

立法會
Legislative Council

LC Paper No. CB(1)1266/04-05
(These minutes have been
seen
by the Administration)

Ref : CB1/BC/1/04/2

Bills Committee on Construction Industry Council (No. 2) Bill

**Minutes of seventh meeting held on
Tuesday, 31 March 2005, 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, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Yuen-han, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon WONG Kwok-hing, MH
Hon Patrick LAU Sau-shing, SBS, JP

Members absent: Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon Alan LEONG Kah-kit, SC
Hon CHEUNG Hok-ming, SBS, JP

Public officers attending : Mr Clement CHEUNG
Deputy Secretary for the Environment, Transport and
Works (Works) 1

Ms Agnes KWAN
Assistant Secretary for the Environment, Transport and
Works (Industry Review)

Ms Frances HUI
Senior Government Counsel
Department of Justice

Ms Selina LAU
Government Counsel
Department of Justice

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (1)4

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Ms Sarah YUEN
Senior Council Secretary (1)6

Action

I Confirmation of minutes

(LC Paper No. CB(1)1162/04-05 -- Minutes of meeting on
15 March 2005)

The minutes of the meeting held on 15 March 2005 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1)1161/04-05(01) -- List of follow-up actions
arising from discussion at the
meeting on 15 March 2005

LC Paper No. CB(1)1161/04-05(02) -- Administration's response to
the list of follow-up actions
arising from discussion at the
meeting on 15 March 2005

LC Paper No. CB(1)1120/04-05(01) -- Letter dated 14 March 2005
from Hon CHEUNG
Hok-ming expressing views
on certain clauses of the Bill

LC Paper No. CB(1)1161/04-05(03) -- Administration's response to
the letter from Hon CHEUNG
Hok-ming

LC Paper No. CB(1)1106/04-05(01) -- Assistant Legal Adviser's
letter dated 9 March 2005
commenting on certain
clauses of the Bill

- LC Paper No. CB(1)1161/04-05(04) -- Draft Committee Stage Amendments to clause 5 proposed by the Administration
- LC Paper No. CB(3)34/04-05 -- The Construction Industry Council (No. 2) Bill
- LC Paper No. CB(1)153/04-05(02) -- Marked-up copy of the consequential amendments arising from the Bill
- LC Paper No. CB(1)923/04-05(03) -- Administration's responses to concerns/views expressed by organizations and Bills Committee (as at 24 January 2005)
- LC Paper No. CB(1)1067/04-05(03) -- Updated summary of concerns/views expressed by organizations and the Bills Committee (as at 8 March 2005))

2. Members noted the Administration's response to Assistant Legal Adviser's comments on the Bill, which was tabled at the meeting.

(Post-meeting note: The above paper was circulated to members vide LC Paper No. CB(1)1201/04-05 on 1 April 2005.)

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

4. The Administration was requested to:

- (a) review the proposed Committee Stage Amendments to clause 5. Members expressed the following views -
 - (i) paragraph (b) should be retained;
 - (ii) the proposed addition of "subcontracting management" in paragraph (h) could not adequately address the concern about multi-layer subcontracting; and
 - (iii) consideration should be given to expressly include in the clause issues about problem of wage arrears, dubious self-employed status and labour dispute resolution;
- (b) supply a quarterly highlight issued by the Provisional Construction

Industry Co-ordination Board and an updated progress report on implementation of recommendations made by the Construction Industry Review Committee; and

- (c) provide financial information of the Construction Industry Training Authority including its sources of funding, projected annual income and expenditure, as well as measures being contemplated by the Administration to cope with a forecasted reduction of construction levies and student intake.

III Any other business

5. After taking into account the Administration's views, members agreed to discuss the following at the next meeting to be held on Tuesday, 19 April 2005, at 2:30 pm -

- (a) Composition of Construction Industry Council (clause 9);
- (b) Composition of Construction Industry Training Board (clause 2 in Schedule 3); and
- (c) Updated Committee Stage Amendments to clause 5, if available.

6. The meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
18 April 2005

**Proceedings of the seventh meeting of the
Bills Committee on Construction Industry Council (No. 2) Bill
on Tuesday, 31 March 2005, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000048	Chairman	Confirmation of minutes of the meeting held on 15 March 2005 (LC Paper No. CB(1)1162/04-05)	
000049 - 000154	Chairman	Opening remarks	
000155 - 000649	Administration	Briefing by the Administration on the proposed draft Committee Stage Amendments to clause 5 (the proposed CSAs) (LC Paper No. CB(1)1161/04-05(04))	
000650 - 001903	Mr WONG Kwok-hing Administration	<p>A member welcomed the proposed CSAs but stressed the need to ensure they could address problems arising from multi-layer subcontracting</p> <p>Administration's expression of the following points -</p> <p>(a) The Bill already provided a wide range of self-regulatory powers for the Construction Industry Council (CIC) to tackle problems arising from multi-layer subcontracting and further develop initiatives such as the voluntary subcontractor registration scheme;</p> <p>(b) The construction industry has all along been operating on an outsourcing model due to the specialized skills required at different stage of a project cycle. As such, it would be more</p>	

