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A BILL

To

Provide for—

- (a) the establishment of the Construction Industry Council as a body corporate;
- (b) the functions and management of the Construction Industry Council;
- (c) a levy to be paid by contractors in the construction industry in respect of construction operations;
- (d) the repeal of the Industrial Training (Construction Industry) Ordinance;
- (e) the dissolution of the Construction Industry Training Authority;
- (f) the vesting of the rights, assets, liabilities and obligations of the Construction Industry Training Authority in the Construction Industry Council;
- (g) corresponding amendments to the Pneumoconiosis (Compensation) Ordinance and the Pneumoconiosis (Compensation) (Assessment of Levy) Regulations in respect of the construction industry levy scheme under that Ordinance; and
- (h) other consequential and related matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Construction Industry Council (No. 2) Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment, Transport and Works by notice published in the Gazette.

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires—
- “appointed day” (指定日期) means the day on which Part 9 comes into operation;
- “appointed member” (委任成員) means a member of the Council appointed under section 9(1)(a) or (d);
- “authorized person” (獲授權人), in relation to construction operations, means—
- (a) the authorized person appointed or nominated under section 4 of the Buildings Ordinance (Cap. 123) in respect of the construction operations; or
 - (b) if no authorized person is appointed under that section, the person appointed in accordance with section 68 in respect of the construction operations;
- “Board” (訓練委員會) means the Construction Industry Training Board established under section 31;
- “building” (建築物) has the meaning assigned to it in section 2(1) of the Buildings Ordinance (Cap. 123);
- “carry out” (進行), in relation to any construction operations, includes—
- (a) to manage, or to arrange for, the carrying out of the construction operations;
 - (b) to provide one’s own labour or that of any other person for the carrying out of the construction operations; and
 - (c) otherwise to undertake the construction operations;
- “CITA” (訓練局) means the Construction Industry Training Authority established by section 4 of the Industrial Training (Construction Industry) Ordinance (Cap. 317) and in existence before the commencement of section 73;
- “construction contract” (建造合約) means a contract between an employer and a contractor under which the contractor carries out construction operations but does not include a contract of employment;
- “construction industry” (建造業) means the industry in which construction operations are carried out;
- “construction operations” (建造工程) has the meaning assigned to it in Schedule 1;
- “contract of employment” (僱傭合約) has the meaning assigned to it in section 2(1) of the Employment Ordinance (Cap. 57);
- “contractor” (承建商), in relation to any construction operations (whether the construction operations are carried out under a contract or otherwise), means—
- (a) the person appointed as contractor under section 9 of the Buildings Ordinance (Cap. 123) in respect of the construction operations; or

(b) if no such person is appointed, the person who carries out the construction operations;

“Council” (議會) means the Construction Industry Council established by section 4;

“employer” (聘用人) means a person for whom a contractor carries out construction operations, whether under a contract or otherwise;

“Executive Director” (執行總監) means the Executive Director appointed under section 14;

“financial year” (財政年度) means the period fixed as the financial year of the Council under section 24(1);

“function” (職能) includes a power, authority or duty;

“further penalty” (另加罰款) means any further penalty payable under section 48(3);

“levy” (徵款) means the Construction Industry Levy referred to in section 34(2);

“notice of assessment” (評估通知) means a notice of assessment described in section 35(3);

“notice of surcharge” (附加費通知) means a notice of the surcharge referred to in section 43(3);

“Objections Committee” (異議審核委員會) means the committee established under section 56;

“objector” (反對者) means a person who makes an objection under section 57;

“penalty” (罰款) means any penalty payable under section 48(2);

“Secretary” (局長) means the Secretary for the Environment, Transport and Works;

“surcharge” (附加費) means any surcharge imposed under section 43;

“term contract” (固定期合約) means a construction contract—

(a) that provides for completion of all construction operations to which the contract relates within a specified period (whether or not such period may be varied by agreement); and

(b) under which a contractor carries out construction operations as required by the employer by any notice issued from time to time within the specified period by or on behalf of the employer to the contractor;

“total value” (總價值), in relation to any construction operations, means the total value of the construction operations as defined in section 55;

“value” (價值), in relation to any construction operations, means the value of the construction operations as determined under section 54;

“works order” (施工通知) means a notice issued by or on behalf of an employer to a contractor under a term contract, by which the employer requires construction operations to be carried out.

(2) Without affecting the generality of the definitions of “contractor” and “employer” under subsection (1), the following applies for the purposes of construing those terms—

- (a) where a person carries out construction operations for any other person under a contract of employment—
 - (i) if the first-mentioned person is appointed as contractor under section 9 of the Buildings Ordinance (Cap. 123) in respect of the construction operations, he (and not that other person) is the contractor in respect of the construction operations; and
 - (ii) if the first-mentioned person is not appointed as contractor under section 9 of the Buildings Ordinance (Cap. 123) in respect of the construction operations, the first-mentioned person is not the contractor in respect of the construction operations, and the person for whom the construction operations are carried out is the contractor;
- (b) where a person carries out construction operations for himself without any arrangement for the carrying out of the construction operations by any other person, the first-mentioned person is both the contractor and the employer in respect of the construction operations;
- (c) where a person carries out construction operations for himself with the assistance, under a contract of employment, of one or more other persons none of whom is appointed as contractor under section 9 of the Buildings Ordinance (Cap. 123) in respect of the construction operations, the first-mentioned person is both the contractor and the employer in respect of the construction operations.

3. Application to Government

This Ordinance binds the Government.

PART 2

CONSTRUCTION INDUSTRY COUNCIL

4. Establishment of Construction Industry Council

(1) There is established by this section a body to be known as the “Construction Industry Council”.

(2) The Council is a body corporate with perpetual succession and is required to have a common seal.

(3) The Council may sue and be sued in its corporate name.

(4) The Council is not to be regarded as the servant or agent of the Government or as enjoying any status, immunity or privilege of the Government.

