

立法會
Legislative Council

LC Paper No. CB(1)668/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/09/2

Bills Committee on Buildings (Amendment) Bill 2010

Eleventh meeting on
Tuesday, 9 November 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 Miriam LAU Kin-ye, 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
Dr Hon Priscilla LEUNG Mei-fun
Hon Tanya CHAN

Members absent : Hon James TO Kun-sun
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon CHEUNG Hok-ming, GBS, JP

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

Miss Elaine NG Pui-kei
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)384/10-11 -- Minutes of meeting on
25 October 2010)

. The minutes of the meetings held on 25 October 2010 were confirmed.

II Meeting with the Administration

Outstanding issues from previous meetings

(LC Paper No. CB(1)367/10-11(01) -- Administration's response to issues raised at the meeting on 25 October 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)367/10-11(02) -- List of follow-up actions arising from the discussion at the meeting on 25 October 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 take the following actions --

- (a) To provide an alternative to criminal sanction against an owner who refuses to contribute to the cost of the inspection or repair works in the proposed new section 39B(1)(c), the Administration is requested to provide a paper to respond to members' suggestions: including the Government advancing the outstanding payment and registering the amount as a charge against the

owner's property title, as well as devising a dispute resolution mechanism between the owners' corporation and the non-paying owner through a tribunal; and

- (b) To provide details about the provisions to be included in the subsidiary legislation under preparation that would specify the requirements of prescribed inspection and prescribed repair under the proposed new section 30D(1).

III Any other business

- 4. There being no other business, the meeting ended at 6:25 pm.

Council Business Division 1
Legislative Council Secretariat
6 December 2010

Bills Committee on Buildings (Amendment) Bill 2010

**Proceedings of the Eleventh meeting
on Tuesday, 9 November 2010, at 4:30 pm
In Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000643	Chairman	Opening remarks and confirmation of minutes (LC Paper No. CB(1)384/10-11)	
000644 – 001331	Administration	The Administration's briefing on its paper (LC Paper No. CB(1)367/10-11(01)) The Administration highlighted responses to issues raised at previous meetings.	
001332 – 003233	Mr WONG Kwok-hing Administration Chairman	(a) Mr WONG's objection to making an owner's refusal to contribute to the cost of inspection or repair works a criminal offence; and the suggestion that the Administration should advance outstanding payment due to the owners' corporation (OC) to enable the inspection or repair works to proceed and charging the cost against the uncooperative owner's property title. (b) The Administration's explanation that the purpose of the offence clause was to enhance deterrent effect.	
003234 – 004259	Mr KAM Nai-wai Chairman Administration	(a) Mr KAM's disagreement with the criminal offence provision, with suggestions that Buildings Department (BD) should intervene and carry out inspection or repair and recover the costs from owners, as in the case of emergency repairs. (b) The Administration's explanation that other owners might not agree to provide their properties as security for government's loan to effect inspection or repair works.	

Time Marker	Speaker	Subject(s)	Action Required
004300 – 004508	Ir Dr Raymond HO	Dr HO's view that owners' refusal to contribute to the cost of inspection or repair works should be resolved through civil actions.	
004509 – 005235	Ms Cyd HO Administration	<p>(a) Ms HO's disagreement with the criminal offence provision in the proposed new section 39B(1)(c), and suggestion that BD should step in to do the repair works to ensure public safety, and recover the cost of repair works from owners in default.</p> <p>(b) The Administration's explanation that the purpose of the proposed offence provision was to enhance deterrent effect.</p> <p>(c) Ms HO's concern that developers who owned a large ownership share of a building could still force out minority owners with meager resources by undertaking expensive renovation of the building.</p> <p>(d) The Administration's explanation that only minimal repair works to render the building safe with reference to the statutory standard at the time when the building was constructed or subsequent enhanced standards as required by the law would be required, and that any owner who refused to pay more than his share of the cost of such minimal repair works would not attract criminal charge.</p>	
005236 – 005800	Chairman Administration	Discussion on effective approaches to help finance and effect the inspection or repair works.	
005801 – 010214	Ms Audrey EU Administration	<p>(a) Ms EU's disagreement with the criminal offence provision.</p> <p>(b) Discussion on the feasibility of the Administration paying the repair cost upfront and register the paid cost as a</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>charge against the non-paying owners' property titles.</p> <p>(c) The Administration's explanation that BD's intervention should be used as the last resort, and that there were already a number of assistance measures to facilitate owners to finance and carry out the inspection or repair works.</p>	
010215 – 011022	Ms Miriam LAU Ms Audrey EU Administration Prof Patrick LAU	<p>(a) Discussion on alternative approaches where an OC would finance the inspection or repair works from a maintenance fund, or the Administration to pay on behalf of the owner who refused to contribute to the cost of inspection or repair works. The Administration could be empowered by statute to register a charge against the un-cooperative owner's property title.</p> <p>(b) The Administration's response that it might not be proper for it to use public fund to pay, on behalf of an owner, for works initiated by the OC and then recover the sums involved through a charge against the concerned property as that would be tantamount to forcing an owner to borrow the sums involved from the Government.</p> <p>(c) Prof LAU's suggestion that Administration should consider measures to deal with unco-operative owners who were identifiable as early as when OC tried to carry out prescribed inspection.</p>	
011023 – 011549	Mr KAM Nai-wai Mr WONG Kwok-hing Chairman Administration	<p>(a) Mr KAM's suggestion for the Administration to invoke emergency repair procedures when owners obstructed the OC in the carrying out of a prescribed inspection or repair.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) Mr WONG's objection to the criminal offence provision, and his support for the suggestion that the Administration should carry out inspection and repair works on behalf of OC and register a charge against the owners who refused to pay their shares.</p> <p>(c) The Administration's explanation that an OC or its contractor was not exercising a statutory power when carrying out prescribed inspection or repair.</p>	
011550 – 011712	Ms Cyd HO	Suggestion for the Administration to consider advancing the part of the cost owed by unco-operative owners rather than rendering them criminally liable.	
011713 – 012317	Mr CHAN Kam-lam Administration	<p>(a) Mr CHAN's comments that proper legal procedures were necessary before the Administration would lend or pay cost first and recover it later.</p> <p>(b) Mr CHAN's suggestion that OC, rather than the Administration, should apply to the court to register a charge against the property titles of those owners who refused to pay their shares. OC would then seek financial assistance from government, e.g. BD, Hong Kong Housing Society or Urban Renewal Authority and transfer the beneficiary of the charge to the Administration.</p> <p>(c) Mr CHAN's suggestion for the Administration to consider a fine penalty (rather than imprisonment) against owners who refused to pay their shares to facilitate the work of OCs.</p>	

