

立法會
Legislative Council

LC Paper No. CB(1)100/05-06
(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 fourteenth meeting held on
Monday, 3 October 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 CHAN Yuen-han, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, BBS, JP
Hon WONG Kwok-hing, MH
Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, 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)2217/04-05 -- Minutes of meeting on 20 July 2005)

The minutes of the meeting held on 20 July 2005 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1)2333/04-05(01) -- Relevant provisions of the Town Planning Ordinance (Cap. 131) on meeting arrangements provided by the Assistant Legal Adviser

LC Paper No. CB(1)2313/04-05(01) -- List of follow-up actions arising from discussion at the meeting on 20 July 2005

LC Paper No. CB(1)2313/04-05(02) -- List of outstanding follow-up actions arising from discussion at previous meetings (as at 21 July 2005)

LC Paper No. CB(1)2313/04-05(03) -- Administration's responses to outstanding follow-up actions arising from discussions at previous meetings (as at 21 July 2005)

LC Paper No. CB(1)2313/04-05(04) -- A comparison of the Construction Industry Council (No.2) Bill with relevant provisions of the Industrial Training (Construction

2. The Bills Committee deliberated (Index of proceedings attached at the **Appendix**).
3. The Administration was requested to:
 - (a) at the Second Reading debate on the Bill, state its expectations in relation to nomination for appointment to the Construction Industry Council (CIC) and the need for a report back system;
 - (b) refine the drafting of new 7A(2)(b)(ii) in Schedule 2 to reflect the policy intention that meetings of CIC would not be open if the matter to be discussed in relation to levy was case specific;
 - (c) in consultation with the Legal Adviser to the Bill Committee, provide the case law concerning the meaning of the phrase "...having regard to all the circumstances of a particular case, reasonably considers that..." (new 7A(2)(c) in Schedule 2);
 - (d) advise in writing the outcome of the voluntary exit scheme launched by Construction Industry Training Authority (CITA) and the impact on its financial position;
 - (e) provide a breakdown by year of the value of construction works subject to levy and the levy income in the 90s; and
 - (f) consider providing a written undertaking concerning smooth transition of CITA staff upon the amalgamation of CITA with CIC.

III Any other business

4. The Chairman reminded members that the next two meetings of the Bills Committee had been scheduled as follows –

Date and time

15th meeting:	10 October 2005 (Monday) from 2:30 pm to 4:30 pm
16th meeting:	25 October 2005 (Tuesday) from 10:45 am to 12:45 pm

5. Members agreed that the Bills Committee should proceed to clause-by-clause examination of the Bill at its fifteenth meeting.

6. The meeting ended at 12:55 pm.

Council Business Division 1
Legislative Council Secretariat
24 October 2005

**Proceedings of the fourteenth meeting of the
Bills Committee on Construction Industry Council (No. 2) Bill
on Monday, 3 October 2005, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000020	Chairman	Confirmation of minutes of the meeting held on 20 July 2005 (LC Paper No. CB(1)2217/04-05)	
000021 - 000115	Chairman	Opening remarks	
000116 - 000557	Administration	Briefing by the Administration on item (1) of the Administration's responses to outstanding follow-up actions arising from discussions at previous meetings (Annex A to LC Paper No. CB(1)2313/04-05(03))	
000558 - 001822	Chairman Ms Emily LAU Administration	<p>A member's question on whether all stakeholders found the new Schedule 1A agreeable, and expression of the following views –</p> <ul style="list-style-type: none"> (a) The proposed allocation of one extra seat in the Construction Industry Council (CIC) to construction workers unions was inadequate; (b) She supported the proposed removal of CIC's Chief Executive from the membership of CIC; (c) The number of representatives of employers on CIC was too great to maintain a balanced composition; (d) It was unclear how the Secretary for the Environment, Transport and Works (SETW) should have regard to the nominations made when appointing members to CIC (clause 9(5)); and 	

Time marker	Speaker	Subject(s)	Action required
		<p>(e) There was a need to ensure that CIC members appointed could represent and be accountable to their respective categories.</p> <p>Administration's expression of the following points –</p> <p>(a) The allocation of one extra seat in CIC to construction workers unions was considered the best arrangement to maintain a balanced composition of CIC and to ensure the nimbleness in its decision making process;</p> <p>(b) The number of seats allocated to employers were only 4 as provided under clause 9(3)(a). Professionals, consultants, contractors, subcontractors and suppliers were not necessarily employers;</p> <p>(c) Depending on the quality of the nominations received, SETW would select and appoint CIC members based on the lists of candidates provided by the specified bodies set out in the new Schedule 1A;</p> <p>(d) The Administration was not aware of any adverse comments on the new Schedule 1A, which was intended to cover representative bodies who had demonstrated the willingness and capabilities in spearheading industry reform, during its consultation with various stakeholder groups and the Provisional Construction Industry Co-ordination Board. The Administration would</p>	