5. Functions of Council

The functions of the Council are—

- (a) to advise and make recommendations to the Government on strategic matters, major policies and legislative proposals, that may affect or are connected with the construction industry;
- (b) to reflect to the Government the construction industry's needs and aspirations;
- (c) to elevate the quality and competitiveness of the construction industry by promoting the ongoing development and improvement of the industry;
- (d) to uphold professionalism and integrity within the construction industry by promoting self-regulation, formulating codes of conduct and enforcing such codes;
- (e) to improve the performance of stakeholders in the construction industry through establishing or administering registration schemes or rating schemes;
- (f) to advance the skills of personnel in the construction industry through planning, promotion, supervision, provision or coordination of training courses or programmes;
- (g) to encourage research activities and the use of innovative techniques and to establish or promote the establishment of standards for the construction industry;
- (h) to promote good practices in the construction industry in relation to procurement methods, site safety, environmental protection, sustainable construction and other areas conducive to improving construction quality;
- (i) to serve as a resource centre for the sharing of knowledge and experience within the construction industry;
- (j) to monitor improvements made by the construction industry through the compilation of performance indicators;
- (k) to make recommendations with respect to the rate of the levy imposed under this Ordinance; and
- (l) to perform any other functions relevant to the construction industry, including those functions conferred or imposed on it by or under this Ordinance or any other enactment.

6. Supplementary functions of Council

Without limiting section 5, the Council also has the following functions—

- (a) to provide training courses for the construction industry;
- (b) to establish and maintain industrial training centres for the construction industry;
- (c) to assist, including by the provision of financial assistance, in the placement of persons who have completed training courses provided for the construction industry;
- (d) to assess the standards of skills achieved by any person in any kind of work involving or in connection with the construction industry, to conduct examinations and tests, to issue or award certificates of attendance or competence, and to establish the standards to be achieved in respect of any such work;
- (e) where it is appointed under the Construction Workers Registration Ordinance (18 of 2004) as the Registrar of Construction Workers under that Ordinance, to perform the functions conferred or imposed on the Registrar by or under that Ordinance or any other enactment.

7. Powers of Council

(1) The Council may do all such things as are necessary for, or incidental or conducive to, the performance of its functions.

(2) Without limiting subsection (1), the Council may—

- (a) hold, acquire or lease any kind of property, whether movable or immovable;
- (b) subject to section 8(1), sell or otherwise dispose of any kind of property, whether movable or immovable;
- (c) enter into, assign or accept the assignment of, and vary or rescind, any contract or obligation;
- (d) subject to section 8(2) and (3), meet the expenditure on any item shown in the estimates of expenditure of the Council, borrow or otherwise raise money on such security as may be necessary, and charge all or any of the property of the Council for the purposes of meeting its expenditure;
- (e) charge fees for the use of any facility or service provided by the Council or in respect of any registration scheme or rating scheme established or administered by the Council;
- (f) engage any technical, professional or other person to provide any such facility or service, and determine any matter relating to such engagement;

- (g) devise, establish, operate and maintain registration schemes or rating schemes in respect of stakeholders, companies or personnel of the construction industry;
- (h) conduct research into any matter relating to its functions;
- (i) determine standards for application in the construction industry, in particular the standards for designs, processes, construction techniques, products, materials and methods of procurement and recommend the adoption of such standards;
- (j) collect, analyse, compile, publish and disseminate information relating to the construction industry or such other subject as may be necessary for the performance of its functions;
- (k) formulate, issue and promulgate codes of conduct for construction personnel and good practices in the construction industry;
- (l) investigate or otherwise dispose of complaints concerning any code of conduct, registration scheme or rating scheme;
- (m) conduct reviews in respect of codes of conduct, registration schemes and rating schemes;
- (n) set training requirements, provide and approve training courses and conduct examinations and tests, in respect of construction operations;
- (o) issue and award certificates of attendance or competence in respect of such training courses, examinations and tests and oversee and administer apprenticeship schemes for the construction industry;
- (p) organize and arrange seminars, exhibitions, workshops, conferences or training courses or programmes for the construction industry;
- (q) engage in publicity activities in any form that the Council considers appropriate;
- (r) form or manage or participate in the formation or management of any company or engage the services of any other body;
- (s) acquire or dispose of shares in any company; and
- (t) receive any funds, donations or gifts lawfully given for a purpose consistent with its statutory objects.

8. Limitations on Council's powers

(1) Except with the approval of the Chief Executive, the Council shall not sell or otherwise dispose of any land granted at nil premium by the Government.

(2) Except with the approval of the Financial Secretary, the Council shall not borrow or otherwise raise an amount which by itself exceeds 10% of the total estimated expenditure of the Council for the current financial year.

(3) Except with the approval of the Financial Secretary, the Council shall not borrow or otherwise raise an amount if the aggregate of that amount and the outstanding amounts previously borrowed or otherwise raised exceeds 10% of the total estimated expenditure of the Council for the current financial year.

9. Composition of Council

- (1) The Council is to consist of—
 - (a) a chairman appointed by the Secretary;
 - (b) the Executive Director;
 - (c) not more than 3 public officers appointed by the Secretary; and
 - (d) not more than 20 other members appointed by the Secretary.
- (2) The Secretary may not appoint a public officer under subsection (1)(a) or (d).
- (3) Of the members referred to in subsection (1)(d)—
 - (a) not more than 4 are to be persons who, in the opinion of the Secretary, represent employers;
 - (b) not more than 4 are to be persons who, in the opinion of the Secretary, represent professionals or consultants connected with the construction industry;
 - (c) not more than 5 are to be persons who, in the opinion of the Secretary, represent contractors, subcontractors, materials suppliers or equipment suppliers in the construction industry;
 - (d) not more than 2 are to be persons who, in the opinion of the Secretary, represent training institutes or academic or research institutions connected with the construction industry;
 - (e) not more than 2 are to be persons who, in the opinion of the Secretary, are from trade unions representing workers employed in the construction industry that are registered under the Trade Unions Ordinance (Cap. 332); and
 - (f) not more than 3 are to be such other persons as the Secretary thinks fit to be members of the Council.
- (4) The Secretary shall give notice in the Gazette of an appointment under subsection (1)(a), (c) or (d).

10. Term of office of appointed member and member who is public officer

- (1) An appointed member holds office for a period not exceeding 3 years as determined by the Secretary.

(2) An appointed member is eligible for reappointment on the expiry of his term of office, but may not hold office for more than 2 consecutive terms.

