

立法會
Legislative Council

LC Paper No. CB(1)2805/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/09/2

Bills Committee on Buildings (Amendment) Bill 2010

Eighth meeting on
Tuesday, 29 June 2010, at 4:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Deputy Chairman)
Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon CHEUNG Hok-ming, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king
Hon Tanya CHAN

Members absent : Hon James TO Kun-sun
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun

Public officers : Mr Tommy YUEN Man-chung
Attending Deputy Secretary for Development (Planning and Lands) 2

Mr Edward TO Wing-hang
Principal Assistant Secretary for Development
(Planning and Lands) 3

Mr Harry LIN Ting-yan
Assistant Secretary for Development (Buildings) 2

Mr LAM Siu-tong
Deputy Director of Buildings

Mr Alex CHOW Kim-ping
Assistant Director / Support
Buildings Department

Ms Rayne CHAI Chih-hui
Senior Government Counsel
Department of Justice

Miss Elaine NG Pui-kei
Government Counsel
Department of Justice

Clerk in attendance: Mr WONG Siu-yee
Chief Council Secretary (1)4

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Mr Daniel SIN
Senior Council Secretary (1)5

Ms Christina SHIU
Legislative Assistant (1)7

I Confirmation of minutes

(LC Paper No. CB(1)2340/09-10 -- Minutes of meeting on 27 May
2010)

. The minutes of the meetings held on 27 May 2010 were confirmed.

II Meeting with the Administration

Outstanding issues from previous meetings

(LC Paper No. CB(1)2339/09-10(01) -- Administration's paper on response to issues raised at meetings on 27 May and 8 June 2010)

Clause-by-clause examination of the Bill

(LC Paper No. CB(3)389/09-10 -- The Bill
LC Paper No. CB(1)1168/09-10(01) -- Marked-up copy of the Bill prepared by the Legal Service Division)

Other relevant papers previously issued

(File Ref: DEVB(PL-CR) 2-15/08 -- Legislative Council Brief
LC Paper No. LS42/09-10 -- Legal Service Division Report
LC Paper No. CB(1)1168/09-10(02) -- Paper on Buildings (Amendment) Bill 2010 prepared by the Legislative Council Secretariat (Background brief)
LC Paper No. CB(1)2313/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 8 June 2010
LC Paper No. CB(1)2114/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 27 May 2010
LC Paper No. CB(1)1935/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 6 May 2010)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

3. In relation to the penalty imposed by a disciplinary board on a registered inspector under section 7(2)(ba) of the Buildings Ordinance (Cap.123) as to be amended by clause 10(9) to clause 10(11) of the Buildings (Amendment) Bill 2010, the Administration was requested to provide information on the levels of penalty imposed by comparable legislation under similar circumstances.

III Any other business

4. There being no other business, the meeting ended at 6:20 pm.

Council Business Division 1
Legislative Council Secretariat
2 September 2010

**Proceedings of the
Bills Committee on Buildings (Amendment) Bill 2010
Eighth meeting on Tuesday, 29 June 2010, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000402	Chairman	Opening remarks and confirmation of minutes (LC Paper No. CB(1)2340/09-10)	
000403 – 000547	Chairman Administration	<p>The Administration's briefing on its paper LC Paper No. CB(1)2339/09-10(01)</p> <p>The Administration advised that it was reviewing the enforcement policy against unauthorized building works (UBWs).</p>	
000548 – 001218	Mr WONG Kwok-hing Administration Chairman	<p>(a) Mr WONG asked if the various building safety related financial assistance schemes administered by the Urban Renewal Authority (URA), Hong Kong Housing Society (HKHS) and Buildings Department (BD) should be integrated, and whether they should be administered under one roof. The Administration replied that it was exploring how to consolidate the various schemes to streamline the modus operandi such that they could better meet the needs of building owners.</p> <p>(b) Mr WONG further asked if the integration measures would be completed by the time the Bill was enacted.</p> <p>(c) The Administration advised that appropriate measures were expected to be implemented when the Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window Inspection Scheme (MWIS) came into operation.</p>	

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		<p>(d) Mr WONG asked if the Administration would set up a statutory registration system for building management companies.</p> <p>(e) The Administration responded that the Home Affairs Department was studying the matter.</p>	
001219 – 001811	Chairman Prof Patrick LAU Deputy Chairman Administration	<p>(a) Prof LAU and the Deputy Chairman said that there were suggestions from the sector that associate or affiliate members of professional institutes should also be eligible for registration as registered inspectors (RIs) or qualified persons.</p> <p>(b) The Administration undertook to discuss with professional institutes again on the registration requirements.</p> <p>(c) Prof LAU asked why about 20% of the target buildings would not be eligible for first inspection subsidy. The Administration explained that the rateable values of these buildings had exceeded the eligibility limit.</p>	
001812 – 001912	Chairman Deputy Chairman Administration	<p>(a) The Deputy Chairman said that issues regarding the identification and reporting of UBWs by RIs still required clarification.</p> <p>(b) The Administration advised that further discussion could be made when examining the relevant clauses of the Bill.</p>	
001913 – 002837	Ms Starry LEE Administration Chairman	<p>(a) Ms LEE asked whether RIs were required to report any structural alterations or subdivision of flats they incidentally found during an</p>	

