

立法會
Legislative Council

LC Paper No. CB(2)1614/05-06
(These minutes have been
seen by the Administration)

Ref : CB2/BC/8/04

**Bills Committee on
Building Management (Amendment) Bill 2005**

**Minutes of meeting
held on Thursday, 9 March 2006 at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Andrew CHENG Kar-foo
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Patrick LAU Sau-shing, SBS, JP
Hon TAM Heung-man
- Members absent** : Hon Abraham SHEK Lai-him, JP
Hon WONG Kwok-hing, MH
- Public Officers attending** : Home Affairs Department
Mr Isaac CHOW
Deputy Director of Home Affairs (2)
Mrs Angelina CHEUNG
Assistant Director of Home Affairs (4)

Department of Justice

Mr Michael LAM
Senior Government Counsel

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)2

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Joanne MAK
Senior Council Secretary (2)2

Action

I. Confirmation of minutes

[LC Paper Nos. CB(2)1269/05-06 and CB(2)1320/05-06]

The minutes of the meetings on 26 January and 9 February 2006 were confirmed.

II. Future meeting schedule

[LC Paper No. CB(2)1322/05-06]

2. Members agreed to adopt the proposed schedule of additional meetings for the period from April to June 2006 [Appendix I to LC Paper No. CB(2)1322/05-06].

(Post-meeting note : an updated meeting schedule was issued vide LC Paper No. CB(2)1349/05-06 dated 10 March 2006.)

III. Meeting with the Administration

[LC Paper Nos. CB(2)2617/04-05(05) and CB(2)1322/05-06(02) to (03)]

Action

3. The Bills Committee deliberated –
 - (a) the Administration's paper on procurement by owners' corporations (OCs) and managers [LC Paper No. CB(2)2617/04-05(05)];
 - (b) the Administration's paper on how to fulfill the majority requirement in the selection of tenders by an OC [LC Paper No. CB(2)1322/05-06(02)]; and
 - (c) the Administration's paper on consequences for non-compliance with the procurement requirements [LC Paper No. CB(2)1322/05-06(03)].

Index of proceedings is at **Annex**.

Thresholds for tendering and approval by owners' meeting

4. Members raised no objection to the proposals in the Bill as set out in paragraph 4 of the Administration's paper [LC Paper No. CB(2)2617/04-05(05)].

Renewal of contracts

5. Members expressed divergent views on the Administration's proposal of further revising the procurement requirements to the effect that for renewal of contracts which exceeded the sum of \$200,000 or a sum which was equivalent to 20% of the annual budget of the OC, whichever was the lesser, the management committee (MC) could put the procurement proposal to an owners' meeting for approval without going through the process of tendering. Ms Miriam LAU expressed support for the proposal on the grounds that owners usually would like to retain the existing maintenance services of building facilities such as lift maintenance and considered that it was not necessary for them to go through the statutory procurement requirements for the sake of confirming the renewal of contract. The Chairman, however, expressed concern that such a proposal might create loopholes. Mr Albert HO pointed out that it was well-accepted that service for lift maintenance should be subject to open tender for the sake of consumer protection.

Validity of procurement contract in case of non-compliance with statutory procurement requirements

6. Members in general expressed strong reservations about the Administration's proposal of introducing an express provision in section 20A of the Building Management Ordinance (BMO) of giving wide discretion to the Lands Tribunal in making orders and giving directions in respect of the rights

Action

and obligations of the contractual parties where proceedings were taken for the enforcement of any procurement contract to which section 20A applied (as set out in paragraph 7 of of LC Paper No. CB(2)1322/05-06(03)). Some members expressed concern that the proposal would overburden the Lands Tribunal and cause uncertainties to the contractual parties.

7. Mr Albert CHAN was of the view that it should be stipulated clearly in BMO that a contract for the procurement of supplies, goods or services would be void if it was entered into without following the statutory procurement requirements. Most members, however, took the view that such a contract should be voidable at the instance of a certain percentage of shares of owners and a mechanism should be provided for under BMO to enable owners to ratify the procurement contract as appropriate. If the mechanism could not resolve the disputes, the contractual parties could initiate proceedings in the Lands Tribunal. They stressed that if the non-compliance was merely due to minor technical problems, e.g. inadequate notice had been given for holding the general meeting of the OC at which the relevant procurement proposal was passed, owners should be given the opportunity to rectify the problems so that the OC and owners concerned could save the trouble of going through the procurement procedures again. These members also expressed the following views for the Administration's consideration in working out a revised proposal –

