



立法會秘書處 法律事務部  
LEGISLATIVE COUNCIL SECRETARIAT  
LEGAL SERVICE DIVISION

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By Fax (2147 5834)

28 January 2011

Mr Philip HAR  
AS for the Env (Energy) 3  
Environment Bureau  
Energy Division  
46/F, Revenue Tower  
5 Gloucester Road  
Wanchai, HK

Dear Mr HAR,

**Buildings Energy Efficiency (Registered Energy Assessors) Regulation  
(L.N. 19 of 2011) (the Regulation)**

We are scrutinising the legal and drafting aspects of the above Regulation made by the Secretary for the Environment under section 42 of the Buildings Energy Efficiency Ordinance (Cap. 610) (the Ordinance). We have the following questions relating to the Regulation for your clarification-

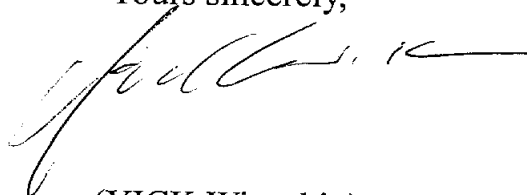
- (a) According to section 6(3)(b) of the Regulation, an application for renewal of registration may be submitted within the period of 28 days from the expiry of the current registration. As a result, there would be a time gap between the expiry of the current registration and the date on which a new certificate of registration is issued under section 6(6)(b) of the Regulation. What would be the status of those Registered Energy Assessors (REAs) who apply for renewal of their registration in accordance with section 6(3)(b) during such time gap? Can they still certify declarations and issue forms of compliance and energy audit forms under the Ordinance after the expiry of the current registration and pending the issue of a new certificate of registration? Is it necessary to make provisions to provide for these matters in the Regulation?

- (b) Under section 9 of the Regulation, the Director of Electrical and Mechanical Services (the Director) may remove from the Register of Registered Energy Assessors (the Register) the name of the registered REAs. Please clarify if the validity of the declarations certified and forms of compliance and energy audit forms issued by a REA would be affected by the removal of his name from the Register. If not, should express provisions be included to reflect the intention of the Administration in this respect?
- (c) Under section 9(1) of the Regulation, the Director may remove from the Register of REAs the name of any person if, including but not limited to, the registration of the person has expired. Section 9(5) of the Regulation provides that on the removal of the name of the person, the registration of the person ceases to be valid. These two provisions, as drafted, suggest that the registration of the person concerned could remain to be valid notwithstanding that it has expired and has not been renewed as long as the name of the person is not formally removed from the Register by the Director. Does this reflect the intention of the Administration? What is the reason for allowing REAs to continue certifying declarations and issuing energy audit forms after their registration has expired?
- (d) Under section 13 of the Regulation, the Director may decide to institute disciplinary proceedings against a REA and also determine the disciplinary case under section 14 of the Regulation. In view of the fact that the Director is the party who determines the application for registration of a person as a REA, would it be more appropriate for another party to institute disciplinary proceedings against a REA and also to decide on the disciplinary case concerned in order to satisfy the requirement of procedural fairness as required by law. You may wish to note that in a similar regulatory regime under the Lifts and Escalators (Safety) Ordinance (Cap. 327), the only role of the Director of Electrical and Mechanical Services in relation to a prospective disciplinary case concerning a registered lift engineer or registered escalator engineer is to refer the case to the Secretary for Development and the Director is not involved in the ensuing disciplinary proceedings at all. Is there any reason for adopting a different approach in this Regulation?
- (e) What will the Secretary for Environment do after the Director has referred to him a case of prospective disciplinary proceedings under section 13(3)(a)? Can the Secretary refer the case to a disciplinary board? If so, should this be provided in section 16 of the Regulation?

- (f) Please clarify whether a person would be protected by section 17(7) of the Regulation in relation to those documents protected by legal professional privilege, if the disciplinary board only directs such person to produce documents without requiring him to attend or appear at a hearing before it. If not, should section 18(8) of the Regulation be amended to confer protection on documents subject to legal professional privilege as well?
- (g) Please clarify if the Administration intends that the disciplinary board should have powers to administer oath and require evidence to be given on oath? If so, should these powers be provided in section 18 of the Regulation?
- (h) Section 19 of the Regulation, as drafted, suggests that the orders set out in paragraphs (a) to (e) are exhaustive. Does the Administration consider it appropriate to provide for a power to allow the disciplinary board to make any order as it thinks fit?
- (i) Please clarify if the determination of disciplinary board under section 19 and the determination of the Director under section 14 are meant to be final so that the only redress available to the persons aggrieved by such determinations is to apply for judicial review to the Court of First Instance. It is noted that in a similar regulatory regime under the Lifts and Escalators (Safety) Ordinance (Cap. 327), orders made by the disciplinary board under that regime are subject to appeal to the Court of First Instance. Is there any reason for adopting a different approach in this Regulation?

To enable us to make a report to the House Committee meeting on 11 February 2011, it is appreciated that your reply in both languages could reach us as soon as possible, preferably before noon on 7 February 2011.

Yours sincerely,



(YICK Wing-kin)  
Assistant Legal Adviser

cc. DoJ (Attn.: Miss Selina LAU, Sr Govt Counsel (By Fax: 2869 1302))  
LA  
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