

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1565/10-11  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/4/09/2

**Bills Committee on Buildings (Amendment) Bill 2010**

**Fifteenth meeting on**  
**Monday, 24 January 2011, at 10:45 am**  
**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 Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon LEE Wing-tat  
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 Miriam LAU Kin-ye, GBS, JP  
Hon WONG Kwok-hing, MH  
Hon CHEUNG Hok-ming, GBS, JP  
Dr Hon Priscilla LEUNG Mei-fun

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

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

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

Mr Manuel NG Man-chun  
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

## **I Meeting with the Administration**

### Outstanding issues from previous meetings

(LC Paper No. CB(1)1123/10-11(01) -- Administration's response to issues raised at the meeting on 7 January 2011)

Clause-by-clause examination of the Bill -- starting from clause 27(15)

- (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)1123/10-11(02) -- List of follow-up actions arising from the discussion at the meeting on 7 January 2011  
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)

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

**II Any other business**

2. There being no other business, the meeting ended at 12:40 pm.

**Bills Committee on Buildings (Amendment) Bill 2010**

**Proceedings of the fifteenth meeting  
on Monday, 24 January 2011, at 10:45 am  
in the Chamber of the Legislative Council Building**

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 – 000845	Chairman	Opening remarks	
000846 – 001002	Administration	<u>Clause-by-clause examination of the Bill</u>  <u>Clause 27 – Offences</u>	
001003 – 001459	Ms Audrey EU Administration	(a) In relation to the daily fine against a person who, without having registered as a Registered Inspector (RI) or Qualified Person (QP), certified a prescribed inspection, or certified or supervised a prescribed repair in respect of a building under the proposed new section 40(2H)(b) or certify a prescribed inspection, or certified or supervised a prescribed repair in respect of a window under the proposed new section 40(2I)(b), Ms EU's enquiry on when the daily fine would begin to be charged.  (b) The Administration's response that the daily fine would be payable for each day that person certified or supervised a prescribed inspection or prescribed repair while not having the legal capacity to do so.	
001500 – 001830	Administration	<u>Clause 28 – Secretary to the Appeal Tribunal</u>  <u>Clause 29 – Saving</u>  <u>Clause 30 – Validation</u>  <u>Clause 31 – Provisions of Buildings Ordinance 1935 to continue in operation</u>  <u>Clause 32 – Form of warrant</u>	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p><u>Clause 33 – Departments</u></p> <p><u>Clause 34 – Scheduled areas</u></p> <p><u>Clause 35 – Form of warrant</u></p> <p><u>Clause 36 – Schedule 7 added</u></p> <p><i>Schedule 7 – Penalty notice</i></p> <p>Members raised no question on clauses 28 to 36.</p> <p><b>Part 3</b></p> <p><b>Related Amendments</b></p> <p><b>Building (Administration) Regulations</b></p> <p><u>Clause 37 – Fees</u></p>	
001831 – 001924	Chairman Administration	<p>(a) The Chairman's query of how the registration and related fees were determined.</p> <p>(b) The Administration's response that the fees were calculated using standard costing method based on the staff cost and the standard time spent on processing registration and related matters.</p>	
001925 – 002333	Ms Audrey EU Administration Chairman	<p>(a) Ms EU's comment that small scale contractors might find the proposed fees hefty.</p> <p>(b) The Administration's response that the proposed fees were applicable to professionals registering as RIs in undertaking building inspections and supervision of repair works. Small scale contractors undertaking certain building repair or window inspection or repair works would be registered as minor works contractors under a separate registration system.</p>	

