

立法會
Legislative Council

LC Paper No. CB(1)442/05-06
(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 seventeenth meeting held on
Thursday, 10 November 2005, at 4:30 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 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 Andrew CHENG Kar-foo
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 Abraham SHEK Lai-him, 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 Confirmation of minutes

(LC Paper No. CB(1)228/05-06 -- Minutes of meeting on
25 October 2005)

The minutes of the meeting held on 25 October 2005 were confirmed.

II Clause-by-clause examination of the Bill

(LC Paper No. CB(1)227/05-06(01) -- List of follow-up actions
arising from discussion at the
meeting on 25 October 2005

LC Paper No. CB(1)99/05-06(03) -- Draft Committee Stage
Amendments to Clauses 2, 5,
7, 9, 18, 21, 56, 58, 59 and 71
and new Schedule 1A,
Schedule 2 and Schedule 5

LC Paper No. CB(1)99/05-06(04) -- Marked-up version of the
draft Committee Stage
Amendments to Clauses 2, 5,
7, 9, 18, 21, 56, 58, 59 and 71
and new Schedule 1A,
Schedule 2 and Schedule 5

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)2024/04-05(04) -- Updated summary of

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

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

3. The Administration was requested to:

Clause 10

- (a) review the Chinese rendition of subclause (1);
- (b) consider the need to state expressly that an appointed member might hold office for not more than six consecutive years;

Clause 12

- (c) review (a) with regard to the need to seek "the Council's permission" for being absent from meetings. One suggestion was to amend it to provide that the office of an appointed member might

be terminated if he had been absent from 3 consecutive meetings “without reason”;

- (d) review (d) with regard to “functions assigned to” an appointed member. The functions to be performed by appointed members were specified in clause 5 and not assigned individually;

Clause 13

- (e) review the need for the clause. As the clause was modeled on an existing provision of the Industrial Training (Construction Industry) Ordinance, the Administration was requested to provide information on the reasons for such a provision, the frequency of invoking the provision and the effect should the Administration consider it necessary to retain the clause;
- (f) clarify the meaning of “ temporarily” in subclause (1) and the mechanism for invoking the acting appointment;
- (g) consider the need to include a provision concerning appointment of members to fill up vacancies arising from resignation or termination of office of appointed members. Members considered clause 9 inadequate for the purpose;

Clause 14

- (h) review the need for subclauses (2) and (3) as the Executive Director would not be a member of the Council; and
- (i) consider the need to provide expressly the relationship between the Executive Director and the Council. Members were concerned about how the work of the Executive Director would be monitored.

III Any other business

4. Members noted that the eighteenth meeting of the Bills Committee had been scheduled for Thursday, 24 November 2005, at 4:30 pm to continue clause-by-clause examination of the Bill.

5. The meeting ended at 6:30 pm.

**Proceedings of the seventeenth meeting of the
Bills Committee on Construction Industry Council (No. 2) Bill
on Thursday, 10 November 2005, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000022	Chairman	Confirmation of minutes of the meeting held on 25 October 2005 (LC Paper No. CB(1)228/05-06)	
000023 – 000119	Chairman	Opening remarks	
<i>Clause-by-clause examination of the Bill together with Committee Stage amendments (CSAs)</i>			
000120 – 000357	Chairman Administration	<p><i>Clause 6 – Supplementary functions of Council</i></p> <p>Reference to Mr CHEUNG Hok-ming's view on clause 6 in his letter dated 14 March 2005 expressing views on certain clauses of the Bill (LC Paper No. CB(1)1120/04-05(01)) and the Administration's response thereto (LC Paper No. CB(1)1161/04-05(03))</p>	
000358 – 001014	Chairman Administration Ms LI Fung-ying	<p><i>Clause 7 Powers of Council</i></p> <p>Reference to the updated summary of concerns/views expressed by organizations and the Bills Committee (as at 11 July 2005) (LC Paper No. CB(1)2024/04-05(04)) and the Administration's responses thereto (LC Paper No. CB(1)2386/04-05(02))</p> <p>Briefing by the Administration on the draft CSAs to clause 7 (LC Paper No. CB(1)99/05-06(04))</p> <p>Administration's explanation in response to a member that the draft CSA to clause 7(2)(g) had been proposed to address Assistant Legal Advisor (ALA)'s concern that the term "stakeholders" was not defined</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>in the Bill</p> <p>The member's indication of the need to further consider the draft CSA</p>	
001015 – 001625	Chairman Administration Ms Emily LAU	<p><i>Clause 8 Limitations on Council's powers</i></p> <p>Reference to Mr CHEUNG Hok-ming's view on clause 8 and the Administration's response thereto</p> <p>Administration's expression of the following points in response to a member –</p> <p>(a) It did not anticipate any need for the Construction Industry Council (CIC) to seek additional land from Government for the construction of its headquarters given the small secretariat being planned. Nonetheless, clause 8(1) provided that CIC would be abided by the same restrictions concerning disposal of land granted at nil premium as those presently imposed on the Construction Industry Training Authority (CITA) upon the amalgamation; and</p> <p>(b) In consideration of CIC's need to conduct open meetings and the remote location of CITA's headquarters, CIC might need to select from other CITA premises or hire a more convenient site for use as headquarters. The decision should be made by CIC since its operation would be funded by industry levy.</p>	
001626 – 005544	Chairman Administration	<i>Clause 9 Composition of Council</i>	

