

立法會
Legislative Council

LC Paper No. CB(1)2436/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/09/2

Bills Committee on Buildings (Amendment) Bill 2010

Twenty-second meeting on
Tuesday, 7 June 2011, at 4:30 pm
in Conference Room B of the Legislative Council Building

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
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
Hon CHEUNG Hok-ming, GBS, 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 : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Deputy Chairman)
Dr Hon Margaret NG
Prof Hon Patrick LAU Sau-shing, SBS, JP

Public officers : Mr Tommy YUEN Man-chung, JP
Attending Deputy Secretary for Development (Planning and Lands) 2

Mr Daniel FONG Siu-wai
Acting Principal Assistant Secretary for Development
(Planning and Lands)³

Mr LAM Siu-tong
Deputy Director of Buildings

Mr Alex CHOW Kim-ping
Assistant Director / Support
Buildings Department

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)2371/10-11 -- Minutes of meeting on
1 March 2011)

The minutes of the meeting held on 1 March 2011 were confirmed.

II Meeting with the Administration

Discussion of outstanding issues

(LC Paper No. CB(1)1896/10-11(02) -- Administration's response to
issues raised at the meetings on
11 February, 16 and
28 March 2011

- LC Paper No. CB(1)2230/10-11(01) -- Updated Administration's response to issues raised at the meetings on 16 March 2011
- LC Paper No. CB(1)2349/10-11(01) and (02) -- Administration's response dated 30 May 2011 to the letters dated 20 April 2011 from Hon KAM Nai-wai
- LC Paper No. CB(1)2373/10-11(01) -- The Administration's proposed major Committee Stage Amendments
- LC Paper No. CB(1)2350/10-11(01) -- Letters from Hon KAM Nai-wai dated 30 May 2011 (Chinese version only) on the proposed major Committee Stage Amendments to the Bill)

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
- LC Paper No. CB(1)2020/10-11(01) -- Letter from Hon KAM Nai-wai dated 20 April 2011 (Chinese version only) on the Administration's response to members' questions on the Buildings (Amendment) Bill 2010
- LC Paper No. CB(1)2020/10-11(02) -- Letter from Hon KAM Nai-wai dated 20 April 2011 (Chinese version only) on the Buildings (Amendment) Bill 2010)

2. The Committee deliberated (Index of proceedings attached at **Appendix**).
3. The Bills Committee noted that the Administration would remove the proposed Committee Stage Amendments (CSAs) relating to the new building safety initiatives and would pursue the provisions of the proposed CSAs through a separate bill as soon as possible.

III Any other business

4. The Chairman concluded that the Bills Committee supported the Administration's proposal to resume the Second Reading debate on the Bill at the Council meeting on 29 June 2011. The Chairman would report to the House Committee on 17 June 2011.
5. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 1
Legislative Council Secretariat
7 August 2012

Bills Committee on Buildings (Amendment) Bill 2010

**Proceedings of the Twenty-two meeting
on Tuesday, 7 June 2011, at 4:30 pm
In Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000148 – 000411	Chairman	Opening remarks and confirmation of minutes of meeting held on 1 March 2011 (LC Paper No. CB(1)2371/10-11).	
000412 – 001239	Administration Chairman	The Administration's briefing on its paper (LC Paper No. CB(1)2373/10-11(01)). In response to the Chairman's query, the Administration indicated that a separate bill would be introduced in the coming legislative session to pursue the proposed new building safety-related Committee Stage Amendments (CSAs).	
001240 – 001431	Mr WONG Kwok-hing Administration	(a) Mr WONG sought the Administration's clarifications on the proposed CSAs being removed from the current legislative exercise. (b) The Administration's clarifications on the five proposed CSAs being removed from the current legislative exercise as stated in LC Paper No. CB(1)1423/10-11(01).	
001432 – 002026	Mr KAM Nai-wai Chairman Administration ALA7	(a) Mr KAM sought the Administration's clarifications on the penalty terms for refusing to share the cost of prescribed inspection or repair works after removing the proposed CSAs from the Amendment Bill. (b) The Administration's response that details were recapitulated in LC Paper No. CB(1)1423/10-11(01) circulated to members.	
002027 – 002425	Ms Audrey EU Mr KAM Nai-wai Administration	(a) Ms EU's query about whether criminal liability for refusing to share the cost of prescribed inspection or repair works would remain.	