(3) A member who is a public officer holds office at the discretion of the Secretary.

11. Resignation of appointed member

(1) An appointed member may resign at any time by giving notice in writing to the Secretary.

(2) A resignation takes effect on the date specified in the notice of resignation or, if a date is not specified, on the date the Secretary receives the notice.

12. Removal of appointed member

The Secretary may terminate the appointment of an appointed member if the member—

- (a) has been absent from 3 consecutive meetings of the Council without the Council's permission;
- (b) becomes bankrupt or enters into a voluntary arrangement within the meaning of section 2 of the Bankruptcy Ordinance (Cap. 6) with his creditors;
- (c) is incapacitated by physical or mental illness; or
- (d) is for any other reason unable or unfit, in the opinion of the Secretary, to perform the functions assigned to him.

13. Casual vacancies

(1) If an appointed member is temporarily absent from Hong Kong or is unable to perform the functions of his office for any other reason, the Secretary may appoint another person to act in his place during his absence or incapacity.

(2) Only a person who satisfies the same criteria that applied to the appointment of the member replaced may be appointed under subsection (1).

(3) The Secretary shall give notice in the Gazette of an appointment under subsection (1).

14. Appointment of Executive Director

(1) The Council shall appoint a person who is not a public officer to be the Executive Director of the Council.

(2) If the Executive Director is temporarily absent from Hong Kong or is unable to perform the functions of his office for any other reason, the Council may appoint another person to act in his place during his absence or incapacity.

(3) The Council shall give notice in the Gazette of an appointment under this section.

15. Functions of Executive Director

Subject to the Council's direction, the Executive Director is responsible for the management, conduct and administration of the Council.

16. Meetings and proceedings of Council

Schedule 2 has effect with respect to the Council.

17. Council may establish committees

(1) The Council may establish any committees as it considers appropriate for the better performance of its functions.

(2) The Council may determine the composition, functions and procedures of a committee established under subsection (1).

18. Delegation of Council's functions and appointment of subcommittee

(1) The Council may delegate in writing any of its functions to a committee established under section 17.

(2) The Council may not delegate under subsection (1) any of the following powers or functions—

(a) the powers referred to in section 7(2)(a), (b), (c) and (d);

(b) the power to appoint an auditor;

(c) the power to establish a committee and determine its composition and functions;

(d) the power to delegate under subsection (1);

(e) the power to approve programmes of its proposed activities, estimates of its income and expenditure or other statements or reports required to be submitted to the Secretary under Part 3;

(f) the power to authorize the preparation of its accounts or other financial records;

(g) the functions of the Board or the Objections Committee.

(3) A delegation may be subject to such terms and conditions as the Council considers fit.

(4) A delegation does not prevent the concurrent performance by the Council of the functions delegated.

(5) The Council may amend or revoke a delegation.

(6) The Council may authorize a committee established under section 17 to appoint a subcommittee for the better performance of the committee's functions.

19. Employment of staff

(1) The Council may employ such persons as it requires to perform its functions.

(2) The Council may determine all matters relating to the remuneration of its employees and other terms and conditions of their appointment or employment.

20. Staff benefits, etc.

(1) The Council may grant, or make provision for the grant of, retirement benefits, gratuities, bonuses or other benefits to or in respect of its employees, any class of its employees or their dependants.

(2) The Council may make payments, whether ex gratia or legally due, to the personal representative of a deceased employee or to a dependant of such an employee.

(3) The Council may establish, manage and control, or enter into an arrangement with any company or association for the establishment, management and control by the company or association (either alone or jointly with the Council) of any fund or scheme for the purposes of providing for the retirement benefits, gratuities, bonuses or other benefits or the payments referred to in subsection (1) or (2).

(4) The Council may require its employees, or any class of its employees, to make contributions to any fund or scheme referred to in subsection (3).

(5) In subsections (1) and (2), "employee" (僱員) includes a former employee of the Council.

(6) The powers conferred on the Council under this section are without derogation from the obligations and duties imposed under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) on an employer.

21. Protection of members of Council, etc.

(1) A person to whom this section applies, acting in good faith, is not personally liable for anything done or omitted to be done by that person in the performance or purported performance of any function conferred or imposed on the Council by or under this Ordinance.

(2) The protection conferred on a person by subsection (1) in respect of an act or omission does not in any way affect any liability of the Council for that act or omission.

(3) This section applies to—

- (a) any member of the Council;
- (b) any member of a committee established under section 17;
- (c) any member of the Board or the Objections Committee;
- (d) any member of a subcommittee appointed under section 18(6);
- (e) any member of a subcommittee appointed under section 56(3);
- (f) any member of a subcommittee appointed under section 13 of Schedule 3; and
- (g) any employee of the Council.

22. Provision of funds by CITA

(1) If Parts 5 and 9 come into operation on a date after the day of commencement of this Part, the Secretary may, before the coming into operation of those 2 Parts, request the CITA to provide such funds as are necessary to meet expenses reasonably incurred by the Council.

(2) The CITA shall comply with any such request.

PART 3

FINANCIAL PROVISIONS

23. Funds and property of Council

The funds and property of the Council consist of—

- (a) all moneys recovered by way of levy, surcharge, penalty and further penalty;
- (b) all moneys received by the Council by way of grants, loans, donations, fees, rent or interest;
- (c) all moneys derived from the sale of any property held by or on behalf of the Council;
- (d) all funds provided by the CITA under section 22; and
- (e) all other moneys and property lawfully received by the Council for its purposes.

24. Estimates and financial year

(1) The Council may, with the approval of the Secretary, fix from time to time a period to be the financial year of the Council.

(2) In every financial year, the Council shall submit to the Secretary, before a date determined by him, a programme of its proposed activities and estimates of its income and expenditure for the next financial year.

(3) The Council shall submit the programme and estimates for the first financial year as soon as practicable after the commencement of this section.

25. Bank account

The Council shall—

- (a) maintain an account with a bank approved by the Director of Accounting Services; and
- (b) pay all moneys received by it into the account.

26. Investment of funds

Any funds of the Council that are not immediately required by the Council for the performance of its functions may, with the approval of the Financial Secretary—

- (a) be deposited on fixed deposit in a bank; or
- (b) be invested in such investments as the Council thinks fit.

