

立法會
Legislative Council

LC Paper No. CB(1)101/05-06
(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 fifteenth meeting held on
Monday, 10 October 2005, at 2:30 pm
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 Alan LEONG Kah-kit, SC
Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
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 Clause-by-clause examination of the Bill

(LC Paper No. CB(1)2386/04-05(01) -- List of follow-up actions arising from discussion at the meeting on 3 October 2005

LC Paper No. CB(1)2386/04-05(02) -- Administration's response to the updated summary of concerns/views expressed by organizations and the Bills Committee (as at 11 July 2005)

LC Paper No. CB(1)2313/04-05(05) -- Draft Committee Stage Amendments to clauses 2, 5, 7, 9 and 71 and new Schedule 1A, Schedule 2 and Schedule 5 of the Bill

LC Paper No. CB(1)2313/04-05(06) -- Marked-up version of the draft Committee Stage Amendments to clauses 2, 5, 7, 9 and 71 and new Schedule 1A, Schedule 2 and Schedule 5 of the Bill

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 Industry) Ordinance (Cap. 317)

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)1201/04-05(01) -- Administration's response to the letter from Assistant Legal Adviser
- 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)2024/04-05(04) -- Updated summary of concerns/views expressed by organizations and the Bills Committee (as at 11 July 2005))

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

2. The Administration was requested to:

Clause 1

- (a) advise in writing the timeframe contemplated by the Administration with respect to the establishment of the Construction Industry Council (CIC) and the dissolution of the Construction Industry Training Authority;

Clause 2

- (b) review the definition of "construction operations" to address operational difficulty, if any, encountered in collecting levy;
- (c) advise the channels/mechanism to ensure construction operations which were subject to levy were traceable and that the contractors concerned were made aware of the liability for payment of the levy;
- (d) review the Chinese rendition of "Objections Committee". One suggested version was "處理反對事宜委員會";

Clause 5

- (e) review the drafting of clause 5(j). A member was concerned how CIC could **monitor** improvements made by the construction industry through compilation of performance indicators; and
- (f) consider the strategic framework governing the relationship between the Environment, Transport and Works Bureau and CIC.

II Any other business

3. Members noted that the sixteenth meeting of the Bills Committee had been scheduled for Tuesday, 25 October 2005, at 10:45 am, to continue clause-by-clause examination of the Bill.

4. The meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
24 October 2005

**Proceedings of the fifteenth meeting of the
Bills Committee on Construction Industry Council (No. 2) Bill
on Monday, 10 October 2005, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000239	Chairman Ms Emily LAU	Opening remarks	
<p><i>Clause-by-clause examination of the Bill together with Committee Stage amendments (CSAs)</i></p> <p><u>Preamble and clause 1</u></p>			
000240 – 001353	Administration Ms Emily LAU Chairman	<p><i>Preamble</i></p> <p>Examination of the preamble</p> <p><i>Clause 1 - Short title and commencement</i></p> <p>A member's enquiry about the timeframe contemplated by the Administration with respect to the establishment of the Construction Industry Council (CIC) and the dissolution of the Construction Industry Training Authority (CITA) ((a) and (e) of the preamble)</p> <p>The Administration's explanation that the establishment of CIC with an appointment mechanism based on nominations from industry bodies and a permanent secretariat supported by independent source of funding was expected to take a few months. It was the Administration's intention to kick-start the amalgamation with CITA thereafter as soon as practicable, though it might not be conducive to the smooth transition if a definite deadline was set for completion of the exercise. While CITA and CIC would need to operate in parallel for a certain period of time, this should not be a problem because</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>the governance and functions of CITA would largely be preserved</p> <p>The member's emphasis of the need to ascertain the above timeframe before resumption of the Second Reading debate on the Bill, and expression of concern about the financial implications of parallel operation of CIC and CITA</p> <p>Administration's explanation that the transition period was intended to be as brief as possible. Also, as in the case of CITA, CIC would be led by industry representatives who were mindful of the cost-effectiveness in funding its operation by construction levies.</p>	<p>The Administration to take action under paragraph 2(a) of the minutes</p>
<p><u>Clause 2 – Interpretation</u></p> <p>- <i>Chinese version of clause 2(1)</i></p>			
001354 –002737	Chairman Administration Ms Emily LAU	<p>Reference to the comparison of the Bill with relevant provisions of the Industrial Training (Construction Industry) Ordinance (Cap. 317) (LC Paper No. CB(1)2313/04-05(04)), and the Administration's confirmation that the terms used in the Bill were modelled on Cap 317 as far as practicable</p> <p>Administration's explanation in response to a member that “附加費通知” (notice of surcharge) was not a new term although it was not defined in Cap. 317</p> <p>Administration's explanation in response to the member that the term “委任成員” (appointed member) was not defined in Cap. 317. To convey its meaning clearly, it was covered in clause 2(1) of the Bill</p>	

