

立法會
Legislative Council

LC Paper No. CB(1)718/05-06
(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 twentieth meeting held on
Tuesday, 20 December 2005, at 8:30 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 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 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 LEE Cheuk-yan
Hon Alan LEONG Kah-kit, SC
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

Attendance by invitation : The Construction Industry Training Authority

Mr Tony YAU
Accounting Manager

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)545/05-06 -- Minutes of meeting on
24 November 2005)

The minutes of the meeting held on 24 November 2005 were confirmed.

II Clause-by-clause examination of the Bill

(LC Paper No. CB(1)544/05-06(01) -- List of follow-up actions
arising from discussion at the
meeting on 8 December 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 49

- (a) consider the merits of disclosing by administrative means the names of contractors who failed to pay a levy, surcharge or penalty due and payable under the Bill;

Clause 56

- (b) provide a paper with flow charts to explain the existing operation of Construction Industry Training Authority (CITA) in relation to levy matters including its imposition, determination and objection;
- (c) review the clause to address the following concerns –
 - (i) members responsible for determining levy and for handling objections should be different to avoid role conflict;
 - (ii) there should be criteria for selecting members sitting on the Objections Committee; and
 - (iii) objections should be determined by lay members;

Clause 73

- (d) provide a timetable for dissolving CITA; and
- (e) give an undertaking to report to the relevant Panel of LegCo before CITA was dissolved.

III Any other business

- 4. Members noted that the twenty-first meeting of the Bills Committee had been scheduled for Thursday, 5 January 2006, at 4:30 pm to continue clause-by-clause examination of the Bill.
- 5. The meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
17 January 2006

**Proceedings of the twentieth meeting of the
Bills Committee on Construction Industry Council (No. 2) Bill
on Tuesday, 20 December 2005, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000130	Chairman	Confirmation of minutes of the meeting held on 24 November 2005 (LC Paper No. CB(1)545/05-06)	
000131 - 000228	Chairman	Opening remarks	
000229 - 000435	Administration	<i>Clauses 39 to 41</i> Members noted the clauses	
000436 - 000751	Chairman Administration Mr Howard YOUNG Ms Emily LAU	<i>Clause 42 Powers of Council to make assessment</i> Administration's expression of the following points in response to members' questions on subclause (1) – (a) The contractor of leviable construction operations normally would not be required to pay levy if he did not receive any payment for the operations concerned at present; and (b) Subclause (1) would empower the Construction Industry Council (CIC) to assess the levy payable in respect of any specific construction operations based on information collected from various channels.	
000752 - 001612	Chairman Ms Emily LAU Administration CITA	<i>Clause 43 Imposition of surcharge</i> Administration's expression of the following points in response to a member – (a) If a contractor failed to give a	

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		<p>notice of payment or a notice of completion according to relevant provisions in the bill without reasonable excuse, CIC might impose a surcharge on him;</p> <p>(b) The Construction Industry Training Authority (CITA) confirmed that it had put in place a set of guidelines for imposing the amount of surcharge on an incremental scale as shown below:</p> <ul style="list-style-type: none"> - 10% of the amount of the levy assessed for a delay of 28 days; - 25% for eight weeks; - 50% for 13 weeks; and - 200% for over 39 weeks; and <p>(c) CITA's reiteration that contractors would normally comply with the statutory requirements upon receiving a reminder. No surcharge had been imposed so far this year.</p>	
001613 - 001639	<p>Chairman Administration Ms Emily LAU CITA</p>	<p><i>Clauses 44 Time limit on making assessment: construction operations under term contract</i></p> <p>Administration's confirmation in response to a member that the time limits as set out in subclauses (a), (b) and (c) were intended to allow CIC reasonable lead time for levy assessment purposes</p> <p>A member's view that delays in contract payment by the Government in respect of public works might lead to delays in levy assessment. She referred to complaints about serious delays in this regard and called upon the attending officials to relay to the Secretary for the Environment, Transport and Works her concern on</p>	

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		the need to improve the situation	
001640 - 001846	Administration	<p><i>Clauses 45 to 47</i></p> <p>Members noted the clauses</p>	
001847 - 001933	Chairman Ms LI Fung-ying Administration CITA	<p><i>Clause 48 Payment of levy, surcharge or penalty, etc.</i></p> <p>Administration's confirmation in response to a member that the 28 days mentioned in subclause (5) referred to calendar days</p>	
001934 - 002300	Chairman Administration Ms Emily LAU CITA	<p><i>Clause 49 Recovery of levy, surcharge or penalty, etc.</i></p> <p>Reference to Mr CHEUNG Hok-ming's view on clause 49 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> <p>A member's call upon the Administration to consider Mr CHEUNG Hok-ming's suggestion to explore the feasibility of disclosing by administrative means the names of contractors who failed to pay a levy, surcharge or penalty due and payable under the Bill</p> <p>CITA's confirmation in response to the member that so far only one case was brought to the District Court and the amount of levy recovered exceeded \$600,000</p>	<p>The Administration to take action under paragraph 3(a) of the minutes</p>
002301 - 002341	Administration	<p><i>Clause 50 Levy, surcharge or penalty, etc. payable despite intention to object</i></p> <p>Members noted the clause</p>	

