

立法會
Legislative Council

LC Paper No. CB(1)1922/07-08
(These minutes have been seen
by the Administration)

Ref: CB1/BC/1/07

Bills Committee on Buildings (Amendment) Bill 2007

**Minutes of eleventh meeting on
Thursday, 22 May 2008, at 4:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon KWONG Chi-kin (Chairman)
Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, GBS, 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** : 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 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

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

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Guy YIP
Senior Council Secretary (1)5

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)1508/07-08 -- Minutes of meeting on 22 April 2008)

The minutes of the meeting held on 22 April 2008 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)1600/07-08(01) -- Administration's response to issues raised at the Bills Committee meeting on 27 March 2008

LC Paper No. CB(1)1600/07-08(02) -- Administration's response to issues raised at the Bills Committee meetings on 22 and 29 April 2008

LC Paper No. CB(1)1600/07-08(03) -- Draft Committee Stage amendments proposed by the Administration

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

LC Paper No. CB(1)1043/07-08(01) -- Draft Revisions to the Bill – Clause 3

LC Paper No. CB(1)1146/07-08(01) -- Draft Revisions to the Bill – Clauses 6, 7, 9, 13, 15, 18, 21, 22, 24, 26, 27, 28 and 42

Ref: DEVB(PL-B) 30/30/120 -- The Legislative Council Brief on "Buildings (Amendment) Bill 2007" issued by the Development Bureau

LC Paper No. CB(1)927/07-08(02) -- Preliminary draft of Building (Minor Works and Related Matters) Regulation and Schedule of Minor Works provided by the Administration)

The Administration's response to issues raised at the meetings held on 22 and 29 April 2008

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

Admin 3. The Administration was requested to re-consider the revised drafting of new sections 4A and 9AA (appointment of registered professionals/registered minor works contractors (RMWCs)) taking into account members' views that while further safeguards should be provided for building owners concerning the criminal liabilities against non-compliance with the proposed minor works control regime, the liabilities of building professionals and contractors under the proposed regime should not be relaxed. Consideration should also be given to retain "the person for whom minor works are to be carried out" as proposed in the previous drafting. Where appropriate, alternative formulations to amend the drafting of new sections 4A and 9AA should be provided for members' consideration.

Date of next meeting

4. The Chairman reminded members that the twelfth meeting of the Bills Committee would be held on Tuesday, 27 May 2008 at 10:45 am to discuss the outstanding issues.

III. Any other business

5. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 1
Legislative Council Secretariat
17 June 2008

