

**立法會**  
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**Paper for the House Committee meeting on 13 March 2015**

**Report of the Bills Committee on District Cooling Services Bill**

**Purpose**

This paper reports on the deliberations of the Bills Committee on District Cooling Services Bill ("the Bills Committee").

**Background**

2. According to the Administration, a District Cooling System ("DCS") is an energy-efficient air-conditioning system which consumes 35% and 20% less electricity as compared with traditional air-cooled air-conditioning systems and individual water-cooled air-conditioning systems ("WACS") using cooling towers respectively. DCS has been used as an infrastructure facility in support of the sustainable and environmentally friendly development at the Kai Tak Development ("KTD"). The DCS at KTD will provide district cooling services to public and private non-domestic developments in KTD. All public developments in KTD, which account for around 35% of the total air-conditioned floor area in KTD, will subscribe to district cooling services. As for private non-domestic projects, they will be required, under relevant provisions prescribed in the conditions of land sale, to construct and maintain DCS substations for connection to DCS in accordance with the guidelines issued by the Electrical and Mechanical Services Department ("EMSD").

3. Further, EMSD, as the district cooling services provider in KTD, is responsible for the provision of district cooling services to all users through the operation of the DCS. EMSD has employed a design-build-operate contractor, which has extensive experience in operating the DCS in Europe and Singapore, through open tender to carry out the construction and day-to-day operation of the DCS as per the established procurement procedures and practices. The contractor is overseen and supervised by EMSD to ensure that proper and satisfactory service can be delivered to users.

4. The Administration proposes to legislate to provide for matters relating to district cooling services provided by the Government, including the imposition of charges for the services; and to provide for other related matters. Non-Government buildings using district cooling services will be charged on the basis of the charging arrangements stipulated in the Bill. According to the Administration, as Government buildings using district cooling services will not be subject to the charging regime provided in the Bill, EMSD will work out with user departments the administrative arrangements for recovering the utility costs arising from the provision of district cooling services in the form of allocation warrants. Notwithstanding this, the notional "revenue" from Government departments will be incorporated into the financial model for assessing the DCS's financial performance and for calculating the appropriate tariff that can achieve full cost recovery.

### **The Bill**

5. The Bill proposes to provide for matters relating to district cooling services, including the imposition of charges for the services and other related matters. The key provisions of the Bill are set out as follows –

- (a) Part 1 (clauses 1 to 3) contains preliminary provisions. In particular, it provides for the application of the Bill in relation to the DCS(s) specified in Schedule 1;
- (b) Part 2 (clauses 4 to 9) deals with matters relating to the provision of district cooling services. It specifies the conditions under which the Director of Electrical and Mechanical Services Department ("DEMS") may approve a consumer, as well as the circumstances under which district cooling services to a building may be provided, refused, suspended or terminated. It also provides for the contract cooling capacity;
- (c) Part 3 (clauses 10 to 17) contains provisions relating to charges for district cooling services. It stipulates that an approved consumer is liable for any charge, fee or deposit payable under the proposed charging arrangement. DEMS may reduce, waive or refund a charge, fee or deposit as provided under clause 15. Clause 17 provides for the offsetting arrangement for EMSD's expenses. Subject to the approval of the Financial Secretary, those parts of the charges and fees received by the Government under the Bill that are required for the purposes of settling payment to the DCS contractor or other expenses arising from the provision of district cooling services do not form part of the general revenue and may be applied for those purposes;

- (d) Part 4 (clauses 18 to 21) contains provisions relating to the administration of district cooling services. Clauses 18 and 19 empower DEMS to issue improvement notices and appoint authorized officers. Clause 20 stipulates the powers of an authorized officer. Clause 21 provides for offences;
- (e) Part 5 (clauses 22 to 30) contains provisions relating to appeals against certain decisions or direction. It provides for the composition of the appeal board panel and the proceedings of an appeal board. It empowers an appeal board to confirm, vary or revoke the decision or direction appealed against. The appeal board is also empowered to substitute its own decision or direction for the decision or direction appealed against;
- (f) Part 6 (clauses 31 to 34) contains miscellaneous provisions. It empowers the Secretary for the Environment to amend the Schedules by notice published in the Gazette. It also empowers DEMS to specify forms and delegate functions;
- (g) Schedule 1 specifies the district cooling system(s) in relation to which the Bill applies; and
- (h) Schedule 2 provides for details of charges.

