

立法會
Legislative Council

LC Paper No. CB(1)1564/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/09/2

Bills Committee on Buildings (Amendment) Bill 2010

Fourteenth meeting on
Friday, 7 January 2011, at 3:30 pm
in the Chamber 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 Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon CHEUNG Hok-ming, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Hon Tanya CHAN

Members absent : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon LEE Wing-tat
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

Miss Elaine NG Pui-kei
Government Counsel
Department of Justice

Clerk in Attendance : Mr Stephen LAM
Chief Council Secretary (1)4

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)965/10-11 -- Minutes of meeting on
7 December 2010)

. The minutes of the meetings held on 7 December 2010 were confirmed.

II Meeting with the Administration

Outstanding issues from previous meetings

(LC Paper No. CB(1)993/10-11(01) -- Administration's response to
issues raised at the meeting on
23 December 2010)

Clause-by-clause examination of the Bill

- (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)

Other relevant papers previously issued

- (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)1168/09-10(02) -- Paper on Buildings (Amendment) Bill 2010 prepared by the Legislative Council Secretariat (Background brief)
LC Paper No. CB(1)993/10-11(02) -- List of follow-up actions arising from the discussion at the meeting on 23 December 2010
LC Paper No. CB(1)1935/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 6 May 2010)

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

Follow-up actions to be taken by the Administration

3. The Administration is requested to provide the following information --
- (a) With reference to criminal liability of company directors under the Criminal Procedure Ordinance (Cap 221), an explanation on whether the majority owners on the management committee of an owners' corporation who, without reasonable excuse, failed to comply with a notice served on the owners' corporation under the proposed new section 30B(3), (4), (5) or (6) or under the proposed new section 30C(3) or (4) will be liable to imprisonment under the proposed new section 40(1BC) or (1BD) respectively;
- (b) An explanation on whether the manager, who ignored the instructions of the management committee of an owners' corporation to comply with a notice served on the owners' corporation under the proposed new section 30B(3), (4), (5) or (6)

or under the proposed new section 30C(3) or (4) will be liable to imprisonment under the proposed new section 40(1BC) or (1BD) respectively;

- (c) In relation to service of a penalty notice described in the proposed new Schedule 7, information on Buildings Department's (BD) performance pledge, for example the point in time when a penalty notice will be served and a flowchart on the procedure for service and enforcement of a penalty notice;
- (d) The wording and format of the first and subsequent penalty notices as described in section 1 of the proposed new Schedule 7, and the accompanying explanatory letter from Building Authority to the owners;
- (e) Meaning of the term "proceedings" referred to in section 17 of the proposed new Schedule 7 that would be terminated upon payment of the fixed penalty of \$1,500 and cost of \$500, and with the production of the summons at any magistracy; and
- (f) The criteria for determining "carrying out the prescribed inspection personally" referred to in the proposed new sections 30D(3)(a) and 30E(2) and which penalty provision is to apply when a registered inspector or qualified person did not carry out the prescribed inspection personally.

(Post-meeting note: The Administration's response was issued to members vide paper CB(1)993/10-11(01) dated 6 January 2011)

