

LEGISLATIVE COUNCIL PANEL ON MANPOWER

EXTENSION OF CONSTRUCTION INDUSTRY LEVY TO COVER ELECTRICAL AND MECHANICAL WORKS IN THE CONSTRUCTION INDUSTRY

PURPOSE

This paper informs Members of the proposal to extend the existing construction industry levy to cover electrical and mechanical (E&M) works in the construction industry.

BACKGROUND

Construction Industry Training Authority

2. The Construction Industry Training Authority (CITA) was established in 1975 as a statutory body to provide training courses for the construction industry. As stipulated under section 5 of the Industrial Training (Construction Industry) Ordinance (Cap. 317) (the Ordinance), CITA's primary functions are to provide training courses for the construction industry through its training centres, to assist in the placement of its trainees, and to assess the standards of skills achieved by construction workers.

3. At present, CITA collects levy on "construction works" as defined under sections 2(2) and 2(3) of the Ordinance (as at **Annex 1**). Construction works undertaken in Hong Kong and exceeding a value of \$1 million are subject to the construction industry levy which is now fixed at a rate of 0.4%. The purpose of the levy is to support training and trade testing activities provided by CITA for construction workers.

4. As defined under the Ordinance, the scope of "construction works" which are subject to the levy does not include E&M works. Section 2(3) of the Ordinance stipulates that "construction works" shall not include E&M works such as installation, repair and maintenance of any air-conditioning plant, electricity supply system, etc. When the

Ordinance was first drafted in 1975, consideration was given to including E&M works within its scope as well. However, as the scale of E&M works then was relatively small and the technical institutes (i.e. Vocational Training Council's predecessor) and the industry itself were providing adequate training, the E&M industry objected to the proposal and E&M works were subsequently excluded from the scope of "construction works".

Existing E&M Training and Trade Testing

5. With the support of government subventions, some generic and construction-related training courses and trade tests for E&M workers are currently provided by the Vocational Training Council (VTC). On the advice of its Metals Training Board and E & M Services Training Board, the VTC organizes courses in electrical, mechanical, building services, welding and gas works and conducts trade tests for some categories of E&M workers. The majority of these training courses are subsidized and only a nominal fee is charged for trade tests.

PROPOSAL

Purpose

6. According to the Hong Kong Electrical and Mechanical Contractors' Association (HKEMCA), the E&M services have grown in importance in the construction industry in recent years. They now constitute on average 15-20% of the overall construction cost of a building and the figure can be as high as 30% in "hi-tech" and "intelligent" buildings. The skills required for these services have become more complex and specialised. As a result the HKEMCA now believes that the spectrum and capacity of E&M training courses as well as the categories and capacity of E&M trade tests need to be expanded. This would facilitate the provision of more well-trained workers to meet the needs of the industry. It would also help lift quality and productivity and improve site safety. To meet the cost of the training courses and trade tests, the HKEMCA has recommended that a levy should be imposed on E&M works in the construction industry.

7. In response to the industry's recommendation, the Education and Manpower Bureau (EMB) agreed to take forward a proposal to extend the existing construction industry levy to cover E&M works in the construction industry so that the income so derived could be used to

provide expanded training courses and trade tests for E&M workers. The purpose is to enhance the quality, industrial safety, and productivity of E&M workers. A Steering Committee including representatives from the Hong Kong Construction Association (HKCA), the HKEMCA, the VTC, CITA and the Administration was formed to take forward the proposal and the proposals that it has agreed on are described in paragraphs 8 – 14 below.

Definition of Construction Contracts

8. It is proposed that the construction industry levy stipulated under the Ordinance be extended to cover E&M works in the construction industry. It is also proposed that the rate of levy should remain unchanged at 0.4%.

9. In examining how the existing Ordinance should be amended to extend coverage to E&M works, the Steering Committee noted that the current definition of “construction works” had given rise to disputes over whether certain works item such as design, compensation, attendancy etc. should be covered. To remove ambiguity and to facilitate administration of the levy collection by CITA, the Steering Committee recommended that the Ordinance should be amended so that levy would be imposed on the value of “construction contracts” rather than the value of “construction works”. Modelling on existing UK legislation, the Steering Committee further recommended that the definition of construction contract as shown at **Annex 2** should be adopted. The definition would cover, among other items, E&M works.

Expansion of training and trade testing for E&M workers

10. The annual levy collectible in respect of E&M works in construction contracts is estimated to amount to \$46 million when the levy takes full effect, which is estimated to take five years.^{Note} It is impossible to achieve the full effect of the levy immediately after imposition because CITA could assess the amount of levy due from the contractor and collect the levy only after receiving a contractor’s notice that payment or interim payment has been made to the contractor. Based on past experience on collecting construction works levy, CITA estimates that the proportion of levy collectible will be a nominal progression of 5%, 25%, 65%, 90% and 100% during the first 5-year period.

