

立法會
Legislative Council

LC Paper No. CB(1)384/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/09/2

Bills Committee on Buildings (Amendment) Bill 2010

Tenth meeting on
Monday, 25 October 2010, at 10:45 am
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 Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Hon Tanya CHAN

Members absent : Hon CHEUNG Hok-ming, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun

Public officers : Mr Tommy YUEN Man-chung, JP
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

Clerk in attendance: Mr Stephen LAM
Chief Council Secretary (1)4

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mr Daniel SIN
Senior Council Secretary (1)7

I Confirmation of minutes

(LC Paper No. CB(1) 2826/09-10 -- Minutes of meeting on 13 July 2010)

. The minutes of the meetings held on 13 July 2010 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1)126/10-11(01) -- Administration's response to issues raised at the meetings on 29 June and 13 July 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)2618/09-10(01)	-- List of follow-up actions arising from the discussion at the meeting on 13 July 2010
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 --
- (a) work with the legal adviser on the drafting of the English and Chinese texts of "on a building" in the proposed new section 30B(6);
 - (b) provide a written response on whether and how the Administration would require, in the Bill, registered inspectors to report to the Building Authority any signs of subdivision of flats or unauthorized building works found during an inspection under the Mandatory Building Inspection Scheme or Mandatory Window Inspection Scheme;
 - (c) provide a written response on whether the Administration would meet the cost shortfall of a prescribed inspection or repair when certain property owners refuse to contribute to the cost, and recover the cost from the owners separately;
 - (d) consider elaborating, in the Bill, on how the cost of prescribed inspection or repair is determined under the proposed new section 39B(1)(c); and
 - (e) reconsider whether criminal liability should be imposed on contravention of the proposed new section 39B(1)(c).

III Any other business

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

Council Business Division 1
Legislative Council Secretariat
8 November 2010

Bills Committee on Buildings (Amendment) Bill 2010

**Proceedings of the tenth meeting
on Monday, 25 October 2010, at 10:45 am
In Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000311	Chairman	Opening remarks	
000312 – 000830	Administration	The Administration's briefing on its paper (LC Paper No. CB(1)126/10-11(01)) The Administration highlighted responses to issues raised at the previous meetings.	
000830 – 001501	Prof Patrick LAU Chairman Administration	(a) Prof LAU suggested that the Administration should elaborate on the scope of "professional duties" in relation to inspection of building or windows under section 7(1) and (1A) of the Buildings Ordinance (Cap. 123) (BO) as amended by clause 10(2) to (4) of the Bill, to facilitate the court's adjudication. (b) The Administration clarified that section 7 as amended was only related to disciplinary proceedings and the general requirements of professional duties were provided in the proposed new section 30D(4), which would be similar to those applicable to other professionals such as authorized persons (APs) or registered structural engineers (RSEs). Details would also be specified in the subsidiary legislation as well as the relevant codes of practice and practice notes to be made.	
001502 – 001807	Administration Ir Dr Raymond HO Chung-tai	Dr HO said updated practice notes and codes of practice were regularly issued to APs, RSEs and registered geotechnical engineers to provide guidelines on professional practice. Similar arrangements should be made for RIs.	

