

Our Ref.: 156/2004 in WR1/DIV/LE101

1 December 2004  
(By Fax 28696794)

Clerk to Bills Committee  
Legislative Council Secretariat  
3/F, Citibank Tower  
3 Garden Road  
Central  
HONG KONG

Attn: Ms. Sarah Yuen

Dear Ms Yuen,

### **Construction Industry Council (No.2) Bill**

In response to the Chairman of the Bills Committee's invitation to the KCRC Chairman, dated 8 November 2004, Kowloon-Canton Railway Corporation makes the following submissions-

There is no doubt that the Hong Kong construction industry can improve its performance in the areas of safety, efficiency, economy, productivity and quality. Therefore the initiative to establish the Construction Industry Council, with its objectives of providing a focal point for the Hong Kong construction industry and to act as a catalyst to promote a reformation in the culture and practices and to improve collaboration between all sectors within the industry, is welcomed.

The Corporation fully supports the Bill, acknowledging that the cost of the levy applied to contractors, which will ultimately be borne by the project owners, is a price which employers will have to pay to ensure better quality and more cost-effective projects in the longer term. Given its ongoing infrastructure programme and role as a major Employer, the Corporation would welcome a closer working relationship with the CIC, preferably through representation on the Council, in order to keep close to developments and to contribute toward the necessary changes designed to enhance performance generally in the construction industry.

Notwithstanding the above the Corporation suggests that the Committee give consideration to the following points -

- (a) Given the wide definition of Construction Operations and the somewhat vague language used to describe what is included in the levy category, it is arguable that activities other than construction work, such as permanent way maintenance, would be subject to the levy. Although the thrust and intent of the Bill pertains to construction work undertaken by contractors, the Corporation suggests that it would, in the interests of clarity, be appropriate if this was clearly stated to be the case.
- (b) Given that an Employer, Contractor and an Authorised Person concerned in any construction operation is obliged to produce for inspection by the CIC “any document or record in his possession that relates to the construction operations that the Employer, Contractor or Authorised Person is concerned in”, there is concern that sensitive information, particularly in relation to pricing or contractual disputes, may, in the absence of any constraint, be disclosed to third parties. It is suggested that the Bill imposes on the CIC an obligation to treat all documents and records produced as confidential and not to be disclosed to third parties, without the consent of the Employer or Contractor, unless required by law to do so.
- (c) Having established the CIC, with the objective of the CIC advising or making recommendations to the Government on strategic matters, major policies and legislative proposals which affect the construction industry, provision could perhaps also be made in the Bill requiring the Government to consult with the CIC and to notify the CIC of any proposals which it may have to introduce new or amended legislation which affects the construction industry.
- (d) Provision could also be made obliging the Secretary for the Environment, Transport and Works Bureau to supply to the CIC, for dissemination within the construction industry, information relating, for example, to forthcoming projects, statistics etc.

- (e) The Bill could also contain a mechanism by which the CIC is able to raise complaints with the Secretary for the Environment, Transport and Works Bureau concerning the conduct and/or activities of any Government Department or any individual Government official involved in the construction process.

The Corporation trusts that the above comments prove useful. Please note that the Chinese version, including soft copy, will follow shortly. Please also note that the Corporation does not wish to give an oral presentation of its views to the Bills Committee.

Yours sincerely,

Ian M. Thoms

Senior Director, Capital Projects (Acting)

c.c. Chairman - Mr. Michael TIEN  
ACEO - Mr. Samuel LAI  
CS-GC - Mr. David FLEMING

IMT/ff(L1DEC2004-2)