

**LAW FOR CHANGE
STUDENT
COMPETITION 2019**

TEAM 1	PROJECT TITLE Renew the Feed-in Tariff (FiT)
MEMBERS	LEUNG Yee Lam¹ YEUNG Jun Tao²
SCHOOL	¹ The Chinese University of Hong Kong ² The University of Hong Kong

BRIEF BACKGROUND

General Energy Mix of Hong Kong

Currently, renewable energy (RE) only accounts for around 1% of the total amount of electricity generated in Hong Kong, whilst about 75% is generated from coal and natural gas. According to Hong Kong's Climate Action Plan 2030+, it is targeted that, Hong Kong will already have increased the proportion of electricity generation by wind, solar and waste-to-energy (WTE) to 3 - 4% before 2030.¹

Feed-in-Tariff (FiT)

To promote RE development, the Hong Kong Government introduced the Feed-in Tariff Scheme (FiT) in 2018. Under the scheme, private sectors, including households and private enterprises, are encouraged to install a RE system in their buildings. The power generated by the system can be sold back to the power companies at a rate higher than the normal electricity tariff rate. It is hoped that FiT can act as a financial incentive for the private sectors to invest in RE and in turn increase the percentage of RE in the Hong Kong's energy mix.

Social Justice Issue: Lack of Access to Legal Resources

Most private sector participants of the FiT scheme choose to install solar photovoltaic panels (PV panels) in their buildings. However, potential applicants are faced with extremely complex legal issues surrounding the installation process. In such situations, there is often lack of transparency and access to legal resources to help them get around the legal issues of installation. Participants who install a PV panel on their buildings with the good faith of promoting the RE development in Hong Kong may fall into the legal traps.

Legal requirements for installation

Applicants of FiT have to deal with different pieces of legislation and subsidiary legislation.

Owners of village houses

There are specific regulations about New Territories Exempted House (NTEH). Firstly, they are exempted from certain provisions of the Buildings Ordinance (Cap. 123) and its subsidiary regulations, including the need for obtaining prior approval for and consent to the commencement of works from the Buildings Department. Secondly, there are specific fire safety recommendations. For example, if one of the sides of the building faces well-defined Emergency Vehicular Access (EVA), at least one side of the roof should be free from PV installations. Provision of a draw powder type extinguisher is highly recommended.

Owners of residential, industrial, commercial multi-storey buildings

Most buildings in Hong Kong are multi-storey buildings, with Owners' Corporation, and accordingly would be subject to a Deed of Mutual Covenant (DMC). Any installation of solar PV panels must abide by the DMC, which regulates the rights and duties of a multiplicity of owners among themselves. Owners also have to pay attention to the requirements in the Buildings Ordinance (Cap. 123). Usually, owners have to appoint an authorized person to submit building plans to the Buildings Department and obtain prior approval before the commencement of the work.

Applicants of PV panel installations in idle land

Such applicants have to pay specific attention to relevant requirements in the Buildings Ordinance and the land use condition.

Other legal issues and potential liability

All applicants may have to handle or encounter:

- 1. Electricity Ordinance (Cap. 406)**
Applicants have to comply with the requirements relating to electricity safety, such as employing a registered electric worker to carry the electric work.
- 2. The Code of Practice for Fire Safety in Buildings 2011**
Applicants are recommended to comply with the requirements relating to fire safety.
- 3. Business Registration Ordinance (Cap. 310); Inland Revenue Ordinance (Cap. 112)**
Applicants are required to apply for business registration and report FiT payments in their tax returns in accordance with the Ordinances.
- 4. Potential Tortious Liability**
According to practical experience from the operation of solar PV systems overseas, the solar panel user may incur tortious liability². For example, glaring from sunlight reflected from solar PV panel can cause both personal injury and damage to a neighbouring property.
- 5. Potential Contractual Liability**
Contract law issues may also arise. Some building owners may choose to contract with PV panel contractors on a condition that contractors will cover installation expenses in exchange for a certain share of the income derived from the sale of electricity back to the two power companies. The contract may be very complicated and each term must be analysed carefully.

Unfortunately, none of the schemes of NGOs, the government, or two power companies specifically provide assistance relating to the above legal issues.

Existing Services Gap

The current resources and assistance regarding FiT scheme are mainly provided by the government, the two power companies, and other NGOs. They only focus on technological problems, e.g. solar panel models or sizes that are accepted etc., while seldom tackling the above complicated legislation and potential legal liabilities.