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		<p>(b) The Administration's response that details were described in Clause (4C) of section 40 in the "Marked-up Version Showing Administration's Latest Proposed CSAs to Buildings (Amendment) Bill 2010" (Annex B of LC Paper No. CB(1)2373/10-11(01)). Imprisonment terms had been removed but the proposed fine would be raised from level 3 to level 4.</p> <p>(c) Mr KAM sought the Administration's clarification on the imprisonment term stipulated in Clause (4B) of section 40.</p> <p>(d) The Administration's response that Clauses (4B) and (4C) referred to different types of offences. Clause (4B) referred to Section 39B (1) of the Buildings Ordinance (Cap. 123) (BO).</p>	
002426 – 002739	Miss Tanya CHAN Administration Chairman	<p>(a) Miss CHAN's query about how and when the Administration would introduce another bill to cover the five proposed CSAs.</p> <p>(b) The Administration's response that a separate bill would be introduced in the coming legislative session.</p>	
002740 – 003330	Ms Miriam LAU Chairman Administration	<p>(a) Ms LAU expressed concern about the proposal of allowing BA's staff to apply for a court warrant to enter into private premises to investigate building works associated with sub-divided units. Her views that the problem of sub-divided units should be dealt with through a separate piece of legislation.</p> <p>(b) Ms LAU's agreement to the Administration's decision to remove the five proposed CSAs from the current legislative exercise and to</p>	

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		<p>pursue the provisions by a separate bill as soon as possible.</p> <p>(c) The Administration's response that (i) BD would work out the work flow and guidelines of applying for court warrant and (ii) the industry was being consulted on the control of building works associated with sub-divided units, including the proposal to designate such building works as minor works.</p>	
003331 – 004556	Ms Audrey EU Administration Ms Miriam LAU ALA7 Chairman	<p>(a) Ms EU urged the Administration to carefully consider the circumstances for applying for a court warrant before putting forward a separate bill.</p> <p>(b) Ms EU and Ms LAU sought the Administration's clarifications on the difference in the penalty terms as stipulated in sections 39B (1) and 39B (1A).</p> <p>(c) The Administration's explanation that owners who refused to contribute to the cost of the prescribed inspection or repair works would be subject to a fine, whereas those who obstructed a person employed by owners' corporation (OC) in carrying out the inspection or investigation works would be subject to a fine and imprisonment.</p> <p>(d) The Administration's clarification that with the introduction of section 39B (1A), section 39B (1)(c) would be deleted.</p>	
004557 – 005008	Miss Tanya CHAN Chairman ALA7 Administration	<p>(a) Miss CHAN's query whether it was easier for the Administration to use the blue bill as a basis in discussing the remaining provisions of the Bill with members.</p>	

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		(b) The Administration's response that there was a need to supplement the blue bill with the marked-up version of the Bill in examining the latest amendments since the marked-up version contained other agreed technical amendments which were not related to the five proposed CSAs.	
005009 – 011516	Mr KAM Nai-wai Administration Chairman	<p>(a) Mr KAM's concern that the Practice Note on Best Practices on Tendering Procedures for Engagement of Registered Inspector (RI) / Qualified Person (QP) and Registered Contractors under the MBIS and MWIS was not legally enforceable. He would move a CSA to provide that a RI / QP must comply with the relevant Practice Notes.</p> <p>(b) The Administration's response that as the tendering process was not directly relevant to building safety, which is the primary objective of the BO, it would not be appropriate to legislate for the adoption of the best practices on tendering procedures under the BO.</p> <p>(c) The current disciplinary mechanisms adopted by the Administration and the various professional institutes/ registration boards would be sufficient to guard against infringement of the relevant codes and misconduct.</p>	
011517 – 012005	Ms Starry LEE Administration Mr KAM Nai-wai	<p>(a) Ms LEE's query the Administration's rationale for its objection to make the Practice Notes legally enforceable.</p> <p>(b) Mr KAM's views that the code of practice should have the legal status similar to the code of practice issued by the Secretary for Home Affairs under section 44 of the Building Management Ordinance (Cap. 344).</p>	