Time marker	Speaker	Subject(s)	Action required
002342 - 002521	Chairman Ms Emily LAU Administration CITA	<p><i>Clause 51 Council's power to waive or refund whole or part of levy, surcharge or penalty, etc.</i></p> <p>CITA's explanation in response to a member that while there had only been a few refund cases, all of them arose from successful applications for exemption of or reduction in levy payment</p>	
002522 - 002716	Administration	<p><i>Clauses 52 to 55</i></p> <p>Members noted the clauses</p>	
002717 - 011526	Chairman Ms Emily LAU Administration CITA Ms LI Fung-ying Mr Patrick LAU Ir Dr Raymond HO Mr Abraham SHEK	<p><i>Clauses 56 to 58</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>CITA's explanation of the mechanism for handling objections concerning levy in response to members as follows –</p> <p>(a) The Committee on Levy which comprised at least three CITA Board members was responsible for drawing up policies/guidelines concerning levy and dealing with objections received;</p> <p>(b) In accordance with such policies/guidelines, the assessment work was undertaken by the staff of CITA;</p> <p>(c) The number of objections handled by the Committee on Levy was less than ten a year;</p>	

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		<p>(d) The Administration supplemented that as for CIC, a dedicated committee with its composition and functions clearly defined under clause 56 would be set up to deal with objections; and</p> <p>(e) It had been agreed that the Chinese version of “Objections Committee” would be amended to “處理反對事宜委員會”.</p> <p>Members’ expression of the following views –</p> <p>(a) The present operating arrangement of CITA was undesirable as the members who determined objections might be those who recommended the guidelines relating to levy. To avoid role conflict, amendments to clause 56 and other relevant clauses were necessary to ensure that members responsible for determining levy and for handling objections would be different;</p> <p>(b) There was a need to spell out the relationship between the committee handling levy and that determining objections and their relationship with CIC;</p> <p>(c) There should be criteria for selecting members sitting on the Objections Committee of CIC (clause 56(1));</p> <p>(d) The Administration should provide a paper with flow charts to explain the existing operation of CITA in relation to levy matters</p>	<p>The Administration to take action under paragraph 3(c)(i) of the minutes</p> <p>The Administration to take action under paragraph 3(c)(ii) of the minutes</p> <p>The Administration to take action under</p>

Time marker	Speaker	Subject(s)	Action required
		<p>including its imposition, determination and objection;</p> <p>(e) Certain members' view that to ensure impartiality, objections should be determined by non-CIC members or lay members (clause 9);</p> <p>(f) A member's view that it was undesirable that all objection cases were brought up for determination by the CITA Board; and</p> <p>(g) The Chairman's view that in order not to preempt the decisions of the Objections Committee, CIC staff should not escalate levy matters in relation to individual cases to the whole CIC for a decision. Advice could be sought from the Executive Director of CIC.</p> <p>Administration's agreement to consider members' views and provide the relevant information</p>	<p>paragraph 3(b) of the minutes</p> <p>The Administration to take action under paragraph 3(c)(iii) of the minutes</p>
011527 - 011818	Administration	<p><i>Clauses 59 and 60</i></p> <p>Members noted the clauses</p>	
011819 - 011924	Administration Chairman CITA Ms Emily LAU	<p><i>Clause 61 Provision of information</i></p> <p>Reference to the view expressed by CITA on clause 61 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 confirmation in response to a member that clause 61 was modelled on existing provisions</p>	