Time Marker	Speaker	Subject(s)	Action Required
002334 – 002546	Administration	<p><u>Clause 38 – Duty of authorized person, registered structural engineer, registered geotechnical engineer, registered contractor, etc. to notify Building Authority of change of business address</u></p> <p><b>Building (Construction) Regulations</b></p> <p><u>Clause 39 – Interpretation</u></p> <p><b>Building (Planning) Regulations</b></p> <p><u>Clause 40 – Interpretation</u></p> <p><b>Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) Regulations</b></p> <p><u>Clause 41 – Interpretation</u></p> <p><b>Building (Energy Efficiency) Regulation</b></p> <p><u>Clause 42 – Interpretation</u></p> <p>Members raised no question on clauses 38 to 42.</p>	
002547 – 003635	Mr KAM Nai-wai Administration	<p>External wall</p> <p>(a) With reference to, for example, the proposed amendment to the definition of "external wall" in the Building (Planning) Regulations (Cap. 123 sub. leg. F), noting that "external wall" excluded "party wall", Mr KAM's query of how party walls were maintained.</p> <p>(b) The Administration's explanation that owners or owners' corporations (OCs) of adjoining buildings sharing the party wall would be responsible for its maintenance.</p> <p>(c) Mr KAM's enquiry on the share of maintenance responsibility of the</p>	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>party wall under the Mandatory Building Inspection Scheme (MBIS) if one of the adjoining buildings was less than 30 years old (and fell beyond the scope of MBIS).</p> <p>(d) The Administration's response that if one of the adjoining buildings was redeveloped and the party wall had to remain, the respective owners would still have to be responsible for the subsequent inspection and repair of the party wall.</p> <p>(e) Mr KAM's query of whether the Bill would relieve the legal liability of owners who were willing to carry out prescribed inspection or repair of the party wall, but could not do so because they could not secure the agreement and the share of cost from owners of the adjoining building.</p> <p>(f) The Administration's confirmation that the statutory notices of prescribed inspection and repair would be issued to owners of both adjoining buildings sharing the party wall. Any owners who failed to comply with the prescribed inspection or repair notice would be liable to prosecution under the proposed mechanism.</p>	
003636 – 004554	Ms Cyd HO Administration Chairman	<p>(a) Ms HO's concerns that owners of old buildings might find it inequitable to share the prescribed inspection and repair costs of the party wall if damage was (or defects were) caused by the redevelopment of an adjoining building. She queried how such disputes could be resolved.</p> <p>(b) The Administration's response that the problem was not limited to MBIS buildings. Repair orders would also be served on owners of both buildings</p>	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>as and when necessary. If owners could not co-ordinate among themselves to effect the required repair works, the Buildings Department (BD) would carry out the works on their default and recover the cost from all concerned owners.</p> <p>(c) Ms HO's query whether a mechanism could be set up to delineate maintenance responsibilities so that owners could negotiate a more equitable share of inspection and repair cost.</p> <p>(d) The Administration's response that resolution of cost sharing among owners was outside the scope of MBIS; whereas the Hong Kong Housing Society (HKHS) and the Urban Renewal Authority (URA) would offer technical and financial assistance where necessary.</p> <p>(e) The Chairman's comment that equal sharing of inspection and repair responsibilities of party wall should benefit owners of the older building who would otherwise have to pay a higher cost without the contribution from owners of the adjoining new building.</p> <p>(f) In response to Ms HO, the Administration's explanation that owners of each of the adjoining buildings would have to share their apportionment of the cost of prescribed inspection and repair of the party wall. BD would provide information to owners where necessary, and HKHS and URA would be involved as appropriate.</p>	



Time Marker	Speaker	Subject(s)	Action Required
004555 – 004906	Administration	<p><b>Specification of Public Offices</b></p> <p><u>Clause 43 – Schedule amended</u></p> <p><b>Buildings Ordinance (Application to the New Territories) Ordinance</b></p> <p><u>Clause 44 – Effect of certificate of exemption</u></p> <p><b>Prevention of Bribery Ordinance</b></p> <p><u>Clause 45 – Public bodies</u></p> <p><b>Railways Ordinance</b></p> <p><u>Clause 46 – Interpretation</u></p> <p>Members raised no question on clauses 43 to 46.</p>	
004907 – 005957	Administration	The Administration's briefing on penalty notices (LC Paper No. CB(1)1123/10-11(01))	
005958 – 010706	Mr James TO Administration	<p>(a) Mr TO's query of whether the penalty which the court might impose under the proposed new section 40(1BD) would exceed the \$1,500 fine under the penalty notice.</p> <p>(b) The Administration's explanation that the penalty under the proposed new section 40(1BD) was a maximum fine of \$25,000 (i.e. level 4 fine) and three months' imprisonment with a fine of \$2,000 per day of a continuing offence. This level of penalty was heavier than the fixed penalty under the penalty notice.</p> <p>(c) Mr TO's comment that the court might sentence a lower penalty than the statutory maximum, but the level should always exceed that of a penalty notice in order to encourage acceptance of the simpler procedure.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(d) The Administration's explanation that the use of fixed penalty arrangement was unprecedented in the Buildings Ordinance (Cap. 123). As the daily fine for a continuing offence already exceeded \$1,500, and each case would likely involve the commitment of an offence more than one day, it was unlikely that the penalty which a court might impose following a legal proceeding would be less than that for a penalty notice.</p>	
010707 – 011813	Mr KAM Nai-wai Administration	<p>(a) Mr KAM's query of the procedure which BD would follow before the first penalty notice was served.</p> <p>(b) The Administration's explanation that owners or OCs would be given six months to comply with a statutory notice of inspection or repair in respect of a window. At the same time, the HKHS and URA would be giving assistance to those owners or OCs in need. Warning letters would be issued if the notice was not complied with, and the first penalty notice would be issued about five months after the expiry of the order.</p> <p>(c) Mr KAM's query of whether clear information on the enforcement procedure could be made available.</p> <p>(d) The Administration's response that sufficient publicity would be launched to inform owners and OCs of their rights and obligations.</p> <p>(e) Mr KAM's query of how the second penalty notice would be served and whether an owner or OC would avoid paying the second penalty if he or it disputed the first penalty notice within 21 days.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		(f) The Administration's explanation that the owner or OC's duty under the statutory notice from BD remained outstanding until the prescribed inspection or repair in respect of a window was carried out. If an owner or OC disputed the first penalty, the magistrate would rule on his or its liability in respect of the prescribed inspection or repair of a window. Further penalty was possible if no action was taken to comply with the statutory notice, unless the court ruled in favour of the owner or OC after hearing the dispute.	
011814 – 011922	Administration	The Administration's briefing on the draft format of the penalty notices and the covering letter (LC Paper No. CB(1)1123/10-11(01))	
011923 – 012008	Ms Cyd HO Administration	(a) Ms HO's suggestion that paragraph 3(i) of the penalty notice should specify in full the exact date when the notice expired.  (b) The Administration undertook to amend the draft letter accordingly.	
012009 – 012052	Chairman Administration	In response to the Chairman's enquiry, the Administration confirmed that the statutory notice of inspection and repair would specify the due dates on which the key steps the owner or OC would need to complete.	
012053 – 012417	Administration	The Administration's briefing onRIs / QPs to conduct inspections (LC Paper No. CB(1)1123/10-11(01))	
012418 – 013856	Mr KAM Nai-wai Administration	(a) Mr KAM's query of whether details such as the time and date of inspections, locations and items or parts of buildings inspected, would also be included in the inspection reports submitted to BD. He also	

