

立法會
Legislative Council

LC Paper No. CB(1)545/04-05
(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 eighteenth meeting held on
Thursday, 24 November 2005, at 4:30 pm
in Conference Room B 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 Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Yuen-han, JP
Hon Howard YOUNG, SBS, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon Alan LEONG Kah-kit, SC
Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon LEE Cheuk-yan
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon WONG Kwok-hing, MH
Hon CHEUNG Hok-ming, SBS, JP
- Public officers attending** : Mr Jack CHAN
Principal Assistant 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)355/05-06(01) -- List of follow-up actions arising from discussion at the meeting on 10 November 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)

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

Follow-up actions by the Administration

Admin 2. The Administration was requested to:

Clauses 14 and 15

- (a) review the two clauses to address members' concern about the relation between the Executive Director and the Council;

Clause 19

- (b) review the drafting of the clause. Members were concerned about its relation with clause 82. A suggested version was to add at the beginning of the clause “除了 82 條另有規定之外，”;

Clause 21

- (c) provide similar provisions in other ordinances;
- (d) advise whether and how the provision would affect liability for accident arising from work and claim for compensation; and

Clause 34

- (e) review if there was any grey area in the clause which might affect imposition of levy on construction operations.

3. Keen to ensure sufficient levy income for the Construction Industry Council, Miss CHAN Yuen-han requested Assistant Legal Adviser 5 to look at the adequacy of the definition of “construction operations” and clause 35 to ensure all construction operations which were subject to levy would be covered.

II Any other business

4. Members noted that the nineteenth meeting of the Bills Committee had been scheduled for Thursday, 8 December 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 eighteenth meeting of the
Bills Committee on Construction Industry Council (No. 2) Bill
on Thursday, 24 November 2005, at 4:30 pm
in Conference Room B of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action required |
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| 000000 - 000126 | Chairman | Opening remarks | |
| 000127 - 001320 | Chairman Administration Ms LI Fung-ying Mrs Selina CHOW | <p><i>Clause 14 – Appointment of Executive Director</i></p> <p><i>Clause 15 – Functions of Executive Director</i></p> <p>Administration’s explanation in response to members that clause 14(2) and (3) would be deleted as the Executive Director (ED) would not be a member of the Construction Industry Council (CIC) according to the proposed amendments, and there could be administrative acting arrangements put in place by CIC in the absence of ED whenever necessary. It was also supplemented that in so far as members of CIC were concerned, section 50 of the Interpretation and General Clauses Ordinance (Cap. 1) might be relevant</p> <p>A member’s expression of the following views –</p> <p>(a) As ED would be a staff member rather than a member of CIC, the Chinese version of “appointment” and “appoint” as used in clause 14 should be “聘任” instead of “委任”; and</p> <p>(b) There was a need to set out clearly how the work of ED would be monitored, and to provide expressly the relation between him and CIC.</p> | |

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| | | Administration's advice that clauses 14 and 15 would be reviewed and a framework in relation to (b) above would be provided. However, to avoid confusion, detailed appointment terms and management measures should more appropriately be set out in the relevant employment contract than in the Bill | The Administration to take action under paragraph 2(a) of the minutes |
| 001321 - 001615 | Chairman Administration | <i>Clauses 16 to 18</i> Members noted the clauses | |
| 001616 - 003007 | Chairman Administration Ms LI Fung-ying Mrs Selina CHOW | <i>Clause 19 – Employment of staff</i> A member's expression of concern that notwithstanding clause 82 on continuance of employment, CIC might still make use of clause 19(2) to play tricks and amend the remuneration of the existing employees of the Construction Industry Training Authority (CITA) and other terms and conditions of their appointment or employment Administration's expression of the following points – (a) Clause 19(2) was intended to apply to new staff to be recruited by CIC only. The provision was required to empower CIC to employ staff with suitable terms and would not implicate on clause 82 because the two governed different aspects; (b) Under clause 82, the continued employment of CITA staff with their terms and conditions preserved upon the amalgamation of CITA and CIC had already been assured; and | |