Time marker	Speaker	Subject(s)	Action required
	<p>Mr Howard YOUNG Ms Emily LAU Mr Patrick LAU</p>	<p>Briefing by the Administration on the draft CSAs to clause 9</p> <p>- <i>Representation of CIC members</i></p> <p>Administration's expression of the following points to address a member's concern about how the Bill could ensure the representation, acceptability and accountability of the CIC members under clause 9(3) –</p> <p>(a) The specified bodies in new Schedule 1A, which could nominate candidates for the membership of CIC (the nominating organizations), were representative bodies in key industry sectors;</p> <p>(b) The Secretary for the Environment, Transport and Works (the Secretary) would have due regard to the representation of nominees when deciding whether to appoint them as CIC members;</p> <p>(c) Reporting system would be put in place by respective nominating organizations to facilitate the appointees communicating regularly with stakeholder groups in their own sectors. In this regard, the Administration had already agreed to consider that such activities be covered in the first few annual reports to be submitted by CIC to the Secretary; and</p> <p>(d) Although the nominating organizations might come up with their candidates in different ways, nominees that could best represent the interest of respective sectors would be put forth given the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>competition created by the proposed nominating and appointment mechanism.</p> <p>The member's expression of the following views –</p> <ul style="list-style-type: none">(a) The reporting system should be included in all annual reports to be submitted by CIC to the Secretary;(b) The Secretary should state in her speech at the Second Reading Debate that the nominating organizations were expected to ensure the representation, acceptability and accountability of their nominees. Where possible, administrative measures in this regard should be worked out; and(c) There was a need to clarify whether the CIC members referred to in clauses 9(3)(c) and 9(3)(e) would represent all their respective nominating organizations. <p>Administration's expression of the following points –</p> <ul style="list-style-type: none">(a) It would be made clear to the nominating organizations that the nominees should represent the interest of their own sector;(b) The Administration would ensure that nominating organizations were fully aware of their role in enabling the appointees to keep in regular contact with stakeholder groups belonging to their constituent sectors; and(c) Along this vein, CIC members appointed under clauses 9(3)(c)	

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		<p>and 9(3)(e) should be able to represent all subgroups within the categories concerned despite their personal affiliation.</p> <p>- <i>Clarifications of various issues</i></p> <p>Administration's clarification in response to members as follows –</p> <p>(a) Instead of focusing on the academic qualifications attained by the nominees, factors such as representation and past performance would be taken into account during the selection process. The Administration noted a member's view that experience was important and that nominees with radical stance should not be discriminated against;</p> <p>(b) As a result of the draft CSA to clause 9(1)(b), CIC's Executive Director would not be a member of CIC. Such an arrangement had been adopted by many other similar statutory organizations (clauses 9(1)(d) and 14);</p> <p>(c) The persons to be appointed to CIC under clause 9(3)(f) could provide valuable expertise in areas such as legal services, insurance and economic analysis;</p> <p>(d) The order of specified bodies in the Chinese version of new Schedule 1A followed that of the English version, which was arranged in alphabetical order; and</p> <p>(e) The Real Estate Developers Association of Hong Kong Limited (REDA) was incorporated</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>with its English name only.</p> <p>- <i>Whether CIC members should be remunerated</i></p> <p>Some members' expression of the following views –</p> <p>(a) CIC members should be remunerated;</p> <p>(b) The Bill should provide CIC the flexibility to decide whether to remunerate its members since CIC was self-regulatory and self-financing; and</p> <p>(c) The inconsistency in remunerating members of statutory bodies was undesirable. The wider policy issue should be examined later.</p> <p>Administration's expression of the following points –</p> <p>(a) The Administration did not see the need to provide remuneration for members of CIC because:</p> <ul style="list-style-type: none"> - Limited resources were available as reflected by the projected operating deficits of CITA for the next few years; - the move would entail complications such as whether a member should be remunerated if his attendance/performance was found unsatisfactory by the industry; and - the active participation of industry representatives in the work of CIC was not necessarily secured by remunerating the members; <p>(b) Whether a statutory body should</p>	