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		<p>inform members if there was any written requests for inclusion in the new Schedule 1A received afterwards; and</p> <p>(e) The Administration would highlight the need to ensure nominees' representativeness and accountability when inviting specified bodies to make nominations.</p>	
001823 - 002151	Chairman Ir Dr Raymond HO Administration	<p>A member's expression of the following views –</p> <p>(a) He supported the proposed allocation of one extra seat in CIC to construction workers unions;</p> <p>(b) In consideration of the need to maintain a balanced composition of CIC and to expedite its establishment to spearhead the long-delayed industry reform, he agreed to specify the Hong Kong Institution of Engineers (HKIE) as the only body to nominate engineers for appointment to CIC despite the many categories and organizations of engineers; and</p> <p>(c) Most members of HKIE were not employers.</p>	
002152 - 002316	Chairman Ms LI Fung-ying Administration	<p>A member's view that although the allocation of three seats in CIC to construction workers unions was insufficient, it might be futile to pursue the issue further. She hoped that SETW could actively liaise with the unions to appoint the best candidates to CIC</p> <p>The Administration's assurance that efforts would be made to ensure the</p>	

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		nominees appointed could represent the interests of their categories and would report back to their respective categories the work of CIC	
002317 - 002938	Chairman Mr Patrick LAU Administration	<p>A member's expression of the following views –</p> <ul style="list-style-type: none"> (a) The Housing Authority (HA) should be represented on CIC as proposed by members earlier (clause 9(1)); (b) Consultant architects did not represent employers; (c) Co-operation and communication among stakeholders were important in taking forward industry reform; and (d) He supported the proposed removal of CIC's Chief Executive from the membership of CIC. <p>The Administration's explanation that since HA was chaired and serviced by Government officials, it would be represented on CIC in the capacity of one of the three public officers to be appointed by SETW (clause 9(1)(c))</p> <p>The member's proposal to specify the three public officers to be appointed, and the Administration's view that the present drafting of clause 9(1)(c) could provide greater flexibility</p>	

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002939 - 003405	Chairman Mr Abraham SHEK Administration	<p>A member's expression of the following views –</p> <p>(a) The proposed composition of CIC was balanced. No differentiation should be made between employers and employees as both had to work together to take forward industry reform; and</p> <p>(b) Close liaison with construction workers unions should be kept up to ensure the best candidates would be appointed to CIC.</p> <p>The member's question on whether the Kowloon-Canton Railway Corporation (KCRC) and the MTR Corporation Limited (MTRC) would each have one representative on CIC after their likely merger</p> <p>The Administration's explanation that the new Schedule 1A might be amended should there be a merger of KCRC and MTRC. However, under the present drafting SETW was not obliged to appoint one nominee from each of the two organizations. The major criterion for appointment would be the quality of the nominees</p> <p>The Administration's confirmation in response to the Chairman that the legislative intent was to appoint four CIC members from the category of employers to maintain a balanced composition, notwithstanding the expression "not more than 4" in clause 9(3)(b)</p>	

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003406 - 004009	Chairman Mr WONG Kwok-hing Ms Emily LAU Administration	<p>A member's expression of the following views –</p> <p>(a) In recognition of other members' stance, she would not seek to further increase the number of seats on CIC for construction workers unions;</p> <p>(b) She supported the need to ensure good communication between CIC members and the categories they represented, and requested that SETW should state at the Second Reading debate on the Bill the Administration's expectations in relation to nomination for appointment to CIC and the need for a report back system; and</p> <p>(c) There was a need to establish a sound mechanism for removal of appointed members should they fail to perform satisfactorily. Clause 12(d) which dealt with removal of appointed members was however not clear enough (clauses 10 and 12).</p> <p>Administration's elaboration of the criteria set out for assessing the performance of CIC members and expressed difficulties to provide in the Bill substantial details of the appraisal mechanism</p>	The Administration to take action under paragraph 3(a) of the minutes
004010 - 004630	Administration	Briefing by the Administration on item (2) of LC Paper No. CB(1)2313/04-05(03) (Annexes B and C)	