Time Marker	Speaker	Subject(s)	Action Required
012318 – 012456	Mr KAM Nai-wai	Mr KAM's suggestion that the Administration should keep the interest rates of various loan schemes low, while increase the level of fine for refusal to contribute to the cost of inspection or repair works.	
012457 – 012718	Prof Patrick LAU Administration Chairman	<p>(a) Prof LAU's suggestion following from Mr CHAN KAM-lam's comments, that OC should apply to a tribunal rather than a court, to register a charge against the property titles of the owners who refused to pay their shares.</p> <p>(b) The Administration to provide a paper to respond to members' suggestions: including the Government advancing the outstanding payment and registering the amount as a charge against the owner's property title, as well as devising a dispute resolution mechanism between the OC and the non-paying owner through a tribunal</p>	Administration to take action as required in paragraph 3 of the minutes
012719 – 012934	Ms Cyd HO Chairman	Ms HO's comment that, if the Administration was to lend money to an OC to finance the prescribed inspection or repair works, the repayment responsibility of OC upon its dissolution, and the arrangement of foreclosure of the property upon realization of the charge should be clarified.	
012935 – 014142	Mr KAM Nai-wai Chairman Administration	<p>(a) Discussion on the impact on cost of prescribed repair works by using construction materials from different supply sources.</p> <p>(b) Discussion on Registrar Inspectors' (RIs) legal responsibilities to report subdivision of flats and other structural defects to BA.</p> <p>(c) The Administration's explanation that the Bill would require RIs to report</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>any structural defects observed in common parts or on external walls of a building, any cases of emergency and unauthorized building works in the common parts or on external walls of a building. The subsidiary legislation, codes of practice and practice notes to be prepared would elaborate on requirements.</p> <p>(d) The Administration's explanation that the subsidiary legislation, codes of practice and practice notes would prescribe details of RIs' duties as outlined in the proposed new section 30D.</p>	
014143 – 014810	Prof Patrick LAU Administration	<p>(a) Prof LAU's concern of whether an RI could identify building safety risks inside private premises just by inspecting the common parts or external walls.</p> <p>(b) The Administration's explanation that the professional institutes also agreed that serious structural alterations inside a private premises that caused danger to the building could be evident from signs of structural defects observed in common parts and on external walls.</p> <p>(c) The Administration's clarification that an RI's duties were considered to be discharged when he reported his visual observations of signs of structural defects in common parts and on external walls to BA. RIs were not required to give detailed assessment of structural safety of any building works inside individual private premises from the observations.</p>	

Time Marker	Speaker	Subject(s)	Action Required
014811 – 015245	Mr KAM Nai-wai Administration	(a) Mr KAM's comments that the proposed section 30D(5)(b) was not specific in requiring RIs to identify structural safety concerns inside a private premises from inspections of common parts and external walls. (b) The Administration's explanation that the subsidiary legislation, codes of practice and practice notes would provide details of RIs' inspection and reporting requirements. (c) The Administration would provide details about the provisions to be included in the subsidiary legislation under preparation that would specify the requirements of prescribed inspection and prescribed repair under the proposed new section 30D(1).	Administration to take action as required in paragraph 3 of the minutes
015246 – 015431	Chairman	The next meeting would be held at 4:30 pm on 25 November 2010.	