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		<p>remunerate its members should be determined by their own circumstances; and</p> <p>(c) Should CIC observe the need to remunerate its members after coming into operation, relevant legislative proposal could be drawn up for that specific purpose.</p> <p>ALA's advice in response to a member that in general, for a statutory body to remunerate its members, there should be a provision in the relevant ordinance specifically empowering the body to do so</p>	
005545 – 010104	<p>Chairman Administration Ms Emily LAU Ms LI Fung-ying</p>	<p><i>Clause 10 Term of office of appointed member and member who is public officer</i></p> <p>A member's indication of support for restricting a CIC member to hold office for more than two consecutive terms, and call for application of the restriction to other statutory bodies</p> <p>Administration's agreement to take the following actions in response to members -</p> <p>(a) Review the Chinese rendition of subclause (1); and</p> <p>(b) Consider the need to state expressly that an appointed member might hold office for not more than six consecutive years.</p>	<p>The Administration to take action under paragraph 3(a) of the minutes</p> <p>The Administration to take action under paragraph 3(b) of the minutes</p>
010105 – 010219	Chairman	<i>Clause 11 Resignation of appointed</i>	

Time marker	Speaker	Subject(s)	Action required
	Administration	<p><i>member</i></p> <p>Reference to Mr CHEUNG Hok-ming's view on clause 11 and the Administration's response thereto</p>	
010220 – 012005	<p>Chairman Administration Mr Howard YOUNG Ms LI Fung-ying Ms Emily LAU Mr WONG Kwok-hing Mr Alan LEONG</p>	<p><i>Clause 12 Removal of appointed member</i></p> <p>Reference to Mr CHEUNG Hok-ming's view on clause 12 and the Administration's response thereto</p> <p>Members' expression of the following views –</p> <p>(a) Most members' view that the office of an appointed member should be terminated if he had been absent from three consecutive meetings without reason;</p> <p>(b) A member's view that clause 12 (a) might be overly stringent, unenforceable and unnecessary;</p> <p>(c) Some members' view that notwithstanding their support of the provision, it might not be appropriate to require a CIC member to seek "the Council's permission" for absence from meetings. Moreover, there would be enforcement difficulties. They therefore opined that clause 12(a) should be amended to provide that the office might be terminated if the absence was "without reason"; and</p> <p>(d) Some members' view that should the requirement for "the Council's permission" be retained, the circumstances under which the permission would be given should</p>	<p>The Administration to take action under paragraph 3(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		<p>be clearly specified, preferably in CIC's rules of procedures.</p> <p>Administration's expression of the following points –</p> <p>(a) The need to compile guidelines to provide objective criteria for giving permission for absence from meetings would be conveyed to the CIC Secretariat; and</p> <p>(b) The industry was aware of the provision and did not find it unreasonable. Indeed, the provision was not too stringent because:</p> <ul style="list-style-type: none"> - there was no specific requirement for members to sit through a meeting for attendance to be counted; - the membership would only be terminated for absence from three "consecutive" meetings without permission from CIC; and - practical arrangements would be put in place by CIC for its members to seek the permission where appropriate. <p>Administration's agreement to review clause 12(d) with regard to "functions assigned to" an appointed member in response to a member's view that the functions to be performed by appointed members were specified in clause 5 and not assigned individually</p>	<p>The Administration to take action under paragraph 3(d) of the minutes</p>
012006 - 014811	<p>Chairman Administration Ms LI Fung-ying Mr Patrick LAU Mr WONG Kwok-hing Miss CHAN Yuen-han</p>	<p><i>Clause 13 Casual vacancies</i></p> <p>Members' expression of the following views –</p> <p>(a) Any need for subclause (1), which</p>	