Time Marker	Speaker	Subject(s)	Action Required
001808 – 002539	Dr Margaret NG Administration	<p>(a) The Administration said a new definition of "projection" was introduced for the purpose of the Mandatory Building Inspection Scheme (MBIS), and would only be applicable to the new Part IIA of BO.</p> <p>(b) The Administration would move a committee stage amendment (CSA) to remove the definition of "projection" in the proposed section 30A(1), and amend the proposed new section 30B(5) by replacing "(other than a signboard)" with "as prescribed in the regulation". The definition of "projection" would be specified in the subsequent subsidiary legislation.</p> <p>(c) Dr NG considered it more appropriate to define "projection" in the principal legislation than to leave it to the subsidiary legislation. Without a definition, the general meaning and usage of "projection" would apply.</p> <p>(d) Dr NG would accept the Administration's current drafting approach if the subsequent regulation would describe the Building Authority's (BA) discretion as to what types of projection BA could require a building owner to inspect or repair.</p> <p>(e) The Administration said that it intended to specify the types of "projection" covered by MBIS in the subsidiary legislation. The regulation would also state the scope of prescribed inspection and prescribed repair, RIs' responsibilities, procedures RIs have to follow in prescribed inspections and repairs, and other related details.</p>	
002540 – 002716	Ir Dr Raymond HO Chairman Administration	<p>(a) Dr HO cautioned that it would be difficult to list exhaustively what "projection" would cover.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		(b) The Administration said that the building sector would be consulted to ensure the scope of "projection" would be comprehensive.	
002717 – 002900	ALA7 Administration	(a) ALA7 said that care should be taken in drafting the subsidiary legislation: if the definition of the term "projection" in the proposed section 30B(5) would cover the meaning of signboard, then the section would overlap with the proposed section 30B(6), which dealt specifically with signboards. (b) The Administration said that the subsidiary legislation as related to the proposed section 30B(5) would make it clear that "projection" would not cover "signboard."	
002901 – 003614	Administration Chairman ALA7	(a) Following the last meeting, ALA7 pointed out that the phrase "on a building" in the proposed section 30B(6) of the English version and "在建築物內某處所上" in the Chinese version appeared to be inconsistent, and enquired about the Administration's position in this regard. (b) The Administration clarified that the word "內" would be replaced by "的" and the clause "on a building" would cover the meaning of being attached to a wall of a building, and "on a building" is not necessarily "on top of a building". The difference in the nature of the two languages results in the difference in the drafting of the two texts. (c) The Chairman asked the Administration to work with the legal adviser on the drafting of the English and Chinese texts of "on a building" in the proposed section 30B(6).	Administration to take action as required in paragraph 3 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
003614 – 004110	Chairman Administration	In response to the Chairman, the Administration explained that the reference to "building" in the proposed section 30B(9) could mean the whole building or any part thereof, and was intended to refer to the parts of a building against which the BA's notice would register.	
004110 – 005130	Mr KAM Nai-wai Chairman Administration	<p>(a) Mr KAM asked to what penalty would be imposed on an owner if he refused to pay his share of the inspection or repair costs, and how it compared with similar offences in other legislation.</p> <p>(b) The Administration explained that there were existing penalty provisions (i.e. section 39B(1) (a) and (b)) against obstruction by owners to compliance with BA's order. The penalty would be a maximum fine at level 3 (\$10,000) and six months of imprisonment. Similar penalty was introduced under the proposed section 30B(9)(c) against refusal to contribute to cost in the light of feedbacks received during previous public consultation exercises as a deterrent against unco-operative owners.</p>	
005130 – 010141	Ms Starry LEE Administration Chairman	<p>(a) Ms LEE suggested that the Bill, not just the practice notes, should require RIs to report to BA cases of subdivision of flats or interior unauthorized building works found during prescribed inspection or repair.</p> <p>(b) The Administration said RIs would need to be given additional power to enter private premises to ascertain cases of subdivision of flats or interior unauthorized building works.</p> <p>(c) The Administration further explained that subsequent regulations would require RIs to report signs of</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>structural defects or overloading found in common areas or unauthorised alteration to means of escape. Guidelines would also be issued to require RIs to record observations of features associated with subdivision of flats in buildings (e.g. many flat door openings or door bells) for follow-up by the Buildings Department (BD).</p>	
<p>010141 – 011126</p>	<p>Mr James TO Chairman Administration</p>	<p>(a) Mr TO raised the question of how owners' refusal to contribute to the cost of inspection or repair works as described in the proposed section 39B(1)(c) should be interpreted.</p> <p>(b) The Administration said that the provision was introduced to deal with situations where an owners' corporation (OC) had decided to undertake inspection or repairs to meet BA's requirement but certain owners refused to contribute their share of the cost.</p> <p>(c) The Administration added that the purpose of the offence clause was to add deterrence against unco-operative owners. However, before prosecution action could be taken, sufficient evidence would have to be collected. Owners might also have excuses for not contributing to the repair costs.</p> <p>(d) Mr TO asked if being unable to afford the inspection and repair costs could be a reasonable defence against accusation of refusal to contribute.</p> <p>(e) The Administration said that there should be a balance between public safety consideration and the owner's ability to pay. The Administration added that there were a number of available financial assistance schemes</p>	