Time marker	Speaker	Subject(s)	Action required
002738 – 010103	Administration Chairman Mr WONG Kwok-hing Ir Dr Raymond HO Mr Patrick LAU Ms Emily LAU Ms LI Fung-ying	<p>Discussion on the definition of “建造工程” (construction operations) with reference to the view of the Kowloon-Canton Railway Corporation (KCR) that it was too wide and that levy should be imposed on construction works only (LC Paper No. CB(1)2386/04-05(02) and Schedule 1) –</p> <p>(a) Some members’ view that, to maximize income for CITA, the definition should, contrary to KCR’s view, cover all construction operations which were subject to levy;</p> <p>(b) Some other members’ view that the definition as further elaborated in Schedule 1 was wide enough and, since it had been in use for years, if CITA had not encountered any operational difficulty in collecting levy according to the definition, the definition should remain as it was to obviate the need for further consultation and hence delay in enacting the Bill;</p> <p>(c) A member’s view on the need to ensure the definition was consistent with that given in relevant laws;</p> <p>(d) A member’s concern that large-scale operations that were deliberately conducted in phases might evade levy payment. He also saw a need to step up publicity to ensure the contractors concerned were made aware of the liability for payment of the levy; and</p>	

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		<p>(e) Members' view that the Administration should closely liaise with all works-related departments for establishing standing channels/mechanism to ensure all construction operations which were subject to levy were traceable. For example, by including the liability for payment of the levy as one licensing condition and by identifying operations through the landfill charging system.</p> <p>Administration's expression of the following points –</p> <p>(a) Detailed elaboration in Schedule 1 of the scope of “construction operations” should suffice to ensure the definition could cover all construction operations which were subject to levy;</p> <p>(b) The Bill already provided that any construction operations whose total value exceeded HK\$1 million would be subject to levy, and according to clause 55 “total value” referred to the aggregate of the values of all stages of the construction operations concerned. In this connection, small-scale repair and maintenance works that were carried out for the occupant of a domestic unit would continue to be exempted from levy payment;</p> <p>(c) CITA had expressed no difficulties in assessment and collection of levy based on the present definition of construction operations. Further confirmation would however be sought from CITA on the adequacy of the</p>	<p>The Administration to take action under paragraph 2(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		<p>scope of works currently prescribed in its enabling legislation;</p> <p>(d) Failure to report the commencement/completion of any leviable construction operations within a specified period was an offence under current statutory requirements and CITA had made use of various channels available to access to relevant information. For an instance, notices on government gazette and copies of building submissions were scrutinized in detail for this purpose. In the meantime, administrative arrangements with regulatory authorities and other parties concerned would be looked into for an enhanced impact of the levy collection mechanism; and</p> <p>(e) Publicity on the liability for payment of the levy could be geared up through trade unions and professional institutes represented on CITA and CIC.</p>	<p>The Administration to take action under paragraph 2(c) of the minutes</p> <p>The Administration to take action under paragraph 2(c) of the minutes</p>
010104 – 010706	Chairman Administration Ms Emily LAU Mr Alan LEONG	<p>Some members' comment that the expression “異議審核委員會”, the Chinese rendition of “Objections Committee”, might need to be improved to enhance consistency and clarity (clause 56)</p> <p>The Administration's explanation of the rationale behind using the present rendition, and agreement to review it with reference to a member's suggested version of “處理反對事宜委員會”</p>	<p>The Administration to take action under paragraph 2(d) of the minutes</p>
010707 – 011209	Administration Ms Emily LAU	Administration's explanation in response to a member that there was a	