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		<p>(c) The Administration's response that the tendering process was a building management and private contractual issue on which building owners themselves should make the final decision. It was not appropriate to legislate for the adoption of the best practices on tendering procedures under the BO, the legislative intent of which was to ensure building safety through controlling the planning, design and construction of buildings.</p>	
<p>012006 – 013922</p>	<p>Ms Audrey EU Administration Mr KAM Nai-wai Ms Miriam LAU</p>	<p>(a) Ms EU's enquiry whether:-</p> <p>(i) there was any other legislation whereby the code of practice or practice notes were legally enforceable; and</p> <p>(ii) Mr KAM would consider incorporating the consequences of non-compliance of the Practice Notes in his proposed CSA.</p> <p>(b) The Administration's explanation of the three-tier framework in regulating building safety standards and requirements. Matters such as duties of RIs / QPs, standards and requirements of the prescribed inspection and repair, administrative procedures, etc. might be revised from time to time, and were more appropriate to be prescribed in the subsidiary legislation and code of practice.</p> <p>(c) Mr KAM's view that making the Practice Notes legally binding on RIs and QPs would have stronger deterrent effects. He would consider Ms EU's suggestion of incorporating the penalty terms in his proposed CSA.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(d) Ms LAU's query on the effectiveness of mandating compliance with the best practice on tendering procedures.</p> <p>Mr KAM's response that the Practice Notes were the main sources of reference for building professionals on best practices on tendering procedures. They should be given legal effects and be enforceable.</p>	
013923 – 014554	Mrs Sophie LEUNG Administration Chairman	<p>(a) Mrs LEUNG's query on how far existing Practice Notes issued by the Administration were observed by the building sector.</p> <p>(b) The Administration's response that the guidelines in the existing Practice Notes had been generally observed by the industry.</p> <p>(c) The Chairman expressed reservation that the Practice Notes should be legally binding.</p> <p>The Chairman's enquiry about making the owners and the public aware of the practice note on best practices on tendering procedures.</p>	
014555 – 015017	Ms Miriam LAU Administration Chairman	<p>(a) Ms LAU's query on whether legally binding practice notes would be effective in curbing tender-rigging activities. She took the view that the current legal framework was sufficient to allow legal remedies to be sought if there was a breach of law in the tendering process.</p> <p>(b) The Administration's response that publicity materials would be made available to raise the awareness of the public/owners/OCs about the best practices on tendering procedures for MBIS/MWIS works.</p>	

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015018 – 015754	Chairman ALA7 Administration	<p>(a) In response to the Chairman's request, ALA7 highlighted the latest position of the Administration's proposed amendments after the withdrawal of the five proposed CSAs (Annex A of LC Paper No. CB(1)2373/10-11(01)):-</p> <p>(i) Clause 19 - In the proposed section 30B(11), by adding "not exceeding" after "surcharge of".</p> <p>(ii) Clause 25 - By deleting subclause (1) and substituting – "(1) Section 39B(1) is amended by repealing everything before paragraph (a) and substituting – "(1) A person who has been notified by an owners' corporation of a building that an order has been served on the owners' corporation under section 24(1), 26(1), 26A(1) or (3), 27A(1) or (2B), 27C(1) or (4) or 28(2)(a), (3) or (5), or a notice has been served on the owners' corporation under section 30B(3), (5) or (6) or 30C(3), in relation to any common parts of the building must not –".</p> <p>(iii) Clause 27(8) - In the proposed section 40(2AD), by deleting "30E(2)" and substituting "30E(2)(a)".</p> <p>(iv) Clause 44 - By deleting "(as amended by section 47 of the</p>	

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		amending Ordinance)" and adding "Fire Safety (Commercial Premises) Ordinance 45A. Offence to disclose information obtained officially" and "Fire Safety (Buildings) Ordinance 47. Offence to disclose information obtained officially".	
015755-015949	Chairman	(a) The Chairman requested ALA7 to check if all the amendments were correctly presented. (b) The Bills Committee supported the Administration's proposal to resume the Second Reading debate on the Bill at the Council meeting on 29 June 2011.	