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8 February 2011

Mr YICK Wing-kin
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Legislative Council
8 Jackson Road
Central
Hong Kong

By Fax (2877 5029) and By Mail

Dear Mr YICK,

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

Thank you for your letter dated 28 January 2011. I hereby set out our responses to your questions raised in the letter.

In response to your paragraph (a):

According to section 6(3)(b) of the Regulation, an application for renewal of registration of Registered Energy Assessor (“REA”) may be submitted within the period of 28 days from the expiry of the current registration¹. During the “time gap” of such 28 days, the registration of the REA has expired and he is not legally allowed to perform any

¹ After the period of 28 days, the registration cannot be renewed and the registered energy assessor concerned may only apply for new registration under section 4 of the Regulation.

functions under the Buildings Energy Efficiency Ordinance (“the Ordinance”).

We do not consider it necessary to make specific provisions to clarify the status of the REA under this scenario as it has already been stated clearly under section 5(5) of the Regulation that, subject to section 9, the registration is valid for a period of 10 years beginning on the date on which the certificate of registration is issued. In other words, upon expiry, the registration has become invalid.

In response to your paragraph (b):

Under section 2 of the Ordinance, a “registered energy assessor” is a person who is for the time being registered under section 30 of the Ordinance (i.e. registered as a REA). For the purposes of the Ordinance, as long as a person is a REA at the material time, the relevant requirements under the Ordinance regarding the certification of declarations and the issue of forms of compliance and energy audit forms are complied with. Under section 9 of the Regulation, the Director of Electrical and Mechanical Services (“the Director”) may remove from the Register of REAs (“the Register”) the name of an REA. The removal does not carry retrospective effect on the validity of the registration. We, therefore, consider it not necessary to provide for the effect of the removal on the validity of the documents certified or signed by the REA.

In response to your paragraph (c):

Section 5(5) of the Regulation stipulates that subject to section 9, the registration is valid for a period of 10 years beginning on the date on which the certificate of registration is issued. Section 9(1) lists out the scenarios where the Director may remove from the Register the name of any REA. One of the scenarios is where the registration of the REA has expired (under section 9(1)(g)). Section 9(5) specifies that on the removal of the name of the person, the registration ceases to be valid. Section 9(5) does not have the effect of extending the validity period of a registration that has already expired. It only provides that once a name is removed, the registration ceases to be valid (notwithstanding the fact that the validity period of 10 years has not expired).

In response to your paragraph (d):

The Director is required under section 30 of the Ordinance to register a person as REA on application.

We consider that the Director, being the regulatory authority of the Ordinance and the Regulation, should well be tasked with the function of instituting disciplinary proceedings against a REA under section 13 of the Regulation. Similar arrangement that an authority is required to deal with both registration and disciplinary matters of certain persons is commonly found in existing legislation. Examples are the registration and disciplinary matters of gas installers and gas contractors under the Gas Safety Ordinance (Cap. 51), the registration and disciplinary matters of registered electrical workers and contractors under the Electricity Ordinance (Cap. 406) and the registration and disciplinary matters of registered professional engineers under the Engineers Registration Ordinance (Cap. 409).

Safeguards to ensure procedural fairness in disciplinary proceedings have been built into the Regulation – see for example sections 13(2) and (3), 14 and 18. By virtue of sections 13(3)(a) and 14(4)(a) of the Regulation, the powers of the Director to determine a case against a REA and to censure a REA is limited. We expect that the Director will determine relatively minor or routine cases only.

In response to your paragraph (e):

Section 13(2)(a) empowers the Director to determine a disciplinary matter subject to section 13(3). Section 13(2)(b) specifies that the Director may refer a disciplinary case to the Secretary for the Environment (“the Secretary”) by notice in writing. Sections 13(2)(a) and 13(3) are to be read together. Section 13(3) only clarifies that in the scenarios mentioned in paragraphs (a) and (b) of that subsection, the Director must refer a case to the Secretary. In other words, under the scenarios covered in section 13(3), the Director cannot determine the case pursuant to section 13(2)(a) but must refer it to the Secretary pursuant to section 13(2)(b). That is why, in section 16(1), a reference is made to section 13(2)(b) only.

In response to your paragraph (f):

Section 17(7) only applies to a situation where a person appears at a hearing before a disciplinary board. If the board directs a person to produce any document, under section 18(6)(b), the person is protected under section 18(8) not to produce any document which tends to incriminate himself or herself. Protection of legal professional privilege is provided under common law principles and consistent with Article 35 of the Basic Law. We do not consider it necessary to make express

provisions in statute.

In response to your paragraph (g):

We do not consider it necessary for the disciplinary board to administer oath and require evidence to be given on oath. Similar practice has been adopted for the appeal board to be established under section 35 of the Ordinance.

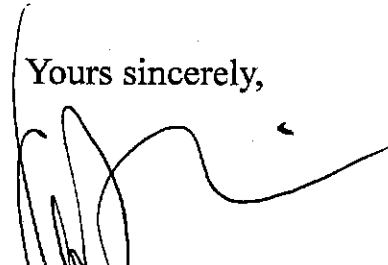
In response to your paragraph (h):

Section 19(1) has exhaustively listed out all orders a disciplinary board may make.

In response to your paragraph (i):

A person may, pursuant to section 32(1)(m) of the Ordinance, lodge an appeal to an appeal board formed under section 35 of the Ordinance if he is aggrieved by a decision of the Director to take disciplinary action against him under section 14 the Regulation. Both the Ordinance and the Regulation do not provide for further statutory appeal mechanisms against the decisions of, respectively, an appeal board formed under section 35 of the Ordinance, and a disciplinary board formed under section 16 of the Regulation. However, the decisions of the appeal board and the disciplinary board will be subject to judicial review by the Court of First Instance. Similar approach is adopted in existing legislation. Examples are the Gas Safety Ordinance (Cap. 51) and the Electricity Ordinance (Cap. 406).

Yours sincerely,



(Miss Katharine CHOI)
for Secretary for the Environment

c.c.

Electrical & Mechanical Services Department (Attn.: Mr K K LI)
Department of Justice (Attn.: Miss Selina Lau
Ms Mandy Ng)