III Any other business

4. There being no other business, the meeting ended at 6:00 pm.

Bills Committee on Buildings (Amendment) Bill 2010

**Proceedings of the fourteenth meeting
on Friday, 7 January 2011, at 3:30 pm
in the Chamber of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000828	Chairman	Opening remarks and confirmation of minutes (LC Paper No. CB(1)965/10-11)	
000829 – 001301	Administration	The Administration's briefing on its paper (LC Paper No. CB(1)993/10-11(01))	
001302 – 001526	Prof Patrick LAU Administration	<p>(a) Prof LAU's query on the reason for charging an interest instead of imposing a fine when an owners' corporation (OC) or an owner had failed to carry out prescribed inspection or repair.</p> <p>(b) The Administration's explanation that the Buildings Department (BD) would have to recover the expenses incurred for carrying out the prescribed repair on behalf of such OCs or owners upon default of the concerned orders. The amount was considered a debt that the OCs or owners owed to the Government and should be repaid with interest.</p>	
001527 – 002233	Mr KAM Nai-wai Administration	<p>(a) Mr KAM's intention to move amendments to include the code of practice/practice notes (CoP/PNs) in the Bill such that Registered Inspectors (RIs) involved in the Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS) would need to comply mandatorily with the CoP/PNs.</p> <p>(b) The Administration's response that RIs engaged in carrying out prescribed inspections or repairs might be subject to disciplinary sanctions even though they were not</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>legally liable for failure to follow the CoP/PNs. Best practices on tendering procedure would be included in PNs, and RIs should advise OCs and owners on ways to guard against tender rigging and other irregularities with reference to the PNs.</p> <p>(c) Mr KAM reminded the Administration to submit the draft PNs for members' perusal as early as possible.</p>	
002234 – 002543	Chairman Administration	<p><u>Clause-by-clause examination of the Bill</u></p> <p><u>Clause 24 – Technical memorandum</u></p> <p><u>Clause 25 – Obstruction of owners' corporation</u></p> <p>In respect of the criminal penalty under the proposed new section 39B(1)(c) in clause 25(4), the Administration agreed to move a Committee Stage amendment (CSA) to section 40(4B) of the Buildings Ordinance (Cap. 123) (BO) to remove the imprisonment term but increase the fine to level 4 (\$25,000) where an owner refused, without reasonable excuse, to contribute to the cost of the inspection or repair works that was required for the purpose of complying with the notice served under the proposed new section 30B(3), (5) or (6), or 30C(3).</p>	
002544 – 002804	Ms Cyd HO Administration	Ms HO's request that the Administration should provide explanation notes to each of the CSAs.	
002805 – 002920	Administration	<p><u>Clause 26 – Building Authority shall not serve order under section 24 or notice under section 24C</u></p> <p>Members raised no question on proposed clauses 25 to 26.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<u>Clause 27 – Offences</u>	
002921 – 003243	Mr KAM Nai-wai Administration	<p>(a) Mr KAM's query of whether daily fines of continuous offence were also imposed on similar offences under BO.</p> <p>(b) The Administration's explanation that the penalty for not complying with an order served under section 24(1) of BO was a fine of \$200,000 and one year imprisonment, and an additional fine of \$20,000 per day of continuous offence as specified in section 40(1BA); contravention of an inspection order served under section 26A(1) of BO was liable to a fine at level 5 (i.e. \$50,000) and one year imprisonment, with an additional fine of \$5,000 per day of continuous offence.</p>	
003244 – 003605	Administration	<u>Clause 27</u>	
003607 – 004020	Ms Cyd HO Administration Chairman	<p>(a) Ms HO's query of why the Administration did not remove the imprisonment term in the proposed new sections 40(1BC) and 40(1BD).</p> <p>(b) The Administration's explanation that failing to effect a prescribed inspection of building or window or a prescribed repair could have more serious consequences as compared with a refusal to contribute towards the cost of a prescribed inspection or repair. Heavier penalty was considered necessary.</p> <p>(c) Ms HO's suggestion that loans should be provided to enable OCs to carry out prescribed inspections or repair to avoid breaching the law just because of a few owners' refusal to contribute towards the costs.</p>	

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		<p>(d) The Administration's response that BD would carry out the prescribed inspection or repair and recover the cost from the OCs or owners concerned; loans and various financial support measures were already available from the Hong Kong Housing Society, Urban Renewal Authority as well as BD for owners or OCs having financial difficulties to meet the inspection or repair expenses.</p>	
004021 – 004618	Mr KAM Nai-wai Administration Chairman	<p>Clause 27</p> <p>(a) In regard to the proposed new section 40(1BD) and (1BE), the Chairman and Mr KAM's query of how an OC could be imprisoned for breaching the statutory order from the Building Authority (BA). They commented that the penal provisions were unenforceable against OCs.</p> <p>(b) The Administration's explanation that the Bill would apply to both owners and OCs: OCs were expected to be fined (instead of being imprisoned) for offences related to prescribed inspections or repairs of common parts; whereas an individual owner who refused to comply with the prescribed inspection or repair of his own premises might be liable to both fine and imprisonment.</p>	
004619 – 005055	Mr James TO Administration	<p>(a) With reference to criminal liability of company directors under the Criminal Procedure Ordinance (Cap. 221), Mr TO's request for the Administration to provide an explanation on whether the majority owners on the management committee of an OC who, without reasonable excuse, failed to comply with a notice served on the OC under</p>	Administration to take action as required in paragraph 3 of the minutes