6. The Bill, if passed, will come into operation on the day on which the Bill is published in the Gazette as an Ordinance.

### **The Bills Committee**

7. At the House Committee meeting on 17 October 2014, members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**. Under the chairmanship of Ir Dr Hon LO Wai-kwok, the Bills Committee has held eight meetings to discuss the Bill with the Administration and received views from the public at one of the meetings. A list of the deputations who have submitted views to the Bills Committee is in **Appendix II**. To better understand the operation of DCS at KTD, the Bills Committee also conducted a site visit to KTD on 24 February 2015.

## **Deliberations of the Bills Committee**

8. The Bills Committee generally supports and welcomes the implementation of DCS at KTD on account of the resultant benefits of better energy efficiency and saving in electricity consumption. The Bills Committee notes that apart from energy saving, DCS also has other benefits, such as reducing the total building cost by about 5-10%, enabling more flexible building designs, reducing heat island effects in KTD, and providing a more adaptable air-conditioning system to the varying demand as compared to individual air-conditioning systems.

9. However, some members have questions about the justifications for the Administration's decision to provide district cooling services and charge for the services through legislative means. In the course of deliberation, members have examined various issues relating to the provision of and charging for district cooling services at KTD, as well as the appeal mechanism under the Bill. There are concerns about whether individual occupiers or tenants of a building to which district cooling services are provided can opt out from the subscription of the services, and interim arrangements for the provision of district cooling services to a user building (such as whether district cooling services would continue to be provided to the building concerned) in case the approved consumer for the building has ceased to exist without a replacement. Details of the Bills Committee's deliberations are set out below.

### Provision of district cooling services and collection of charges through legislation

10. According to the Administration, in order to provide legal backing for the Government to collect charges from non-Government users of the district cooling services, and to use the revenue collected to offset the operating costs incurred by EMSD, as well as for other matters relating to the provision of the services, there is a need to introduce a new piece of legislation for the purposes.

11. Some members including Mr Alan LEONG and Mr Tony TSE have raised questions about the need for introducing a new piece of legislation to provide for the collection of district cooling services charges, which is essentially a contractual agreement between the Government and the consumers. They have enquired whether the Administration has considered any alternative means, such as prescribing the charging arrangements in the conditions of land sale, to provide district cooling services to potential users in KTD.

12. The Administration has explained that it is not feasible to adopt means other than legislation for the Government to charge for the provision of district cooling services from non-Government users; to offset the operating costs from the revenue collected; and to provide for the necessary powers, duties and other matters in relation to the provision of the district cooling services in view of the considerations detailed below:

- (a) according to the case of McCarthy & Stone (Developments) Ltd. v Richmond upon Thames London Borough Council [1992] 2 A.C. 48<sup>1</sup>, there should be clear statutory authority based on which the Government may impose a charge or a fee. In the case of DCS, since the Government in effect will charge the users for the use of the district cooling services, there should be clear statutory basis for the Government to impose charges for the services;
- (b) section 3(1) of the Public Finance Ordinance (Cap. 2) provides that any charges received for the purposes of the Government shall form part of the general revenue, unless there are express statutory provisions to provide for alternative arrangements. In order to empower EMSD to make use of the district cooling services charges and fees received by the Government to settle operation and maintenance fees for the DCS contractor as well as utility costs arising from the operation of the DCS directly, the Administration needs to introduce the relevant statutory provisions to provide for this offsetting arrangement; and
- (c) it is necessary to provide for the necessary powers and duties in relation to the operation of the district cooling services such as access for inspection and maintenance, appeals, offences and evidential matters, which all require legislation.

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<sup>1</sup> According to the Administration, the long established principle that statutory authority to charge is required was re-affirmed in the McCarthy case. In this case, the respondent local planning authority adopted a policy of charging a fee for consultations between developers and the authority's planning officers before a formal application for planning permission for speculative development or redevelopments was made. The applicant developers challenged the legality of the charge and applied for a judicial review of the authority's decision of not to revoke its policy to make such a charge. On appeal by the developers to the House of Lords, it was held that no charge could be made for pre-application advice in the absence of statutory authority, either express or arising by necessary implication. The giving of pre-application advice was not itself a function of the local planning authority within the meaning of section 111(1) of the Local Government Act 1972 and that to charge for such advice did not facilitate, nor was it conducive or incidental to, the authority's functions of considering and determining planning applications within the meaning of the subsection. Besides, the power to charge did not arise by necessary implication even though the authority had no obligation to provide the service which at its discretion it provided. Accordingly, the House of Lords held that the charge was unlawful.

