

立法會
Legislative Council

LC Paper No. CB(1)418/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/09/2

Bills Committee on Buildings (Amendment) Bill 2010

Eighteenth meeting on
Wednesday, 16 March 2011, at 8:30 am
in Conference Room B 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 Miriam LAU Kin-ye, 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 Starry LEE Wai-king, JP
Hon Tanya CHAN

Members absent : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Cyd HO Sau-lan
Dr Hon Priscilla LEUNG Mei-fun

Public officers : Mr Edward TO Wing-hang
Attending Acting Deputy Secretary for Development (Planning and Lands) 2

Mr Daniel FONG Siu-wai
Assistant Secretary for Development (Buildings) 1

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

Mr Manuel NG Man-Chun
Government Counsel
Department of Justice

Clerk in Attendance : Ms Annette LAM
Chief Council Secretary (1)7

Staff in Attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mr Daniel SIN
Senior Council Secretary (1)7

Action

I Confirmation of minutes

- | | | |
|-----------------------------|----|---------------------------------------|
| LC Paper No.CB(1)1564/10-11 | -- | Minutes of meeting on 7 January 2011 |
| LC Paper No.CB(1)1565/10-11 | -- | Minutes of meeting on 24 January 2011 |

The minutes of meeting held on 7 January 2011 and 24 January 2011 were confirmed.

II Meeting with the Administration

Discussion of outstanding issues

- LC Paper No. CB(1)1423/10-11(02) -- Updated Administration's response to issues raised at the meetings on 23 December 2010, 7 and 24 January 2011
- LC Paper No. CB(1)1423/10-11(03) -- List of follow-up actions arising from the discussion at the meeting on 11 February 2011
- LC Paper No. CB(1)1423/10-11(04) -- Administration's response to issues raised at the meetings on 23 December 2010 and 11 February 2011
- LC Paper No. CB(1)1584/10-11(01) -- List of follow-up actions arising from the discussion at the meeting on 1 March 2011
- LC Paper No. CB(1)1584/10-11(02) -- Administration's response to issues raised at the meetings on 1 March 2011
- LC Paper No. CB(1)1401/10-11(01) -- Letter from Hon KAM Nai-wai dated 21 February 2011
- LC Paper No. CB(1)1451/10-11(01) -- The Administration's response dated 28 February 2011 to the letter from Hon KAM Nai-wai

Clause-by-clause examination of the Bill

- LC Paper No. CB(1)1423/10-11(01) -- Updated paper on proposed major Committee Stage Amendments prepared by the Administration

Other relevant papers previously issued

- 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

File Ref: DEVB(PL-CR) 2-15/08 -- Legislative Council Brief

LC Paper No. LS42/09-10 -- Legal Service Division Report

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

Follow-up actions to be taken by the Administration

3. The Administration was requested to:-
- (a) provide detailed qualifications and experience requirements for registration as a registered inspector (RI);
 - (b) provide breakdown by number of contracts awarded to each of the 73 consultant companies that were awarded repair work contracts for the 313 buildings under the Operation Building Bright; and the proportion of these 73 companies in relation to the total number of companies that have submitted bids;
 - (c) consult the professional institutes concerned on the proposal to organize top-up training courses on the essential skill-set and knowledge necessary for registration as RIs;
 - (d) in consultation with the professional institutes concerned, provide an estimation of the number of existing registered building professionals who would be interested to register as RIs and provide services in building maintenance and repair,
 - (e) provide further information on the mechanism in place to prevent tender rigging among contractors and tenderers for building maintenance and repair works, including whether and how the Administration would advise the building owners or owners' corporations to require the RIs appointed for a prescribed inspection or supervision of prescribed repair in respect of a building to undertake in the contract to disclose any conflict of interest or potential conflict of interest; and

co-ordinate a reply from the professional institutes concerned on whether and how they would initiate disciplinary action against their members for non-compliance with the declaration on ethical commitments or found to

be engaging in unethical practice.

III Any other business

4. There being no other business, the meeting ended at 10:27 am.

Council Business Division 1
Legislative Council Secretariat
21 November 2011

Bills Committee on Buildings (Amendment) Bill 2010

**Proceedings of the Eighteenth meeting
on Wednesday, 16 March 2011, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000554 – 000628	Chairman	Opening remarks and confirmation of minutes of meetings held on 7 January 2011 (LC Paper No. CB(1)1564/10-11) and 24 January 2011 (LC Paper No. CB(1)1565/10-11)	
000629 – 001224	Administration	The Administration's briefing on its paper (LC Paper No. CB(1)1451/10-11(01)) The Administration highlighted responses to issues raised by Hon KAM Nai-wai in his letter of 21 February 2011.	
001225 – 002102	Prof Patrick LAU Chairman Administration	(a) Prof LAU's comments that the Administration should ensure sufficient supply of registered building professionals to meet the increasing service demands. (b) The Administration's response that registered architects (RAs), and different disciplines and divisions of registered professional engineers (RPEs) and registered professional surveyors (RPSs) respectively were qualified to register. It was expected that about 6 500 registered professionals would be qualified to register as Registered Inspectors (RIs). (c) The Administration's comments that the annual target of 2 000 buildings to be inspected under the Mandatory Building Inspection Scheme (MBIS) and the increase in public awareness of building safety would drive demand for inspection service and	