27. Accounts

(1) The Council shall maintain proper accounts and records of all its income and expenditure.

(2) The Council shall, as soon as practicable after the end of a financial year, cause to be prepared a statement of accounts of the Council in respect of the financial year.

(3) The statement of accounts is to include an income and expenditure account and a balance sheet.

28. Auditors

(1) The Council shall appoint an auditor for the purposes of this Ordinance.

(2) The auditor appointed under subsection (1) shall—

- (a) audit the statement of accounts referred to in section 27(2); and
- (b) submit a report on the statement of accounts to the Council.

(3) The auditor is entitled to—

- (a) have access to all books of account, vouchers and other financial records of the Council; and
- (b) require such information and explanations of those books, vouchers and records as he thinks fit.

29. Submission of reports, etc. to Secretary

(1) Within 6 months after the end of a financial year, the Council shall, in respect of the financial year, submit to the Secretary—

- (a) a report on the activities of the Council during the financial year, including a general survey of the developments during that year in respect of matters falling within the scope of the Council's functions;
- (b) a copy of the statement of accounts referred to in section 27(2); and
- (c) the auditor's report referred to in section 28(2)(b).

(2) The Secretary shall cause the documents received under subsection (1) to be laid on the table of the Legislative Council.

(3) The Secretary may in a particular case extend the period for submitting the documents under subsection (1).

30. Exemption from taxation

The Council is exempt from taxation under the Inland Revenue Ordinance (Cap. 112).

PART 4**CONSTRUCTION INDUSTRY TRAINING BOARD****31. Establishment of Construction Industry Training Board**

(1) The Council shall establish a committee to perform its supplementary functions under section 6.

(2) The committee established under subsection (1) is to be known in the English language as the "Construction Industry Training Board" and in the Chinese language as "建造業訓練委員會".

(3) The Board may do all such things as are necessary for, or incidental or conducive to, the performance of those functions.

32. Composition, meetings and proceedings of Board, etc.

Schedule 3 has effect with respect to the Board.

PART 5

LEVY

33. Interpretation of this Part

In this Part—

“notice of completion” (竣工通知) means a notice given under section 38;

“notice of payment” (付款通知) means a notice given under section 37.

34. Imposition of levy

(1) A levy at the rate specified in Part 2 of Schedule 4 is to be imposed in respect of construction operations carried out in Hong Kong.

(2) The levy is to be known as the “Construction Industry Levy” and it is to be assessed and paid according to this Part.

(3) Construction operations the total value of which does not exceed the amount specified in Part 1 of Schedule 4 are not liable to the levy.

(4) This section applies to construction operations described in subsection (1) irrespective of whether the construction operations are carried out for an individual, a public authority, a body or organ (whether public or private) or any other person.

35. Who is to pay levy

(1) Subject to subsection (2), the levy is payable by a contractor of any construction operations which are subject to the payment of a levy.

(2) A contractor is liable to make a payment pursuant to subsection (1) only if the Council gives him a notice of assessment.

(3) A notice of assessment shall be in writing and shall specify the amount of the levy payable by the contractor.

36. Contractor and authorized person to notify Council of their carrying out of construction operations

(1) Within 14 days after any construction operations have commenced, the contractor and the authorized person in respect of the construction operations shall each inform the Council, by a notice, that he is such contractor or authorized person.

(2) A notice referred to in subsection (1) shall be in a form specified by the Council and shall state the estimated total value of the construction operations.

- (3) A notice is required to be given under this section only if—
 - (a) the construction operations are carried out under a term contract; or
 - (b) it is reasonably estimated that the total value of the construction operations exceeds the amount specified in Part 1 of Schedule 4.
- (4) The Council may in a particular case extend the period for giving a notice under this section.
- (5) A person who, without reasonable excuse, fails to give a notice as required by this section commits an offence and is liable on conviction to a fine at level 1.

37. Notice of payment made in respect of construction operations

- (1) If a payment is made to or for the benefit of a contractor in respect of any construction operations or any stage or part of any construction operations, other than construction operations carried out under a term contract, the contractor shall, within 14 days after the payment is made, give notice of the payment to the Council.
- (2) If a payment is made to or for the benefit of a contractor in respect of any construction operations carried out under a term contract, the contractor shall, within 14 days after the last day of the month in which the payment was made, give notice of the payment to the Council.
- (3) A notice of payment shall be in a form specified by the Council and shall state the value of the construction operations or the value of the stage or part of the construction operations in respect of which the payment was made.
- (4) A notice is required to be given under this section only if—
 - (a) the construction operations are carried out under a term contract; or
 - (b) it is reasonably estimated that the total value of the construction operations exceeds the amount specified in Part 1 of Schedule 4.
- (5) The Council may in a particular case extend the period for giving a notice under this section.
- (6) A person who, without reasonable excuse, fails to give a notice as required by this section commits an offence and is liable on conviction to a fine at level 1.

38. Notice of completion of construction operations

- (1) After the completion of any construction operations, the contractor and the authorized person shall each give notice of the completion to the Council.

(2) If any construction operations (other than those carried out under works orders) are carried out in stages, after the completion of each stage, the contractor and the authorized person shall each give notice of the completion to the Council.

(3) A notice of completion shall be given within 14 days after the completion of the construction operations or the stage of the construction operations (as the case may be) but the Council may in a particular case extend the period for giving the notice.

(4) The notice shall be in a form specified by the Council and shall state the value of the completed construction operations or the value of the completed stage.

(5) A notice is required to be given under this section only if—

(a) the construction operations are carried out under a term contract; or

(b) it is reasonably estimated that the total value of the construction operations exceeds the amount specified in Part 1 of Schedule 4.

(6) A person who, without reasonable excuse, fails to give a notice as required by this section commits an offence and is liable on conviction to a fine at level 1.

39. Assessment pursuant to notice of payment or notice of completion

(1) On receiving a notice of payment, the Council shall assess the amount of the levy payable in respect of the construction operations or the stage or part of the construction operations to which the notice relates.

(2) If no assessment has been made under subsection (1), on receiving a notice of completion, the Council shall assess the amount of the levy payable in respect of the construction operations or the stage of the construction operations to which the notice of completion relates.