Time Marker	Speaker	Subject(s)	Action Required
		<p>asked whether and how such information would be made known to owners and OCs, and whether the Bill would require inspection reports to be made available to the owners or OCs engaging the RIs.</p> <p>(b) The Administration's response that the detailed requirements would be specified in the code of practice/practice notes (CoP/PNs), but the Bill would not require the reports to be provided to owners or OCs. It would be up to the respective owners or OCs to specify such requirements in their service contracts with RIs.</p> <p>(c) In response to the Chairman, the Administration would consider advising, through the CoP/PNs, RIs to provide a copy of the inspection reports to the respective owners or OCs.</p> <p>(d) Mr KAM's criticism that many owners were not aware of their rights to demand a copy of the inspection reports from RIs, and the Bill should impose an obligation on RIs to provide the information to owners. Mr KAM indicated his intention to move a Committee Stage amendment (CSA) if the Administration would not do so.</p> <p>(e) The Administration's explanation that the objective of BO was to regulate the conduct of registered building professionals and contractors, and the Administration had reservation on putting the onus on RIs to provide inspection reports to owners or OCs in the statute, as it was a matter between the two contracting parties.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(f) Mr KAM's query of whether contravention of a guideline in CoP/PN would be an offence in BO. He drew comparison of the Building Management Ordinance (Cap. 344) where even procurement of material was subject to legislative control. Mr KAM indicated his intention to move a CSA if the Administration would not do so.</p> <p>(g) The Administration's explanation that it was more appropriate to include detailed technical standards and frequently updated practices and procedures in CoPs/PNs rather than in the legislation.</p>	
013857 – 014238	Prof Patrick LAU	Professor LAU's comment that the requirement for RIs to submit inspection reports to the owners or OCs should be a matter to be agreed among themselves. Creating too many offences and penalties would only discourage professionals from taking up building inspection or repair contracts, and aggravating the manpower shortage problem. The respective professional institutions would be enlisted to draw up standard contract terms.	
014239 – 014424	Mr KAM Nai-wai Chairman	<p>(a) Mr KAM's comment that there should be a separate meeting to examine the quality and supply of professionals.</p> <p>(b) The Chairman's comment that the manpower issue would be addressed together with the discussion on criminal liability of OCs and other CSAs to be raised by the Administration.</p>	
014425 – 014734	Chairman Mr KAM Nai-wai Administration	(a) Mr KAM's query of when the Administration would provide the draft CoP/PNs for members' consideration as previously agreed.	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>(b) The Administration had taken note of the suggestions from members at previous meetings and would report to members how the suggestions were incorporated into the CoP/PNs at the coming meetings.</p>	
<p>014735 – 014855</p>	<p>Administration Mrs Sophie LEUNG</p>	<p>(a) The Administration's report that additional building safety related provisions would be introduced as CSAs to the Bill.</p> <p>(b) These CSAs would include --</p> <ul style="list-style-type: none"> <li>(i) the power to obtain warrants for entry into premises;</li> <li>(ii) a new control system of signboards;</li> <li>(iii) penalty for owners who refused to contribute to the cost of prescribed inspection or repair; and</li> <li>(iv) surcharge for default works.</li> </ul> <p>The proposals would be submitted to members for deliberation at the next meeting.</p> <p>(c) Mrs Sophie LEUNG's suggestion that weblinks to existing PNs should be made available for members' reference.</p>	
<p>014856 – 015346</p>	<p>Ms Cyd HO Prof Patrick LAU Administration Deputy Chairman Mr KAM Nai-wai</p>	<p>(a) Professor LAU and the Deputy Chairman's comments that the proposed CSAs from the Administration were not straight forward and more time should be allowed for thorough deliberation.</p> <p>(b) Ms HO's suggestion that members should be clearly reminded that the Administration was putting forward</p>	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>new provisions that were not part of MBIS and the Mandatory Window Inspection Scheme.</p> <p>(c) Mr KAM's suggestion for thorough consultation on the proposed CSAs and, in particular, another public hearing on control of signboards should be considered.</p>	
015347 – 015417	Chairman Clerk	The next meeting would be held on 11 February 2011.	

Council Business Division 1  
Legislative Council Secretariat  
11 March 2011