

立法會
Legislative Council

LC Paper No. CB(1)1112/07-08
(These minutes have been seen
by the Administration)

Ref: CB1/BC/1/07

Bills Committee on Buildings (Amendment) Bill 2007

**Minutes of fifth meeting on
Tuesday, 26 February 2008, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon KWONG Chi-kin (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
(Deputy Chairman)
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, GBS, JP
Hon LEE Wing-tat
Hon Daniel LAM Wai-keung, SBS, JP
Hon CHEUNG Hok-ming, SBS, JP
- Public Officers attending** : Development Bureau

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

Mr Edward TO Wing-hang
Principal Assistant Secretary (Planning and Lands)3

Mr Jerry CHEUNG Chun-yu
Assistant Secretary (Buildings)1

Buildings Department

Mr CHEUNG Hau-wai, JP
Director of Buildings

Mr LAM Siu-tong
Assistant Director (Support)

Department of Justice

Mr Allen LAI Kai-pang
Senior Government Counsel

Ms Carmen CHU Ying-hung
Senior Government Counsel

Miss Selina LAU Suet-ching
Senior Government Counsel

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Miss Monna LAI
Assistant Legal Adviser 7

Ms Guy YIP
Senior Council Secretary (1)5

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)880/07-08 -- Minutes of meeting on 26 January 2008)

The minutes of the meeting held on 26 January 2008 were confirmed.

- II. Paper issued since last meeting**
(LC Paper No. CB(1)878/07-08(01) -- Submission from Friends of the Earth (HK))
(*Chinese version only*)

2. Members noted that the above paper had been issued for the Bill Committee's information.

III. Meeting with the Administration

- (LC Paper No. CB(1)785/07-08(02) -- Administration's response to views submitted by various organizations on the Buildings (Amendment) Bill 2007
- LC Paper No. CB(1)785/07-08(03) -- Letter dated 11 February 2008 to the Development Bureau
- LC Paper No. CB(1)882/07-08(01) -- Letter dated 25 February 2008 from the Development Bureau
- LC Paper No. CB(1)927/07-08(01) -- Letter dated 25 February 2008 to the Development Bureau
(*tabled at the meeting and subsequently issued on 28 February 2008*)
- LC Paper No. CB(1)927/07-08(02) -- Administration's paper on preliminary draft of Building (Minor Works and Related Matters) Regulation and Schedule of Minor Works
(*tabled at the meeting and subsequently issued on 28 February 2008*)

Other relevant papers

- LC Paper No. CB(3)173/07-08 -- The Bill
- LC Paper No. CB(1)473/07-08(01) -- Marked-up copy of the Bill prepared by the Legal Service Division
- Ref: DEVB(PL-B) 30/30/120 -- The Legislative Council Brief on "Buildings (Amendment) Bill 2007" issued by the Development Bureau)

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

- Admin 4. The Administration was requested to provide the following information:
- (a) response to the views expressed by Friends of the Earth (LC Paper No. CB(1)878/07-08(01)) on light nuisance including measures which might be taken to help contain the problem of light nuisance under the minor works control system;
- (b) the mechanism for registered minor works contractors (RMWCs) to notify the Building Authority (BA) and the BA to confirm acceptance

of the completed minor works as well as the instrument/channel to be used to promulgate the mechanism;

- (c) response to members' concern about the legal implications of implementing the Validation Scheme on possible title and conveyancing problems after consulting the Law Society of Hong Kong (LC Paper No. CB(1)785/07-08(02) Part A(VI) 6.3(a)); and
- (d) response to the query on the Administration's proposal to adopt different registration arrangements for partnerships and sole proprietorships operating as "firms" from that for "individual workers" and measures to help practitioners who were eligible for applying for registration as RMWCs either as firm-based or individual-based contractors to make informed decision on their preferred stream.

Date of next meetings

5. The Chairman reminded members that the sixth and seventh meetings of the Bills Committee would be held on Tuesday, 11 March 2008 at 2:30 pm and Thursday, 27 March 2008 at 2:30 pm respectively. Subject to the progress of the discussion, the Bills Committee might proceed to commence clause-by-clause examination of the Bill. Members agreed.