The government's overview on legal issues by the Guidance Notes for Solar Photovoltaic (PV) System Installation is too brief

A Working Group, consisting of different government departments, including Environment Bureau, Electrical and Mechanical Services Department (EMSD), Lands Department, etc, wrote the Guidance Notes for Solar Photovoltaic (PV) System Installation (the Guidance Notes). The Guidance Notes are open to public and provide useful guidelines in issues related to solar PV system installations and the FiT application procedures. However, the Guidance only gives a brief overview on related legal issues. Wider issues, including potential tortious liability and installation contracts, are not covered.

Hotlines of two power companies only provide technological support

The EMSD, and the two power companies also run their hotlines, answering basic inquiries from the general public regarding PV installation. However, the hotline mainly focuses on technological factors. Legal issues are not dealt with in these hotlines.

NGOs fail to provide support to individuals and on legal perspective

There are certain existing services related to the installation of solar PV panels in Hong Kong by NGOs. Greenpeace, WWF-HK, and Hong Kong Baptist University collaborate to develop the website, Hong Kong Solar Map. Through the map, users can click the building on which they plan for PV installation. Then, the technological information regarding the building will be provided, including the number of panels that can be installed in their buildings and the amount of electricity that can be generated post-installation.

Another NGO, CarbonCare InnoLab, is currently running a programme named Jockey Club Solarcare Programme, which invites NGOs to install PV panels on their premises. Asian Energy Studies Centre and Hong Kong Solar Partnership jointly hold community deliberative workshops in inviting residents to discuss their views on building a solar power community.

From the above, it can be concluded that the existing services mainly focus on providing technological assistance and advice on PV installation.

APPLICATION OF LAW

This proposal aims to resolve the above gap through the provision of accessible legal assistance and information that relevant stakeholders can understand easily, and increase the overall transparency of installation and

operation under the FiT. Participants of our proposal are expected to gain a legal-based general picture on PV panel installation.

Relevant Stakeholders

Organisers	Guests	Participants
<p>Volunteers and Student Helpers: They will help us run the whole programme and are responsible for various tasks, such as inviting guest speakers for workshops and running the website.</p> <p>NGOs: They provide networking and venue support, and help us review the materials of website and workshop.</p> <p>District Councillors: They provide networking support.</p>	<p>Pro bono lawyers and legal academics: They help review the materials to ensure the correctness and host the workshops.</p> <p>Successful applicants of FiT: They have personal experience in dealing with legal issues arising in PV installations. They are invited to share such experiences. (*They may also be current FiT participants, but they have better legal knowledge and experience.)</p>	<p>Current FiT participants: Although they already have a PV panel in their buildings, they may still lack the requisite knowledge regarding the potential legal issues.</p> <p>Potential FiT participants: They decide to join FiT but they may lack the requisite legal knowledge about the scheme and the legal issues arising in PV installation.</p>

Project Description

The project has two main components:

1. An innovative website
2. Workshop and Consultation Pilot Scheme

Goals

To promote public awareness of legal issues arising from RE development in Hong Kong

Objectives

- To provide the public with easier access to legal knowledge regarding FiT and explain the relevant issues in an easily understandable manner.
- To fill in the legal issue loopholes among the existing services in relation to FiT.
- To prevent participants with the good faith of promoting RE development from falling into legal traps.

Strategy

1. Start small, expand gradually

The Workshop and Consultation Pilot Scheme will first be conducted in Sai Kung district, because this area has a higher concentration of village houses (no DMC issue), and hence would have higher propensity to participate in the FiT scheme. The advantages of having a focused pilot scheme in a smaller district is that, we can try to run the scheme and find out the difficulties and infeasible aspects in a more controlled environment, which would enable us to rectify the situation easily. Once we succeed on a small scale, we would have accumulated the requisite skills and experience to handle the arrangements and workshops on larger scale across more districts. It is also expected that we can have a more thorough evaluation from the participants, which helps us pinpoint specific opinions and points to improve on.

2. Seek assistance from other stakeholders

In our proposal, we seek help from different stakeholders of this initiative. We hope to obtain some assistance from pro bono lawyers to ensure the materials of both the workshops and the website are factually legally accurate. We invite NGOs to give us the details of the current FiT and advise on the proposal and the content of the workshops and website. To maintain the sustainability of the project, we would aim to obtain more funding for the scheme from the Environment and Conservation Fund under Environmental Campaign Committee, if necessary.