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	Chairman	need to include the definition of “罰款” (penalty) in clause 2(1) to differentiate it from “另加罰款” (further penalty)	
<u>English version of clause 2(1) and clauses 3 to 5</u>			
011210 – 011443	Chairman	Examination of the English version of clause 2(1)	
011444 - 011830	Chairman Administration	Members examined clause 2(2) and accepted the proposed CSAs	
011831 – 012325	Chairman Administration Mr Howard YOUNG Ms Emily LAU	<p><i>Clause 3 – Application to Government</i></p> <p>Discussion on the need to specify in the Bill that it would bind the Government, and on whether this was the normal practice with all other pieces of legislation that bound the Government</p> <p>Administration’s explanation that the provision was considered necessary since a significant share of construction levies was contributed by public works projects</p> <p>A member’s view that Government should be bound by all laws, especially those related to environmental protection</p>	
012326 – 012704	Chairman Administration Ms Emily LAU	<p><i>Clause 4 – Establishment of Construction Industry Council</i></p> <p>Administration’s explanation in response to a member that similar to other statutory bodies performing self-regulatory functions and vested with specific powers to handle internal affairs, CIC would not be regarded as the servant or agent of the Government or as enjoying any status, immunity or privilege of the Government. (clause 4(4))</p>	

Time marker	Speaker	Subject(s)	Action required
012705 – 015724	Administration Ms LI Fung-ying Ms Emily LAU Mr Alan LEONG Mr Patrick LAU Ir Dr Raymond HO	<p><i>Clause 5 – Functions of Council</i></p> <p>Members’ expression of the following views on the Chinese version of clause 5 and the proposed CSAs –</p> <p>(a) A member’s expression of concern about how CIC could monitor improvements made by the construction industry through compilation of performance indicators (clause 5(j));</p> <p>(b) A member’s reference to the Bills Committee’s view on the need to include the functions of CIC to address the problems in the industry such as multi-layer subcontracting, wage arrears and insurance coverage for genuine workers;</p> <p>(c) Chairman’s reference to the view of the Hong Kong Institute of Surveyors that the strategic framework governing the relationship between CIC and the Environment, Transport and Works Bureau (ETWB) should be spelt out in the Bill, and members’ request for further details on the operation of the above framework in areas other than those specified in clauses 24 and 29;</p> <p>(d) A member’s query of the need to put in place a liaison mechanism between ETWB and CIC for better interface as intended by the Administration, having regard that three public officers would already be appointed to CIC (clause 9(1)(c)); and</p> <p>(e) A member’s comment that the</p>	

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		<p>drafting of the Chinese version of the CSA to clause 5(a) should be improved by replacing the first “及” that appeared in the clause with the Chinese punctuation mark “、”.</p> <p>Administration’s expression of the following points –</p> <p>(a) Performance indicators would be set to measure the improvements against desirable standards, whereas a comprehensive monitoring system required the implementation of other self-regulatory initiatives such as registration/rating schemes for practitioners and formulation of codes of conduct. The drafting of clause 5(j) would be reviewed in light of the member’s concern in item (a) above;</p> <p>(b) The introduction of the new sub-clause (ha), in particular the general principle of “observance of statutory requirements relating to employment”, was intended to address the problems highlighted in item (b) above;</p> <p>(c) There might not be a need to spell out in the Bill the framework highlighted in item (c) above because the Bill had already stipulated that ETWB, functioning as the lead agency in Government on construction-related matters, would oversee the operation of CIC through its annual submissions to the Secretary for Environment, Transport and Works;</p> <p>(d) Further consideration would be</p>	<p>The Administration to take action under paragraph 2(e) of the minutes</p> <p>Administration</p>

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		<p>given as to how effective communication could be maintained between ETWB and CIC, so as to enable informal discussions necessary on specific issues that might involve some departments not represented on CIC as well as other interested parties.</p> <p>The Chairman's echo of the Administration's view in item (b) above</p> <p>Members examined the English version of clause 5 and accepted the proposed CSAs</p> <p>Discussion on the numbering of the sub-clauses of clause 5 after incorporating the proposed CSAs</p>	to take action under paragraph 2(f) of the minutes
015725 – 015859	Chairman	Meeting arrangements	