(3) If the notice of payment is given in respect of an interim payment or partial payment, subject to subsection (4)—

(a) the assessment shall be a provisional assessment; and

(b) a final assessment shall be made on the final payment for the construction operations.

(4) If an assessment made under this section is in respect of a stage or part of any construction operations, or in respect of any construction operations, which constitute a stage or part of any other construction operations—

(a) the assessment shall be a provisional assessment; and

(b) a final assessment shall be made on the completion of those other construction operations.

40. Assessment for construction operations under term contract may be deferred

If the construction operations are carried out under a term contract, the Council may, subject to section 44, defer the making of any assessment under section 39 until such time as the Council considers appropriate.

41. Assessment in respect of stage or part of construction operations

The amount of the levy payable in respect of a stage or part of any construction operations is to be assessed as if that stage or part separately constitutes construction operations that are subject to payment of levy under this Ordinance.

42. Powers of Council to make assessment

(1) The Council may, subject to sections 44 and 46, assess the amount of the levy payable in respect of any construction operations or any stage or part of any construction operations, after the completion of the construction operations or the stage or part of the construction operations, notwithstanding that neither a notice of payment nor a notice of completion has been given to the Council.

(2) If it appears to the Council that any assessment of levy made by it is less than the proper amount, subject to sections 44 and 46, the Council may make an additional assessment of the levy.

43. Imposition of surcharge

(1) If a contractor fails to give a notice under section 37 or 38 and fails to give, within a period allowed by the Council, a reasonable excuse for that failure, the Council may, subject to sections 45 and 47, impose a surcharge on him.

(2) The surcharge may not exceed twice the amount of the levy payable by the contractor.

(3) Notwithstanding subsection (1), the contractor is liable to pay a surcharge only if the Council gives him a notice of the surcharge.

(4) A notice of surcharge shall be in writing and shall specify the amount of the surcharge payable by the contractor.

**44. Time limit on making assessment:
construction operations under
term contract**

In the case of construction operations carried out under a term contract, an assessment under this Ordinance may not be made after the expiry of whichever is the last to end of the following periods—

- (a) 2 years after the completion of all construction operations under the contract;
- (b) 2 years after the expiry of the period within which the contract stipulates that all such construction operations have to be completed;
- (c) one year after evidence, sufficient in the opinion of the Council to justify the making of the assessment, comes to its knowledge.

**45. Time limit on imposing surcharge:
construction operations under
term contract**

In the case of construction operations carried out under a term contract, a surcharge may not be imposed after the expiry of whichever is the last to end of the following periods—

- (a) 2 years after the completion of all construction operations under the contract;
- (b) 2 years after the expiry of the period within which the contract stipulates that all such construction operations have to be completed;
- (c) one year after evidence, sufficient in the opinion of the Council to justify the imposition of the surcharge, comes to its knowledge.

**46. Time limit on making assessment:
construction operations other than
those under term contract**

In respect of construction operations other than those carried out under a term contract, an assessment under this Ordinance may not be made after the expiry of whichever is the last to end of the following periods—

- (a) 2 years after the completion of the construction operations;
- (b) one year after evidence, sufficient in the opinion of the Council to justify the making of the assessment, comes to its knowledge.

47. Time limit on imposing surcharge: construction operations other than those under term contract

In respect of construction operations other than those carried out under a term contract, a surcharge may not be imposed after the expiry of whichever is the last to end of the following periods—

- (a) 2 years after the completion of the construction operations;
- (b) one year after evidence, sufficient in the opinion of the Council to justify the imposition of the surcharge, comes to its knowledge.

48. Payment of levy, surcharge or penalty, etc.

(1) A contractor who is given a notice of assessment or a notice of surcharge shall pay to the Council the amount of the levy or surcharge specified in the notice given to him, within the specified period.

(2) If the amount of the levy or surcharge is not fully paid within the specified period, the contractor is liable to pay a penalty of 5% of the unpaid amount.

(3) If the amount of the levy or surcharge, including any penalty imposed under subsection (2), is not fully paid within 3 months after the expiry of the specified period, the contractor is liable to pay a further penalty of 5% of the unpaid amount.

(4) A penalty or further penalty is payable in addition to the levy or surcharge for the non-payment of which it is imposed.

(5) In this section, “specified period” (指明期間), in relation to—

- (a) the levy, means the period of 28 days after the contractor receives the notice of assessment; and
- (b) a surcharge, means the period of 28 days after the contractor receives the notice of surcharge.

49. Recovery of levy, surcharge or penalty, etc.

(1) A levy, surcharge, penalty or further penalty due and payable under this Ordinance is recoverable as a civil debt due to the Council.

(2) An action for such recovery may be brought in the District Court notwithstanding that the amount due exceeds the financial limits on the civil jurisdiction of the District Court under the District Court Ordinance (Cap. 336).

50. Levy, surcharge or penalty, etc. payable despite intention to object

The levy or a surcharge, penalty or further penalty shall be paid in accordance with section 48 even if the contractor concerned intends to make an objection under section 57.

51. Council's power to waive or refund whole or part of levy, surcharge or penalty, etc.

(1) The Council may waive or refund the whole or any part of a levy, surcharge, penalty or further penalty if it considers it fair and reasonable to do so in the special circumstances of a particular case.

(2) If an amount waived under subsection (1) has already been paid to the Council, the Council shall refund it.

(3) If, in respect of any construction operations, the Council receives more than the proper amount of the levy due to more than one contractor paying the whole or part of amount due, the Council shall refund the excess to the contractor entitled to the refund.

52. Application of this Part

(1) This Part does not apply to construction operations that are carried out both—

(a) for a person who occupies a domestic unit or part of a domestic unit; and

(b) for the sole or principal purpose of decorating, altering, repairing, maintaining or renovating the unit or any part of the unit.

(2) In this section, “domestic unit” (住用單位) means any premises used or intended to be used solely or principally for residential purposes and constituting a separate household unit.

(3) For the purposes of this section, a person is regarded as a person who occupies a domestic unit if he intends to occupy the unit.

53. Power of Chief Executive in Council to exclude certain construction operations from application of this Part

(1) The Chief Executive in Council may, by order published in the Gazette, exclude any construction operations from the application of this Part.