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| | | <p>(c) The Administration's earlier agreement to consider providing an undertaking concerning smooth transition of CITA's staff should further help ensure CITA staff's continuance of employment. The feasibility of such a transitional period and the length of the period, if any, was being carefully examined.</p> <p>Members' suggestion that, to address their concern about the relation of clause 19 with clause 82, the phrase “除了 82 條另有規定之外，” should be added at the beginning of clause 19</p> | <p>The Administration to take action under paragraph 2(b) of the minutes</p> |
| 003008 - 003755 | <p>Chairman Administration Miss CHAN Yuen-han Ms LI Fung-ying</p> | <p><i>Clause 20 – Staff benefits, etc.</i></p> <p>Reference to the Administration's paper entitled “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)2313/04-05(04))</p> <p>Administration's confirmation in response to a member's concern about the implications of clause 20(4) that the clause was modelled on section 13(3) of Cap. 317</p> | |
| 003756 - 010847 | <p>Chairman Administration Miss CHAN Yuen-han ALA Ms LI Fung-ying Mrs Selina CHOW Mr Howard YOUNG</p> | <p><i>Clause 21 – Protection of members of Council, etc.</i></p> <p>Members' expression of the following views –</p> <p>(a) Some members' view that the introduction of clause 21(1) was a necessary improvement to protect members of CIC from being held personally liable for anything done in the performance of</p> | |

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| | | <p>functions conferred or imposed on CIC;</p> <p>(b) Some members' concern that the expression “真誠行事” in the Chinese version of clause 21(1) was subject to interpretation and hence could be abused, so that CITA staff might be made scapegoats, or be penalized for making known views different from those of CIC; and</p> <p>(c) The Chairman's concern that the provision might affect the establishment of vicarious liability for accident arising from work and hence claim for compensation.</p> <p>Administration's expression of the following points –</p> <p>(a) The provision was an improvement over Cap. 317 and was intended to “protect” CIC staff against third party claims rather than “penalize” CIC staff. There were similar provisions in ordinances such as those for the establishment of the Hospital Authority (HA), Arts Development Council (ADC), Employees Retraining Board (ERB), etc.;</p> <p>(b) The expression “真誠行事” was commonly used in ordinances, whether the person concerned had acted in good faith could be objectively assessed based on past cases; and</p> <p>(c) The provision would not affect the establishment of vicarious liability.</p> | |

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| | | <p>ALA’s advice in response to members as follows –</p> <p>(a) She accepted the Administration’s points in (a) and (c) above. For example, HA could be held liable for medical negligence without the need to hold the doctor concerned personally liable because HA was responsible for the acts of its agents (the doctors); and</p> <p>(b) The English version of “真誠行事”, namely, “acting in good faith”, carried a general meaning which only meant acting honestly and not inconsistent with the ordinary course of employment.</p> <p>A member’s view that clause 21(2) could ensure that the protection conferred on a person by clause 21(1) in respect of an act would not affect any liability of CIC for that act</p> <p>Administration’s undertaking in response to members’ concerns to take the following actions –</p> <p>(a) Provide similar provisions in other ordinances; and</p> <p>(b) Advise whether and how the provision would affect liability for accident arising from work and claim for compensation.</p> | <p>The Administration to take action under paragraph 2(c) of the minutes</p> <p>The Administration to take action under paragraph 2(d) of the minutes</p> |
| 010848 - 011102 | Chairman Administration | <p><i>Clauses 22 and 23</i></p> <p>Members noted the clauses</p> | |

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| 011103 - 011339 | Chairman Administration Miss CHAN Yuen-han Mr Howard YOUNG | <p><i>Clause 24 – Estimates and financial year</i></p> <p>Administration’s explanations in response to members as follows –</p> <p>(a) The Chief Executive had delegated his power in section 20 of Cap. 317, which provided that CITA shall submit to the Chief Executive a report on its activities and finance, to the Secretary of Education and Manpower. Clause 24(2) was drawn up with reference to the current practice; and</p> <p>(b) As was the case in similar enabling provisions, the term “from time to time” was included in clause 24(1) to provide flexibility.</p> | |
| 011340 - 011641 | Chairman Administration Mr Howard YOUNG ALA | <p><i>Clause 25 – Bank account</i></p> <p>Administration’s explanation in response to a member that while CIC could open other accounts, all moneys received by it should first be paid into an account approved by the Director of Accounting Services to facilitate monitoring of its income. Cap. 317 had a similar provision</p> <p>ALA’s advice that the above account would be similar to a trust account which could keep track of all moneys received by CIC. The requirement to maintain the account could be found in similar ordinances</p> | |
| 011642 - 012337 | Chairman Administration Miss CHAN Yuen-han Mr Patrick LAU | <p><i>Clause 26 – Investment of funds</i></p> <p>Administration’s expression of the following points in response to</p> | |