13. The Bills Committee also takes note of the views of the legal adviser to the Bills Committee that the Administration may propose to implement the provision of district cooling services through a legislative proposal with a view to avoiding challenges to the legality of district cooling services charges. The difference between charging the services through administrative arrangements and legislative means is that the administrative arrangements can provide flexibility for the Administration to address different situations, whereas the use of legislative means can ensure that all the approved consumers will be treated according to the relevant piece of legislation.

14. Regarding the scope of application of the Bill, members note that the Bill may apply to any DCS as specified in Schedule 1 to the Bill, and Schedule 2 provides for the methods of calculating charges for district cooling services provided by each DCS specified in Schedule 1. Currently, Schedules 1 and 2 to the Bill cover the DCS in KTD only. The Bill may apply to other DCS that may be constructed by the Government in future subject to future amendments to the Schedules. For each DCS in relation to which the Bill applies, the scope of the Bill is not limited to or does not exclude a particular type of buildings. In other words, the Bill applies to both domestic and non-domestic developments. In the case of the DCS in KTD, as specified in Schedule 1 to the Bill, the design capacity of Phases I-III A of the project which have received funding approval from the Finance Committee of the Legislative Council is based on the scale of non-domestic air-conditioned developments in the district, which is about 1.73 million square metres of non-domestic air-conditioned gross floor area. The planning capacity of the DCS at KTD does not cover the residential buildings in KTD.

#### Provision of district cooling services in KTD

##### *Application to become an approved consumer (clause 4)*

15. Clause 4 of the Bill provides for the approval of consumers of district cooling services. For each building, its owner or occupier, or a person responsible for its management, may apply to the DEMS to be the consumer of district cooling services for the building. The applicant must, among other things, undertake to observe certain requirements relating to the services, including the obligation to pay any charge, fee or deposit payable in respect of the services. Once approved, the applicant becomes an approved consumer.

16. Given that clause 4 of the Bill does not seem to preclude two or more persons who satisfy the requirements to make their respective applications, the Bills Committee has requested the Administration to explain how DEMS will handle concurrent applications from an owners' corporation of a building and

another party that claims to be responsible for the management of the same building.

17. The Administration has advised that DEMS may approve a new applicant's application as the approved consumer if the conditions specified in clauses 4(1) to 4(3) are satisfied. Such conditions include the giving of an undertaking to be responsible for, and to bear the cost of the maintenance of the facilities for the building to receive district cooling services. For the purpose of satisfying the requirement proposed under clause 4(3)(b) of the Bill, an approved consumer will have to provide suitable accommodation (i.e. the substations) in their building to house the equipment required for the purposes of providing and metering the district cooling services. The accommodation may include, but not be limited to, substations together with associated pipe trenches and structural provisions, as well as electrical and mechanical services during the first connection or subsequent maintenance of the district cooling services. The approved consumer would also have to be responsible for maintaining such accommodation in good order. That being the case, the Administration considers that the possibility that two or more persons will be able to provide the undertaking as requested in clause 4(3) of the Bill should be very slim. If in the unlikely circumstances that there are more than one application for becoming the approved consumer of a building, DEMS will consider and assess the capability of the applicants to comply with the undertaking, including the payment of the relevant fees and charges, and the installation and maintenance of the facilities for the building to receive district cooling services. Where necessary, EMSD will seek clarifications from the relevant parties, including the applicants, the building owners and the management of the building, etc.

18. The Bills Committee has also examined whether there is a need to standardize the arrangements for EMSD to notify the approved consumers by means of notice in writing. The Administration has advised that depending on the circumstances of each case, DEMS will adopt the best practicable means to give the requisite notices under the concerned clauses of the Bill.

