

立法會
Legislative Council

LC Paper No. CB(1)2826/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/09/2

Bills Committee on Buildings (Amendment) Bill 2010

Ninth meeting on
Tuesday, 13 July 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 James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Dr Hon Priscilla LEUNG Mei-fun

Members absent : Hon Miriam LAU Kin-yee, GBS, JP
Hon LEE Wing-tat
Hon CHEUNG Hok-ming, GBS, JP
Hon Tanya CHAN

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)2495/09-10 -- Minutes of meeting on
8 June 2010)

The minutes of the meetings held on 8 June 2010 were confirmed.

II Meeting with the Administration

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

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|----------------------------------|--|
| (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)2460/09-10(01) | -- List of follow-up actions arising from the discussion at the meeting on 29 June 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 Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

3. The Administration is requested to provide the following information --
- (a) Definitions and meanings of "projection" in other parts of the Buildings Ordinance (Cap.123), its regulations and in other legislation, and a comparison of these various definitions highlighting any ambiguities in such definitions.
 - (b) Elaboration on the relationship between proposed section 30B(6) and proposed section 30B(9), and whether the relevant provisions need to be fine-tuned.

III Any other business

4. There being no other business, the meeting ended at 6:32 pm.

**Proceedings of the
Bills Committee on Buildings (Amendment) Bill 2010
Ninth meeting on Tuesday, 13 July 2010, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000326	Chairman	Opening remarks and confirmation of minutes (LC Paper No. CB(1)2495/09-10)	
000327 – 000757	Mr KAM Nai-wai Dr Margaret NG Chairman	Mr KAM and Dr NG said that clashes between meetings should be avoided. The Chairman noted members' concerns and requested the Secretariat to avoid clashes between meetings as far as possible.	
000758 – 002417	Administration Chairman Prof Patrick LAU Ms Cyd HO Ir Dr Raymond HO Ms Audrey EU	<p><u>Clause 19 – Part IIA added</u></p> <p><i>Part IIA</i></p> <p><i>Inspection and Repair of Building</i></p> <p><i>30A – Interpretation and application</i></p> <p>(a) Prof Patrick LAU and Ms Cyd HO were concerned that the term "projection" in proposed section 30A(1) might be defined differently in the regulations under the Buildings Ordinance (Cap. 123) (BO) or in other legislation and this might cause confusion.</p> <p>(b) The Administration advised that the definition concerned was only applicable to proposed Part IIA of the BO in respect of the Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window Inspection Scheme (MWIS).</p> <p>(c) The Chairman asked the Administration to provide definitions and meanings of "projection" in other parts of BO, its regulations and in other legislation, and to compare the various definitions and highlight any ambiguities in such definitions.</p>	Administration to take action as required in paragraph 3 of the minutes

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		<p>(d) Ir Dr Raymond HO said that the responsibilities and liabilities of registered inspectors (RIs) should be clearly spelt out so that they knew under what circumstances they should report unauthorized building works (UBWs) to the Building Authority (BA).</p> <p>(e) The Administration advised that RIs' responsibilities and liabilities on reporting UBWs would be elaborated in proposed section 30D and in the codes of practice/practice notes.</p>	
002418 – 013348	Administration Ms Audrey EU Prof Patrick LAU ALA1 Mr James TO Dr Priscilla LEUNG	<p><i>30B – Obligation on owners to carry out prescribed inspection and prescribed repair in respect of buildings</i></p> <p>(a) The Administration advised that it would move Committee Stage amendments (CSAs) to repeal the word "內" in "建築物內" in the Chinese version of proposed section 30B(5), and to replace the word "內" by "的" in the Chinese version of proposed section 30B(6).</p> <p>(b) Ms EU asked if "projection" included signboards and the reason for defining it in the subsidiary legislation instead of the principal legislation.</p> <p>(c) The Administration explained that projections and signboards were treated differently. Signboards might be installed by shop owners for the purposes of displaying shop names. They might also be erected by third parties, e.g. by an advertising company to receive rent for posting of advertisements.</p> <p>(d) The Administration added that defining "projection" in subsidiary legislation would make future revision easier to cover new</p>	

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		<p>projecting features arising from new building technology and design.</p> <p>(e) In response to Ms EU, the Administration said that "signboard" as defined in section 2 of BO included frames supporting the signboards. Structures with luminous displays on external walls of a building were also signboards. Signboard was excluded from the scope of "projection" in proposed section 30B(5).</p> <p>(f) Ms EU said that if the Administration's intention was to exclude signboard from projection, proposed section 30B(5) should be rephrased because the current wording gave the impression that projection included signboard.</p> <p>(g) The Administration explained that the current wording was intended to make it clear that projections and signboards would be treated differently under the Bill. The Administration agreed to consider expressing this intention more clearly when defining "projection" in the subsidiary legislation.</p> <p>(h) Prof LAU suggested that the term "projection" should be rephrased as "projected object" or in other terms to avoid confusion with existing definitions of projection under the regulations of the BO or other legislation.</p> <p>(i) The Administration said that the meaning of "projection" in proposed section 30A(1) would only apply to proposed Part IIA of BO. However, the Administration would consider if there was any suitable alternative term for "projection".</p>	