(2) An order under subsection (1) may exclude particular construction operations or a type or description of construction operations.

(3) An order under subsection (1) may specify the circumstances in which or the purposes for which the exclusion applies.

PART 6

VALUE OF CONSTRUCTION OPERATIONS, ETC.

54. Value of construction operations

(1) In relation to any construction operations, the value of the construction operations is—

- (a) if the construction operations are the subject of a construction contract—
 - (i) the consideration attributable to the construction operations, that is stated in the contract; or
 - (ii) the consideration attributable to the construction operations, that is ascertainable by reference to the contract; or
- (b) in any other case, the reasonable consideration to be expected in the open market for the carrying out of the construction operations.

(2) Notwithstanding subsection (1)(a), if the consideration attributable to any construction operations as determined in accordance with that subsection is below the reasonable consideration to be expected in the open market for the carrying out of the construction operations, the consideration of the construction operations is to be the reasonable consideration referred to in subsection (1)(b).

(3) For the purposes of this section, the Council may, in a particular case, have regard to any or all of the following matters when ascertaining the reasonable consideration to be expected in the open market for the carrying out of the construction operations concerned—

- (a) the cost or value of materials used in the construction operations;
- (b) the cost or value of time, work and labour involved in the construction operations;
- (c) the equipment used in the construction operations;
- (d) such overhead costs incurred in relation to the construction operations as the Council considers reasonable;
- (e) the reasonable profit to be expected in the open market for the carrying out of the construction operations;
- (f) any other factors that the Council considers appropriate.

55. Total value of construction operations

(1) For the purposes of this Ordinance, “total value” (總價值), in relation to construction operations carried out under a construction contract, means—

- (a) if the contract is a term contract under which works orders are issued, the aggregate of the values of all construction operations carried out as required by those works orders;
- (b) if the contract is not a term contract described in paragraph (a), but a contract under which the construction operations are or form part of any construction operations that are carried out in stages, the aggregate of the values of all stages of the construction operations so carried out; and
- (c) in any other case, the value of the construction operations.

(2) For the purposes of this Ordinance, “total value” (總價值), in relation to construction operations that are not carried out under a construction contract, means—

- (a) if the construction operations are or form part of any construction operations that are carried out in stages, the aggregate of the values of all stages of the construction operations so carried out; and
- (b) in any other case, the value of the construction operations.

PART 7**OBJECTIONS AND APPEALS****56. Establishment of Objections Committee**

(1) The Council shall establish a committee consisting of 3 members of the Council for the purposes of determining objections made under section 57.

(2) The Objections Committee may do all such things as are necessary for, or incidental or conducive to, the performance of the function mentioned in subsection (1).

(3) The Council may authorize the Objections Committee to appoint a subcommittee for the better performance of the Objections Committee’s function.

(4) The Objections Committee may determine its own procedures.

57. Objections to levy or surcharge

(1) A person who is notified under section 35 or 43 may object to the levy or surcharge.

(2) The objection shall be made by a notice in writing (“notice of objection”).

(3) A notice of objection must be served on the Council within 21 days after the contractor receives the notice of assessment or the notice of surcharge (as the case may be).

(4) A notice of objection shall state the grounds of objection and shall be accompanied by all written statements and other documentary evidence relied on by the objector.

58. Decision of Objections Committee

(1) The Council shall refer every objection made under section 57 to the Objections Committee for consideration.

(2) The Objections Committee may confirm, cancel or reduce the levy or surcharge and shall inform the Council of its decision.

(3) The Council shall notify the objector in writing of the decision of the Objections Committee within 28 days after the Council receives the notice of objection or, where that is not practicable, within a reasonable period.

(4) If a levy or surcharge is cancelled or reduced under this section, the Council shall forthwith refund to the objector the amount of the levy or any amount, including any amount of the penalty or further penalty, that has been paid in excess (as the case may be).

59. Appeals against decision of Objections Committee

(1) An objector who is aggrieved by a decision of the Objections Committee may appeal to the District Court against that decision.

(2) An appeal shall be lodged within 30 days after the objector receives the notification of the decision.

(3) An appeal may not be heard unless the amount of the levy or surcharge which is the subject of the appeal, including the amount of any penalty or further penalty, has been paid.

(4) On hearing an appeal, the District Court may confirm, cancel or reduce the levy or surcharge and make any order as to costs as it thinks fit.

(5) If the District Court cancels or reduces a levy or surcharge, it may order the repayment of the cancelled or reduced amount, and any amount of the penalty or further penalty that has been paid.

(6) The District Court may order repayment with interest, at a rate determined by the Court, calculated from the date of payment to the Council, or without interest.

60. Rules of court

The District Court Rules Committee established under section 17 of the District Court Ordinance (Cap. 336) may make rules of court for the purposes of section 59.

PART 8**MISCELLANEOUS****61. Provision of information**

(1) An employer, a contractor or an authorized person concerned in any construction operations shall give the Council or an officer authorized by the Council, within a time and in a form specified by the Council or the officer, any information of a kind described in subsection (2) that the Council or the officer may require for the purposes of performing its or his functions under this Ordinance.

(2) The information referred to in subsection (1) is—

- (a) information relating to the construction operations that the employer, contractor or authorized person (as the case may be) is concerned in, including information on any amount paid or payable in respect of the construction operations or any work connected with the construction operations;
- (b) the name and address of the person for whom the construction operations are carried out; and
- (c) the name and address of the person by whom the construction operations are carried out.

(3) A person who, without reasonable excuse, fails to comply with subsection (1) commits an offence and is liable on conviction to a fine at level 1.

62. Production of documents, etc.

(1) An employer, a contractor or an authorized person concerned in any construction operations shall produce or cause to be produced for inspection by the Council or an officer authorized by the Council, any document or record in his possession that relates to the construction operations that the employer, contractor or authorized person (as the case may be) is concerned in, including a document or record relating to any amount paid or payable in respect of the construction operations or any work connected with the construction operations, if required by the Council or the officer for the purposes of performing its or his functions under this Ordinance.

(2) If required by the Council or an officer authorized by the Council for the purposes referred to in subsection (1), the employer, contractor or authorized person shall permit the Council or the officer to make a copy of such a document or record or make any extract from it, or to remove it for a reasonable period.

