

Implementation of Mandatory Building Energy Codes

Owing to low participation rates for the voluntary Energy Efficiency Registration Scheme for Buildings, the government has drafted a legal framework for mandatory implementation of the Building Energy Codes. Under the scheme, affected buildings will be required to follow compliance procedures. New buildings will be affected immediately. Older buildings will be affected following certain retrofitting works.

The Voluntary Scheme

The Electrical and Mechanical Services Department (EMSD) created the voluntary Hong Kong Energy Efficiency Registration Scheme for Buildings in 1995. The scheme later added a Building Energy Code covering lighting, air conditioning, electrical and lift and escalator installations which stipulate the minimum energy performance standards.

However only 1,981 buildings were enrolled in the scheme by November 2007 and of these buildings 76% were government premises. In order to increase participation the government has proposed a mandatory scheme. This mandatory scheme received majority approval during the consultation period (December 2007 to March 2008). The draft legislation is scheduled to be put before the Legislative Council before the end of 2009.

The New Mandatory Scheme

The mandatory scheme of implementation will adopt the latest version of the voluntary Building Energy Codes but will make compliance with them compulsory, subject to a number of restrictions and exclusions.

The scheme will cover both single-use and composite buildings and will cover common areas, commercial areas, hotels and guesthouse facilities, educational facilities, community buildings, governmental institutional buildings, municipal buildings and medical-use buildings. Certain buildings will be exempt: New Territories exempted houses, declared monuments under the Antiquities and Monuments Ordinance and low-energy use buildings (where the main electrical switch does not exceed 100A). Other buildings will be exempt on technical or operational grounds rendering it impractical to comply with the Code (for example, installation for fire suppression or surgical operations). Exemptions will also be available on an individual basis on application to the Director of Electrical and Mechanical Services.

There will be two categorisations under the mandatory scheme: Post-enactment Buildings (i.e. new buildings after the legislation comes into effect) and Pre-enactment Buildings (i.e. pre-existing buildings) and different compliance procedures will be followed for each. The distinction is that the Pre-enactment Buildings will not have to comply with the scheme when it comes into force. Instead they will become subject to the scheme only if they undergo major retrofitting. This recognises that the efficiency performance of lighting, air conditioning, electrical and lift and escalator installations, cannot easily be improved after they have been installed. The relevant date for determining pre or post-enactment status will be the date on which the consent for commencement of works for superstructure construction is granted.

A system of checks and inspections will be carried out in order to ensure that developers and responsible persons are in compliance with the Code. Furthermore a scheme of penalties will punish non-compliance. Fines will be proportionate to the seriousness of the breach and will range from minor to major (such as a maximum fine of HKD 2 million for a developer who fails to obtain a Certificate of Compliance Registration). Falsification of documents or obstructing authorised officers exercising their powers will carry potential terms of imprisonment.

There will be incentives available to developers (in the form of financial incentives such as grants, loans, tax exemptions or rebates) if they meet energy efficiency standards in excess of the Code.

According to Edward Yau, the Secretary for Environment, the mandatory code may push up construction costs by 3% to 5%. However it could cut energy consumption by 10-15% annually. Thus the cost of the code will be met after about six years of operation and will be cost-effective to owners in the longer term.

Post-enactment Buildings

Developers will need to submit two self-declarations of compliance to EMSD, confirming that suitable design provisions have been included to meet the requirements of the Code. The first self-declaration must be submitted after obtaining consent for commencement of works for superstructure construction. The second must be submitted within two months of the issuance of the occupation permit and must be accompanied by necessary supporting documents and proof. Both declarations will have to be certified by a 'competent person'. A competent person will be registered professional engineer and corporate members of the Hong Kong Institution of Engineers in electrical, mechanical, building service or environmental disciplines with relevant post-qualification working experience and knowledge who have applied for competent person status.

Upon receipt and confirmation of the second certificate of compliance EMSD will issue a Certificate of Compliance Registration. This certificate will be subject to reassessment and renewal procedures by the building owner every 10 years.

Pre-enactment Buildings, Retrofitting & Forms of Compliance

Pre-enactment Buildings are not subject to the scheme immediately. However, they will be required to improve energy efficiency whenever the buildings undergo certain major retrofitting works. The responsible persons (owners and tenants) are required to obtain a Form of Compliance certified by a competent person. Post-enactment buildings that undergo retrofitting will also need to obtain a certified Form of Compliance. The Form of Compliance will set out minimum standards that the building service installations must meet in the future.

Those retrofitting works which fall outside the scope of major retrofitting works, or which are conducted in premises or common areas with a total internal floor area of less than 500 m², will not be required to obtain a Form of Compliance. Major retrofitting will include, for example, replacing the main components of a building services installation, unitary air-conditioner or the drive of a lift or escalator.

Periodic Energy Audits

Owners of commercial buildings (both Pre-enactment and Post-enactment Buildings) are required to arrange energy audits for the common area in their buildings once every ten years. Energy audits should be carried out by competent persons and the results should be exhibited in a conspicuous place at the main entrance of the building.

Conclusions and Next Steps

Assuming that the legislation remains largely unchanged after review by the Legislative Council, the mandatory scheme will become law in the next few years. This will have an immediate and significant effect on developers. Owners and tenants (as responsible persons) will also be affected and engineers and other construction professionals may consider registering as competent persons in order to provide new services to customers. The scheme may well also deter redevelopment of certain Pre-enactment Buildings.

Overall, the mandatory scheme is likely to make the construction industry cleaner and more environmentally conscious. It is also likely to reduce the long-term cost of maintaining buildings. As such the Code is good for Hong Kong and is to be welcomed. At the same time there will undoubtedly be new legal issues involved in implementing and interpreting the Code, particularly if it changes form during the legislative debate. Any parties with concerns or wanting to know more about the scheme are invited to contact JSM for assistance.

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