

立法會
Legislative Council

LC Paper No. CB(2)2252/05-06

(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 Tuesday, 2 May 2006 at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LI Kwok-ying, MH
Hon Alan LEONG Kah-kit, SC
Hon Patrick LAU Sau-shing, SBS, JP
Hon TAM Heung-man
- Members absent** : Hon Albert HO Chun-yan
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Andrew CHENG Kar-foo
Hon LEUNG Kwok-hung
- 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. Meeting with the Administration
[LC Paper No. CB(2)1747/05-06(01)]

The Bills Committee deliberated paragraphs 1 to 32 of the Administration's paper on "Matters arising from meetings on 9 and 23 March 2006 – matters relating to procurement requirements" (Index of proceedings is at **Annex**).

The four proposed options of consequence for non-compliance with the procurement requirements

2. Members in general had no objection to the Administration's proposal of including an express provision in the Building Management Ordinance (BMO) that where proceedings were taken for the enforcement of any procurement contract to which section 20A(2) and (2A) applied, the court may make such orders and give such directions in respect of the rights and obligations of the contractual parties, including whether the procurement contract was void or voidable, as the court may deem fit having regard to all the circumstances of the case and in particular (but not limited to) certain stipulated factors. They, however, considered that owners should be given the opportunity to decide whether to honour the contract or not before the judicial mechanism to be triggered.

3. Members expressed different views as to the premise in case of non-compliance. Miss CHOY So-yuk and Mr WONG Kwok-hing considered that in order to protect the interests of owners, a contract for the procurement of any supplies, goods or services shall be rendered void in case of

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non-compliance but could be ratified by a resolution passed at an owners' meeting. They considered that as the proposed statutory requirement was very clear, contractors and suppliers should be able to protect their interests by ensuring due compliance with the requirement before provision of any supplies, goods or services.

4. Ms Audrey EU, the Chairman, Ms Emily LAU and Mr Albert CHAN, however, took the view that such contract for the procurement of any supplies, goods or services shall only be voidable at the option of owners, say, the majority votes of the owners at a general meeting convened under BMO or certain percentage of the shares of owners. Miss CHOY So-yuk expressed concern that if the contract was only voidable, the chairman of a management committee (MC) might defer the holding of an owners' meeting in order to prevent the relevant procurement contract from being rendered void.

Admin

5. The Administration was requested to consider members' views and concern expressed in drawing up a revised proposal for further consideration.

6. Members raised no queries on the Administration's view that the determination of liability among contractual parties was beyond the scope of BMO and the Bill and there was no need to introduce a provision in BMO to set out the mechanism for determination of liabilities among contractual parties in the case where a procurement contract was void.

Imposition of criminal liability for contravening the statutory procurement requirements

7. Mr Albert CHAN suggested that criminal liability should be imposed if a person knowingly and deliberately did not follow the statutory procurement requirements. Members in general considered that while imposition of such a punitive clause would achieve more effective deterrent effect, it would not be appropriate to pursue the issue in the current legislative exercise given that the suggestion had not been included in the public consultation paper on the proposed amendments to BMO issued by the Administration in May 2003. The Administration was requested to review the need for the proposed punitive clause after implementation of the proposed provisions relating to procurement procedures.

Admin

Liability of members of an MC

8. Members raised no objection to the Administration's proposal of including an express provision under section 20A of BMO that for the avoidance of doubt, any person who entered into a procurement contract on behalf of the corporation in breach of section 20A(2) and (2A) of BMO would be held personally liable for any claims unless the proposed new section 29A applied.

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Procurement of related supplies, goods or services

9. Notwithstanding the doubts expressed by the Administration about the enforceability of any express provision to prevent splitting of a contract, members were of the view that possible loophole of splitting a huge-sum contract into mini-contracts so as to avoid the need to comply with the procurement requirements should be plugged as far as possible. They considered that even though no express provision could cater for all situations, it could at least limit the room for any unscrupulous parties to make use of the loophole. Miss CHOY So-yuk suggested that the Administration could consider including an express provision under BMO to stipulate that all related works which were of the same nature and carried out within a specified period of time, say, six months, should be counted as a single procurement and the relevant contract could not be split into two or more. She further proposed that it should be stipulated that procurement contracts which had been entered into without complying with the proposed provision could be void at the discretion of owners in order to achieve deterrent effect.

10. The Administration proposed that as an alternative, the principle that all related procurement contracts must be regarded as a single procurement could be stipulated in the Code of Practice on procurement of supplies, goods and service issued by the Secretary for Home Affairs and relevant examples could be set out for illustration purposes. Members agreed to continue discussion of this issue (paragraphs 28 to 32 of the Administration's paper (LC Paper No. CB(2)1747/05-06(01)) at the next meeting scheduled for Thursday, 11 May 2006 at 2:30 pm.

II. Any other business

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

Council Business Division 2
Legislative Council Secretariat
5 June 2006

**Proceedings of the Bills Committee on
Building Management (Amendment) Bill 2005
on Tuesday, 2 May 2006 at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000 – 013429	Chairman Admin Miss CHOY So-yuk Mr WONG Kwok-hing Ms Audrey EU Ms Emily LAU Mr Albert CHAN	<u>The four proposed options of consequence for non-compliance with the procurement requirements</u> [paragraphs 1-21 of LC Paper No. CB(2)1747/05-06(01)]	Admin to draw up a new proposal (para. 5 of minutes)
013430 – 013603	Chairman Admin	<u>Determination of liabilities</u> [paragraphs 22-23 of LC Paper No. CB(2)1747/05-06(01)]	
013604 – 013628	Admin	<u>Guidelines and standard forms</u> [paragraph 24 of LC Paper No. CB(2)1747/05-06(01)]	
013629 – 013931	Chairman Admin	<u>Liability of members of an Management Committee (MC)</u> [paragraphs 25-27 of LC Paper No. CB(2)1747/05-06(01)]	
013932 – 015922	Chairman Admin Mr Albert CHAN Miss CHOY So-yuk Ms Emily LAU	<u>Procurement of related supplies, goods or services</u> [paragraphs 28-32 of LC Paper No. CB(2)1747/05-06(01)] - Imposition of criminal liability for contravening the statutory procurement requirements	Admin to review the need for the proposed punitive clause (para. 7 of minutes)