#### *Individual occupiers or tenants*

19. The Bills Committee is concerned that individual occupiers or tenants may choose not to subscribe to the district cooling services for various reasons. The Bills Committee has enquired whether individual occupiers or tenants of a building to which district cooling services are provided will be given the option to opt out from the subscription of the services. The Administration has advised that an approved consumer can apply for cessation of the approval as a consumer of the district cooling services in accordance with clause 9 of the Bill. The charging arrangements for the use of the district cooling services by individual occupants or tenants within a building, as with

the tenants or occupants of any other buildings using central air-conditioning systems, are to be decided and negotiated between the occupants or tenants and the building owner or the management company. The district cooling services charges may therefore form part of the rent or management fee, or may be separately charged.

20. Regarding the mechanism to prevent abuse or possible disruption by individual persons, the Bills Committee has examined whether a mechanism should be provided under the Bill to penalize individual occupiers or tenants of a user building whose behaviour or activities jeopardize the satisfactory operation of the DCS at KTD. The Administration has advised that according to clause 7(1)(g) of the Bill, DEMS may suspend or terminate district cooling services to a building if in DEMS's opinion, the behaviour of, or an installation of the building by, the approved consumer for the building is jeopardizing or will jeopardize the operation or reliability of the district cooling services. The Bill does not deal with the relationship between an approved consumer and individual occupiers or tenants of the building concerned. As for individual users within a building, their use of district cooling services and other arrangements are to be decided and negotiated between themselves and the building's approved consumer.

#### Suspension or termination of district cooling services (clause 7)

##### *In case where the approved consumer fails to settle outstanding charges*

21. Clause 7 of the Bill sets out the circumstances under which DEMS may suspend or terminate district cooling services to a building. The Bills Committee has requested the Administration to consider setting out a specified timeframe in the Bill after which DEMS will suspend or terminate the supply of district cooling services should the approved consumer in respect of a building fail to settle any outstanding district cooling services charges.

22. The Administration has advised that it will not be advisable to set out such a provision in the Bill as it may encourage abuse of the district cooling services. The arrangement of not providing a specified timeframe in the Bill for that purpose is also in line with the arrangement for water provision under the Waterworks Ordinance (Cap. 102). Notwithstanding this, the Administration has assured members that should an approved consumer fail to settle the fees and charges on time, DEMS will liaise with the consumer to understand the situation and seek further information, and consider if it is necessary and advisable to continue the provision of district cooling services up to a specific date, having regard to the circumstances of that particular case.

*In case where there is no approved consumer*

23. Under clause 7(1)(a) of the Bill, DEMS may suspend or terminate district cooling services to a building if there is no approved consumer for the building. The Bills Committee has examined the arrangements for the provision of district cooling services to a user building in case where the approved consumer for the building has ceased to exist without a replacement, in particular, whether the Administration will charge individual occupiers or tenants of the building district cooling services charges directly during the transitional period and how the Administration will communicate with individual occupiers or tenants of the building in the absence of the approved consumer. The Bills Committee has requested the Administration to ensure that even if an approved consumer for a building has ceased to exist without a replacement, the provision of district cooling services to the building should not be suspended or terminated hastily.

24. The Administration has advised that if the approved consumer in respect of a building has ceased to exist without a replacement, EMSD will liaise with the relevant parties such as the owners or the management company of the building with a view to identifying the new approved consumer for the building as soon as practicable. Having regard to the circumstances of each particular case, EMSD will assess if it is necessary and advisable to continue the provision of district cooling services after the approved consumer has ceased to exist and before the application submitted by the new consumer is approved. As for the question of whether the Government will impose district cooling services charges on individual occupiers or tenants of the building, the Administration has advised that the Bill does not empower the Government to do so.

25. The Administration has further advised that if it is necessary to suspend or terminate district cooling services to a building in case there is no approved consumer for that building, EMSD will use its best endeavours to inform the affected parties, having regard to the circumstances of each particular case. EMSD will also set up an enquiry hotline to handle public enquiries concerning district cooling services, including the suspension and termination of services. It will be difficult to specify in the Bill the means of notifying the relevant parties, as any specified means of notification may not be practicable or feasible in all circumstances.