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		<p>practical to improve subcontracting management than imposing arbitrary restriction on the layers of subcontracting; and</p> <p>(c) The pilot public works projects to be launched were aimed to deal with problems associated with multi-layer subcontracting through proper contractual arrangements including an effort to encourage contractors/subcontractors to sign up written contracts with their employees and sanctions against non-compliance.</p> <p>The member reiterated his call on the Administration to make reference to relevant practices in Macau and Canada when implementing the three pilot public works projects (the pilot projects)</p>	
001904 - 004540	Miss CHAN Yuen-han Administration Chairman Ms Emily LAU	<p>A member cast doubt if the pilot projects could effectively tackle problems arising from multi-layer subcontracting. She opined that the proposed addition of “subcontracting management” in clause 5(h) was not adequate to address such concern, and that an express reference should be made in clause 5 to wage arrears and dubious self-employed status.</p> <p>Another member shared the member’s views above, and stressed the need to safeguard the welfare of workers.</p> <p>Administration’s expression of the following points -</p>	The Administration to take actions under paragraphs 4(a)(ii) and 4(a) (iii) of the minutes respectively

Time marker	Speaker	Subject(s)	Action required
		<p>(a) Measures to be tried out in the pilot projects were modelled upon private sector practices. Key stakeholders, in particular labour unions, were involved in the working group formed to steer forward these projects;</p> <p>(b) Striving for improved management of subcontracting was a more realistic approach than imposing restriction on layers of subcontracting;</p> <p>(c) CIC should be given sufficient flexibility to perform its statutory role and not constrained by detailed delineation of its functions; and</p> <p>(d) The proposed clause 5(ha) would enable CIC to promote observance of existing labour legislation governing wage arrears and insurance coverage for genuine workers who took up self-employed status.</p> <p>A member's remark that CIC might not agree on what constituted "concerns of the construction industry" in the proposed new clause 5(b) and how to address these concerns</p> <p>Administration's explanation that CIC was intended to serve as a platform to forge consensus. Similar to other statutory bodies, the Bill provided for CIC to arrive at decisions by voting but this was unlikely to be exercised (clause 5(3) in schedule 2)</p>	

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		A member emphasized the need to ensure a balanced representation on CIC	
004541 - 005402	Ir Dr Raymond HO Administration	<p>A member's expression of the following views -</p> <p>(a) Subcontracting was a practical necessity of the construction industry but non-productive subcontracting, especially total subletting, should be avoided; and</p> <p>(b) Hong Kong could draw useful experience from practices in Macau.</p> <p>Administration's explanation that while total subletting was prohibited in public works contracts, the pilot projects would take one step further by eliminating the incentives for non-productive subcontracting and introducing tougher sanctions as deterrent</p> <p>The member's proposal that consideration might also be given to -</p> <p>(a) Barring contractors guilty of misconduct from bidding for projects tendered out by major clients: and</p> <p>(b) Rewarding good practices.</p>	
005403 - 010905	Mr Patrick LAU Administration Chairman	A member's view that both administrative arrangements such as requirement to produce certificates of payment and regulatory actions under the voluntary subcontractor registration scheme as well as	

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		<p>legislative measures should be explored to curb default of contract payment</p> <p>The member's question on whether a start-up fund would be provided for CIC, and whether subsidiary legislation would be formulated for the implementation of clauses 5(d) and 5(e)</p> <p>Administration's expression of the following points -</p> <p>(a) Default of payment could be averted by plugging the loopholes in contractual provisions. To this end, the Provisional Construction Industry Co-ordination Board was refining the standard form of domestic subcontract and working on sample sub-subcontracts for use at the second or lower tiers;</p> <p>(b) The existing levy rate should be sufficient to fund CIC's future operation because many reform initiatives were rolled out by leveraging on the support of key industry stakeholders. Moreover, major clients did not rule out an upward adjustment of the levy rate should this be justified;</p> <p>(c) A preliminary estimate of the annual staffing expenditure incurred by the CIC secretariat was about HK\$4 million; and</p> <p>(d) Clause 70 provided that</p>	

