

立法會
Legislative Council

LC Paper No. CB(1)2368/03-04

(These minutes have been seen
by the Administration)

Ref : CB1/BC/9/02/2

Bills Committee on Buildings (Amendment) Bill 2003

**Minutes of twentieth meeting held on
Friday, 14 May 2004, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Cyd HO Sau-lan (Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Margaret NG
Hon Miriam LAU Kin-yee, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon LI Fung-ying, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Andrew WONG Wang-fat, JP
Hon Abraham SHEK Lai-him, JP
- Public officers attending** : Ms Olivia NIP
Deputy Secretary for Housing, Planning and Lands
(Planning and Lands)²
- Mr Rick CHAN
Assistant Secretary for Housing, Planning and Lands
(Buildings)¹
- Mr AU Choi-kai
Assistant Director (Support)
Buildings Department

Mr HO Kwok-hung
Chief Building Surveyor (Legal)
Buildings Department

Mr CHENG Kim-fung
Senior Assistant Law Draftsman
Department of Justice

Ms Selina LAU
Government Counsel
Department of Justice

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (1)4

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Ms Connie SZETO
Senior Council Secretary (1)4

Action

I Confirmation of minutes

- (LC Paper No. CB(1)1718/03-04 -- Minutes of meeting on 1 April 2004
LC Paper No. CB(1)1719/03-04 -- Minutes of meeting on 16 April 2004
LC Paper No. CB(1)1720/03-04 -- Minutes of meeting on 23 April 2004)

The minutes of the meetings held on 1, 16 and 23 April 2004 were confirmed.

II. Meeting with the Administration

- (LC Paper No. CB(1)1810/03-04(01) -- List of follow-up actions arising from the discussion at the meeting on 7 May 2004
LC Paper No. CB(1)1810/03-04(02) -- Letter dated 13 May 2004 from the Administration responding to members' questions raised at the meeting on 7 May 2004

Action

- LC Paper No. CB(1)1717/03-04(02) -- Supplementary information provided by the Administration on relationship between individual owners and owners' corporations
- LC Paper No. CB(1)1717/03-04(03) -- Letter dated 4 May 2004 from the Administration responding to members' concerns raised at the meeting held on 23 February 2004
- LC Paper No. CB(1)1717/03-04(04) -- Draft Committee Stage Amendments (CSAs) to the Bill proposed by the Administration
- LC Paper No. CB(1)1747/03-04(01) -- Marked-up copy of the draft CSAs to the Bill prepared by the Legal Service Division
- LC Paper No. CB(3)566/02-03 -- The Buildings (Amendment) Bill 2003)

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

Follow-up actions to be taken by the Administration

3. The Administration was requested:

Section 24C of the Buildings Ordinance (BO)

- (a) to note members' view that the public be made known of the performance pledge in relation to the time required by the Buildings Department in lodging in the Land Registry an appropriate instrument of satisfaction against a warning notice; and

Section 39B of BO

- (b) to review the merits of retaining section 39B and the viability of narrowing its scope to confine application to obstruction of owners' corporation in complying with orders in relation to any common parts of a building and in connection with unauthorized building works and contravention of provisions of a serious nature.

Action

III. Any other business

Date of next meeting

4. Members noted that the next meeting would be held on Thursday, 20 May 2004, at 8:30 am.
5. The meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
12 July 2004

**Proceedings of the twentieth meeting of the
Bills Committee on Buildings (Amendment) Bill 2003
on Friday, 14 May 2004, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000239	Chairman	Confirmation of minutes of the meetings held on 1, 16 and 23 April 2004 (LC Paper Nos. CB(1)1718/03-04, CB(1)1719/03-04 and CB(1)1720/03-04)	
000240 - 002148	SALA1 Chairman Administration Ms Miriam LAU Miss Margaret NG	<p>Matters arising from the meeting on 7 May 2004 (LC Paper No. CB(1) 1810/03-04(02))</p> <p><u>Clause 32 - maintenance of emergency vehicular access (EVA) (proposed section 29A of the Buildings Ordinance (BO))</u></p> <p>(a) SALA1's view that as section 29(1) was not a criminal provision, it might not be necessary to delete the words "to the satisfaction of the Building Authority (BA)" in the provision</p> <p>(b) The Administration's explanation that as section 29(2) had already set out the circumstances under which an EVA was considered not being maintained in good order and their consequences, deleting the words would remove any uncertainty over the responsibility of the owners of EVA resulting from the words</p> <p>(c) A member's concern that deletion of the words might undermine BA's power in requiring owners to maintain EVA in good order</p> <p>(d) The Administration's confirmation that owners were required to submit plans for construction of EVA for approval by BA, and that design</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>standards and necessary requirements of EVA would be set out in guidelines and Codes of Practice</p> <p>(e) Committee Stage amendment (CSA) to Section 29(1) was accepted by members</p>	
002149 - 002439	Chairman Administration	<p><u>Section 8B of BO</u></p> <p>The Administration's advice that it had taken an average of 8.4 months for the relevant disciplinary boards to complete the disciplinary proceedings for the five cases from 1997 to 1999 and that the actual time taken for individual cases varied from 2 to 19 months</p>	
002440 - 003233	Ms Miriam LAU Administration Chairman Dr TANG Siu-tong Ms LI Fung-ying	<p><u>Section 24C</u></p> <p>(a) The Administration's advice that the Buildings Department (BD) would provide a performance pledge to lodge in the Land Registry within 3 weeks an appropriate instrument of satisfaction against a warning notice if BA was satisfied with the works carried out by the concerned owners</p> <p>(b) Members' suggestions on means to make known BD's performance pledge to the public, e.g. BD's website, letter to owners etc.</p>	The Admin. to take note of members' views
003234 - 003356	SALA1 Administration	<p><u>Section 29A(4)</u></p> <p>The Administration's explanation that it was necessary to retain the words "in the opinion of BA" in the provision to enable BA to act expeditiously to carry out emergency works on EVA if the conditions were found dangerous</p>	