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		<p>inspection.</p> <p>(b) The Administration advised that the Bill required RIs to report any UBWs found in common parts of buildings to the Building Authority (BA). RIs were not empowered nor required by the Bill to enter individual private premises to look for UBWs or internal alterations. RIs were, however, obliged to notify BA if they noticed certain signs of structural defects in the common parts extending from individual flats (such as cracks on structural elements or external walls) suggesting that certain structural alteration works had been carried out inside individual private premises of the building.</p> <p>(c) The Administration further advised that provisions would be made in the code of practice or practice notes to encourage RIs to report to BA if they became aware of UBWs inside individual private premises.</p> <p>(d) Ms LEE considered the Administration's response unacceptable because subdivision of flats was a serious problem and the opportunity should be taken to tighten control through the Bill.</p> <p>(e) The Administration replied that the current enforcement policy on tackling subdivision of flats and UBWs was under review. As the problems were related to building safety, the Subcommittee on Building Safety and Related Issues could follow up the matter.</p>	

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		<p>(f) The Chairman said that the suggestion to require RIs to report subdivision of flats or UBWs inside individual private premises was shared by many members. He urged the Administration to further consider the suggestion.</p>	
<p>002838 – 003422</p>	<p>Mrs Sophie LEUNG Chairman Administration</p>	<p>(a) Mrs LEUNG asked if proposed section 30D(5) in clause 19 of the Bill could be construed as requiring RIs to notify BA of UBWs or flat alterations found in private premises. She said that a balance should be struck between a professional's duty to report a known building safety hazard and the extent of liability for not doing so.</p> <p>(b) The Administration explained that RIs were required to notify BA of any case of emergency revealed during prescribed inspections or prescribed repairs. Where a building defect was spotted, RIs should include their observations in their report to BA. RIs would be encouraged through code of practice or practice notes to inform BD of the presence of UBWs or subdivision of flats in individual private premises.</p>	
<p>003423 – 003606</p>	<p>Mr CHAN Kam-lam</p>	<p>Mr CHAN criticized that the Administration was reluctant to handle UBWs and subdivision of flats in private premises unless they involved structural alterations to the building. The proliferation of subdivision of flats generated many building management and safety concerns. He suggested that the Administration should rethink its policy and respond more positively to members' views.</p>	

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003607 – 003816	Mr LEE Wing-tat Chairman	Mr LEE also considered the Administration's response on handing UBWs and alterations inside private premises unsatisfactory. While he would not object to the Bill on this basis, the subject should be pursued.	
003817 – 004317	Mrs Sophie LEUNG Prof Patrick LAU Administration	<p>(a) Mrs LEUNG suggested extending the duties of professionals engaged to carry out building inspections under MBIS and MWIS to include collection of information about building alterations and subdivision of flats.</p> <p>(b) Prof LAU said that the Bill was drafted before the building collapse incident in Ma Tau Wai, and had not included adequate measures to safeguard public safety. The incident had raised public awareness of building safety concerns in old buildings created by subdivision of flats. The issue should not be dissociated from the current legislative amendment exercise and the Administration should consider extending the coverage of the Bill.</p> <p>(c) The Administration responded that while the Buildings Ordinance (Cap.123) already had provisions to empower BD to deal with building safety issues, the Administration would consider how to help tackle subdivision of flats by capitalizing on the implementation of MBIS and MWIS.</p>	
004318 – 004414	Chairman	The Chairman summarized that members' main concerns were UBWs and internal alterations in private premises and how they should be	

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		<p>handled under MBIS and MWIS; and provision of assistance to owners in carrying out building inspections and maintenance. The Administration should ensure sufficient support was available, including professional advice, financial subsidies and adequate manpower in the Home Affairs Department to help owners.</p>	
<p>004415 – 010354</p>	<p>Chairman Administration ALA1</p>	<p>Clause-by-clause examination of the Bill</p> <p><u>Clause 1 – Short title</u></p> <p><u>Clause 2 – Commencement</u></p> <p><u>Clause 3 – Long title amended</u></p> <p>Members raised no question on clauses 1 to 3.</p> <p><u>Clause 4 – Interpretation</u></p> <p>The Chairman referred to cases where ownership of an external wall was shared among owners, but the right of use of the external wall was reserved for certain persons under the deeds of mutual covenant. He asked whether the external wall would be regarded as the "common parts" of the building and that all owners would be responsible for its inspection and repair under MBIS.</p> <p>The Administration replied that for the above case, the notice of prescribed inspection would be served on all owners or the respective owners' corporation (OC).</p> <p>ALA1 said that proposed section 30B(4) in clause 19 of the Bill dealt specifically with an external wall that was not in the "common parts" of the building. In those cases, the owner of</p>	