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		<p>more professionals would be willing to register as RIs.</p> <p>(d) Prof LAU's doubt that the Administration's estimate on the supply was too optimistic. He would consult the relevant professional institutes on the matter.</p> <p>(e) Prof LAU's request that training on the essential skills and knowledge necessary for registration as RIs be provided.</p> <p>(f) The Administration undertook to provide detailed qualifications and experience requirements for registration as an RI to facilitate Prof LAU's discussion with the professional institutes.</p>	<p>Administration to take action as required in paragraph 3 of the minutes</p>
<p>002103 – 004123</p>	<p>Mr KAM Nai-wai Administration Chairman</p>	<p>(a) Mr KAM's query whether adequate registered professionals were available when the legislation came into effect. From Operation Building Bright (OBB) experience, building inspection work were monopolized by a few consultant companies.</p> <p>(b) Mr KAM's query whether the Bill would take effect only when the number of RIs had reached the target.</p> <p>(c) Mr KAM supported the provision of training to equip RIs with the necessary skills.</p> <p>(d) The Administration's response that :</p> <p>(i) 73 consultant companies had tendered for projects in 313 buildings under OBB;</p> <p>(ii) these were professionals</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>qualified to carry out building inspection work. The new registration system would expand the pool of professionals to meet service demand;</p> <p>(iii) Prescribed inspection and repair notices would likely be issued around one year after the enactment of the Bill when there were sufficient service providers in the market.</p> <p>(iv) to avoid tender-rigging and monopoly of building inspection contracts, the Buildings Department (BD) would issue a practice note on best practices on tendering procedures for RIs and Qualified Persons. Owners may also make reference to the best practices in adopting the appropriate tendering procedures.</p> <p>(v) the new requirement for RIs to carry out prescribed inspection personally and supervise repair works would help ensure quality of work; and</p> <p>(vi) discussions with relevant professional institutes would be held to examine the feasibility of organizing training programmes.</p> <p>(e) The Administration would provide breakdown of the number of contracts awarded to each of the 73 consultant companies that were awarded repair work contracts for the 313 buildings</p>	<p>Administration to take action as required in paragraph 3 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>under the OBB; and the proportion of these 73 companies in relation to the total number of companies that have submitted bids.</p> <p>(f) The Chairman's comments on the importance of attracting qualified professionals to register as RIs and ensuring adequate supply of service providers. He asked whether the one-year period would be adequate for registration of sufficient number of RIs.</p> <p>(g) The Administration's response that:</p> <p>(i) around 300 to 500 active RIs would be sufficient to meet the anticipated demand for the 2 000 selected target buildings under MBIS each year;</p> <p>(ii) existing Authorized Persons (APs) would also be qualified for carrying out inspection work for MBIS; and</p> <p>(iii) the Administration aimed to support and encourage charging reasonable fee for work supervision to assure high quality workmanship;</p>	
004124 – 005030	Ir Dr Raymond HO Administration Chairman	<p>(a) Dr HO's comment that professionals did not find building inspection work profitable and attractive. He suggested technicians who were associates or associate members of professional institutes could also register as RIs.</p> <p>(b) Dr HO's suggestion of providing top-up training to different disciplines of engineers not directly related to</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>building inspection or repair to enable them to register as RIs.</p> <p>(c) The Chairman's query whether training programmes would be provided to equip technicians professionally for registration as RIs.</p> <p>(d) The Administration's response that:</p> <p>(i) scales of minimum professional fee had been provided by the relevant professional institutes. Owners / owners' corporations (OCs) might make reference to such information to facilitate their arranging tenders for works under MBIS; and</p> <p>(ii) the Administration would support and encourage charging reasonable fee for professional service in building inspection and supervision of repair works</p> <p>(e) The Administration would consult the professional institutes concerned on the proposal to organize top-up training courses on the essential skill-set and knowledge necessary for registration as RIs.</p>	<p>Administration to take action as required in paragraph 3 of the minutes</p>
005031 – 005820	Mr KAM Nai-wai Administration Chairman	<p>(a) Mr KAM sought clarification on whether the estimated number of 6 500 RIs were drawn from the 7 000 odd registered professionals.</p> <p>(b) The Administration's explanation that 90% of registered professionals surveyed previously had indicated interest to register as RIs. Accordingly, it was estimated that 6 500 RIs would be available from the</p>	