Time marker	Speaker	Subject(s)	Action required
003357 - 004605	Administration Chairman SALA1	<p>Clause-by-clause examination of the Bill together with CSAs (LC Paper No. CB(1)1747/03-04(01))</p> <p><u>Clauses 33 to 37 - sections 36(2A), 36A, 36B, 38, 39A of BO</u></p> <p>Members noted the proposed CSAs</p>	
004606 - 013244	Chairman Ir Dr Raymond HO Administration Mr Albert CHAN Ms Aurdrey EU Ms LI Fung-ying Mr WONG Sing-chi	<p><u>Clause 38 - obstruction of owners' corporation (OC) (proposed section 39B of BO)</u> (LC Paper No. CB(1)1717/03-04(02))</p> <p>(a) The Administration's proposal to delete the clause from the Bill having regard to the contentious issues involved, e.g. owners might be prosecuted for causing obstruction to OC even if the decisions of OC were unreasonable</p> <p>(b) Members' concern that if the clause was deleted, it would be difficult for OC to carry out works to comply with statutory orders, resulting in prosecution of OC</p> <p>(c) Members' view that an effective mechanism to resolve disputes between individual owners and OC in relation to the manner of complying with a statutory order issued by BA should be set up</p> <p>(d) The Administration's advice that it would be more appropriate for such disputes to be resolved under the Building Management Ordinance and through mediation</p> <p>(e) Enquiry about the scope of proposed section 39B</p>	The Secretariat to re-circulate the paper LC

Time marker	Speaker	Subject(s)	Action required
		<p>(f) Viability of retaining section 39B with its scope narrowed to cover obstruction of OC in complying with orders in relation to common parts of a building and in connection with unauthorized building works and contravention of provisions of a serious nature</p>	<p>Paper No. CB(1)237/03-04(03)</p> <p>The Admin. to consider this under para. 3(b) of the minutes</p>
013245 - 015201	Administration Chairman Ir Dr Raymond HO	<p><u>Clause 39 - offences (section 40 of BO)</u> (LC Paper No. CB(1)1717/03-04(03))</p> <p>(a) Dr Raymond HO's query about the rationale for increasing fines by three times or four times for different offences</p> <p>(b) The Administration's advice that factors, e.g. gravity of the offences, frequency of charges, public concern on the relevant offences had been taken into consideration. The revised proposal of linking the level of fines with the composite Consumer Price Index (CPI) was supported by the Hong Kong Institution of Engineers (HKIE)</p> <p>(c) The Administration's explanation that the CPI for 2003 was about four times the level of 1979 when the fines for offences under sections 40(1), (1B), (2A),(2B) and 2(C) were last revised and about three times the level of 1981 when the fines for offences under sections 40(2AB) and (2AC) were first set</p>	

Time marker	Speaker	Subject(s)	Action required
015202 - 020427	Ms LI Fung-ying Ir Dr Raymond HO Chairman Administration	<u>Level of fines for offence under section 40(2AA) of BO</u> (a) Ms LI Fung-ying's enquiry about the rationale for keeping the existing level of fine at \$250,000 for the offence and deleting the 3-year imprisonment term (b) Dr Raymond HO's comment that HKIE had raised strong opposition to the severe imprisonment penalty for the offence involving a mere failure to notify BA of an error in an approved plan (c) The Administration's explanation that it was the responsibility of authorized person, registered structural engineer and building contractors to supervise the carrying out of building works and to ensure its compliance with BO. The penalty provision would act as a deterrent to the offence. The Administration shared the view of HKIE that the gravity of the offence did not deserve an imprisonment penalty, hence the proposed deletion.	
020428 - 020433	Chairman	Date of next meeting	