

立法會
Legislative Council

LC Paper No. CB(2)714/06-07
(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 Wednesday, 29 November 2006, at 8:30 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 Miriam LAU Kin-ye, 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, JP
Hon Alan LEONG Kah-kit, SC
Prof Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon Jasper TSANG Yok-sing, GBS, JP
Hon Andrew CHENG Kar-foo
Hon LEUNG Kwok-hung
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 Lawrence PENG
Senior Assistant Law Draftsman

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

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I. Confirmation of minutes

[LC Paper No. CB(2)433/06-07]

The minutes of the meeting on 2 November 2006 were confirmed.

II. Meeting with the Administration

[LC Paper Nos. CB(3)477/04-05, CB(2)3140/05-06(01) and (02)]

Clause-by-clause examination of the Bill

2. The Bills Committee completed examination of clauses 33 to 69 of the Bill, together with relevant Committee Stage amendments (CSAs) proposed by the Administration. (Index of proceedings attached in **Annex**).

The Schedule to the Specification of Public Officers (Cap. 1 sub. leg. C)

3. The Administration informed the Bills Committee that, after considering members' concern about the delegation of the powers and duties by the Secretary for Home Affairs under the Building Management Ordinance (BMO) as proposed in the Bill, the Administration would move a CSA to delete part 4 of the Bill.

Admin

Transitional provisions

4. The Administration was requested to consult the Department of Justice and revert to the Bills Committee on the following issues relating to the powers of a management committee (MC) of an owners' corporation (OC) which had

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been appointed in accordance with a deed of mutual covenant (DMC) but had not followed the composition and procedure as set out in the revised Schedule 2 to BMO before expiry of the transitional period -

- (a) whether section 36 of the Building Management (Amendment) Ordinance 2005 as currently drafted was clear enough to reflect the policy intent that these OCs would no longer be valid upon expiry of the transitional period;
- (b) whether members of the MC concerned could exercise powers vested in them by provisions of their DMC to carry out their building management work;
- (c) whether contracts which had been entered into by these OCs after expiry of the transitional period would be valid, and what would be the financial consequence to the contractual parties, e.g., the contractor who undertook the relevant works, if such contracts would be rendered void; and
- (d) whether an express provision should be added to provide for a ratification mechanism in order to avoid unnecessary litigation or whether it should be left to the discretion of the court.

Admin

5. At the suggestion of the Chairman, the Administration agreed to move a CSA to clause 36(3)(a) to substitute "an annual general meeting" with "a meeting of owners".

6. Ms Emily LAU and Mr WONG Kwok-hing suggested that, after the enactment of the Bill, the Administration should consult the Panel on Home Affairs before the issuance of publicity booklets with Q&As and guidelines to assist OCs, building managers and stakeholders in complying with the new statutory requirements. The Administration indicated that it accepted in principle the suggestion but would need to take into account the working timeframe.

Clerk

7. At the suggestion of the Chairman, members agreed that the Bills Committee would suggest to the Panel on Home Affairs that the Panel should arrange to discuss issues relating to the implementation of this Amendment Ordinance. Members also requested the Administration to provide a set of the publicity booklets with Q&As and the guidelines to the Panel before their issuance.

Admin

Minor and consequential amendments

8. The Administration confirmed that the proposed minor and consequential amendments under clauses 37 to 66 had been covered during

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scrutiny of previous clauses of the Bill. The legal adviser to the Bills Committee said that the proposed consequential amendments to the Land Titles Ordinance were legally in order.

The Administration's response to Members' Suggestions/Views on the Draft Building Management (Third Party Risks Insurance) Regulation (draft Regulation)

[LC Paper No. CB(2)446/06-07(01)]

9. The Chairman reminded members that the Bills Committee should focus its discussion on the proposed amendments to section 28 in BMO which enabled the Administration to impose the new requirement on mandatory third party risks insurance in relation to the common parts of the building. Detailed discussion of the draft Regulation should be left to the subcommittee which would likely be formed for the scrutiny of the draft Regulation upon its gazettal.

Admin

10. The Administration was requested to provide the following information -

- (a) a breakdown on the amounts of claims in respect of the 6 500 public liability claims received by member companies of the Hong Kong Federation of Insurers between 2002 and 2004; and
- (b) the level of premium generally charged by insurance companies in providing insurance coverage to UBWs.