Time marker	Speaker	Subject(s)	Action required
004631 - 005050	Chairman Mr WONG Kwok-hing Ms Emily LAU Administration	<p>A member's question on why discussion on levy, surcharge, penalty or further penalty should be conducted at closed meetings (new clause 7A(2)(b)(ii) in Schedule 2)</p> <p>Administration's explanation that the above matters needed to be discussed at closed meetings because they might involve the contemplation of legal actions to recover levy, surcharge or penalty in relation to specific cases, which should not be disclosed prematurely (clause 49)</p> <p>The Chairman's and another member's view that the drafting of new 7A(2)(b)(ii) in Schedule 2 should be refined to reflect the policy intention that meetings of CIC would not be open if the matter to be discussed in relation to levy was case specific</p>	The Administration to take action under paragraph 3(b) of the minutes
005051 - 010622	Chairman Ms Emily LAU Administration ALA5	<p>A member's expression of the following views –</p> <p>(a) The holding of meetings in public should, as in the case of the Town Planning Board (TPB), apply to all committees under CIC; and</p> <p>(b) The expression “reasonably considers” in the new clause 7A(2)(c) in Schedule 2 was vague and could be abused to avoid holding open meetings. Criteria in this regard should therefore be set.</p> <p>Administration's expression of the following points –</p> <p>(a) Unlike TPB whose committees</p>	

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		<p>had defined functions focusing on planning applications and hearing of representations, the committees to be established by CIC would deal with a wide range of internal affairs including management and personnel matters. It might therefore be more appropriate for CIC to follow the open meeting arrangements of similar statutory bodies such as HA, the Hospital Authority and the Estate Agents Authority instead of TPB;</p> <p>(b) The expression “reasonably considers” in clause 7A(2)(c) was introduced to ensure the discretions in conducting closed meetings by CIC would be exercised with regard to reasonableness and the specific circumstances of individual cases; and</p> <p>(c) There was a need to conduct closed meetings to facilitate frank exchange of views on matters under contemplation.</p> <p>Assistant Legal Adviser’s advice that when the court reviewed a decision of a statutory authority which was required to be made reasonably under the legislation, it would consider all circumstances of the case and not only the subjective view of the statutory body. She proposed to work in consultation with the Administration to provide the case law concerning the meaning of “reasonableness” (new 7A(2)(c) in Schedule 2)</p>	<p>The Administration to take action under paragraph 3(c) of the minutes</p>

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010623 - 011551	Administration	<p>Briefing by the Administration on item (3) of LC Paper No. CB(1)2313/04-05(03) (Annex D)</p> <p>Administration's expression of the following points –</p> <p>(a) It was expected that with the decrease since 2004 in the value of construction works subject to levy, levy income of the Construction Industry Training Authority (CITA) would decrease. Hence the need for CITA to cut costs and increase incomes to mitigate the impact on its financial position; and</p> <p>(b) A voluntary exit scheme (VES) was launched by CITA in August 2005. The response so far was satisfactory. It was expected that the savings in staff cost resulting from VES and natural wastage would enable CITA to maintain its financial viability up to 2010.</p>	
011552 - 012723	Chairman Mr LEE Cheuk-yan Administration	<p>A member's expression of the following views –</p> <p>(a) It was questionable whether in the following years the Administration could honour its undertaking that the value of public works commenced each year would on average reach \$29 billion; and</p> <p>(b) It was undesirable that the emoluments of CITA's senior staff should take up 20% of the total emoluments. Such an imbalanced salary structure should be rectified. The success of VES would hinge on the</p>	

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		<p>number of senior staff opting it (Annex E to LC Paper No. CB(1)2313/04-05(03)).</p> <p>Administration's expression of the following points –</p> <p>(a) The value of public works projects commenced over the past few years had decreased because of the economic downturn and delays in certain planned large-scale projects such as the development of the Kai Tak site, Central Reclamation, etc. Efforts were being made to facilitate an early commencement of suitable public works projects so as to achieve the target spending level in the medium term;</p> <p>(b) The strategic position and mode of operation of CITA would be addressed in a holistic manner through a comprehensive review spearheaded by CIC after the amalgamation exercise. The salary structure of CITA should be addressed in that context.; and</p> <p>(c) The outcome of CITA's VES would only be available in late October 2005 when the scheme was closed for application. According to information from CITA thus far, applicants came from different categories of staff.</p>	<p>The Administration to take action under paragraph 3(d) of the minutes</p>
012724 - 013810	Chairman Ms LI Fung-ying Miss CHAN Yuen-han Administration	<p>Members' request of a written undertaking concerning smooth transition of CITA staff upon the amalgamation of CITA with CIC (clause 82)</p> <p>Administration's agreement to</p>	<p>The</p>