^{Note} The levy of \$46 million is based on 0.4% of the value of E&M works in construction contracts, which are estimated to be \$11.5 billion per annum.

11. The additional levy collected from E&M works in the construction industry would be used by CITA to expand the scope of E&M training courses and to cover the costs of the corresponding trade tests. In future, CITA will provide E&M training specific to the construction industry while the VTC will continue to provide general training on E&M which will continue to be subvented by government.

12. It is recommended that CITA should have full authority to plan and administer additional E&M training courses and trade tests that are related to the construction industry. CITA plans to engage the VTC as an agent in running some of the expanded programmes. In this connection, the current Ordinance, which provides for CITA to use the proceeds of the levy to provide training itself, should also be amended to enable CITA to involve other organizations as training agents to organize and provide training and trade testing for the construction industry. A provision would have to be added to section 6 of the Ordinance, “General powers of the Authority”, to give the CITA such authority.

13. Currently, a Working Party comprising representatives of the HKEMCA, the VTC and CITA is considering a proposed expansion programme for E&M training courses and trade tests. The proposal is being drawn up with close reference to the registration requirements of the future Construction Workers Registration System (CWRS). Under the proposed CWRS, construction workers are required to pass relevant trade tests or intermediate trade tests, in order to be registered as skilled or semi-skilled workers respectively.

Composition of the CITA Board

14. Due to the proposed extension of the construction industry levy to cover E&M works, the Steering Committee recommended that the CITA Board should include a representative from the E&M sector. The recommendation has been considered and supported by the Provisional Construction Industry Co-ordinating Board. The proposed new composition of CITA is shown at **Annex 3**.

COMMENTS FROM MAJOR STAKEHOLDERS

15. Comments from representatives of major stakeholders in the construction industry who would be mainly responsible for meeting the costs of the proposal through the levy have been invited. Although the

Real Estate Developers Association (REDA) of Hong Kong has expressed some reservations over the proposed extension of construction industry levy to cover E&M works, the proposal is welcomed by other major stakeholders in the construction industry including the HKCA, the HKEMCA, MTR Corporation Limited, Kowloon Canton Railway Corporation, Hong Kong Housing Authority, Hong Kong Housing Society and Pneumoconiosis Compensation Fund Board (PCFB).

16. The existing construction industry levy is an effective, long established and widely accepted mechanism by which the construction industry contributes to its own manpower development. While REDA supports the principle of the construction industry funding training and trade testing activities for its workers, they have some reservations over the proposal because of the consequential increase in construction cost. Our estimates suggest that this increase will amount to approximately 0.05% of average construction costs or \$500 for a construction contract with a value of \$1 million.

17. We believe that the proposed expansion of E&M training and trade testing activities would definitely benefit the construction industry by providing more specialised skilled workers and enhancing the overall quality and productivity of the trade. These benefits will be felt, even if indirectly, by the real estate industry and the community as a whole. The benefit of the proposal would appear to outweigh the cost of it. For the reasons given in para. 6 above we agree with the E&M industry that this is a worthwhile proposal and that its implementation as soon as possible would be desirable.

THE NEXT STEP

18. With the growing importance of E&M trades in the construction industry in recent years and the implementation of the proposed CWRS, the demand for E&M training and trade testing will increase. Given its overall responsibility for training in the construction industry, CITA is the appropriate body to take overall responsibility for meeting this demand. We will be increasingly relying on CITA to step up E&M training and trade testing so as to ensure that the manpower needs of the construction industry are met. Given that CITA's activities are funded by the levy and that this proposal has the endorsement of the industry, EMB supports the proposed expansion of the scope of the levy.

19. EMB is preparing the necessary legislative amendments to

extend the construction industry levy to cover E&M works. Parties concerned will be consulted throughout the drafting exercise. We aim to introduce the amendment bill into this Council in the first half of the next legislative year.

Education and Manpower Bureau
July 2002

Industrial Training (Construction Industry) Ordinance
Cap.317

Section 2 Interpretation and application

- (2) Subject to subsections (3) and (4), for the purposes of this Ordinance "construction works" (建造工程) includes any kind of work involving or in connexion with - (Amended L.N. 235 of 1996)
- (a) building works;
 - (b) the laying out, construction, alteration or repair of any street, tunnel, airport runway, canal, reservoir, pipe-line, railway or tramway;
 - (c) trench works carried out by or for any public utility; and
 - (d) river training works.
- (3) Notwithstanding subsection (2) and subject to any order made under subsection (4), "construction works" (建造工程) shall not include -
- (a) the installation, repair and maintenance of any -
 - (i) air conditioning plant;
 - (ii) electricity supply system, including the wiring, appliances and fittings;
 - (iii) lift, escalator or belt conveyor system;
 - (iv) fire services installation or equipment;
 - (b) manufacture, repair or maintenance of movable furniture;
 - (c) demolition.