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		<p>existing pool of registered professionals and APs.</p> <p>(c) The Administration's comment that 300 to 500 active RIs would be sufficient to meet the service demand under MBIS.</p> <p>(d) Mr KAM's suggestion that a realistic estimation of the supply situation was by applying the ratio of consultants participating in OBB works on the 6 500 RIs.</p>	
005821 – 010353	Ir Dr Raymond HO Administration Chairman	<p>(a) Dr HO's view that the Administration's estimates of having 5% RIs undertaking building inspections and supervision of repairs was too optimistic, unless other qualified technicians were allowed to register as well.</p> <p>(b) Dr HO's request for the Administration to:</p> <p>(i) provide a more realistic estimate of supply of RIs to meet the market demand in the long run; and</p> <p>(ii) consult the professional institutes for a more realistic assessment of existing registered building professionals who would be interested to register as RIs.</p> <p>(c) The Administration reassured members that about 300 to 500 active RIs would be sufficient to cope with the service demand. It undertook to provide, in consultation with the professional institutes concerned, an estimate of the number of existing registered building professionals who</p>	Administration to take action as required in paragraph 3 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>would be interested to register as RIs and provide services in building maintenance and repair.</p>	
010411 – 010617	Administration Chairman	<p>The Administration's briefing on the draft Code of Practice as well as a draft Practice Note on Best Practices on Tendering Procedures.</p>	
010618 – 011630	Administration Ms Audrey EU Chairman Mr CHAN Kam-lam	<p>Proposed Committee Stage Amendments – Surcharge for Defaulted Works</p> <p>(a) The Administration's briefing on the surcharge for defaulted works as one of the proposed major Committee Stage Amendments (CSAs) (LC Paper No. CB(1)1423/10-11(01)).</p> <p>(b) The Administration undertook to introduce CSAs to give the Building Authority (BA) a discretion of imposing a surcharge up to a ceiling of 20% of the cost of defaulted works carried out by BD.</p> <p>(c) Ms EU's query about the actual amount of surcharge and typical cases for the surcharge to be imposed.</p> <p>(d) The Administration's response that the actual amount of surcharge levied would vary from 0% to 20% of the cost incurred by BA, depending on the urgency of the works and the owners' response to BA's order/notice.</p> <p>(e) Mr CHAN shared the view that the proposed arrangement to impose a variable surcharge of up to 20% was appropriate to achieve a deterrent effect and to ensure public safety. He reminded the Administration to exercise discretion properly in implementing the above arrangement</p>	

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		as appropriate.	
011647 – 012028	Administration Ir Dr Raymond HO	<p>Relationship between Registered Inspectors and Contractors</p> <p>(a) The Administration's briefing on the relationship between registered inspectors and contractors, including the arrangement under the proposed new section 30D(7) and the draft Practice Notes on Best Practices on Tendering Procedures which included suggestions that RIs should sign a declaration on compliance with the ethical commitments and disclose any conflict of interest or potential conflict of interest.</p> <p>(b) Dr HO supported the above proposed measure and urged the Administration to consider extending similar measures to minor works.</p> <p>(c) The Administration undertook to consider Dr HO's suggestion.</p>	
012029 – 012711	Mr James TO Chairman Administration	<p>(a) Mr TO's query about the increased cost involved for engaging different professionals for inspection and repair. He urged the Administration to consider incorporating ethical commitment clauses in the tender documents, and in the contracts with the building professionals to prevent tender-rigging.</p> <p>(b) The Administration had not made the cost comparison as it was provided in the Bill that the RI concerned could not act as the contractor for the repair of the same part of the building.</p> <p>(c) Mr TO's query whether failure of an RI to disclose any link with a contractor</p>	