Charging for district cooling services at KTD

*Full cost recovery of DCS*

26. Noting the Administration's advice that the proposed district cooling services tariff set out in the Bill seeks to recover both the capital and

operating costs of DCS over its project life in 30 years, the Bills Committee has expressed concern that the Administration may not be able to achieve full cost recovery within the project life of DCS. Some members opine that in view of rapid technology advancement, DCS may no longer be an energy-efficient system in future and user buildings may choose not to subscribe to district cooling services. Under these circumstances, the DCS at KTD may turn into a "white elephant project" and the Administration may not be able to recover the capital and operating costs of the DCS at KTD over its service life of 30 years. There are also concerns that the costs of running DCS may eventually be shouldered by only a few DCS users.

27. The Administration has advised that the Administration has commissioned a consultancy study to advise on the initial tariff and future review mechanism having regard to international practices and features of the DCS at the KTD. The level of tariff specified in the Schedule 2 to the Bill has been worked out on the basis of the target rate of return, which has been worked out taking into account the nature of the industry, the specific project related risk, the market interest rate as well as the expected rate of return for similar investment.

28. Regarding the competitiveness of the district cooling services charges, the Administration has assured the Bills Committee that the tariff will be set at a competitive level comparable to the cost of individual WACS using cooling towers, which is one of the most energy-efficient air-conditioning systems available in the international market. Since the level of district cooling services charges and the adjustment formula are stipulated in the Bill, occupants/tenants will be able to monitor and assess the reasonableness of the charges imposed by the building's approved consumer. It is expected that in the initial years of operation, the number of completed developments in KTD is still relatively small, the charges collected may not be able to cover all the operating costs incurred by EMSD for the district cooling services. However, as the number of completed developments increases in subsequent years, the project will be able to achieve a reasonably high subscription rate from the private non-domestic development in KTD given its competitiveness over other forms of air-conditioning. Since the cost recovery period is relatively long, short term fluctuations of the revenue will not have substantial impact on the level of district cooling services charges.

*Tariff adjustment mechanism (clauses 10 and 13 and Schedule 2)*

29. Regarding the tariff adjustment mechanism, the Bills Committee notes that the proposed tariff comprises a capacity charge, a consumption charge, a capacity overrun charge and surcharges for unpaid charges. The former two charges are the key tariff components and their rates will be adjusted annually based on the change in the Composite Consumer Price

Index and the change in electricity tariff rate respectively. Further, DEMS may require an approved consumer to pay a deposit to cover any charge or fee that is or may be payable in respect of the building concerned. The Administration will conduct review on the level of district cooling services charges to identify any significant discrepancies between the actual cost and revenue that may require an adjustment to the tariff by not less than once every five years.

30. The Bills Committee is of the view that more frequent reviews of the district cooling services tariff are necessary to ensure the competitiveness of the district cooling services charges. The Administration has assured members that it will review the level of district cooling services charges at least once every five years and additional reviews can be conducted if necessary and as appropriate. Any changes in the cost or revenue of DCS brought about by future technological developments (which may allow DEMS to purchase more energy efficient chillers or other equipment) and managerial advancement for the DCS operation will be taken into account in the reviews.

*Accuracy and testing of meters (clause 12)*

31. The Bills Committee notes that meters will be installed in buildings connected to DCS to measure the actual cooling capacity and actual cooling energy consumption of the building. Under clause 12 of the Bill, an approved consumer for a building who doubts the accuracy of a meter can apply for testing of the meter. If the result of the test is that the meter is registering correctly, the testing fee will be borne by the approved consumer. If the test result reveals that the meter is not registering correctly<sup>2</sup>, no fee for testing is payable by the approved consumer and DEMS will determine the amount of consumption and capacity of district cooling services for the period during which the meter ceased to record properly based on technical evidence, records and other relevant circumstances. A replacement meter will also be provided to the consumer as soon as practicable.

32. In response to some members' concern about the reliability and accuracy of the meters of the DCS in KTD, the Administration has advised that these meters are highly accurate and reliable, and their overall inaccuracies are usually within 1%. To further enhance and ensure accuracy

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<sup>2</sup> Under clause 12(3) of the Bill, a meter is regarded as registering correctly despite any inaccuracy found in its measurements if the inaccuracy does not exceed 3% above or below the correct amount.

of the meters, inspection and maintenance<sup>3</sup> of meters will be carried out regularly by the DCS contractor under EMSD's supervision.