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| | Mrs Selina CHOW | <p>members –</p> <p>(a) The Administration was not aware of any problem arising from investment of funds by CITA; and</p> <p>(b) CITA would be requested to provide such funds as necessary to meet expenses reasonably incurred by CIC before the former's disbandment (clause 22).</p> <p>Members' view that it was too stringent to require CIC to seek the approval of the Financial Secretary (FS) every time it deposited funds on fixed deposit in a bank or made investments.</p> <p>The Administration's clarification that the approval might be sought in respect of specific types or categories of investments.</p> | |
| 012338 - 012823 | Chairman Administration | <p><i>Clauses 27 and 28</i></p> <p>Reference to Mr CHEUNG Hok-ming's view on clause 27 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> | |

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| 012824 - 013201 | Chairman Miss CHAN Yuen-han Administration Mrs Selina CHOW Mr Howard YOUNG ALA | <p><i>Clause 29 – Submission of reports, etc. to Secretary</i></p> <p>Reference to the view expressed by the Hong Kong Institute of Surveyors (HKIS) in 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>Administration’s explanation that the requirement of CIC to include in its annual report a general survey on development of matters falling within its purview could help to address HKIS’s view that the annual report submitted by CIC should cover long-term issues such as CIC’s strategic plan and target objectives</p> <p>Some members’ query of the appropriateness of expressly requiring that the annual report should cover long-term issues</p> <p>ALA’s advice that since the general survey would be in respect of matters falling within the scope of CIC’s functions, there would be sufficient flexibility in clause 29</p> | |
| 013202 - 013821 | Chairman Administration | <p><i>Clauses 30 to 32</i></p> <p>Reference to LC Paper No. CB(1)2024/04-05(04) and LC Paper No. CB(1)2386/04-05(02)</p> | |
| 013822 - 014800 | Chairman Administration Miss CHAN Yuen-han | <p><i>Clause 33 – Interpretation of this Part</i></p> <p><i>Clause 34 – Imposition of levy</i></p> <p>Reference to LC Paper No.</p> | |

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| | | <p>CB(1)2024/04-05(04) and LC Paper No. CB(1)2386/04-05(02)</p> <p>A member's expression of concern about the adequacy of the Bill in tackling possible grey areas arising from new developments which might affect imposition of levy on construction operations, such as works that straddled the border</p> <p>Administration's expression of the following points –</p> <p>(a) Refinements over Cap. 317 had been introduced, including those on provisions relevant to levy collection;</p> <p>(b) Clause 34(4) was introduced to put it beyond doubt that construction operations carried out in Hong Kong for any authority, body, organ or person with a total value exceeding HK\$1 million would be subject to levy;</p> <p>(c) CITA had experienced no difficulties in assessment and collection of levy based on the present definition of construction operations, which was imported to the Bill from Cap.317. Moreover, the wide representation on CIC would ensure that such problems, if any, could be timely detected and resolved by the industry; and</p> <p>(d) The Administration would review if there was any grey area in clause 34 which might affect imposition of levy on construction operations.</p> | <p>The Administration to take action under paragraph 2(e) of the minutes</p> |

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| 014801 - 015523 | Chairman Administration Mr Howard YOUNG Miss CHAN Yuen-han | <p><i>Clause 35 – Who is to pay levy</i></p> <p>Members’ expression of the following concerns –</p> <p>(a) There might be problems in collecting levy on works involving subcontracting, such as evasion of payment and duplication of levy collection; and</p> <p>(b) Large-scale operations could be deliberately conducted in stages to evade levy payment.</p> <p>Administration’s expression of the following points –</p> <p>(a) The term “contractor” was clearly defined in the Bill to address possible problems in collecting levy on works that involved subcontracting;</p> <p>(b) The contractor concerned could lodge an appeal and seek refund if there was duplication of levy collection;</p> <p>(c) 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; and</p> <p>(d) Failure to report the commencement/completion of any leviable construction operations or to pay levy within a specified period was an offence subject to fine under Cap.317 as well as in the Bill</p> | |

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| | | A member's request of ALA to look at the adequacy of the definition of "construction operations" and clause 35 to ensure all construction operations which were subject to levy would be covered | |
| 015524 - 015555 | Chairman | Date of next meeting | |

Council Business Division 1
Legislative Council Secretariat
19 December 2005