

立法會
Legislative Council

LC Paper No. CB(1)1268/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/09/2

Bills Committee on Buildings (Amendment) Bill 2010

Thirteenth meeting on
Thursday, 23 December 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 Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Dr Hon Priscilla LEUNG Mei-fun
Hon Tanya CHAN

Members absent : 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 LEE Wing-tat
Hon CHEUNG Hok-ming, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Starry LEE Wai-king, 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 Meeting with the Administration

Outstanding issues from previous meetings

(LC Paper No. CB(1)857/10-11(01) -- Administration's response to
issues raised at the meeting on
7 December 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)857/10-11(02) -- List of follow-up actions arising from the discussion at the meeting on 7 December 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)

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

Follow-up actions to be taken by the Administration

2. The Administration is requested to provide the following information --
- (a) To provide a copy of the draft Practice Notes for registered inspectors (RIs);
 - (b) Regarding the interpretation of the proposed new section 30D(7), to provide explanation on how the Administration could determine whether or not an RI appointed to carry out the prescribed inspection and supervise the prescribed repair in respect of a building is the same person or a person connected with the contractor appointed to carry out the prescribed repair for the same part of the building;

- (c) To provide explanation on and examples of "case of emergency" specified in the proposed new 30D(6) and 30E(6) where an RI or a qualified person must, respectively, notify the Building Authority; and
- (d) To provide information on comparable legislation or legal provisions (and the amount of money involved in that context) the Administration has considered in setting the interest rate in section 33(4) of the Buildings Ordinance (Cap. 123).

(Post-meeting note: The Administration's response in respect of (c) and (d) above was issued to members vide paper CB(1)993/10-11(01) on 6 January 2011.)

II Any other business

- 3. There being no other business, the meeting ended at 12:40 pm.

Council Business Division 1
Legislative Council Secretariat
10 February 2011

Bills Committee on Buildings (Amendment) Bill 2010

**Proceedings of the thirteenth meeting
on Thursday, 23 December 2010, at 10:45 am
In Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000540	Chairman	Opening remarks	
000541 – 001024	Administration	The Administration's briefing on its paper (LC Paper No. CB(1)857/10-11(01)) The Administration highlighted responses to issues raised at the previous meetings.	
001025 – 001655	Mr WONG Kwok-hing Chairman Administration	(a) Mr WONG's concern about how the practice notes (PNs) would, in practice, help prevent undesirable situations like tender-rigging. (b) The Administration's explanation that PNs, which promulgated good practices on tendering procedures based on experience gained from the Operation Building Bright (OBB), would be issued to Registered Inspectors (RIs). In addition to PNs, the Hong Kong Housing Society (HKHS) and Urban Renewal Authority (URA) would provide technical advice to owners and owners corporations (OCs) as necessary. (c) Mr WONG's enquiry of which department would take the lead in implementing the Mandatory Building Inspection Scheme (MBIS) and Mandatory Windows Inspection Scheme (MWIS). (d) The Administration's explanation that the Buildings Department (BD) would be the statutory authority responsible for the implementation of the MBIS and MWIS; whereas the HKHS and URA would continue to provide	

Time Marker	Speaker	Subject(s)	Action Required
		<p>technical and financial assistance to owners and OCs. The Home Affairs Department (HAD) would continue to provide assistance to OCs in general.</p>	
<p>001656 – 002917</p>	<p>Deputy Chairman Administration Chairman</p>	<p>(a) The Deputy Chairman's query whether OC management committees had followed closely the recommended procedures laid down in guidelines for the OBB or in the PNs.</p> <p>(b) The Administration's response that as regards tendering process in OBB projects, it was noted that owners or OCs in general observed the good tendering practice stipulated in the relevant guidelines. In MBIS, such best practice will be included in the relevant PNs. Professionals would be asked to advise owners or OCs to observe such practices. According to the past experience, professionals would generally follow the PNs.</p> <p>(c) The Administration's elaboration that in OBB there were cases where consultants advised the OCs to charge bidders an administrative fee for tendering for contracts of building maintenance. As a result, contractors not belonging to the same group of the consultants intended not to take part in the tendering exercise. The Administration specify modus operandi to avoid such practice in the PNs for MBIS/MWIS.</p> <p>(d) The Deputy Chairman's concern whether RIs could identify all the building problems (such as connection of foul water drains to storm water drains or unauthorized building works) during the prescribed building inspections.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(e) The Administration's response that RIs possessed adequate professional knowledge and the experience from OBB had suggested that building defects could be rectified if owners had a will to do so.</p> <p>(f) The Administration added that building inspection required professional skills and judgment apart from visual inspection. RIs should obtain approved building plans and relevant information to determine whether there were unauthorized building works required to be reported to the Building Authority (BA).</p> <p>(g) The Administration's explanation that RIs should inspect drainage connections in the common parts of a building for signs of possible sub-division of flats, and if RIs were aware of any unauthorized connection of drains or sewage pipes which might cause pollution, they should report their observations to BBD for further actions.</p>	
002918 – 004114	Mr KAM Nai-wai Administration Chairman	<p>(a) Mr KAM's concern that HKHS and URA would not be as hands-on in the implementation of MBIS and MWIS as compared with their previous involvement in OBB. He further expressed concern about the standard of RIs.</p> <p>(b) The Administration's explanation that HKHS and URA would not carry out prescribed inspections for OCs but would provide technical assistance and advice on good practices based on the experience drawn from OBB. The good practices would also be promulgated through the PNs. A multi-pronged approach with BD taking enforcement actions, RIs</p>	