Admin

- (a) a mandatory mechanism of mediation should be introduced for dealing with disputes arising from non-compliance of the statutory procurement requirements to avoiding overloading the Lands Tribunal;
- (b) where a contract was invalidated, the contractor concerned should be compensated on the basis of a quantum meruit unless he was proven to have conspired with any member of an MC or have resorted to any other unlawful means in obtaining the contract. In determining the sum of money recoverable by the contractor concerned, the court should make reference to relevant provisions on the liabilities of parties to frustrated contracts under the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23); and
- (c) to plug possible loopholes that statutory procurement requirements could be waived by splitting one job into different contracts of small amount, the Administration should specify in BMO that any procurement of supplies, goods and services of the same nature undertaken in the same period of time but was covered by different contracts should be deemed as one single procurement contract. The Administration could also make

Action

reference to relevant existing laws for dealing with malpractices to avoid payment of stamp duty.

Admin

8. To facilitate members' deliberations of the revised proposal to be put forward by the Administration in respect of paragraph 7 above, the Administration was requested to check whether the Companies Ordinance (Cap. 32) provided that in case a company the staff of which had signed a contract with another company without proper authorisation and had thus caused commercial loss to the latter, the former would be held liable to the commercial loss incurred.

Admin

9. To facilitate future implementation of the statutory procurement requirements, if adopted, Mr Patrick LAU and Miss CHOY So-yuk made the following suggestions respectively –

- (a) a standard form which included all necessary procurement procedures to be followed should be issued for use by OCs and building managers in making procurement; and
- (b) a manual setting out the new procurement requirements and the consequences of non-compliance should be drawn up for reference by contractors.

Sanction for non-compliance with the statutory procurement requirements

Admin

10. Members in general were of a view that for the sake of ensuring enforceability of the statutory procurement requirements, it should be clearly stipulated in BMO that any MC member or building manager who had signed a procurement contract on behalf of OC without proper authorisation might be held personally liable for any consequences arising from the non-compliance. Mr Albert CHAN further suggested that criminal sanction should be imposed for non-compliance with the statutory procurement requirements. Mr Alan LEONG suggested that the consequence of non-compliance could be stipulated by codifying the civil liability involved in BMO. The Administration was requested to consider members' view and suggestions.

IV. Any other business

11. Members noted that the next meeting would be held on Thursday, 23 March 2006 at 10:45 am.

12. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
31 March 2006

**Proceedings of the Bills Committee on
Building Management (Amendment) Bill 2005
on Thursday, 9 March 2006 at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000 - 000110	Chairman	<u>Confirmation of minutes of meetings</u> [LC Paper Nos. CB(2)1269/05-06 and CB(2)1320/05-06]	
000111 - 000947	Ms Emily LAU Chairman Ms Miriam LAU Miss TAM Heung-man Mr LI Kwok-ying	<u>Additional meetings for April to June 2006</u> [Appendix I to LC Paper No. CB(2)1322/05-06]	
000948 - 015810	Chairman Mrs Selina CHOW Ms Emily LAU Admin Mr LI Kwok-ying Mr Albert HO Ms Audrey EU Ms Miriam LAU Mr Alan LEONG Mr Patrick LAU Mr Albert CHAN Miss CHOY So-yuk	<u>Briefing on the Administration's papers</u> [LC Paper No. CB(2)2617/04-05(05) and CB(2)1322/05-06(03)] - proposal on thresholds for tendering and approval by owners' meeting - new proposal of deleting the proposed provisions from the Bill which allowed owners' corporations (OCs) to draw up a pre-approved list of items for the purpose of waiving the statutory procurement requirements - new proposal of further revising the procurement requirements to the effect that for renewal of contracts which exceeded the sum of \$200,000 or a sum which was equivalent to 20% of the annual budget of OC, whichever was the lesser, the management committee (MC) could put the procurement proposal to an owners' meeting for approval without going through the process of tendering. - detailed discussion on the new proposal to include an express provision in the Building Management Ordinance (BMO) regarding the consequences for non-compliance with the procurement requirements as set out in paragraph 7 of the Administration's paper [LC Paper No. CB(2)1322/05-06(03)] and	Admin to consider members' views and suggestions, and to provide information (para. 7 to 10 of the minutes)

Time marker	Speaker	Subjects	Action required
		sanction for non-compliance with the statutory procurement requirements	
015811 - 015817	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
31 March 2006