Bill

31. Clause 27 empowers the Director to appoint authorized officers for the purpose of the implementation of the Ordinance (when enacted).

32. Clause 28 requires authorized officers to produce proof of their identities on request.

33. Clause 29 confers on authorized officers several powers required for the performance of their functions.

Part 7 of the Bill

34. Clause 30 empowers the Director to register energy assessors.

35. Clause 31 makes provision for a Register of Registered Energy Assessors.

Part 8 of the Bill

36. Clause 32 sets out the situations in which an appeal may be lodged against a decision or direction of the Director.

37. Clause 33 makes procedural provision for appeals.

38. Clause 34 provides for the appointment of a Buildings Energy Efficiency Appeal Board Panel.

39. Clause 35 provides for the appointment of a Buildings Energy Efficiency Appeal Board (“Appeal Board”) from among the members of the Buildings Energy Efficiency Appeal Board Panel.

40. Clause 36 makes provision for the proceedings of an Appeal Board.

41. Clause 37 makes provision for the hearing of an appeal.
42. Clause 38 empowers an Appeal Board to authorize the inspection of building services installations.
43. Clause 39 provides for the manner in which an appeal may be determined.

Part 9 of the Bill

44. Clause 40 provides for the issue and approval of codes of practice.
45. Clause 41 provides for the admissibility of codes of practice in evidence.

Part 10 of the Bill

46. Clause 42 empowers the Secretary for the Environment to make regulations for the purposes of the Ordinance (when enacted).
47. Clause 43 empowers the Secretary for the Environment to amend any Schedule to the Ordinance (when enacted).
48. Clause 44 provides that the Director's power to extend a period for taking action may be exercised before or after the expiry of that period.
49. Clause 45 empowers the Director to delegate powers.
50. Clause 46 empowers the Director to specify forms for the purposes of the Ordinance (when enacted).
51. Clause 47 provides for the manner in which notices and documents are to be issued, submitted or sent under the Ordinance (when enacted).
52. Clause 48 prohibits forgery of documents and provision of false or misleading information.
53. Clause 49 provides for several offences relating to registered energy assessors.
54. Clause 50 provides for a defence of due diligence for a person charged with an offence under the Ordinance (when enacted).
55. Clause 51 exempts public officers from incurring personal civil liabilities under the Ordinance (when enacted).

Part 11 of the Bill

56. Clause 52 makes transitional provision for an energy audit carried out on or after the date on which a code of practice concerning an energy audit is identified by the Director but before the commencement of Part 4 of the Ordinance (when enacted).

Schedules to the Bill

57. Schedule 1 sets out the buildings that require Certificates of Compliance Registration and Forms of Compliance.

58. Schedule 2 sets out the building services installations to which the Ordinance (when enacted) does not apply.

59. Schedule 3 defines major retrofitting works.

60. Schedule 4 sets out the buildings that require energy audits.

61. Schedule 5 specifies the schedule of the first energy audit for buildings without Certificates of Compliance Registration.

Responsibilities of Different Parties in Post-enactment Buildings

	Central building services installations	Other building services installations serving individual unit or common area ¹	
		with floor area <500m ²	with floor area ≥500m ²
Need to comply with BEC?	✓ (occupation approval stage)	✓	✓
	✓		
Need to obtain COCR from EMSD?	✓ (occupation approval stage)	✓ (for installations provided by developers at the occupation approval stage)	
	✓ (10-year renewal)	x (10-year renewal)	
Need to obtain FOC from registered energy assessors?	✓ (major retrofitting works)	x	✓ (major retrofitting works)

Responsibilities of Different Parties in Pre-enactment Buildings

	Central building services installations	Other building services installations serving individual unit or common area ²	
		with floor area <500m ²	with floor area ≥500m ²
Need to comply with BEC?	✓ (major retrofitting works)	x	✓ (major retrofitting works)
Need to obtain FOC from registered energy assessors?	✓ (major retrofitting works)	x	✓ (major retrofitting works)

Developers
 Owners
 Responsible persons (persons who occupy or are in possession or control of buildings or units)

¹ For common area, it would be the responsibilities of owners to fulfill the compliance requirement under the Ordinance.

² For common area, it would be the responsibilities of owners to fulfill the compliance requirement under the Ordinance.

Implications of the Proposal

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

EMSD will deploy its existing resources to take forward the mandatory implementation of BEC. If additional resources are required for taking forward the legislative procedures and subsequent enforcement of the new legislation, EMSD would seek them in accordance with the established resources allocation mechanism.

2. Since 2005, all government public works projects and minor works projects, including retrofit and renovation projects, have been required to comply with BEC. The turning of BEC into statutory requirements would have minimal additional financial implications on government projects. For the subvented sector, it is estimated that additional capital cost of not more than 1% of the total project cost would be incurred for subvented capital works projects (including minor works) when mandatory compliance with BEC is implemented. The additional capital funding will be sought in accordance with the established resource allocation procedures.

SUSTAINABILITY IMPLICATIONS

3. The proposed mandatory implementation of BEC should contribute positively to the reduction in energy intensity, moderating the growth in carbon dioxide emissions and alleviating air pollution.

4. The proposal is in line with the objective of increasing and sustaining conservation of energy in order to reduce the growing trend of energy use, which has been set out in the Government's First Sustainable Development Strategy of Hong Kong. The proposal is also in line with the sustainability principle of improving consumption efficiency of natural resources.

ENVIRONMENTAL IMPLICATIONS

5. The proposal will yield positive environmental impact since it would enhance building energy efficiency. It is estimated that for new buildings, the implementation of the proposals will result in energy saving of 2.8 billion kWh in the first decade, which will help avoid

carbon dioxide emissions of 1.96 million tonnes.

ECONOMIC IMPLICATIONS

6. The Business Impact Assessment conducted on the proposal concluded that that the proposal will have a net economic benefit to Hong Kong mainly arising from energy saving, as well as the new business opportunities for registered energy assessors, equipment suppliers and contractors for buildings and retrofitting works that are related to energy efficiency compliance. The level of benefit will depend on a number of factors including the amount of energy saving from the use of BEC compliant equipment, the number of buildings that will undergo major retrofitting works and the percentage of buildings that will implement energy improvement measures identified through energy audits. The implementation of the mandatory scheme will also enhance Hong Kong's reputation as an environmentally responsible city and its competitiveness as an international business and financial centre.