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		<p>conducting inspections and HKHS and URA providing technical and financial assistance to OCs was considered an appropriate arrangement.</p> <p>(c) Mr KAM's suggestion that OCs should be required to obtain HKHS or URA's approval that the tendering procedure and standard of inspection under MBIS and MWIS conformed to the good practices laid down in PNs/Codes of Practice.</p> <p>(d) The Administration's response that under MBIS and MWIS, BA would carry out audit checks on RIs' inspection reports in respect of those elements covered under the prescribed inspection notices. Items beyond the scope of the prescribed inspection notices would be optional and separately listed out.</p> <p>(e) Mr KAM sought clarification on whether a failure to comply with PNs would be penalized.</p> <p>(f) The Administration's explanation that RIs would not be prosecuted for failure to observe guidelines promulgated in a PN, but disciplinary action might be taken if there was professional misconduct or negligence.</p> <p>(g) The Administration would provide a copy of the draft PNs concerning best tendering practices for members' reference.</p> <p>(h) Mr KAM's concern that the quality of building inspections would drop as the pool of inspectors would expand from the current 1 800 to 6 500 with the introduction of a registration scheme for inspectors.</p>	<p>Administration to take action as required in paragraph 2 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		(i) The Administration's response that RIs were already registered professionals of relevant disciplines whose professional competence was assured through the regulation and disciplinary regime of their respective professional registration boards or institutes.	
004115 – 004213	Deputy Chairman	The Deputy Chairman's comments that the Bills Committee had not yet taken a view on which classes of professionals should be eligible for registration as RIs. This issue should be deliberated when the corresponding provisions were examined.	
004214 – 004839	Dr Priscilla LEUNG Administration Chairman	<p>(a) Dr LEUNG's observation that some authorized persons (APs) charged an OC exceptionally low consultancy fees for supervision of the building repair, but it often turned out that the tender price was much higher than would otherwise be paid had an AP who would have charged a normal rate of consultancy fee be retained.</p> <p>(b) The Chairman's comment that the root cause of the problem was the ignorance of OCs and owners regarding building maintenance matters.</p> <p>(c) The Administration's response that the HKHS and URA were aware of the same problems during OBB. The expansion of the pool of inspectors to increase competition, the introduction of good practices through PNs and the involvement of the HKHS and URA in providing technical advice should be able to improve the situation.</p>	
004840 – 005550	Chairman Administration Mr KAM Nai-wai	<p><u>Clause-by-clause examination of the Bill</u></p> <p><i>30D – Appointment and duties of registered inspectors</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(a) The Chairman's enquiry of what an OC could do if an RI was temporarily unavailable, but sub-clause (9) prohibited another RI from being nominated to act in the first mentioned RI's stead.</p> <p>(b) The Administration's clarification that the OC would have to wait for the RI to resume work or appoint another RI under sub-clause (8).</p> <p>(c) Mr KAM's query of how the law would deal with cases where an RI ceased to perform the required service but did not inform BD about cessation of his employment.</p> <p>(d) The Administration's explanation that the power to terminate the employment of an RI rested with an OC. According to the regulations, an OC was required to complete a specified form and submit it to BD. Likewise, an RI was also required under the regulations to complete a specified form and submit it to the BD when he terminated his employment with the OC. Regardless of whether the employment was terminated by an OC or RI, an RI was required to provide information on the details of works completed so far and the outstanding works required to be done.</p>	
005551 – 011428	Administration Mr KAM Nai-wai Chairman	<p><i>30E – Appointment and duties of qualified persons</i></p> <p>(a) Mr KAM's enquiry of the difference between an RI and a qualified person (QP), and whether an RI could be a QP at the same time.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) The Administration's explanation that RIs were responsible for building inspection and works supervision, and could include registered engineers, architects and surveyors of the relevant disciplines; QPs were responsible for windows inspection and repair, and could include authorized persons, registered structural engineers, RIs, registered general building contractors and the newly introduced registered minor works contractors under the class, type and item of minor works in respect of windows registered under the Buildings Ordinance (Cap. 123) (BO). The Administration confirmed that an RI could also be a QP.</p> <p>(c) Mr KAM's enquiry of whether an OC or owner could appoint different persons to conduct prescribed inspection and prescribed repair in respect of a window.</p> <p>(d) The Administration's clarification that the Bill required the same QP to be responsible for carrying out the prescribed inspection of a window and supervision of the prescribed repair. It was up to the OC or owner to engage the same person or a different person to carry out the prescribed repair.</p> <p>(e) Mr KAM's enquiry of why different RIs could be appointed for carrying out a prescribed inspection and supervision of a prescribed repair in respect of a building.</p> <p>(f) The Administration's explanation that, in respect of a building, an option was given to an owner or OC to appoint the same or different person(s) for</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>carrying out a prescribed inspection and supervision of prescribed repair. The flexibility was provided to prevent possible conflict of interest. In contrast, the nature of a prescribed inspection and supervision of the prescribed repair in respect of windows was comparatively simple, and such work could preferably be handled by the same person or contractor.</p> <p>(g) Mr KAM's enquiry of why the owner or OC was not given the option of appointing different persons to carry out a prescribed inspection and supervision of prescribed repair in respect of a window.</p> <p>(h) The Administration's response that requirement of further division of work might be onerous and costly for owner or OC.</p> <p>(i) Mr KAM's enquiry of the meaning of "natural person".</p> <p>(j) The Administration's explanation that in law a "natural person" is a living individual whereas a body corporate or a company would not be a "natural person".</p>	
011429 – 012200	Ms Cyd HO Administration Chairman	<p>(a) Ms HO and Mr KAM suggested the Administration to consider amending the Bill to give owners or OCs the flexibility to decide if different persons should be engaged to carry out a prescribed inspection and supervision of the prescribed repair works in respect of windows.</p> <p>(b) Ms HO's enquiry of what constituted "case of emergency" under sub-clause (6) when a QP was required to notify BA, whether there</p>	

