

立法會
Legislative Council

LC Paper No. CB(2)2365/05-06
(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, 11 May 2006 at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Hon Margaret NG
Hon Andrew CHENG Kar-foo
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 LEUNG Kwok-hung
Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : 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 Abraham SHEK Lai-him, JP
Hon TAM Heung-man
- 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 28 to 38 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**).

Procurement of related supplies, goods or services

2. Ms Audrey EU suggested that an express provision should be included in the Building Management Ordinance (Cap. 344) stipulating that any procurement contract which was artificially split for the sole purpose of avoiding the need to comply with the statutory procurement requirements would be rendered void at the instance of the owners. Ms EU further suggested that it would be up to the court to determine whether the procurement contract was artificially split and the management committee/building manager concerned could provide justification as a defence.

Admin 3. Members expressed support for Ms EU's suggestion and requested the Administration to incorporate the suggestion in its revised proposal in respect of consequence for non-compliance with the procurement requirements.
Admin Members were also supportive of the Administration's proposal that the principle should be stipulated in the Code of Practice on procurement of supplies, goods and service issued by the Secretary for Home Affairs for instructional purposes.

Action

Continuous engagement of the incumbent contractor/supplier for supplies, goods and services

4. Mr WONG Kwok-hing and Mr Albert HO expressed support for the Administration's proposal that owners should be allowed to choose whether to go through a fresh tendering exercise or continuously engage the incumbent contractor/supplier at their own wish, subject to a resolution passed at a general meeting of owners. The Chairman and Mr LEUNG Kwok-hung, however, expressed reservations that if tendering requirements could be waived, owners would be unable to obtain the best quotations and up-to-date market information and the procurement process could be subject to abuses.

Admin

5. The Administration confirmed that the proposal would apply even though the terms and conditions of the contract were different from those in the original contract and further consideration would be given to the use of the term "renewal of contracts" when preparing the relevant Committee Stage amendments. Members requested that if the proposal was implemented, owners should be requested to make a deliberate decision at the general meeting not to go through the tendering requirements and to award the contract to the incumbent contractor/supplier.

Procurement of legal service

Admin

6. The Administration was requested to consider the following concerns and suggestion raised by members –

- (a) it might not be feasible to estimate whether the cost involved would exceed the statutory thresholds as legal professionals very often charged on an hourly basis;
- (b) an owners' corporation (OC) should not be required to appoint a legal professional to deal with standard and minor litigation matters by a resolution passed at a general meeting of the owners if the cost involved was less than the statutory threshold;
- (c) it was unclear whether the proposed arrangements regarding continuous engagement of the incumbent contractor/supplier for supplies, goods and services (paragraph 33 of the Administration's paper) would apply in case an OC decided to appoint, through the solicitor engaged for dealing with standard and minor litigation matters, a barrister to represent the corporation at court;
- (d) it might not be appropriate to procure legal service by tender since owners in general tended to decide solely on the basis of

Action

tender price which should not be the primary consideration in procuring legal service for a complex lawsuit;

- (e) the current proposals could not deal with urgent situations when an OC had not engaged any legal service but was in need of legal representation to handle urgent lawsuits; and
- (f) consideration could be given to the feasibility of allowing an OC to procure legal service urgently without the need to seek a resolution passed at an owners' meeting if the legal cost involved was below a stipulated amount.

7. Members agreed to continue the discussion on paragraphs 35 to 38 of the Administration's paper at the next meeting.

II. Any other business

Date of next meeting

8. Members noted that the next meeting would be held on Thursday, 18 May 2006 at 10:45 am.

9. The meeting ended at 3:55 pm.

Council Business Division 2
Legislative Council Secretariat
12 June 2006

**Proceedings of the Bills Committee on
Building Management (Amendment) Bill 2005
on Thursday, 11 May 2006 at 2:30 pm
in the Chamber of the Legislative Council Building**

| Time marker | Speaker | Subject | Action required |
|-----------------|--|--|--|
| 000000 – 003325 | Chairman Admin Ms Audrey EU Mr WONG Kwok-hing Mr Albert HO | <u>Administration's paper on "Matters arising from meetings on 9 and 23 March 2006 – matters relating to procurement requirements"</u> [LC Paper No. CB(2)1747/05-06(01)] - Procurement of related supplies, goods or services (paragraphs 28-32) | Admin to consider Ms Audrey EU's suggestion and take other follow-up action (para. 3 of minutes) |
| 003326 – 005439 | Chairman Admin Mr WONG Kwok-hing Mr Albert HO Mr LEUNG Kwok-hung | <u>Administration's paper on "Matters arising from meetings on 9 and 23 March 2006 – matters relating to procurement requirements"</u> [LC Paper No. CB(2)1747/05-06(01)] - Continuous engagement of the incumbent contractor/supplier for supplies, goods and services (paragraphs 33-34) | Admin to consider members' request (para. 5 of minutes) |
| 005440 – 012039 | Chairman Admin Mr WONG Kwok-hing Mr Albert HO Ms Audrey EU | <u>Administration's paper on "Matters arising from meetings on 9 and 23 March 2006 – matters relating to procurement requirements"</u> [LC Paper No. CB(2)1747/05-06(01)] - Procurement of legal service (paragraphs 35-38) | Admin to consider members' concerns and suggestion (para. 6 of minutes) |
| 012040 – 012055 | Chairman | Date of next meeting | |