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		<p>the proposed new section 30B(3), (4), (5) or (6) or under the proposed new section 30C(3) or (4) would be liable to imprisonment under the proposed new section 40(1BC) or (1BD) respectively.</p> <p>(b) Mr TO further requested the Administration to provide an explanation on whether the manager, who ignored the instructions of the management committee of an OC to comply with a notice served on the OC under the proposed new section 30B(3), (4), (5) or (6) or under the proposed new section 30C(3) or (4) would be liable to imprisonment under the proposed new section 40(1BC) or (1BD) respectively.</p>	<p>Administration to take action as required in paragraph 3 of the minutes</p>
005056 – 005507	Mr KAM Nai-wai Administration	<p>(a) Mr KAM's enquiry of why penalty notices would only apply to offences related to MWIS and not to MBIS.</p> <p>(b) The Administration's explanation that previous public consultations had pointed to the need for higher deterrent effects in the law to enforce MBIS and MWIS. There was also a need for quicker and simpler enforcement procedure for relatively minor offences under MWIS given the expected large number of windows that required inspection and repair.</p>	
005508 – 005726	Administration Ms Audrey EU	<p>Clause 27</p> <p>(a) In regard to the proposed new section 40(1BE) and (1BF), Ms EU's suggestion that the proposed level of fine in a penalty notice, which was currently set at the same level as a littering offence, was disproportionate to the gravity of the offence, should be raised.</p>	

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		<p>(b) The Administration's response that the penalty notice was a new concept in BO, so the level of fine proposed should be comparable to similar fixed penalty offences.</p>	
<p>005727 – 005853</p>	<p>Ms Cyd HO Administration</p>	<p>(a) Ms HO's enquiry of how BD would notify owners who might have moved overseas or otherwise out of contact, of their obligation to carry out prescribed inspection and repair.</p> <p>(b) The Administration's response that where the owners could not be located, BD would carry out prescribed inspection and repair of the building or premises concerned upon default of the concerned orders and recover the cost separately, including registering the cost against the titles of their properties.</p>	
<p>005854 – 010227</p>	<p>Mr KAM Nai-wai Administration</p>	<p>Clause 27</p> <p>(a) Mr KAM's enquiry whether Legislative Council's approval would be sought for amending the level of fine under Schedule 7 to be specified in the penalty notice.</p> <p>(b) The Administration's explanation that any such amendments would be effected by subsidiary legislation through the negative vetting process.</p> <p>(c) In response to Mr KAM, the Administration's explanation that a heavier penalty under the proposed new section 40(1BD) would be invoked only when the owner or OC had failed to respond to a penalty notice issued under the proposed new section 40(1BE). The relevant procedure was specified in the proposed new Schedule 7.</p>	

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010228 – 011436	Administration Mr KAM Nai-wai Ms Audrey EU	<p><u>Clause 36 – Schedule 7 added</u></p> <p>Sections 1 and 2 of the proposed new Schedule 7</p> <p>(a) Mr KAM's query whether a person would be fined twice if he did not respond to the first penalty notice within 21 days under section 1(c)(i), and under what circumstances would BD issue a second penalty notice under section 1(c)(i) or take court proceedings under section 1(c)(ii).</p> <p>(b) The Administration's response that BD would carry out an inspection to check compliance with the statutory inspection notice when the owner or OC had not responded to the first fixed penalty notice. A second penalty notice would normally be issued, and BD would consider initiating prosecution if the owner or OC continued to ignore the second penalty notice.</p> <p>(c) Mr KAM was not confident that BD could take timely actions if the owners or OCs defaulted on the penalty notices, given the possible large amount of penalty notices that would be issued, and the previous enforcement track records against unauthorized building works.</p> <p>(d) The Administration's response that the penalty notice was a streamlined law enforcement procedure and would reduce the need for prosecution. Furthermore, certain work would be outsourced to reduce the manpower pressure on BD.</p> <p>(e) Ms EU's enquiry of the detailed process flow of enforcement action through penalty notices.</p>	