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		<p>were special channels for the notification, what immediate remedial measures the QP would be required to take, and whether the QP should also be required to notify the concerned owners or OC.</p> <p>(c) The Administration's explanation that "case of emergency" might include imminent danger of falling off of concrete elements or broken windows from buildings. Under such circumstances, QPs should handle the situation immediately as far as practicable and report to BA afterwards. Although there was no explicit requirements, QPs would normally inform the owners or OC concerned as they needed to carry out inspections within their premises.</p> <p>(d) Ms HO said there might be situations where QPs might avoid informing the owners or OCs if the incident was their fault. It would be unfair to the owners or OCs if they were, held liable for the incident. Sub-clause (6) should be slightly amended to specify that QPs should report to both BA and the owners or OC in any case of emergency.</p> <p>(e) The Administration would consider the suggestion.</p>	
012201 – 012903	Mr KAM Nai-wai Administration Chairman	<p>(a) Mr KAM's enquiry of how BA could judge whether the RI appointed under the proposed new section 30D to carry out a prescribed inspection and supervision of a prescribed repair was or was not the same contractor appointed to carry out the prescribed repair.</p> <p>(b) The Administration's explanation that where an RI was engaged to carry out a prescribed inspection and</p>	

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		<p>supervision of a prescribed repair, if he was also an "authorized signatory" (AS) of the registered contractor's firm, then he could not at the same time be the contractor to carry out the repair for the same part of the building. However, there was no such restriction on a prescribed inspection and supervision of the prescribed repair, and prescribed repair in respect of a window.</p> <p>(c) Mr KAM's follow-up query of whether the contractor firm could carry out the prescribed repair if the RI was its owner, director or shareholder but not the AS.</p> <p>(d) The Administration would provide explanation on how it could determine whether or not an RI appointed to carry out the prescribed inspection and supervise the prescribed repair in respect of a building is the same person or a person connected with the contractor appointed to carry out the prescribed repair for the same part of the building.</p> <p>(e) The Chairman and Mr KAM's suggestion for the Administration to consider requiring the RI appointed to carry out prescribed inspection to make a declaration that he was not connected with the contractor of the prescribed repair.</p>	<p>Administration to take action as required in paragraph 2 of the minutes</p>
012904 – 013310	Ms Cyd HO Chairman Administration	<p>(a) Ms HO's query of whether the RI was still required to report to BA after he had dealt with a case of emergency, or whether the RI would need to report such case if the situation was beyond his ability to carry out remedy. In such circumstances, Ms HO asked how long it would take for BA to take follow up action.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) The Administration's confirmation that the RI would be required to report to BA in both circumstances.</p> <p>(c) The Administration would provide explanation on and examples of "case of emergency" specified in the proposed new sections 30D(6) and 30E(6) where an RI or a QP must, respectively, notify BA.</p>	<p>Administration to take action as required in paragraph 2 of the minutes</p>
<p>013311 – 013341</p>	<p>Administration</p>	<p><i>30F – Duties of registered general building contractors and registered minor works contractors</i></p> <p>Members raised no question on the proposed new section 30F.</p>	