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		Secretary for the Environment, Transport and Works might make regulations for the better carrying out of provisions in the Bill.	
010906 - 011802	Mrs Selina CHOW Administration	<p>A member's expression of the following views -</p> <ul style="list-style-type: none"> (a) Subcontracting was necessary to cater for the special nature of construction activities; (b) Concern about problems arising from multi-layer subcontracting should be properly addressed in clause 5; and (c) The original clause 5(b) should be retained. <p>Administration's agreement to consider the above views</p>	The Administration to take action under paragraph 4(a)(i) of the minutes
011803 - 012646	Mr LEE Cheuk-yan Administration	<p>A member's expression of the following views -</p> <ul style="list-style-type: none"> (a) Clause 5(h) should be refined by adding the sentence “減少分判及完善其管理制度”(reduce subcontracting and improve its management); (b) Proposed clause 5(ha) should be refined by replacing “提倡遵守關乎僱傭的法例規定” with “倡議切實保障勞工的措施”(advocating practicable measures to safeguard the welfare of 	

Time marker	Speaker	Subject(s)	Action required
		<p>workers);</p> <p>(c) Since sample contracts had only a limited short-term impact, provision should be made in clause 5 for labour dispute resolution; and</p> <p>(d) Rather than waiting for completion of the pilot projects, legislative measures should be introduced to prevent wage arrears.</p> <p>Administration's expression of the following points -</p> <p>(a) The suggested refinements would have to be examined in detail with the Labour Department;</p> <p>(b) The effectiveness of new measures tried out in the pilot projects would be closely monitored and extended to other projects expeditiously; and</p> <p>(c) The introduction of legislative measures required careful examination by relevant departments and prior consultation with parties affected. Past experience revealed that administrative measures were able to yield satisfactory results.</p>	<p>The Administration to take action under paragraph 4(a)(iii) of the minutes</p>
012647 - 014439	<p>Mr Abraham SHEK Ms Emily LAU Administration Chairman Mrs Selina CHOW</p>	<p>A member's expression of the following views -</p> <p>(a) Subcontracting was necessary to facilitate smooth operation of the</p>	

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		<p>construction industry to the benefit of workers and Hong Kong as a whole; and</p> <p>(b) Since CIC was intended to be a self-regulatory body, its functions should be agreed in consultation with the industry which might not support an upward adjustment of the levy rate to take on additional functions such as those in clauses 5(f) to 5(h). PCICB should be consulted in this regard.</p> <p>The member and the Chairman's view that the original clause 5(b) should be retained</p> <p>Administration's advice that it would report progress of scrutiny by the Bills Committee (BC) to PCICB in due course. On resources, the reform initiatives conceived by CIC could become self-financing by leveraging on the support of key industry stakeholders</p> <p>Another member's emphasis on the obligation for CIC to protect welfare of workers despite the additional resources involved</p> <p>Administration undertook to give an update on latest achievements of PCICB and reiterated that CIC should be given flexibility to perform its statutory role without being constrained by detailed delineation of its functions.</p> <p>The Chairman's emphasis on the need</p>	<p>The Administration to take actions under paragraphs 4(b) and 4(c) of the minutes respectively</p>

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		<p>to strike a balance in considering how clause 5 should be further revised to address members' concern</p> <p>Another member's view that the various functions expected of CIC should be enshrined in clause 5</p>	
014440 - 015602	Mrs Selina CHOW Administration Ms Emily LAU	<p>A member's concern that levies collected under the Industry Training (Construction Industry) Ordinance (Cap. 317) for training by the Construction Industry Training Authority (CITA) should not be used for other purposes. Since CITA was facing financial difficulties posed by forecasted reduction of construction levies and student intake, this problem should be resolved before its amalgamation with CIC</p> <p>Administration's expression of the following points -</p> <p>(a) The Bill provided that construction levies collected by CITA could be deployed to fund CIC's future operation but a critical assessment would have to be made as to whether an upward adjustment of the levy rate was justified; and</p> <p>(b) There was currently a positive dialogue between the management and staff sides of CITA on organizational changes necessary to cope with the projected financial difficulties, including the introduction of a voluntary exit scheme.</p>	

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		<p>Members' expression of the following views -</p> <p>(a) The current pool of construction levies might not be sufficient for CIC to discharge a wide range of functions, hence there was a need to work out contingency arrangements; and</p> <p>(b) Since both construction training and protection of labour welfare were related to public interests, the Government should ensure that CIC was provided with resources to discharge these functions.</p>	
015603 - 005916	<p>Chairman Administration Mr Abraham SHEK Mrs Selina CHOW</p>	<p>Items to be discussed at the next meeting</p> <p>Members' request for financial information on CITA and its sources of funding, annual income and expenditure, as well as measures being contemplated by the Administration to cope with a forecasted reduction of construction levies and student intake</p>	<p>The Administration to take action under paragraph 4(d) of the minutes</p>