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		<p>(ethical commitment clause) could be liable for conspiracy to defraud.</p> <p>(d) The Administration's explanation that the ethical commitment clause was part of the agreement between the property owners and RIs.</p> <p>(e) Mr TO's suggestion that RIs should state explicitly in any service contract that there would be no conflict of interest with the contractors and any such interest would be disclosed.</p> <p>(f) The Administration's response that it would remind RIs of the best practices on tendering procedures and remind owners to be conscious of those ethical commitment provisions.</p> <p>(g) The Administration undertook to provide further information on the mechanism in place to prevent tender rigging among contractors and tenderers for building maintenance and repair works, including whether and how the Administration would advise the building owners or OCs to require the RIs appointed for a prescribed inspection or supervision of repair in respect of a building to undertake in the contract to disclose any conflict of interest or potential conflict of interest.</p>	<p>Administration to take action as required in paragraph 3 of the minutes</p>
012712 – 013650	Ms Miriam LAU Administration	<p>(a) Ms LAU's query about how the Bill would regulate:</p> <p>(i) the working relationship between an RI and the contractor of prescribed repair; and</p> <p>(ii) an RI assigning repair works to his acquaintances.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) The Administration's explanation that:</p> <ul style="list-style-type: none"> (i) the proposed new section 30D(7) required that the RI responsible for a prescribed inspection must not act, at the same time, as a contractor to carry out the prescribed repair for the same part of the building; (ii) if an RI breached the ethical commitment clause and mis-conducted himself or committed any offence under the Buildings Ordinance (BO) in the repair works, disciplinary action or prosecution action under the BO might be initiated against the RI concerned; (iii) The owners, being a party of the ethical commitment clause, could also take civil action against the RI concerned; and (iv) the contractor appointed for prescribed repair would be closely supervised by an RI to ensure the repair would be carried out in accordance with the repair proposal. <p>(c) Ms LAU further enquired whether the professional institutes concerned had the power to initiate disciplinary actions against their members for non-compliance with ethical commitment provisions.</p> <p>(d) The Administration undertook to co-ordinate a reply with the professional institutes concerned on whether and how they would initiate disciplinary actions against their members for non-</p>	<p>Administration to take action as required in paragraph 3 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>compliance with the declaration on ethical commitments or found to be engaging in unethical practice.</p>	
013717 – 014944	Ir Dr Raymond HO Administration Chairman	<p>Proposed Committee Stage Amendments – Warrants for Entry into Private Premises</p> <p>(a) Dr HO expressed strong views against the proposal of applying for warrants for entry into private premises for inspection. He cautioned that the Administration should be mindful of the divergent views expressed by members.</p> <p>(b) The Administration referred members to the provision regarding obtaining a warrant for entry into private premises under "Powers of Building Authority" in Cap.123 Section 22(1A) (Annex B of LC Paper No. CB(1)1423/10-11(01)).</p> <p>(c) The Chairman pointed out that there were divergent views expressed by members and consensus was yet to be reached. He suggested that the Administration should reconsider whether or not to move the CSAs.</p>	
014135 – 014220	The Administration Chairman	<p>Administration's response to the letter from Hon KAM Nai-wai (LC Paper No. CB(1)1451/10-11(01)).</p>	
014221 – 014944	Chairman Administration Ir Dr Raymond HO	<p>(a) Briefing by the Administration on the signboard control system (LC Paper No. CB(1)1584/10-11(01) and (02)).</p> <p>(b) Dr HO's enquiry on the long-term control mechanism of unauthorized signboards and whether the RI appointed to carry out a prescribed inspection in respect of the common</p>	

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		<p>parts and external walls of a building would be required to identify unauthorized signboards.</p> <p>(c) The Administration's explanation that:</p> <p>(i) Under the minor works control system, new signboards up to a certain dimension could be erected by registered minor works contractors without BA's prior approval and consent;</p> <p>(ii) Installation of larger signboards would continue to require the prior approval and consent of BA. Unauthorized signboards not joining the proposed signboard control system would be subject to BD's enforcement actions; and</p> <p>(iii) an RI appointed to carry out a prescribed inspection would be required to identify unauthorized building works (UBWs), including unauthorized signboards, in the common parts and the external walls of the building, assess the safety conditions of these UBWs, and report to BA.</p>	
014947 – 015754	Ms Audrey EU Chairman Administration Mr KAM Nai-wai Ir Dr Raymond HO	<p>(a) Ms EU's enquiry on:</p> <p>(i) the definition of "signboard"; and</p> <p>(ii) the number of existing signboards approved under the BO.</p> <p>(b) The Administration's explanation that:</p> <p>(i) the term "signboard" was</p>	

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		<p>defined in Section 2 of BO;</p> <p>(ii) signboards included those structures erected solely for the purpose of displaying any advertisement or any visual image. They were regulated under the BO;</p> <p>(iii) structure on external walls of a building with decorative lights displaying information would still be regarded as a signboard under the BO; and</p> <p>(iv) there were about 600 existing signboards approved under the BO.</p> <p>(c) Mr KAM and Dr HO sought the Administration's confirmation on whether decorations (such as lightings) with any messages would still be considered as "signboard" under BO.</p> <p>(d) The Administration's confirmation that pure decorations hanged on external walls of a building would not fall under the definition of "signboard".</p>	
015755 – 015836	Chairman	The next meeting would be held on 28 March 2011.	