<p>013342 – 013805</p>	<p>Administration Ms Cyd HO</p>	<p><u>Clause 20 – Recovery of costs of works by Building Authority</u></p> <p>(a) Ms HO's enquiry about the calculation of surcharge and the interest that would be imposed in addition to the cost to be recovered from owners or OCs for works undertaken by BD in their default.</p> <p>(b) The Administration's explanation that BD would recover costs of the prescribed inspections or repair works carried out for the owners or OCs together with a 20% surcharge. If the owners or OCs failed to pay the amount, an interest rate of 10% per annum would be imposed.</p> <p>(c) Ms HO's follow-up enquiry of the basis on which the 20% surcharge was calculated.</p> <p>(d) The Administration's explanation that during the previous public consultation, the public agreed that a surcharge set at a sufficiently high level was appropriate to create a</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>deterrent effect against non-compliance with the notices. The Administration had also made reference to similar legislation in determining the proposed level.</p> <p>(e) The Administration would provide information on comparable legislation or legal provisions (and the amount of money involved in that context) the Administration had considered in prescribing the interest rate in section 33(4) of BO.</p>	<p>Administration to take action as required in paragraph 2 of the minutes</p>
<p>013806 – 014536</p>	<p>Administration Chairman Ms Cyd HO ALA7 Department of Justice (DoJ)</p>	<p><u>Clause 21 – Service of notices and orders</u></p> <p>(a) Members' discussion on whether a better Chinese rendition of "purporting" in the proposed new section 35(2) should be adopted.</p> <p>(b) In response to Ms HO's enquiry, the Administration confirmed that the certificate referred to in the proposed new section 35(2) should be the original copy.</p>	
<p>014537 – 014624</p>	<p>Administration</p>	<p><u>Clause 22 – Limitation of public liability</u></p> <p>Members raised no question on clause 22.</p>	
<p>014625 – 015141</p>	<p>Administration ALA7 DoJ Ms Cyd HO</p>	<p><u>Clause 23 – Regulations</u></p> <p>(a) The Administration pointed out that clause 23(2) (which proposes to replace "(i)" by "(i)" in the Chinese text of section 38(1)(ib)(ii)) was necessary despite the editorial change made in the current loose-leaf edition of BO. It was because the editorial change did not alter the text of the law, correction of subparagraph "(i)" to "(i)" in the authentic Chinese text of section 38(1)(ib)(ii) was still required to be done through an amendment bill.</p>	

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		<p>(b) In response to Ms HO, the Administration explained that the editor of the loose-leaf edition could make minor editorial revision under the Laws (Loose-Leaf Publication) Ordinance 1990.</p> <p>(c) The Administration would propose a Committee Stage amendment to clause 23(3) by deleting the proposed new section 38(1)(kg)(ii) because the provision was covered by the proposed new section 38(1)(kg)(i).</p>	
015142 – 015319	Mr KAM Nai-wai Administration	<p>(a) Mr KAM's query of whether section 38(1)(k) should be amended to align with the revised wording of section 37(1) by replacing the word "notices" by "forms, reports, notices and other documents".</p> <p>(b) The Administration's explanation that the proposed new section 38(1)(kg) should provide sufficient additional powers required in respect of the implementation of MBIS and MWIS. The suggested amendment was considered unnecessary.</p>	
015320 – 015525	Chairman	The next meeting would be held at 4:30 pm on 7 January 2010, and would start from clause 24.	