3. Establish a committee to run the whole programme

Student volunteers will be responsible for running the programme, including the website and workshop. The student volunteers will be recruited from all the universities and colleges in Hong Kong. They will run the website and workshop in a manner similar to a student organisation. They will be working as a committee for one year. Each of them will take on a specific position in the committee with corresponding responsibilities and duties. At the end of a year, they will have a promotion for the recruitment of new members from different universities and colleges. For the first year, we will provide the training course for the student volunteers to ensure they are well-equipped with the knowledge of FiT. In the later years, the past student volunteers will be responsible for the training for the new committee.

Components

1. Website

CONTENT OF WEBSITE

a) Knowledge package

It gives a brief overview on the legal issues arising from installation of PV panels. It also lists out statutory requirements, including the Buildings Ordinance, the Electricity Ordinance, the Business Registration Ordinance, and other legal issues, such as potential tortious liabilities, contractual liability and Deed of Mutual Covenant issues. Procedures of application for FiT will be shown in a flow chart or similar style. A short quiz is provided to ensure readers' understanding of the legal issues. Possible

multi-choice questions include: State one problem that a PV panel can cause to neighbours; What do we have to pay attention to when we sign a contract with a contractor on PV installation? Finally, frequently asked questions (FAQs) section is also included. Questions which are frequently asked by users will be included in the section.

b) Filter

Through the filter, users have to answer questions regarding the specific features of the buildings they plan for PV panel installations. Questions include:

1. What kind of building are you living in? A small village house, or a multi-storey building?
2. Whether your building is next to a main road/village passageway?
3. Whether your building is very close to other buildings?
4. Whether you would contract out the PV panel installation?

After they answer all the questions, the filter will provide a brief analysis on the potential legal issues which users may encounter. Users will find a checklist on what legal issues they may encounter. For example, if someone lives in a private residential building which is close to another residential building, apart from complying with Buildings Ordinance, the Code of Practice for Fire Safety in Buildings 2011 and Electricity Ordinance, he or she may have to ensure that the installation of PV panel can comply with the DMC and get the consent of other owners. Tortious liability is possible because glaring from sunlight reflected from solar PV panel may cause both personal injury and damage to the neighbouring building.

c) Case studies

We would invite successful FiT applicants or legal experts of FiT to share their experiences in dealing with the legal issues. Successful applicants are also encouraged to share their stories to us via email. Before posting their stories publicly, we will verify them first in order to ensure that the stories are genuine.

d) Video tutorial

Content of the tutorials would include a step-by-step process of filling in application forms to power companies, studying and identifying particular terms of contracts with PV panel contractors, and a discussion of the effects of Deed of Mutual Covenant on PV panel installations, etc.

e) Contact

Through our website, users who are interested in applying for FiT can contact us directly for further enquiries and joining workshops and consultations.

f) Disclaimers

We would include some disclaimers to exclude our legal liabilities and suggest that users should seek help from the professionals if they need specific and detailed advice.

PROMOTION OF THE WEBSITE

We aim to promote the website through social media sites such as Facebook and Instagram. Target audience of the website are not confined.

INTENDED OUTCOME

Users acquire basic legal knowledge and increase the awareness of FiT through the website. Also, through the website, users feel more interested in joining our workshop and consultation to look for more details of the scheme.

2. Workshop and Consultation Pilot Scheme**DETAILS AND PREPARATION**

In the first phase of our proposal, we would focus our attention in Sai Kung District. If successful, we would extend it to other districts. We would reach out to District Councillors, concern groups and owners' corporations so as to invite residents and current and potential FiT participants to join the workshops. We would also invite academics, legal practitioners, and student volunteers to host the workshops. If student volunteers host the workshops, they should ask for the advice of academics and legal practitioners. All their materials should be approved and proofread by the legal practitioners and academics.

CONTENT OF THE WORKSHOP

The content of the workshop depends on the situations of the participants. Before the workshop, we will conduct a simple survey to ask the participants about what specific content they want to cover in the workshops. Participants can explain their situations of PV panel installations, the legal issues they foresee, their expectations of the workshops. We then adjust the content of the workshop accordingly to satisfy their needs. For example, if most participants are village house owners, our workshop may focus more on specific requirements for NTEH. We would provide individual consultation upon request. In the consultation, we can discuss the legal issues in greater detail.

Before the workshops, participants will be asked to complete a questionnaire regarding the legal issues. After the workshops, they will complete the questionnaire again to see if they can acquire more legal knowledge. They will be asked to fill in questionnaires regarding the quality of workshops and their confidence in handling the legal issues after the workshops.