33. Some members are concerned about the setting of the inaccuracy tolerance of the meter at 3% but not a smaller figure. The Administration has advised that it has made reference to the Waterworks Regulations (Cap. 102 sub. leg. A) in setting out the arrangements for testing of meters in the Bill. The 3% inaccuracy tolerance is generally adopted by local utilities, and is a figure generally adopted worldwide for measurement of flow application including that of DCS. The purpose of setting the inaccuracy tolerance at 3% is to prevent abuse and deter consumers from purposefully requesting unnecessary meter tests. A meter test can be costly, and the procedures required for dismantling the meter in question and delivering it to the test lab can be complicated and hence will affect the air-conditioning supply to the building concerned.

*Discretionary power of DEMS (clause 15)*

34. Under clause 15 of the Bill, DEMS may in a particular case, reduce, waive or refund, in whole or in part, a charge or fee payable or paid under the Bill, or a deposit payable or paid in respect of the building. The Bills Committee has requested the Administration to provide the criteria for exercising the above discretionary power by DEMS and examples of the possible circumstances under which DEMS may exercise the power.

35. The Administration has advised that the clause empowers DEMS to waive, reduce or refund a charge, a fee or a deposit on a case-by-case basis as and when necessary in unforeseen circumstances. It will be difficult to speculate on the circumstances under which such power may be exercised. The proposal for providing such discretionary power under the Bill is in line with the arrangement provided in a number of existing legislation, including the Waterworks Ordinance (Cap. 102).

Appeal mechanism

*Decisions subject to appeal (clause 22)*

36. Under clause 22(1) of the Bill, a person who is aggrieved by any of the decisions and direction specified in the clause made in respect of the person may appeal to an appeal board against the decision or direction. Decisions subject to appeal include a decision not to approve a person as a

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<sup>3</sup> The operator carries out a yearly validation on site for a meter with the manufacturer's pre-calibrated tools. The meters will be taken down and sent to the factory for calibration every five to six years. After 15 years of operation, the meter will be replaced with a new one to ensure accuracy.

consumer of district cooling services, a decision to refuse to provide, suspend or terminate district cooling services, and a decision relating to an improvement notice issued by DEMS. The Bills Committee is concerned that a decision to suspend or terminate district cooling services (or a decision to refuse to resume district cooling services) in the circumstances specified in clause 7(1)(d), (e) or (f) is not appealable under clause 22(1), whereas a decision to suspend or terminate district cooling services (or a decision to refuse to resume district cooling services) in the circumstances specified in clause 7(1)(b), (c) or (g) is appealable<sup>4</sup>.

37. The Bills Committee notes the Administration's explanation that in the circumstances specified in clause 7(1)(d), (e) or (f), works will be necessitated either by the need to ensure that DCS will operate smoothly and safely and is well maintained according to the professional standards of the industry, or by an emergency situation which requires immediate action. The facts establishing the decisions made under clause 7(1)(d), (e) or (f) may include technical issues relating to the operation and / or maintenance of DCS which should be simple and straight forward, and will therefore unlikely require an examination of the facts and / or merits of the case. The Administration opines that it will not be necessary to render such decisions appealable to the appeal board when they are already amenable to judicial review.

38. Having considered the Administration's explanation, members still consider that all decisions made by DEMS should be rendered appealable under the Bill. Members did not see any particular reason for not including in clause 22(1) a decision to suspend or terminate district cooling services (or a decision to refuse to resume district cooling services) in the circumstances specified in clause 7(1)(d), (e) or (f). Moreover, members also consider it undesirable to solve the grievances arising from DEMS's decisions or directions made under clause 7(1)(d), (e) or (f) by means of judicial review.

39. Taking into account members' views, the Administration agrees to move a Committee stage amendment ("CSA") to the effect that a decision to suspend or terminate district cooling services to a building under clause 7(1)(d), (e) or (f), and a decision not to resume district cooling services to a building under clause 8(2) where the services were suspended under clause 7(1)(d), (e) or (f) shall be rendered appealable under clause 22(1).

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<sup>4</sup> Clause 7 sets out the circumstances under which DEMS may suspend or terminate district cooling services to a building. These include the failure on the approved consumer's part to observe a requirement relating to the services [clause 7(1)(b),(c) and (g)], and the necessity in the DEMS's opinion to suspend or terminate the services for reasons concerning the operation, maintenance, safety, etc. of the services or district cooling system[clause 7(1)(d),(e) and (f)].