6. The Chairman instructed the Clerk to make arrangements for future meetings of the Bills Committee to be scheduled for April and May 2008.

(Post-meeting note: Members had been duly informed of the meeting arrangement for the eighth to 12th meetings of the Bills Committee vide LC Paper No. CB(1)911/07-08 issued on 27 February 2008.)

IV. Any other business

7. There being no other business, the meeting ended at 12:45 pm.

**Proceedings of fifth meeting of
Bills Committee on Buildings (Amendment) Bill 2007
on Tuesday, 26 February 2008, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000024 – 000105	Chairman	Confirmation of minutes of the meeting held on 26 January 2008 (LC Paper No. CB(1)880/07-08)	
000106 – 000428	Chairman Ms Audrey EU Prof Patrick LAU	<u>Submission from Friends of the Earth (FOE)</u> (LC Paper No. CB(1)878/07-08(01) Ms Audrey EU's advice that the Panel on Environmental Affairs would follow up on the views expressed by FOE on light nuisance.	The Administration to take action as stated in paragraph 4(a) of the minutes.
000429 – 001344	Chairman Administration Ir Dr Raymond HO	(a) The Administration's advice that a meeting was conducted on 22 February 2008 between the Administration and the Hong Kong Institute of Surveyors (HKIS) to exchange views on issues including the adoption of the term "prescribed requirement minor works" in the Bill, the appointment of registered geotechnical engineers for some Class I minor works; inclusion of works items which required the issuance of occupation permits as minor works; and the drafting of the proposed section 41(3)(b) of the Bill. The Administration would further discuss these issues with other professional institutes before reverting to the Bills Committee. (b) Discussion on the instrument to promulgate minor works and designated exempted works. Consideration should be given to allowing flexibility for amendment from time to time so as to cope with the technological advancement and development of the construction industry.	
001345 – 001723	Chairman Administration Prof Patrick LAU	<u>Preliminary Draft of Building (Minor Works and Related Matters) Regulation and Schedule of Minor Works</u> (tabled at the meeting and subsequently issued vide LC Paper No. CB(1)927/07-08(02) on 28 February 2008) (a) The Administration's advice that the preliminary draft Regulation and Schedule of Minor Works were subject to amendments with reference to the comments agreed by the Bills Committee and further revision by the Law	

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		<p>Draftsman.</p> <p>(b) Prof Patrick LAU's remark that flexibility should be allowed for future amendments on the Schedule of Minor Works in the light of implementation experience.</p>	
001724 – 001945	Chairman Administration	<p><u>The Administration's response to deputations' views on the proposed minor works control system raised at the meeting on 26 January 2008</u> (LC Paper No. CB(1)785/07-08(02))</p> <p><i>Part A(III) 3.4 - Hong Kong Bar Association (HKBA)'s view that warning notices registered with the Land Registry against unauthorized minor works might give rise to disputes in the sale and purchase of the concerned property</i></p> <p>Members raised no query.</p>	
001946 – 002145	Chairman Administration	<p><i>Part A(III) 3.6(b) - HKIS' view that, for the sake of building safety, the owner, rather than the appointed person, should be responsible for "alteration, rectification or reinforcement works"</i></p> <p>Members raised no query.</p>	
002146 – 003318	Chairman Administration Assistant Legal Adviser 7 (ALA) Mr LI Kwok-ying	<p><i>Part A(III) 3.8(a) - the Law Society of Hong Kong (LSHK)'s suggestion that to avoid title problems, a simple form should be devised for RMWCs to notify the BA upon completion of minor works and such document should be registered with the Land Registry</i></p> <p>(a) The Administration's advice was that completion certificates would be in specified form, the design of which would be as simple as possible for contractors to complete. The information provided by the RMWCs in the certificates would be scanned and would be available for public inspection in Buildings Department's Building Information Center. For the long run, the information would be uploaded onto the Internet for public inspection.</p> <p>(b) ALA's enquiry on whether the completion certificates would be accepted by the BA as satisfactory completion of the concerned minor works.</p>	The Administration to take action as stated in paragraph 4(b) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>(c) The Administration's advice that a completion certificate issued by a RMWC was to certify the minor works had been done to the contractor's satisfaction and in accordance with the BO. To ensure building safety, audit inspections would be conducted by the Buildings Department (BD) on completed works within two weeks, if possible, after receipt of the completion certifications submitted by RMWCs. A letter would be issued to the concerned RMWC to confirm BA's acknowledgement. Follow-up action would be taken if audit result was not satisfactory.</p> <p>(d) Mr LI Kwok-ying's enquiry on whether the completion certificates would be registered with the Land Registry. He remarked that as it was not uncommon that title documents of rural housing were lost over time, a completion certificate might serve as a proof of title.</p> <p>(e) The Administration's advice that as there would be cost implications for registering certificates related to minor works with the Land Registry, building owners might pursue the registration on their own volition. Nevertheless, records of completion of minor works would be maintained by the BD on a routine and permanent basis for public inspection.</p>	
003319 – 004424	Chairman Administration ALA Ms LI Fung-ying	<p><i>Part A(V) 5.2(b) - HKIS' view that the provision making it an offence for diverging or deviating from submitted plans of minor works should be deleted</i></p> <p>(a) The Administration's explanation that under the minor works control system, works should be carried out according to standard drawings provided by the BD. It would be an offence for the RMWC to carry out works which significantly deviated or diverged from the works shown in the plans submitted to the BA. Further refinement of the Bill would be considered to clarify the policy intent.</p> <p>(b) ALA's enquiry about the reporting standard to be required of RMWCs for certifying satisfactory completion of minor works.</p> <p>(c) The Administration's advice that in the</p>	