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	<p>Ms Emily LAU Mr Alan LEONG</p>	<p>provides the Secretary with the flexibility to appoint another person to act in an appointed member's place during his absence if he was temporarily absent from Hong Kong or was unable to perform the functions of his office for any other reason;</p> <p>(b) Why subclause (1) would apply to appointed members only;</p> <p>(c) The term "temporarily" should be defined;</p> <p>(d) Some members' view that subclause (1) might create trouble if the absent member did not endorse the decision(s) made by the acting member at the meeting(s) concerned, or that the nominating organizations concerned did not find the acting member suitable;</p> <p>(e) A member's indication of support for the principles embodied in subclause (1);</p> <p>(f) A member's proposal that the provision should be invoked at the request of the absent member, and the person to act in his place during his absence nominated by him;</p> <p>(g) Some other members' view that the member's proposal in (f) above was undesirable because there was no way to ensure the absent member would make the request. Moreover, the proposed provision could be abused;</p> <p>(h) The Chairman's view on the need</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>to specify the circumstances under which the provision would be invoked to prevent abuse; and</p> <p>(i) Members' view on the need to include a provision concerning appointment of members to fill up vacancies arising from resignation or termination of office of appointed members.</p> <p>Administration's expression of the following points –</p> <p>(a) Subclause (1) would apply to appointed members only because public officers sitting on CIC would as a rule make acting arrangements when they were absent from Hong Kong or unable to perform their functions;</p> <p>(b) Subclause (1) was necessary to ensure a balanced representation in CIC despite the absence of certain members;</p> <p>(c) Subclause (1) was modeled on an existing provision of the Industrial Training (Construction Industry) Ordinance (Cap.317). The Administration's intention was to retain in the Bill arrangements prescribed in Cap. 317 as far as practicable;</p> <p>(d) The proposal in (f) above might contradict with CIC's proposed mode of appointment and could be abused; and</p> <p>(e) Clause 9 could cover the scenario highlighted in item (i) above but consideration would be given to the need to include in the Bill an express provision if members</p>	<p>The Administration to take action under paragraph 3(g)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>considered clause 9 inadequate for the purpose.</p> <p>Some members' indication of disagreement to the need highlighted in (b) above on grounds that CIC would operate as a single entity, and that the absent member could make his/her views known to other members</p> <p>Administration's agreement to take the following actions –</p> <p>(a) Review the need for clause 13. As the clause was modeled on an existing provision of Cap. 317, to provide information on the reasons for such a provision, the frequency of invoking the provision and the effect should the Administration consider it necessary to retain the clause; and</p> <p>(b) Clarify the meaning of “temporarily” in subclause (1) and the mechanism for invoking the acting appointment.</p>	<p>of the minutes</p> <p>The Administration to take action under paragraph 3(e) of the minutes</p> <p>The Administration to take action under paragraph 3(f) of the minutes</p>
014812 – 015857	<p>Chairman Administration Ms Emily LAU Mr WONG Kwok-hing Miss CHAN Yuen-han Ms LI Fung-ying</p>	<p><i>Clause 14 Appointment of Executive Director</i></p> <p>Members' expression of the following views –</p> <p>(a) There might not be a need for subclauses (2) and (3) as the Executive Director would be a staff member rather than a member of CIC, and there should be administrative arrangements for his acting appointments; and</p> <p>(b) There was a need to ensure that the work of the Executive Director</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>would be properly monitored, and that he would be accountable to CIC and could be replaced should his performance be found unsatisfactory. As such, there was a need to provide expressly the relationship between the Executive Director and CIC.</p> <p>Administration's expression of the following points –</p> <p>(a) Members' views in (a) and (b) above would be considered; and</p> <p>(b) Having regard that CIC's Executive Director would be a staff member, he/she should be subject to specific appointment terms and internal management measures to be decided by industry representatives sitting on CIC.</p>	<p>The Administration to take actions under paragraphs 3(h) and 3(i) of the minutes respectively</p>
015858 – 020019	Chairman	Date of next meeting	