*Appointment of members to an appeal board (clause 25)*

40. According to clause 25(2) of the Bill, an appeal board is to consist of five members, one of whom is the Chairperson of the board, who must be appointed from the category of members specified in clause 24(1)(a); and the remaining four members must be appointed from the three categories of members specified in clause 24(1)(b), (c) and (d). Members ask the Administration to ensure that the appeal board will have adequate representation of different sectors of the community. Noting that it is the Administration's intent to appoint at least one member from each of the three categories specified in clause 24(1)(b), (c) and (d) to an appeal board, the Bills Committee has requested the Administration to consider moving a CSA to reflect such intent more clearly. The Administration has agreed.

41. On the proposed CSA from the Administration, Mr Alan LEONG has expressed concern that the proposed amendment to clause 25(2)(b) which provides that "the remaining 4 members must be appointed from all of the 3 categories of members specified in section 24(1)(b), (c), and (d)" may not clearly reflect the Administration's intent that an appeal board should comprise at least one member appointed from each of the three categories specified in clause 24(1)(b), (c), and (d). The Administration has explained that the proposed amendment (i.e. simply adding "all of") could achieve the effect that there would be at least one member appointed from each of the above three categories to an appeal board.

*Term of office of members of an appeal board panel (clause 24)*

42. As provided in clause 24(4) of the Bill, a member of an appeal board panel is to be appointed for a term of three years, and may be reappointed where each reappointment is for a term of three years, the Bills Committee has examined whether it is necessary to specify the "six-year rule" which is a general guideline for making appointments to advisory or statutory bodies in the Bill.

43. The Administration has advised that in general, non-official members appointed to any advisory or statutory bodies in the public sector should not serve on the same body for more than six years in any one capacity. Apart from the rule, the Administration should also ensure that the most suitable individuals are appointed taking into account specific circumstances such as the need to preserve continuity of the panel's or an appeal board's operation, though such exceptions will have to be justified. The Administration does not intend to impose a statutory limit on the number of times of reappointments in the Bill. Regarding some members' concern about the continuity of the appeal board panel's operation, the Administration agrees that in the process of appointing members to an appeal board panel, it will consider if it is necessary

and advisable to stagger the appointments of members to the appeal board panel so as to ensure continuity of the panel's operation, having regard to the actual circumstances.

Arrangements for provision of district cooling services to existing public developments

44. The Bills Committee notes that with the completion of the Phase I DCS project in early 2013, district cooling services have already been provided to the Kai Tak Cruise Terminal building and the Ching Long Shopping Centre under the management of the Tourism Commission and the Hong Kong Housing Authority ("HA") respectively. In this connection, members have enquired about the existing charging arrangements for the provision of district cooling services and the future charging arrangements after the enactment of the Ordinance.

45. In respect of the district cooling services provided to the Kai Tak Cruise Terminal, the Administration has advised that since the Tourism Commission is part of the Government, it is not subject to district cooling services charges under the Bill. EMSD recovers the utility cost arising from the provision of district cooling services from the Tourism Commission. The payment of the utility cost is effected by an internal funding transfer through administrative arrangements.

46. In respect of the district cooling services provided to the Ching Long Shopping Centre under the management of HA (which is a financially autonomous body), the Administration has advised that EMSD currently collects charges from HA for the district cooling services on the basis of a Memorandum of Administrative Arrangements entered between HA and the Government. After passage of the Bill, HA will be subject to the charging arrangements provided in the Bill.

**Committee stage amendments**

47. The Bills Committee welcomes the Administration's CSAs to address members' concerns as set out in paragraphs 39 and 40 above.

48. The Bills Committee has examined other CSAs proposed by the Administration which are mainly technical and textual in nature. The Bills Committee notes that the Administration would introduce a definition of "agreed starting date" in clause 2 and make certain related amendments to clauses 4, 5 and 6. In gist, the definition seeks to clarify that in relation to a building for which a person is an approved consumer, the agreed starting date on which the district cooling services is to be provided means the intended

starting date for the provision of district cooling services to the building as agreed by DEMS under section 4(4)(b)(ii) when approving the person as the consumer under section 4(4). The Bills Committee has not raised questions on the proposed CSAs.