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		<p>the external wall, regardless of who held the right of use, would be responsible for the prescribed inspection and repair. ALA1 also expressed concerns on the definitions of "prescribed inspection" and "prescribed repair", in particular the relationship between "repair" and "testing" in the definition of "prescribed repair". The Administration replied that the relationship of the two terms would be clearly set out in the Code of Practice and in the regulations to be made.</p> <p><u>Clause 5 – Part heading amended</u></p> <p>Members raised no question on clause 5.</p>	
010355 – 012358	Administration	<p><u>Clause 6 – Registers of authorized persons, structural engineers and geotechnical engineers</u></p> <p>In relation to clause 6(6), the Chairman asked how the Administration would identify suitable and interested District Council members for appointment to the Inspectors Registration Committee. The Administration explained that the Home Affairs Department would recommend potential candidates for appointment.</p>	
012359 – 012822	Administration Deputy Chairman	<p><u>Clause 7 – Appointment and powers of disciplinary board</u></p> <p>Members raised no question on clause 7.</p> <p><u>Clause 8 – Authorized Persons', Registered Structural Engineers' and Registered Geotechnical Engineers' Disciplinary Board Panel</u></p> <p>(a) As there were no professional institutes for RIs at present,</p>	

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		<p>Prof LAU asked how the Administration would select candidates for appointment to the various disciplinary boards and disciplinary board panels.</p> <p>(b) The Administration explained that RIs should be registered professionals of the relevant disciplines. Nominations from the respective professional registration boards would be invited for short-listing candidates for appointment.</p>	
<p>012823 – 014033</p>	<p>Administration Chairman Prof Patrick LAU Ms Starry LEE</p>	<p><u>Clause 9 – Secretary to the disciplinary board</u></p> <p>Members raised no question on clause 9.</p> <p><u>Clause 10 – Disciplinary proceedings for authorized person, registered structural engineer or registered geotechnical engineer</u></p> <p>(a) The Administration advised that it would move Committee Stage amendments (CSAs) to repeal clause 10(16).</p> <p>(b) On clause 10(9) to clause 10(11), Prof LAU said that the levels of penalty imposed by a disciplinary board on an RI should be consistent with those for offences of equivalent gravity in comparable legislation.</p> <p>(c) Ms Starry LEE requested the Administration to provide information on the levels of penalty imposed by comparable legislation under similar circumstances.</p>	<p>Administration to take action as required in paragraph 3 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
014034 – 014757	Administration Ms Cyd HO	<p><u>Clause 11 – Appeals from Registration Committees</u></p> <p>The Administration advised that it would move CSAs to repeal clause 11(1).</p> <p><u>Clause 12 – Secretary to the disciplinary board</u></p> <p>Members raised no question on clauses 11 and 12.</p> <p><u>Clause 13 – Disciplinary proceedings for contractors</u></p> <p>(a) The Administration advised that it would move CSAs to repeal clause 13(6).</p> <p>(b) On clause 13(5)(c), Ms HO asked how ordinary property owners would know if the registered contractor that they had engaged to carry out a prescribed inspection or repair had been prohibited from undertaking such works.</p> <p>(c) The Administration advised that the prohibitions would be published in the Gazette and on BD's website. Information could also be obtained through BD's telephone hotline. Owners and OCs were encouraged to make enquiries to ensure the validity of the contractors' registration status before they were commissioned to carry out prescribed inspections or repairs.</p> <p>(d) In response to Ms HO, the Administration further explained that for an on-going works project, when a contractor was</p>	

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		<p>prohibited from certifying or supervising any prescribed inspections or repairs, BD would take the initiative to inform the relevant building owners and advise them to appoint another registered contractor to complete the outstanding works.</p> <p>(e) Ms HO suggested that the Administration should provide assistance, including a sample standard contract with suitable clauses, for owners to handle these situations.</p>	
014758 – 014913	Administration	<p><u>Clause 14 – Appeal against Building Authority's decision</u></p> <p>The Administration advised that it would move CSAs to repeal clause 14(1).</p> <p><u>Clause 15 – Conditions may be imposed in certain cases</u></p> <p><u>Clause 16 – Authority to erect shoring in certain cases</u></p> <p><u>Clause 17 – Building works, etc. to cease on order of Building Authority</u></p> <p><u>Clause 18 – Magistrate's warrant</u></p> <p>Members raised no question on clauses 14 to 18.</p>	
014914 – 014943	Chairman	<p>The next meeting would be held at 4:30 pm on 13 July 2010.</p>	