PROMOTION OF WORKSHOP AND CONSULTATION

We promote the workshop through social media such as Facebook and Instagram. The website will also promote the workshop and consultation.

INTENDED OUTCOME

The pilot scheme achieves a huge success and attracts more districts to join us. PV panel owners, current, and potential FiT participants aware of the potential legal traps that they may fall into. Participants can ask the legal experts or successful applicants more specific questions directly, which can satisfy their needs. They can then adopt necessary measures in dealing with these legal issues and seek independent legal advice if needed. The general public have a better understanding about the complicated legal issues of FiT.

Student volunteers find out the difficulties and accumulate the requisite skills and experience to host more workshops in other districts.

Resources Requirements

Personnel	Other materials
Pro bono lawyers, other legal practitioners, and legal academics <ul style="list-style-type: none"> • Their expertise includes energy law, contract law, tort law, and land law • Help us review materials of website and workshop 	Website
Successful applicants of FiT <ul style="list-style-type: none"> • Share their experience in dealing with legal issues on PV installations 	Workshop <ul style="list-style-type: none"> • Refreshments • Stationery • Reference materials
Students volunteers <ul style="list-style-type: none"> • Design legal materials • Design website • For miscellaneous, including running workshops, inviting successful FiT applicants 	Other Logistics (if needed) <ul style="list-style-type: none"> • Renting venues for workshops • Visualizer • Microphone and amplifier
NGO and District Councillors <ul style="list-style-type: none"> • Provide networking and venue support 	

Potential Project Partners**District Councillors**

As the focus of our pilot scheme is Sai Kung District. During the preparation of this proposal, we consulted Miss Christine Fong Kwok-shan, a District Councillor in the district. We would also invite some other District Councillors in that district, such as Miss Zoe Leung of Sai Kung Commons. These District Councillors are concerned about district development and have deep understandings about their district. We believe that their knowledge provides us with valuable help in our workshops.

Successful applicants of FiT

We will invite some successful applicants of FiT, to share their experiences in dealing with legal issues in PV installations in both workshop and the website.

NGOs

350 Hong Kong - the organisation previously, together with other NGOs, issued a statement on FiT. The organisation is an advocate on RE development in Hong Kong. Their manager Ringo Mak shared their views and knowledge on FiT with us. We have also consulted Gigi Lam, a member of CarbonCare InnoLab, and Lai Ming-chuen, the Chairman of Green Sense. We believe that they can give us opinions and valuable knowledge on editing our legal package.

Legal experts

We consulted Professor Hao Zhang, who is a leading energy law expert, about the possible legal issues of FiT scheme. We believe that he can advise us on the preparation on legal workshops and legal materials of the website.

PROBLEMS AND SOLUTIONS

Problem	Solution
There may be difficulty in reaching out to the community and spotting residents who are interested in joining the workshop.	In view of this difficulty, we will launch a pilot scheme and focus our attention on one district first, before we extend our scheme to other districts. We will try to collaborate with some NGOs who are well-known in the area of solar energy development, such as CarbonCare InnoLab and Hong Kong Solar Partner, and District Councillors in the district. The experience of the NGOs can help us spot current and potential FiT participants who lack requisite legal knowledge. District Councillors can help us contact residents in their district and invite residents to join our programme.
Residents may not be able to join our workshops.	We would collaborate with District Councillors in hosting workshops. Through the District Councillors, we identify potential buildings and contact residents who are interested in FiT and then invite them to join our workshops.
District Councillors and NGOs may not be interested in being our partners.	We believe that this is unlikely to be an issue. It has only been one month since the District Council elections. Many newly elected District Councillors would be keen to boost their popularity and reform their communities. We believe that our proposal is attractive to them as this can add value to their platforms. Besides, we aim for Sai Kung District as the location of our first pilot scheme. In the case that Councillors in Sai Kung are not interested, we will reach out to other districts. After we are successful in our pilot scheme in one district, we can attract Councillors in other districts to join us.
There may be difficulties in promoting the website.	We will share the website on social media platforms, such as Facebook and Instagram, and also invite our partners, including NGOs and District Councillors, to share our website.