**Proceedings of eleventh meeting of
Bills Committee on Buildings (Amendment) Bill 2007
on Thursday, 22 May 2008, at 4:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000700 – 000733	Chairman	Confirmation of minutes of the meeting held on 22 April 2008 (LC Paper No. CB(1)1508/07-08)	
000734 – 014211	Chairman Administration Ms Audrey EU Ms Miriam LAU Ms LI Fung-ying Assistant Legal Adviser 4 (ALA) Prof Patrick LAU	<p>The Administration's response to issues raised at meetings on 22 and 29 April 2008 — proposed amendments to sections 4A and 9AA (Annex A to LC Paper No. CB(1)1600/07-08(01))</p> <p>(a) Ms Audrey EU noted with concern that in newly revised sections 4A and 9AA, the definition of "the person" had been changed from "for whom minor works are to be carried out" in previous new sections 4A and 9AA to "who arranged for the works to be commenced or carried out". She opined that the revised definition would extend the scope of coverage to not only the building owners but also other persons involved in the multi-layer subcontracting of minor works, such as the main contractor and sub-contractor(s). While she considered that further safeguards should be provided to building owners concerning their liabilities under the proposed minor works control regime, she pointed out that when reading new sections 4A(2) and 9AA(2) together with new sections 4A(2A) and 9AA(2A) (the latter two provisions specified that "a person who has appointed another person to arrange for the commencement or carrying out of minor works is not to be regarded as a person who arranged for the commencement or carrying out of minor works"), the provisions would provide leeway for the main contractor and subcontractor(s) to evade their liabilities under the proposed minor works control regime even if they knowingly contravened the requirement to appoint registered professionals/RMWCs so long as they had appointed another person to arrange the minor works. Consideration should be given to retain "the person for whom minor works are to be carried out" as proposed in the previous drafting.</p>	The Administration to take action as stated in paragraph 3 of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>(b) The Administration explained that new sections 4A(2), 4A(2A), 9AA(2) and 9AA(2A) were proposed to address members' concern that further safeguards should be provided for building owners concerning their liabilities to comply with the proposed minor works control regime. Although the scope of coverage would be extended to the effect that the liabilities of main contractors and subcontractors might be exempted as a result of the multi-layer subcontracting, they would still be liable for prosecution if they knowingly contravened the proposed minor works control regime against offences such as conspiracy and incitement, etc., as prescribed under other criminal laws as well as common laws. Moreover, checks and balances would also be in place to require building owners and building professionals to comply with the proposed minor works control regime. For instance, building owners would be responsible for rectifying unauthorized building works and building professionals would be subject to sanctions for non-compliance.</p> <p>(c) Ms Miriam LAU recalled that it was members' view that the previous drafting of proposed sections 4A, 9AA and 40(1AB) were not clear enough to provide a safety net for building owners who might be unaware of their liabilities under the proposed minor works control system. She noted the Administration's efforts to express more clearly the conditions under which building owners might be exempted from their liabilities and considered that further amendments could be made to improve the current drafting of new sections 4A(2A) and 9AA(2A) to address Ms Audrey EU's concern.</p> <p>(d) Discussion on the addition of wordings "unless the person who has appointed another person to arrange for the commencement or carrying out of minor works does not know that the person being appointed is not a qualified person or knowingly contravened the requirement to appoint a qualified person" at the end of new sections 4A(2A) and 9AA(2A) as proposed by ALA.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(e) Discussion on the addition of wordings "unless the person knows that the building professionals/contractors are not the prescribed professionals/contractors" at the end of new sections 4A(2A) and 9AA(2A) as proposed by the Administration.</p> <p>(f) Ms LI Fung-ying referred to the concern previously raised by members and deputations that building owners should not be liable for the appointment of unqualified persons if the concerned minor works were arranged by a third party, such as an air-conditioning retailer providing installation service of the air-conditioners. She noted that the liabilities of building owners under such circumstances would be exempted under new sections 4A(2A) and 9AA(2A).</p> <p>(g) The Chairman suggested that to ensure the safety net would not be cast too wide, the liabilities of relevant persons under new sections 4A and 9AA might be differentiated according to the nature and scale of minor works to be carried out. As the appointment of registered professionals under new section 4A would be required for the carrying out of Class I minor works and the construction process of such minor works would normally be supervised and coordinated by the appointed building professionals, the Administration said that it might consider deleting new section 4A(2A) in response to the Chairman's suggestion. Regarding the appointment of RMWCs under new section 9AA, the Administration considered that 9AA(2A) should be retained as the section governed small-scale minor works that were commonly conducted by building owners by hiring contractors and safeguards should be provided.</p>	
014212 – 014433	Chairman Administration	<p>The Administration's response to issues raised at the meeting on 22 and 29 April 2008 — summary table of offences applicable to building owners/tenants (Annex B to LC Paper No. CB(1)1600/07-08(02))</p>	

Time marker	Speaker	Subject(s)	Action required
		Members raised no query.	
014434 – 015806	Chairman Administration	The Administration's response to issues raised at the meeting on 22 and 29 April 2008 — draft provisions relating to the building records e-search system (Annex C to LC Paper No. CB(1)1600/07-08(02)) Members raised no query.	
015807 – 015840	Chairman Administration	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
17 June 2008