49. A full set of CSAs to be moved by the Administration is in **Appendix III**. The Bills Committee will not propose any CSA to the Bill.

### **Resumption of the Second Reading debate**

50. The Bills Committee supports the resumption of the Second Reading debate on the Bill. The Administration has indicated its plan to give notice to resume the Second Reading debate on the Bill at the Council meeting of 25 March 2015.

### **Advice sought**

51. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 1  
Legislative Council Secretariat  
12 March 2015

**Bills Committee on District Cooling Services Bill**

**Membership list**

**Chairman** Ir Dr Hon LO Wai-kwok, BBS, MH, JP

**Members** Hon WONG Ting-kwong, SBS, JP  
Hon Cyd HO Sau-lan, JP  
Hon CHAN Hak-kan, JP  
Hon Alan LEONG Kah-kit, SC  
Hon WU Chi-wai, MH  
Hon Tony TSE Wai-chuen, BBS

(Total : 7 Members)

**Clerk** Ms Shirley CHAN

**Legal Adviser** Miss Evelyn LEE

**Bills Committee on District Cooling Services Bill**

**List of deputations and individuals  
who have submitted views to the Bills Committee**

1. Building Services Operation and Maintenance Executives Society
2. Community & Construction Professionals' Development Centre
3. Construction Industry Council
4. Hong Kong Association of Energy Engineers
- \*5. Hong Kong Environmental Protection Association
6. The Hong Kong Institute of Architects
7. The Hong Kong Institute of Facility Management
- \*8. The Hong Kong Institution of Engineers
- \*9. The Real Estate Developers Association of Hong Kong

\* submitted written views only

District Cooling Services Bill

Committee Stage

Amendments to be moved by the Secretary for the Environment

<u>Clause</u>	<u>Amendment Proposed</u>
2	In the definition of <i>approved consumer</i> , by deleting “section 4” and substituting “section 4(4)”.
2	In the definition of <i>estimated maximum cooling capacity</i> , by adding “intended” before “to be provided”.
2	By adding in alphabetical order— “ <i>agreed starting date</i> (協定開始日期), in relation to a building for which a person is an approved consumer, means the intended starting date for the provision of district cooling services to the building as agreed by the Director under section 4(4)(b)(ii) when approving the person as the consumer under section 4(4);”.
4(2)(b)	In the English text, by deleting “district cooling services to be provided” and substituting “the provision of district cooling services”.

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>By adding—</p> <p>“(4A) If the Director approves the applicant as the consumer of district cooling services for a building under subsection (4), the applicant becomes, or is taken to have become, the approved consumer for the building on the agreed starting date.”.</p>
5(1)	<p>By deleting “On the approval of the consumer of district cooling services for a building under section 4” and substituting “If the Director approves a person as the consumer of district cooling services for a building under section 4(4)”.</p>
5(1)	<p>By deleting “the contract cooling capacity of the building” and substituting “, or is taken to have become, the contract cooling capacity of the building on the agreed starting date”.</p>
6(1)	<p>By deleting “After the consumer of district cooling services for a building has been approved under section 4” and substituting “If the Director approves a person as the consumer of district cooling services for a building under section 4(4)”.</p>
6(1)(a)	<p>By deleting “intended starting date agreed by the Director under section 4(4)(b)(ii)” and substituting “agreed starting date”.</p>
10(1)	<p>By deleting “connected to a district cooling system specified in Schedule 1”.</p>

<u>Clause</u>	<u>Amendment Proposed</u>
22(1)(c)	By adding “, (d), (e), (f)” after “, (c)”.
22(1)(d)	By adding “, (d), (e), (f)” after “, (c)”.
24(1)(b) and (c) and (2)(b)	In the English text, by deleting “the Hong Kong” and substituting “The Hong Kong”.
25(2)(b)	By adding “all of” before “the 3 categories”.
Schedule 1	By deleting “[ss. 3, 10 & 34]” and substituting “[ss. 3 & 34]”.
Schedule 2, section 1(2)	By deleting “building in” and substituting “building to which district cooling services are provided by”.
Schedule 2, section 5(1)	By deleting “building in” and substituting “building to which district cooling services are provided by”.