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		<p>prescribed completion certificates, RMWCs would be required to provide information such as plans or brief description and photos of the completed works and certification that the minor works had been done to the contractor's satisfaction and in accordance with the BO.</p> <p>(d) Ms LI Fung-ying's concern about :</p> <ul style="list-style-type: none"> (i) the objective criteria to be used for determining whether a completed minor works had significantly deviated or diverged from the works plans; (ii) whether the refinement of the Bill, if deemed necessary, would be made during the Bills Committee's scrutiny; and (iii) in complying with BA's reporting system, measures to help reduce RMWCs' burden on paper work. <p>(e) The Administration's advice that :</p> <ul style="list-style-type: none"> (i) in general, whether the completed minor works would meet the prescribed safety standards and requirements would be used as the criteria for assessment in the audit inspection; (ii) the Administration would consider if it was necessary to refine the Bill to clarify that it would be an offence if the completed minor works had significantly deviated or diverged from the plans submitted by the authorized persons or contractors, standard drawings, promulgated specifications or the relevant code of practice and would pose a hazard to building quality or safety; and (iii) the completion certificates would be necessary for certifying legitimate minor works and notifying the BA of the responsible RMWCs/workers. Simple and straightforward prescribed forms would be used to alleviate, as far as possible, RMWCs' burden in completing the forms. 	

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004425 – 004544	Chairman Administration	<p><i>Part A(V) 5.2(c) - HKIS' view that the provision making it an offence for a RMWC who contravened section 17(1) of the BO should be deleted</i></p> <p>Members raised no query.</p>	
004545 – 004722	Chairman Administration	<p><i>Part A(VI) 6.1(c) - HKIS' view that the amendments to require authorized person to supply copy of approved plans to RMWC and the keeping of the plans on site by RMWC should be deleted</i></p> <p>Members raised no query.</p>	
004723 – 012041	Chairman Administration ALA Ir Dr Raymond HO Ms Audrey EU Prof Patrick LAU	<p><i>Part B(VI) 6.3(a) - LSHK's query on whether compliance with the minor works control system would relieve a building owner from the allegation of contravening the relevant Government lease</i></p> <p>(a) In response to ALA and members' queries, the Administration advised that under the extant BO, all building works should comply fully with the statutory requirements, including the prior approval of plans and consent for commencement by the BA, appointment of authorized persons and building professionals, etc. As such, existing unauthorized supporting frames for air-conditioners, drying racks and small canopies would still be regarded as unauthorized building works (UBWs) even if they had been validated under the proposed Validation Scheme. In view that their continual existence as UBWs might create problems relating to land titles and conveyancing, the Administration would discuss further with LSHK on the legal implications of the Validation Scheme and revert to the Bills Committee on the proposed way forward.</p> <p>(c) Members expressed grave concern about the legal implications of the Validation Scheme. Ms Audrey EU suggested that <i>ex post</i> recognition should be given to the validated building works if their safety condition had been fully certified. Ir Dr Raymond HO suggested to legitimize minor works which would not pose a danger, e.g. a supporting frame for air-conditioner which was erected within 3 metres from the ground. Prof Patrick LAU said that there could be problem to</p>	The Administration to take action as stated in paragraph 4(c) of the minutes