Construction contracts

- 1 (1) In this Part a “construction contract” means an agreement with a person for any of the following: -
- (a) the carrying out of construction operations;
 - (b) arranging for the carrying out of construction operations by others, whether under sub-contract to him or otherwise;
 - (c) providing his own labour, or the labour of others, for the carrying out of construction operations.

- (2) References in this Part to a construction contract include works orders issued under the term contract. ("term contract" should be defined)

(Note: For the purpose of construction levy, the amount shall be based on the cumulative value over the whole period of the term contract.)

- (3) References in this Part to a construction contract do not include a contract of employment (within the meaning of the Employment Ordinance (Cap. 57))

- (4) The Chief Executive in Council may by order add to, amend or repeal any of the provisions of subsection (1), (2) or (3) as to the agreements which are construction contracts for the purposes of this Part or are to be taken or not to be taken as included in references to such contracts.

- (5) Where an agreement relates to construction operations and other matters, this Part applies to it only so far as it relates to construction operations.

- (6) This Part shall not apply to any construction contracts which were begun before the commencement of this Part.

Meaning of “construction operations”

- 2 (1) In this Part “construction operations” means, but not limited to, operations of any of the following descriptions: -
- (a) construction, alteration, repair, maintenance, extension, demolition or dismantling of buildings, or structures forming, or to form, part of the land (whether permanent or not);
 - (b) construction, alteration, repair, maintenance, extension, demolition or dismantling of any works forming, or to form, part of the land, including (without prejudice to the foregoing) walls, roadworks, power-lines, pylons, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection, water supply or defence;
 - (c) installation in any building or structure of fittings forming part of the land, including (without prejudice to the foregoing) systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, refuse collection, water supply, fire protection, security or communications systems, lift and escalator or other extra low voltage works;
 - (d) external or internal cleaning of buildings and structures, so far as carried out in the course of their construction, alteration, repair, extension or restoration;
 - (e) operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this subsection, including site clearance and investigation, earthmoving, excavation, tunnelling and boring, laying of foundations, erection, maintenance or dismantling of scaffolding, site restoration,

landscaping and the provision of roadways and other access works;

(f) painting or decorating the internal or external surfaces of any building or structure.

(2) The following operations are not construction operations within the meaning of this Part: -

(a) design work, except under a construction contract which also provides for design;

(b) manufacture or delivery of plant or machinery to a site where the primary activity is : -

(i) power generation;

(ii) the production, transmission, processing or bulk storage (other than warehousing) of chemicals, pharmaceuticals, oil, gas, steel, food or drink, cars, or manufactured goods/articles for sale in market;

(3) The Chief Executive in Council may by order add to, amend or repeal any of the provisions of subsection (1) or (2) as to operations and work to be treated as construction operations for the purposes of this Part.

Provisions not applicable to contract with residential occupier

- 3 (1) This Part does not apply: -
- (a) to a construction contract, which only involves alteration, repair, maintenance, fitting out or painting or decorating the internal or external surfaces of a dwelling, with a residential occupier (see below), or
 - (b) to any other description of construction contract excluded from the operation of this Part by order of the Chief Executive in Council.
- (2) A construction contract with a residential occupier means a construction contract which principally relates to operations on a dwelling which one of the parties to the contract occupies, or intends to occupy, as his residence.

In this subsection “dwelling” means a dwelling-house or a flat; and for this purpose: -

“dwelling-house” does not include a building containing a flat; and

“flat” means separate and self-contained premises constructed or adapted for use for residential purposes and forming part of a building from some other part of which the premises are divided horizontally.

**Proposed New Composition
of the Construction Industry Training Authority**

The Authority shall consist of 13 members of whom –

- (a) 2 shall be persons nominated by the Hong Kong Construction Association Limited;
- (b) 1 shall be a person nominated by the Hong Kong Electrical and Mechanical Contractors' Association;
- (c) 1 shall be a person nominated by the Hong Kong Institute of Architects;
- (d) 1 shall be a person nominated by the Hong Kong Institute of Surveyors;
- (e) 1 shall be a person nominated by the Hong Kong Institution of Engineers;
- (f) 1 shall be a person who holds office as an official of a trade union representing workers employed in the construction industry;
- (g) 1 shall be a person nominated by the Executive Director of the Vocational Training Council;
- (h) 1 shall be a person from the tertiary education sector;
- (i) 2 shall be public officers; and
- (j) 2 shall be co-opted members from the construction industry.