(3) A person who, without reasonable excuse, fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 1.

63. Protection of information given under sections 61 and 62

(1) Subject to subsection (2), a person shall not disclose other than to the Council, or to an employee of the Council acting in his official capacity, any information given or obtained under section 61 or any information obtained from any document or record under section 62 without the consent of the person who gave it or from whom it was obtained.

(2) Subsection (1) does not apply—

- (a) to the provision of information under regulation 14 of the Pneumoconiosis (Compensation) (Assessment of Levy) Regulations (Cap. 360 sub. leg. A);
- (b) to the provision of information under section 31(1) of the Construction Workers Registration Ordinance (18 of 2004);
- (c) to the disclosure of information in the form of a summary of similar information given by or obtained from a number of employers, contractors or authorized persons if the summary is so framed as not to enable particulars relating to any particular contractor's business to be ascertained from it;
- (d) to the disclosure of information by the Council to any person authorized or employed by it for the purposes of checking or ascertaining the value of construction operations;
- (e) to the disclosure of information by the Council to the Pneumoconiosis Compensation Fund Board established under the Pneumoconiosis (Compensation) Ordinance (Cap. 360);
- (f) to the disclosure of information by the Council to the Construction Workers Registration Authority established under the Construction Workers Registration Ordinance (18 of 2004);
- (g) to any disclosure of information made for the purposes of any legal proceedings brought under this Ordinance, or for the purposes of any report of any such proceedings; or
- (h) to the supply of a copy of personal data in compliance with a data access request under section 18 of the Personal Data (Privacy) Ordinance (Cap. 486).

(3) A person who intentionally discloses any information in contravention of subsection (1) commits an offence and is liable on conviction to a fine at level 1.

64. Documents under seal of Council

(1) The affixing of the common seal of the Council is to be authenticated by the signatures of any 2 of its members.

(2) A document purporting to be duly executed under the common seal is admissible in evidence and, unless the contrary is proved, is to be regarded as having been duly executed.

65. Power to sign Council's documents

A notice or any other document given or issued by the Council may be signed by an officer of the Council, authorized by the Council for the purposes of this section.

66. Admissibility of documents signed under section 65

A document purporting to be a notice or other document given or issued by the Council and purporting to be signed by an officer of the Council authorized for the purposes of section 65 is admissible in evidence and, unless the contrary is proved, is to be regarded as a notice or other document given or issued by the Council and signed as purported.

67. Evidence by certificate, etc.

(1) In any legal proceedings, a certificate to which this section applies purporting to be signed by an officer of the Council authorized for the purposes of section 65 is admissible in evidence.

(2) Unless the contrary is proved, such a certificate is evidence of the facts stated in it and is to be regarded as signed as purported.

(3) This section applies to a certificate stating that—

(a) a notice required by or under this Ordinance has or has not been given on a particular date; or

(b) an amount of a levy, surcharge, penalty or further penalty due under this Ordinance has not been paid.

68. Appointment of authorized persons

(1) If the Government is the employer in respect of any construction operations, a person shall be appointed by or on behalf of the Government to perform the functions of an authorized person.

(2) In any other case, the employer in respect of any construction operations shall, if no authorized person is appointed under section 4 of the Buildings Ordinance (Cap. 123), appoint a person to perform the functions of an authorized person.

(3) For the purposes of enabling the Council to perform its functions under Part 5, an employer to whom subsection (2) applies shall, before the commencement of the construction operations, supply to the Council, in a form specified by it, the name of the person appointed under that subsection and the name of the contractor in respect of the construction operations.

(4) A person who fails to comply with subsection (2) or (3) commits an offence and is liable on conviction to a fine at level 1.

(5) Subsection (3) applies only if—

(a) the construction operations are carried out under a term contract; or

(b) it is reasonably estimated that the total value of the construction operations exceeds the amount specified in Part 1 of Schedule 4.

69. Offences of fraudulent evasion of levy and giving false documents or information

(1) A person commits an offence if he—

(a) is knowingly concerned in the fraudulent evasion of the payment of a levy due from him or from any other person; or

(b) is knowingly concerned in taking steps with a view to the fraudulent evasion of the payment of a levy due from him or from any other person.

(2) A person commits an offence if he—

(a) with intent to deceive, produces, supplies or sends for the purposes of this Ordinance, or otherwise makes use of for those purposes, a document or record that is false in a material particular; or

(b) in providing any information for the purposes of this Ordinance, makes a statement that he knows to be false in a material particular or recklessly makes a statement that is false in a material particular.

(3) A person who commits an offence under subsection (1)(a) or (b) is liable on conviction to a fine at level 3 or 3 times the amount of the levy that was evaded or intended to be evaded by his conduct, whichever is the greater.

(4) A person who commits an offence under subsection (2)(a) or (b) is liable on conviction to a fine at level 2 or 3 times the amount of the levy that was evaded or intended to be evaded by his conduct, whichever is the greater.

70. Regulations

The Secretary may make regulations for all or any of the following purposes—

- (a) to provide for records that are to be kept by employers, contractors and authorized persons;
- (b) subject to the particular provisions relating to information in this Ordinance, to provide for information that is to be supplied by employers, contractors and authorized persons;
- (c) generally for the better carrying out of the provisions and purposes of this Ordinance.

71. Power to amend Schedules 1, 2 and 3

The Secretary may, by order published in the Gazette, amend Schedules 1, 2 and 3.

72. Power to amend Schedule 4

(1) The Legislative Council may by resolution amend Schedule 4.

(2) Any amendment to Schedule 4 shall come into effect on the expiry of the specified period.

(3) Despite the coming into effect of any amendment made under subsection (1), Schedule 4 as it was before such amendment continues to apply to the construction operations to which this subsection applies.

(4) Subsection (3) applies to the following construction operations—

- (a) construction operations the tender for which had been submitted to the employer before the expiry of the specified period;
- (b) other construction operations carried out under a construction contract, if the contract had been entered into before the expiry of the specified period or the construction operations had commenced before the expiry of that period; and
- (c) construction operations other than those referred to in paragraphs (a) and (b), that had commenced before the expiry of the specified period.