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		<p>legalize works that were constructed without prior approval of the BA and suggested that the agreement between vendor and purchaser to sell the property with the concerned works could be registered with the Land Registry to help eliminate conveyancing disputes that might arise due to the continual existence of the validated minor works.</p> <p>(d) In relation to Prof Patrick LAU's suggestion, ALA advised that it was doubtful whether the suggested agreement might still lead to a repudiation of the transaction concerned. The court might need to decide whether breach of the Buildings Ordinance (Cap. 123) due to the carrying out of the concerned works without the approval of BD went to the root of the title and thus the purchaser was entitled to rescind the Agreement for sale and purchase of the property if the conveyancing dispute was pursued in a legal proceeding.</p>	
012042 – 020044	<p>Chairman Administration Ms Audrey EU ALA Ms LI Fung-ying Prof Patrick LAU</p>	<p><u>Administration's response dated 25 February 2008 to ALA's letter dated 11 February 2008</u> (LC Paper No. CB(1)882/07-08(01))</p> <p>(a) Briefing by the Administration on the proposed registration of RMWC, the transitional arrangement for registration and implementation of the Validation Scheme.</p> <p>(b) Discussion on the transitional arrangement for the registration of RMWCs operating as firms.</p> <p>(c) ALA's advice that partnerships and sole proprietorships were not legal entities. From a legal perspective, their status was the same as "individual workers". As such, the Administration's proposal to adopt different registration arrangements for partnerships and sole proprietorships operating as "firms" from that for "individual workers" should be further clarified.</p> <p>(d) Ms Audrey EU's remark that while partners and sole proprietors operating as firms might apply for registration as RMWCs either as firm-based or individual-based contractors, they should be fully informed of the different arrangement of the proposed registration system.</p>	<p>The Administration to take action as stated in paragraph 4(d) of the minutes</p>

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		<p>(e) Ms LI Fung-ying's opinion that while minor works would be divided into 114 items, consideration should be given to streamlining the registration system of RMWCs to facilitate practitioners' operation.</p> <p>(f) The Administration's advice that the delineation of duties among works items was to cater for the operation of the trades. Nevertheless, to help reduce inconvenience to be caused to multi-tasks RMWCs, consideration would be given to issuing smart cards for identification of their eligibility for carrying out minor works by relevant parties.</p> <p>(g) ALA's enquiry on whether the installation of an air-conditioner would include the works items described in 3.2, 3.5 and 3.26 of the draft Schedule of Minor Works.</p> <p>(h) The Administration's advice that the installation of air-conditioners would be regarded as one type of minor works under Class III of the Schedule of Minor Works. Detailed specifications of the works items would be promulgated in the code of practice. Building owners would only be required to appoint one RMWC to carry out the works.</p> <p>(i) Discussion on measures to facilitate building owners' comprehension of the minor works control system, e.g. by grouping the 114 works items according to their types. RMWCs might be allowed to apply for registration of an individual works item or a type of works items. In addition, while publicity would be conducted to promote public awareness of the minor works control system, consultation services would also be provided by the Hong Kong Housing Society to building owners.</p>	
020045 – 020138	Chairman	Date of next two meetings and arrangement for future meetings.	The Clerk to take follow-up action as required in paragraphs 5 and 6 of the minutes