Admin

11. The Administration was also requested to review whether the policy on third party risks insurance should cover unauthorised building works (UBWs) attached to or hung on the common parts of the building, taking into consideration the following views expressed by members -

- (a) Mrs Selina CHOW, Mr Albert HO and Ms Emily LAU considered it of utmost importance to protect the right of the third party who was victim in incidents related to such UBWs to obtain compensation payments, even though this would result in boosting the premium. The increases in premium might also provide an incentive to the owners concerned in considering demolition of their UBWs;
- (b) Ms Miriam LAU suggested that reference should be made to the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) under which any liabilities incurred by the driver (the insured party) in respect of a third party's bodily injury and death would be covered by the policy on third party risks insurance under all circumstances, and the insurance company would not

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reject claims by third parties on the ground of any irregularities committed by the insured party;

- (c) Mr WONG Kwok-hing disagreed to extend the policy on third party risks insurance as proposed above. He considered that OCs should not be required to procure insurance for UBWs on a mandatory basis to protect those owners who had built these illegal structures; and
- (d) Miss CHOY So-yuk considered that, if the UBWs in the common part of a building were built and used by one single owner, it would be unfair to other owners if the OC concerned was required to procure an insurance policy at a high cost to cover the UBWs as well.

Admin

12. The Administration was also requested to revert to the Bills Committee on the following issues -

- (a) in case UBWs which belonged to an owner fell down to the common parts of the building and caused injury to third party, whether it would be the OC or the owner concerned to be responsible for the liability arising;
- (b) whether the expression "the common parts of the building" in the amended section 28(1) also covered UBWs attached to or hung on the common parts;
- (c) how the liabilities, arising from those UBWs in the common parts which came into existence after the insurance for the common parts had been procured, would be covered;
- (d) whether it would result in double insurance coverage, if the owner of UBWs, e.g., water towers of a restaurant, had already procured insurance for these structures and the OC concerned was required to do the same for these USWs attached to the common parts of the building; and
- (e) what was the rationale for the Administration not to extend the policy to also cover UBWs attached to the common parts of a building as this would be inconsistent with the mandatory policies on third party risks insurance in other areas, e.g., government works, employees' compensation insurance, and motor vehicles, etc. involving public interest.

13. The Administration and the legal adviser to the Bills Committee both confirmed that the new section 28 as currently drafted would enable the

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Administration to introduce a tiered structure for the insurance requirement if it was deemed necessary in the future. The Chairman suggested that the Administration should take note of the diverse views expressed by members on the desirability of such a tiered structure and the issue should be considered during the scrutiny of the draft Regulation.

14. There being no other business, the meeting ended at 10:38 am.

Council Business Division 2
Legislative Council Secretariat
21 December 2006

**Proceedings of the meeting of Bills Committee on
Building Management (Amendment) Bill 2005
on Wednesday, 29 November 2006, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000-000312	Chairman	Confirmation of minutes	
000313-000930	Chairman Admin	Clause-by-clause examination of the Bill and scrutiny of the Committee Stage amendments (CSAs) proposed by the Administration [The Bill and Appendix III to LC Paper No. CB(2)1550/04-05] <u>Clause 34</u>	Admin to provide a paper (para. 3 of minutes)
000931- 000933	Chairman Admin Ms Emily LAU	<u>Clause 35</u>	The Bills Committee to make referral to the Panel on Home Affairs (para. 7 of minutes)
000934-004947	Chairman Admin Ms Emily LAU Mr WONG Kwok-hing Ms Margaret NG Ms Miriam LAU Mr Albert HO	<u>Clause 36</u>	Admin to provide a paper and to move a CSA to clause 36(3)(a) (paras. 4 & 5 of minutes)
004948-005359	Chairman Admin	<u>Clauses 37-66</u> <u>Clauses 67-69</u>	
005400-011919	Chairman Admin ALA4 Mr LI Kwok-ying Ms Miriam LAU Mr Albert HO	The Administration's Response to Members' Suggestions/Views on the Draft Building Management (Third Party Risks Insurance) Regulation [LC Paper No. CB(2)446/06-07(01)] <u>Item A on statutory minimum amount of insurance coverage</u>	Admin to provide supplementaty information (para. 10 of minutes)

Time marker	Speaker	Subject	Action required
011920-012136	Chairman Admin	<u>Item B on requirements under section 6(3) of the draft Regulation</u>	
012137-020051	Chairman Admin Ms Emily LAU Mr Albert HO Mrs Selina CHOW Ms Miriam LAU Miss CHOY So-yuk Mr WONG Kwok-hing Mr Albert CHAN	<u>Item C on unauthorized building works</u>	Admin to provide a written response (para. 11 & 12 of minutes)
020052 - 020110	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
21 December 2006