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011437 – 012709	Administration	<u>Clause 36 – Schedule 7 added</u> Sections 3 to 19	
012710 – 013415	Ms Starry LEE Administration Chairman	<p>(a) In response to Ms LEE, the Administration's response that the proposed mechanism of penalty notices was similar to the system of fixed penalty tickets for offences such as littering under the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570).</p> <p>(b) Ms LEE's criticism that the Administration did not have a realistic assessment of the lead time between the point in time when a non-compliance with the statutory inspection notice was found and the point in time when a penalty notice was issued, and doubted how it could facilitate the implementation of MWIS effectively.</p> <p>(c) The Administration's response that additional resources would be provided for the BD's implementation of the MBIS and MWIS; at the same time public education and publicity activities would also be enhanced to encourage owners and OCs to take the initiative to improve building safety.</p>	
013416 – 013710	Mr KAM Nai-wai Administration	In relation to service of a penalty notice described in the proposed new Schedule 7, Mr KAM requested the Administration to provide information on BD's performance pledge, for example the point in time when a penalty notice would be served and a flowchart on the procedure for service and enforcement of a penalty notice.	Administration to take action as required in paragraph 3 of the minutes
013711 – 014402	Ms Audrey EU Administration	(a) Ms EU's comments that the proposed new Schedule 7 was vague in setting out how an owner or OC should respond to a penalty notice, and	

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		<p>section 1(c) and section 18 of the proposed new Schedule 7 regarding the issuing of the second penalty notice seemed to be repetitious. She also queried how the second penalty notice would be different from the first notice.</p> <p>(b) The Administration's explanation that section 1 described what information a penalty notice would include, whereas section 18 spelled out BA's power when a person failed to respond to the penalty notice. The contents of the second penalty notice would be similar to the first notice and would specify the recipient's obligations and the consequence of failure to fulfil such obligations.</p> <p>(c) Ms EU's request for the Administration to provide the wording and format of the first and subsequent penalty notices as described in section 1 of the proposed new Schedule 7, and the accompanying explanatory letter from BA to the owners.</p> <p>(d) Ms EU's request for the Administration to explain the meaning of the term "proceedings" referred to in section 17 of the proposed new Schedule 7 that would be terminated upon payment of the fixed penalty of \$1,500 and cost of \$500, and with the production of the summons at any magistracy.</p>	<p>Administration to take action as required in paragraph 3 of the minutes</p> <p>Administration to take action as required in paragraph 3 of the minutes</p>
014403 – 014916	Administration	Clause 27	
014917 – 020910	Mr KAM Nai-wai Administration Chairman	(a) In regard to the proposed new section 40(2A), (2AAAC) and (2AD), the Chairman's query of whether the penalty provision was related to PN under preparation.	

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		<p>(b) The Administration's response that if a professional had committed an offence laid down in BO or had been negligent and had committed acts of misconduct in a professional manner because he had not followed the relevant CoP/PNs, BA could initiate prosecution under BO and/or disciplinary action against him</p> <p>(c) Mr KAM's enquiry of how BA could prove that an RI had not carried out a prescribed inspection personally when invoking the proposed section 40(2AD), and why a breach of CoP/PNs should not be subject to imprisonment.</p> <p>(d) The Administration's explanation that an RI could sign a certificate in a specified form that he had conducted the prescribed inspections personally. BD could set up a reporting mechanism where the owner or OC that engaged the RI could report to BD if they found that the RI had not conducted the inspections personally. An RI might be legally liable for knowingly misrepresenting a material fact in any plan, certificate, form or notice etc., given to BA under BO (section 40(2A)(c)).</p> <p>(e) Mr KAM requested the Administration to provide information on the criteria for determining "carrying out the prescribed inspection personally" referred to in the proposed new sections 30D(3)(a) and 30E(2) and which penalty provision would apply when an RI or qualified person did not carry out the prescribed inspection personally.</p>	<p>Administration to take action as required in paragraph 3 of the minutes</p>

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		<p>(f) Mr KAM's suggestion that detailed guidelines should be specified in the CoP/PNs, and that contravention of the CoP/PNs should be made an offence. He suggested RIs should be required to make available a log of prescribed inspection.</p> <p>(g) The Administration's explanation that the relevant CoP/PNs were under preparation and the requirement of RIs' personal involvement in prescribed inspection would be included.</p> <p>(h) The Administration's explanation that an RI would be obliged to ensure the building was safe after his inspection or repair, otherwise he would be liable to prosecution and a heavy penalty under the proposed new section 40(2AF).</p>	
020911 – 021505	Chairman Clerk	The next meeting would be held on 24 January 2011.	