Time marker	Speaker	Subject(s)	Action required
		<p>consider the above request in recognition of the need to preserve stability during the transition period. It would advise on whether the continued employment of CITA staff for a certain period could be undertaken when the Bills Committee (BC) examined clause 82</p> <p>A member's emphasis of the need to ensure CITA management could not play tricks to interfere with BC's work, and that class reduction by CITA would not create a gap in the training of construction practitioners</p> <p>Administration's advice as follows –</p> <p>(a) It had monitored CITA's enrolment activities closely and enlisted the support of major stakeholders who were represented on the CITA board that priority would be accorded to the passage of the Bill; and</p> <p>(b) Collaborative efforts were made to explore new opportunities for CITA to train up practitioners with skills demanded by the industry.</p>	<p>Administration to take action under paragraph 3(f) of the minutes</p>
013811 - 014216	<p>Chairman Mr Howard YOUNG Administration</p>	<p>A member's question on the value of construction works subject to levy that would sustain CITA's operation until 2010</p> <p>Administration's reiteration that based on an earlier submission concerning various financial scenarios compiled by CITA for 2005 to 2010, \$40 to \$45 billion of construction works commenced per year would suffice</p> <p>The member's enquiry about the value of construction works subject to levy</p>	<p>The Administration</p>

Time marker	Speaker	Subject(s)	Action required
		and the levy income in the 90s, and the Administration's undertaking to provide a breakdown by year	to take action under paragraph 3(e) of the minutes
014217 - 015536	Chairman Ms Emily LAU Mr LEE Cheuk-yan Administration	<p>A member's request for clarification of the following –</p> <ul style="list-style-type: none"> (a) How the views of CITA staff who opposed to VES would be given consideration; (b) Whether all contract staff of CITA would be laid off; and (c) Whether CITA's classes had been reduced by 50% as claimed by CITA staff or 17% as reported by the Administration. <p>Another member's expression of concern about class reduction by CITA</p> <p>Administration's expression of the following points –</p> <ul style="list-style-type: none"> (a) To facilitate long-term planning, there was a need to launch VES for CITA staff that might not be willing to participate in the changes necessary for CITA to reposition itself and cope with the evolving industry needs. Notwithstanding, staff who were ready to continue their contribution to CITA could choose not to opt for VES; (b) As was the current practice, the decision to renew employment contracts of staff would be made in accordance with the operational needs of and resources available to CITA; 	

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		<p>(c) When compared with the number of trainees last year, the enrolments for current year as anticipated by CITA was 17% less; and</p> <p>(d) Actual enrolments would not be restricted to the proposed training capacity but would hinge on the number of applicants. As a result of strengthened promotional efforts, enrolment for basic craft courses and technician programmes had reached the overall target set by CITA.</p> <p>The other member's expression of the following views –</p> <p>(a) CITA strengthened measures to improve course enrolment only after the BC had expressed concern in this regard;</p> <p>(b) Closure of CITA's centre in Kwai Chung was not conducive to course enrolment; and</p> <p>(c) The Administration and not CITA should provide a written undertaking guaranteeing five-year transitional period for CITA staff.</p> <p>Administration's agreement to consider the member's view in (c) above but emphasized the difficulty in providing for a transitional period of five years</p> <p>The Administration noted the member's view on the need to work closely with CITA's staff association and to prepare CITA staff for necessary changes by providing</p>	<p>The Administration to take action under paragraph 3(f) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		suitable training opportunities.	
015537 - 015742	Administration	Briefing by the Administration on items (4) and (5) of LC Paper No. CB(1)2313/04-05(03) (Annexes E and F)	
015743 - 020249	Chairman Ms LI Fung-ying Administration	<p>A member's expression of the following views –</p> <p>(a) There was a need to ensure CITA's salary structure was fair and balanced; and</p> <p>(b) CITA management might be playing tricks to reduce classes. For example, by closing centres and cutting course allowances.</p> <p>Administration's emphasis that they were already actively involved in CITA's enrolment plans and would address the above issues through representatives sitting on CITA board and its committees. CITA's staff association was encouraged to liaise with the Administration more closely to reflect their concerns on the future development of CITA.</p>	
020250 - 020335	Chairman	Meeting arrangements	
020336 - 020520	Chairman Mr WONG Kwok-hing Administration	<p>A member's question on whether disciplinary actions could be taken against CITA's senior staff should their performance be found undesirable</p> <p>Administration's explanation that such cases would be handled by the CITA board or CIC after the proposed amalgamation according to employment terms and relevant staff management measures</p>	
020521 - 020750	Chairman	Administration's expression of the	

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	Mr LEE Cheuk-yan Administration	following points in response to a member – (a) The number of CITA staff members entitled for senior staff allowance was around 20; and (b) A new pay scale with reduced monthly emoluments was adopted for staff employed by CITA after mid-1999 in light of the economic environment.	

Council Business Division 1
Legislative Council Secretariat
24 October 2005