Time Marker	Speaker	Subject(s)	Action Required
		to assist owners to meet the cost of inspection and repairs.	
011126 – 011422	Mrs Sophie LEUNG LAU Yau-fun Administration Chairman	<p>(a) Mrs LEUNG asked whether signs of subdivision of flats could be regarded as an "emergency" that required RIs to notify BA under the proposed section 30D(5)(a).</p> <p>(b) The Administration said whether a building condition was an emergency required professional judgment. Guidelines would also be issued to remind RIs to report such signs to BA.</p> <p>(c) Mrs LEUNG suggested that the report requirement should be spelt out in the legislation rather than through guidelines. The Chairman asked the Administration to provide a written response on whether and how RIs would be required to report to BA signs of subdivision of flats or unauthorized building works found during an inspection under the MBIS or Mandatory Window Inspection Scheme.</p>	Administration to take action as required in paragraph 3 of the minutes
011422 – 012404	Mr KAM Nai-wai Administration Chairman	<p>(a) Mr KAM asked if the Administration would consider alternative options to making refusal to contribute to the cost of inspection or repair a criminal offence.</p> <p>(b) The Administration said that the provisions were introduced in response to public feedback for more stringent measures to deter unco-operative owners. However, the Administration would continue to work with the Hong Kong Housing Society and the Urban Renewal Authority to identify ways to assist owners with financial difficulties to meet the cost of inspection and repairs. It was not the intention to</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>punish owners who were genuinely willing to comply with the prescribed inspection and repair notices.</p> <p>(c) Mr KAM asked if an owner could avail defence of reasonableness for refusal to pay where the scale of inspection or repair works deviated from the agreed work specifications, or exceeded the requirements as prescribed by BA.</p> <p>(d) The Administration explained that BA would only require inspection and repair works necessary to comply with the BO to render the building safe. It would be ultimately for the court to decide whether or not to accept an owner's defence in the circumstances.</p> <p>(e) Mr KAM commented that prosecuting owners for refusal to contribute to inspection or repair cost would still not resolve OCs' problems of not being able to collect sufficient funds to finance the prescribed works. He asked if the Administration could meet the shortfall upfront and recover the cost from the owners separately.</p> <p>(f) The Administration said that the suggestion was considered impracticable. OCs might need to consider filing a civil claim against owners for payment.</p> <p>(g) The Administration undertook to provide a written response on whether the Administration would meet the cost shortfall of a prescribed inspection or repair when certain property owners refuse to contribute to the cost, and recover the cost from the owners separately.</p>	<p>Administration to take action as required in paragraph 3 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
012404 – 013030	Mr James TO Administration Chairman	<p>(a) Mr TO asked if the Bill should require that the scope of inspection and repair to be carried out to comply with BA's notice or order be resolved by OC, and the cost should be certified by a professional as being necessary or reasonable.</p> <p>(b) The Chairman requested the Administration to consider elaborating, in the Bill, on how the cost of prescribed inspection or repair is determined under the proposed new section 39B(1)(c).</p>	Administration to take action as required in paragraph 3 of the minutes
013030 – 013416	Ms Cyd HO Mr James TO Mr KAM Nai-wai Administration	<p>(a) Ms HO raised the question on where an OC decided on the scope and quality of inspection and repair through a due process and there was still a minority of owners who could not afford the cost, it would not help even if the Government was willing to advance their share of the expenses and register the payment against their property title.</p> <p>(b) Mr TO and Mr KAM also queried the meaning of cost that "was required for the purpose of complying with the notice served" (i.e. 需 or 完全絕對必需) as prescribed in the proposed new section 39B(1)(c)</p> <p>(c) The Administration undertook to provide more information for members' consideration.</p>	
013417 – 014255	Mr James TO Administration Chairman	<p>(a) Mr TO commented that the proposed changes to section 39B(1) would be difficult to implement and enforced, as it was difficult to establish criminal liability. He asked whether it was appropriate to create a criminal offence for contravention of that section.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) The Administration said that the provisions were included to facilitate the work of OCs to effect inspection and repairs in common parts of buildings.</p> <p>(c) The Chairman asked the Administration to reconsider whether criminal liability should be imposed on contravention of the proposed new section 39B(1)(c).</p>	<p>Administration to take action as required in paragraph 3 of the minutes</p>
<p>014255 – 014517</p>	<p>Ms Cyd HO Administration</p>	<p>(a) Ms HO was concerned that owners who have acquired 60 per cent of ownership of a building could drive out the minority owners by undertaking expensive maintenance works. She suggested that the Administration should minimize the negative impact the Bill might create.</p> <p>(b) Ms HO observed from the long title that the Bill did not preclude it from dealing with the problem of subdivision of flats. She suggested the Administration to include provision to deal with subdivision of flats.</p> <p>(c) The Administration explained that the suggestion involved the inspection power and duties of RIs and these would be dealt with separately.</p>	
<p>014517 – 020200</p>	<p>Administration Ms Cyd HO Chairman Mr KAM Nai-wai</p>	<p><i>30D – Appointment and duties of registered inspectors</i></p> <p>(a) Ms HO referred to the proposed section 30D(4)(b) and raised concern that RIs might prescribe excessively costly materials to be used for repair.</p> <p>(b) Mr KAM asked the extent of responsibility of an RI in carrying out prescribed inspection and repair, how specific an inspection report would be</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>required and how detailed should the recommended repair an RI was expected to prepare.</p> <p>(c) The Administration explained that RIs would be required to indicate in the inspection report details of damages or defects identified in a building, together with recommendations on the location, area and detailed scope of maintenance or repair works required.</p> <p>(d) In response to Mr KAM, the Administration added that these detailed requirements would be prescribed in subsequent subsidiary legislation and the relevant code of practice and practice notes.</p> <p>(e) Ms HO suggested that the criminal liability for an owner's refusal to contribute to the inspection and repair cost should be limited to the minimal cost necessary for the compliance with the requirements of BA.</p>	
020051 – 020146	Chairman	The next meeting would be held at 4:30 pm on 9 November 2010.	