(5) In this section, “specified period” (指明期間), in relation to a particular amendment made under subsection (1), means the period of 30 days after the publication in the Gazette of that amendment.

PART 9**REPEAL, VESTING, TRANSITIONAL AND SAVINGS PROVISIONS,
AND CONSEQUENTIAL OR RELATED AMENDMENTS****73. Repeal**

(1) The Industrial Training (Construction Industry) Ordinance (Cap. 317) is repealed.

(2) The CITA is dissolved.

**74. Vesting of rights, assets, liabilities and obligations
of CITA in Council and saving of validity
of CITA's acts**

(1) By virtue of this section, all rights, assets, liabilities and obligations of the CITA are to be vested in the Council as from the appointed day.

(2) Nothing in this Ordinance affects the validity of anything done by or in relation to the CITA before the appointed day.

(3) The Stamp Duty Ordinance (Cap. 117) does not apply to any vesting effected by this section.

75. Completion of acts already commenced

Anything which immediately before the appointed day is in the process of being done by or in relation to the CITA may be carried on or completed by the Council in accordance with the provisions of this Ordinance.

76. Rights of action

(1) The Council may be sued for the liabilities or obligations to which it is subject under section 74 and they may be recovered from the Council.

(2) The Council may sue on, recover or enforce a chose in action vested in it under section 74 without having to give notice of the vesting to a person bound by the chose in action.

77. Legal claims and pending legal proceedings, etc.

(1) Legal claims (whether present or future, actual or contingent) by or against the CITA, including any accrued right of appeal, judicial and administrative proceedings instituted by or against the CITA, that existed immediately before the appointed day do not abate by reason of the repeal under section 73 and may be continued or enforced by or against the Council.

(2) Where immediately before the appointed day, any legal proceedings to which the CITA is a party are pending, the Council is to, as from that day, be substituted as a party to those proceedings in place of the CITA.

78. Effect of existing agreement, etc.

(1) Any agreement, arrangement, contract made or entered into or other transaction effected or other thing done by, to or in relation to the CITA that is in force or effective immediately before the appointed day or which is to take effect on or after that day has effect as if made, entered into, effected or done by, to or in relation to the Council.

(2) Without affecting the generality of subsection (1), any lease, tenancy, permit or licence granted to the CITA that is in force or effective immediately before the appointed day or which is to take effect on or after that day has effect as if granted to the Council.

79. References to CITA

As from the appointed day, the references to the CITA in the following are to be taken as references to the Council—

- (a) any agreement, contract or other instrument;
- (b) any process or other document issued, prepared or employed for the purposes of any proceedings before a court, tribunal or similar body; and
- (c) any other document (other than an enactment) relating to or affecting any property, right, liability or obligation of the CITA vested in the Council under section 74.

80. Delivery of books, etc.

All books, accounts, minutes and other documents and equipment belonging to the CITA and in its control immediately before the appointed day shall be delivered to the Council on that day by the person who has the care and custody of those documents or equipment on the commencement of that day.

81. Record of property

Any property of the CITA which, immediately before the appointed day, was standing in the books of a bank, company or other corporation is to be transferred in those books to the Council at the request of the Council, by the bank, company or other corporation.

82. Continuance of employment

(1) As from the appointed day, a person who, immediately before that day, is an employee of the CITA under a valid contract of employment and who, if not for the dissolution of the CITA, would have been its employee under the contract on that day, becomes an employee of the Council on the same terms and conditions that applied immediately before that day to his employment with the CITA.

(2) There is no break or interruption in the employment of such a person by reason of the commencement of this Part.

83. Submission of reports on activities of CITA

(1) Within 6 months after the appointed day, the Council shall submit to the Secretary—

- (a) a report on the activities of the CITA during the specified period;
- (b) a copy of the statement of accounts of the CITA in respect of that period; and
- (c) the auditor's report on the statement of accounts.

(2) The Secretary shall cause the documents received under subsection (1) to be laid on the table of the Legislative Council.

(3) The Secretary may extend the period for submitting the documents under subsection (1).

(4) In this section—

“repealed Ordinance” (被廢除條例) means the Industrial Training (Construction Industry) Ordinance (Cap. 317);

“specified period” (指明期間) means the period beginning on the day next following the end of the last financial year of the CITA in respect of which reports and statements had been submitted under section 20 of the repealed Ordinance and ending on the day immediately before the appointed day;

“statement of accounts” (帳目表) includes an income and expenditure account and a balance sheet.

84. Council to appoint auditor for purposes of section 83

(1) The Council shall appoint an auditor for the purposes of section 83.

(2) The auditor appointed under subsection (1) shall—

- (a) audit the statement of accounts referred to in section 83; and
- (b) submit a report on it to the Council.

(3) The auditor is entitled to—

- (a) have access to all books of account, vouchers and other financial records of the CITA that are in the Council's control; and
- (b) require such information and explanations of those books, vouchers and records as he thinks fit.

85. Transitional provisions in relation to certain construction operations

(1) This Ordinance does not apply to the following construction operations—

- (a) construction operations the tender for which had been submitted to the employer before the commencement day;
- (b) other construction operations carried out under a construction contract, if the contract had been entered into before the commencement day or the construction operations had commenced before the commencement day; and
- (c) construction operations other than those referred to in paragraphs (a) and (b), that had commenced before the commencement day.

(2) Despite the commencement of section 73, the repealed Ordinance as it was in force immediately before the commencement continues to apply to the construction operations referred to in subsection (1), subject to subsection (3).

(3) In respect of those construction operations, the powers conferred and the functions imposed on the CITA under the repealed Ordinance shall be exercised and performed by the Council.

(4) In this section—

“commencement day” (生效日期) means the day on which this Part comes into operation;

“repealed Ordinance” (被廢除條例) means the Industrial Training (Construction Industry) Ordinance (Cap. 317).

86. Consequential or related amendments

(1) The enactments specified in Schedule 5 are amended as set out in that Schedule.

(2) The amendments effected by section 3 of Schedule 5 apply in relation to the year of assessment in which that section comes into operation and to all subsequent years of assessment.

(3) In subsection (2), “year of assessment” (課稅年度) has the meaning assigned to it in section 2(1) of the Inland Revenue Ordinance (Cap. 112).