PROJECTS TIMELINE

Task	Start Date	End Date
Recruitment of student volunteers	Jan 2020	Jun 2020
Training for student volunteers	Jan 2020	Jun 2020
Research and preparation <ul style="list-style-type: none"> Legal research for materials of both workshops and website Contact potential partners: including NGOs and District Councillors 	Jan 2020	Mar 2020
Website: Development of website	Feb 2020	Mar 2020
Website: Trial period	Apr 2020	May 2020
Website: Publishing	Jun 2020	–
Legal workshop (Pilot Scheme)	Jul 2020	Aug 2020

BUDGET BREAKDOWN

Task	Budget (HK\$)
Website	
Website design, website fee, and annual maintenance cost ³	9,000
Video tutorials	100
Promotion fee (Advertising on social media/pamphlet/posters in NGO centres)	2,500
Workshop and Consultation Pilot Scheme (3 times)	
Workshop materials and stationery	300
Refreshments	300
Allowance for speakers	600
TOTAL:	12,800

MONITORING AND EVALUATION PLAN

The evaluation of our proposal is mainly divided into two parts.

Website

We will evaluate the effectiveness of this platform by the statistics obtained from the operation of the website. We will also invite users to rate the platform. There are several indicators of the performance:

- Number of the users
- Average rating
- Number of users, after using the website, that are interested in joining our workshop
- Number of users, after using the website, that feel more knowledgeable about FiT legal issues
- Any further information they would like to include in the website

Also, student volunteers will also help to update the website if necessary in the future.

Workshop and Consultation

After each workshop, we will give three sets of questionnaires to the participants and invite them to give feedback on our workshop. The questionnaire is divided into 3 parts, including the general, objective and subjective parts. The general part is mainly about the quality of workshops. Questions include:

- Reasons of joining the workshops
- How do the participants learn about our workshops
- Whether the information is suitable or useful
- Whether the duration and venue is appropriate
- Whether participants are satisfied with workshops
- Any suggestions for improvement of the workshop

The objective part deals with their knowledge of the legal issues of FiT. Before attending the workshops participants are asked to complete a questionnaire regarding the legal issues of FiT. After the workshops, they will complete the questionnaire again. Then,

participants can compare the results and witness their improvements after attending the workshops. Participants are asked several questions, such as the related ordinances regarding certain legal requirements of the solar PV panel installation. The more questions they answer correctly, the more score they hit.

- Average score hit by participants in the objective tests

In the subjective part, participants are asked to evaluate their knowledge about legal issues in FiT. They will compare their level of legal knowledge before and after the workshop. Moreover, they will be asked about their willingness to handle the legal issues of FiT.

- Whether participants can acquire more legal knowledge regarding FiT
- Whether the potential legal problems will discourage participants from applying for FiT
- The confidence level of participants in settling legal issues of PV installation
- Whether participants know how to seek assistance when holding with legal issues
- How do the workshops help with their legal issues

Since we collect the information from the users, we will also provide a Personal Information Collection Statement under the Personal Data (Privacy) Ordinance (Cap. 486) to protect the privacy interests of our participants in relation to personal data. It states the purpose of collection, consequence of not providing data, transfer of personal data and access, and correction of personal data.

There are several indicators of the effectiveness of workshop and consultation:

- Number of participants of the workshop
- Number of participants, after using the website, are knowledgeable and feel more confident in handling legal issues of FiT

Student volunteers can then improve and adjust the workshop and consultation according to needs of the participants.

SUSTAINABILITY AND STRATEGY FOR MULTIPLIER EFFECT

Low Cost

The cost of running the website is very low. It continues to provide legal information for the public and potential FiT participants. Although the cost for creation of website is relatively high, it is a one-off fixed cost and the cost for maintenance in the future is much lower. Moreover, starting the small-scale pilot workshop in only Sai Kung district can greatly reduce the cost. We can learn from the experience and make further improvements, which will help us to allocate the resources better.

Pilot Scheme

Once we are successful in running the FiT in the first pilot district, we can attract residents in other districts to join our proposal.

Student Committee

Student volunteers will be recruited and working as student committee every year. They are responsible for updating the website and materials for workshops and inviting guests to host workshops.

More Funding

Environment and Conservation Fund under Environmental Campaign Committee provides funding for social education in the area of RE development⁴. Our proposal may be eligible to apply for the funding as it serves a purpose of raising public awareness of FiT. This provides more financial resources in sustaining our proposals going forward. For small scale projects, the funding cap is \$50,000. ■

REFERENCE:

1. <https://www.enb.gov.hk/sites/default/files/pdf/ClimateActionPlanChi.pdf>
2. <https://www.austlii.edu.au/au/journals/MULR/1983/16.pdf>
3. <https://www.webfx.com/How-much-should-web-site-cost.html>
4. https://www.ecf.gov.hk/doc/eeca_guide_to_application_en.pdf