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		<p>(j) ALA1 said that the wording "某處所上" in the Chinese version of proposed section 30B(6) appeared inconsistent with the English version. The Administration explained that "某處所上" corresponded to the wording "on a building" in the English version.</p> <p>(k) Ms EU said that the Chinese and English versions of proposed section 30B(6) were inconsistent because while the former had the words "處所", the word "premises" was missing from the latter.</p> <p>(l) The Administration explained that under section 2 of BO, "building" included "the whole, or any part, of" a building; the wording "premises" was unnecessary. The relevance of "premises" only became apparent in proposed section 30B(6)(c) when it specified the owner of the premises in a building.</p> <p>(m) The Chairman suggested that the Administration should review the wording of the Bill to remove the inconsistencies and ambiguities as pointed out by members.</p> <p>(n) Ms EU asked if the power given to BA under proposed section 30B(9) was appropriate because by application of proposed section 30B(6) and proposed section 30B(9), it was possible that a notice served on a person for whom a signboard was erected might be registered against the building without the building owner being informed before hand.</p> <p>(o) Mr TO said that proposed section 30B(6) as it was drafted would be difficult to enforce. It would be difficult for BA to establish the</p>	

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		<p>responsibility and liabilities of parties concerned, particularly if all parties denied having erected the signboard.</p> <p>(p) Mr TO added that BA might have to face litigation initiated by the owner of a building for not being able to sell the property because a notice was registered against it under proposed section 30B(9), but the evidence supporting the registration was not robust enough.</p> <p>(q) Mr TO further said that it would be difficult for BA to substantiate that the person for whom the signboard was erected or the person receiving rent for the use of the signboard could not be found when BA tried to invoke proposed section 30B(6)(c).</p> <p>(r) Mrs LEUNG said that if an advertiser had signed a tenancy agreement with an owner to erect a signboard on a building, it was the owner's responsibility to specify how the signboard should be dismantled and disposed of upon the expiry of the tenancy. The owner should ultimately be responsible for any structure erected on his property.</p> <p>(s) The Administration explained that the wording in proposed section 30B(9) was modeled on sections 26(2A), 26A(4A), 27C(6) and 28(6A) of BO. In actual practice, if a notice was served on the person for whom the signboard was erected, or the advertising company who received rent, the notice would not be registered against the building on which the signboard was erected.</p> <p>(t) Mr TO suggested that the Administration should rewrite proposed section 30B(9) to reflect the</p>	<p>Administration to take action as required in</p>

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		<p>current practice and the policy intention; but even so, owners might escape maintenance responsibilities of the signboard by using a surrogate.</p> <p>(u) The Administration said that such cases of using a surrogate could be dealt with based on circumstantial and documentary evidence gathered under the current enforcement regime. The Administration undertook to elaborate on the relationship between proposed section 30B(6) and proposed section 30B(9), and consider whether the relevant provisions need to be fine-tuned.</p> <p>(v) ALA1 said that proposed 30B(11)(b) would imply that if there was a change in ownership of the building before a notice was registered in the Land Registry, the new owner might inherit any outstanding liabilities.</p> <p>(w) The Chairman said that buyers should exercise due diligence to check all outstanding liabilities of the property before purchase.</p>	<p>paragraph 3 of the minutes</p>
<p>013349 – 015226</p>	<p>Administration ALA1 Ms Audrey EU Prof Patrick LAU</p>	<p><i>30C – Obligation on owners to carry out prescribed inspection and prescribed repair in respect of windows</i></p> <p>Members raised no question on proposed section 30C.</p> <p><i>30D – Appointment and duties of registered inspectors</i></p> <p>(a) The Administration advised that the RI appointed under proposed section 30D(1)(a) may be the same or a different RI appointed under proposed section 30D(1)(b).</p> <p>(b) ALA1 queried if "全面" in the Chinese version of proposed section 30D(3)(b) was equivalent to</p>	

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		<p>"generally" in the English version. He added that failure to comply with that section was not by itself a criminal offence.</p> <p>(c) Prof LAU and Ms EU queried the need for proposed section 30D(3)(b) as its removal would not affect an RI's liability under BO.</p> <p>(d) The Administration advised that the word "generally" also carried the meaning of "全面". Similar wording could also be found in section 24 of the Public Bus Services Ordinance (Cap. 230), and section 8 of the Aviation Security Regulation (Cap. 494A).</p> <p>(e) The Administration added that the proposed section 30D(3)(b) served to remind RIs to comply with other requirements prescribed in the BO when carrying out works under MWIS and MBIS. Although contravention of the provision was not a criminal offence, it might lead to disciplinary actions.</p>	
015227 – 015438	Chairman Ms Starry LEE	<p>(a) The next meeting would be held in the new legislative session.</p> <p>(b) In response to Ms Starry LEE, the Chairman said that the Administration would further explain what roles professionals could play in tackling UBWs and subdivision of flats during MBIS and MWIS.</p>	