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		in Cap. 317. CITA expressed that there was no difficulty in accessing to information based on which it could perform the statutory functions efficiently.	
011925 - 012124	Chairman Administration	<p><i>Clause 62 Production of documents, etc.</i></p> <p>Reference to the view expressed by the Kowloon-Canton Railway Corporation and the Hong Kong Institute of Architects (HKIA) on clause 62 in LC Paper No. CB(1)2024/04-05(04) and LC Paper No. CB(1)2386/04-05(02)</p>	
012125 - 012219	Chairman Ms Emily LAU Administration CITA	<p><i>Clause 63 Protection of information given under sections 61 and 62</i></p> <p>CITA's confirmation in response to a member that information currently collected under similar provisions in Cap.317 was used for levy purposes only. As such, no complaint in this regard had been received</p>	
012220 - 012309	Administration	<p><i>Clause 64 Documents under seal of Council</i></p> <p>Members noted the clause</p>	
012310 - 012400	Administration Chairman	<p><i>Clauses 65 and 66</i></p> <p>Reference to the view expressed by HKIA on clauses 65 and 66 in LC Paper No. CB(1)2024/04-05(04) and LC Paper No. CB(1)2386/04-05(02)</p>	
012401 - 012535	Administration	<p><i>Clauses 67 and 68</i></p> <p>Members noted the clauses</p>	
012536 - 012617	Chairman Ms Emily LAU Administration	<p><i>Clause 69 Offences of fraudulent evasion of levy and giving false documents or information</i></p>	

Time marker	Speaker	Subject(s)	Action required
	CITA	CITA's confirmation in response to a member that so far it had not been aware of any offence of fraudulent evasion of levy and giving false documents or information	
012618 - 012926	Chairman Administration Ms Emily LAU ALA	<p><i>Clause 70 Regulations</i></p> <p>Administration's expression of the following points in response to a member –</p> <p>(a) The regulations referred to in clause 70 would be subsidiary legislation; and</p> <p>(b) Unless it was expressly provided in the principal ordinance that the subsidiary legislation should be approved by the Legislative Council, subsidiary legislation would be subject to the negative vetting procedure of LegCo under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).</p> <p>ALA's confirmation that unless it was stated expressly in law that the regulations should take effect "by resolution", they should be subject to the negative vetting procedure provided under Cap. 1</p>	

Time marker	Speaker	Subject(s)	Action required
012927 - 013057	Chairman Administration Ms Emily LAU	<p><i>Clause 71 Power to amend Schedules 1, 2 and 3</i></p> <p>Members examined clause 71 and accepted the proposed CSAs</p> <p>Administration's confirmation in response to a member that according to section 34 of Cap. 1, members would have a maximum of 49 days to amend the "order published in the Gazette" mentioned in clause 71, which was also subsidiary legislation</p>	
013058 - 013556	Chairman Administration Ms Emily LAU	<p><i>Clause 72 Power to amend Schedule 4</i></p> <p>Administration's expression of the following points in response to a member –</p> <p>(a) The term "specified period" as used in subclause (2) was defined in subclause (5);</p> <p>(b) Any proposed amendment to Schedule 4 would have gone through consultation with the industry and discussion by CIC; and</p> <p>(c) Given the implications of changing the specified amount/rate in Schedule 4, it was considered appropriate to follow the existing practice for any proposed amendments to be made by resolution through the positive vetting procedure (clause 72(1)).</p>	
013557 - 015533	Chairman Administration Miss CHAN Yuen-han Ms Emily LAU Mr Abraham SHEK	<p><i>Clause 73 Repeal</i></p> <p>Administration's expression of the following points to address members' concern that CITA might play tricks on its staff during the lead time before CIC's amalgamation with CITA –</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(a) To ensure smooth transition, clause 73 would be arranged to take effect in accordance with practical circumstances;</p> <p>(b) The Administration had already been closely monitoring the developments through the representative on CITA Board; and</p> <p>(c) The Administration was aiming for an early formation of CIC within six to nine months after passage of the Bill. The Provisional Construction Industry Co-ordination Board was setting up a task force to work out the detailed planning in this respect. There were however difficulties in setting a definite timeframe for the amalgamation exercise to take place given the complexities of the issues involved.</p> <p>Members' emphasis on the need for a timetable for the transition and request of the Administration to take the following actions –</p> <p>(a) Provide a timetable for dissolving CITA; and</p> <p>(b) Give an undertaking to report to the relevant Panel of LegCo before CITA was dissolved.</p>	<p>The Administration to take action under paragraph 3(d) of the minutes</p> <p>The Administration to take action under paragraph 3(e) of the minutes</p>
015534 - 015611	Administration	<i>Clause 74 to 76</i>	

Time marker	Speaker	Subject(s)	Action required
		Members noted the clauses	
015612 - 015713	Miss CHAN Yuen-han Chairman	Chairman's view that clauses 77 and 78 should address a member's concern about vesting of liabilities of CITA in CIC (clause 74(1))	
015714 – 015949	Chairman Ms Emily LAU Ms LI Fung-ying	Meeting arrangements	

Council Business Division 1
Legislative Council Secretariat
17 January 2006