

## **LEGISLATIVE COUNCIL BRIEF**

### **CONSTRUCTION INDUSTRY COUNCIL (No. 2) BILL**

#### **INTRODUCTION**

A At the meeting of the Executive Council on 28 September 2004, the Council ADVISED and the Chief Executive ORDERED that the Construction Industry Council (No. 2) Bill, at Annex A, should be re-introduced into the Legislative Council (LegCo) to provide for the establishment of the Construction Industry Council (CIC).

#### **JUSTIFICATIONS**

2. The Construction Industry Review Committee (CIRC) observed in its report that whilst being a main pillar of our economy, the construction industry is highly fragmented and beset with an adversarial culture which impedes long-term development. It went on and concluded that a statutory industry co-ordinating body (ICB) encompassing all key sectors should be formed to promote the culture of self-regulation in a market-driven environment.

3. As an umbrella organization, the ICB will be responsible for spearheading reforms and sustaining momentum to achieve continuous improvements across the construction industry. It should provide guidance to the Construction Industry Training Authority (CITA) established under the Industrial Training (Construction Industry) Ordinance (the Ordinance) and set directions for its work. Moreover, the CIRC envisaged that construction levies should be pooled together for more efficient deployment of resources and to fund daily operations of the ICB as well as other activities that will benefit the industry at large.

4. To achieve the objectives referred to in the above paragraph, we have drawn up in June 2003 a legal framework of the CIC capable of forging consensus on long-term strategic issues, conveying industry needs and aspirations to the Government, as well as providing a proper communication channel for the Government to solicit advice on all construction-related matters. In order to propagate improvements across the entire industry, the CIC should be empowered to formulate codes of conduct, administer registration and rating schemes, steer forward research and manpower development, facilitate adoption of construction standards, promote good practices and compile performance indicators.

The CITA will be dissolved and subsumed under the CIC as a committee named as the Construction Industry Training Board (CITB).

5. We have evaluated the justifications for a merger between the CIC and the Pneumoconiosis Compensation Fund Board (PCFB) given that the latter is also a recipient of construction levies. Whilst some sectors of the industry saw such a move as favourable to achieve pooling of levies, the mainstream opinion was that the funds accrued to the PCFB should be ring-fenced to cater for payment of statutory compensation. Given that the CIRC did not cast a firm view on this matter, we propose to maintain the status quo.

6. From an organizational perspective, the Environment, Transport and Works Bureau (ETWB) is fulfilling a role as lead agency within the Government to co-ordinate construction-related matters and will take over from the Education and Manpower Bureau (EMB) its policy responsibilities in relation to construction training.

#### **OTHER OPTIONS**

7. Other options are unable to achieve the following fundamental policy objectives -

- (a) enabling the ICB to set directions for the CITA given its present status as a statutory body;
- (b) empowering the ICB to assess and collect construction levies for its daily operations and to fund other activities beneficial to the industry at large;
- (c) paving way for the industry to generate synergy among different players, to break down the adversarial mindset, and to nurture a sense of continuous improvement; and
- (d) providing a legal platform so that the ICB could widen its ambit in future to take up construction workers registration and other self-regulatory regimes.

On the other hand, establishment of the CIC as a statutory ICB funded by construction levies is in line with the LegCo Brief issued in June 2001 and can also address the concern of the CIRC.

## **THE BILL**

8. The main provisions are -
- (a) **Part 1** contains preliminary provisions. **Clause 1** provides for the short title and commencement of the Bill. **Clause 2** is the interpretation clause which defines the terms used in the Bill. **Clause 3** states that the Bill, if enacted, binds the Government.
  - (b) **Part 2** provides for the establishment of the CIC. Its functions and powers are set out in **clauses 5 to 8**, with its composition listed in **clause 9**. **Clauses 10 to 15** mainly deal with the appointment of CIC members and their terms of office. **Clauses 16 to 21** and **Schedule 2** provide for the meetings and proceedings of the CIC, establishment of committees by the CIC, and its staff and staff benefits. **Clause 22** provides for funding arrangement for the CIC during the transitional period.
  - (c) **Part 3 (clauses 23 to 30)** stipulates the financial provisions of the CIC which follow closely those under the Ordinance.
  - (d) **Part 4 (clauses 31 and 32 and Schedule 3)** provides for establishment of the CITB as well as its composition, meetings and procedures. The CITB is to assume all existing functions and responsibilities of the CITA in respect of construction training and trade testing.
  - (e) **Parts 5 and 6 (clauses 33 to 55 and Schedules 1 and 4)** mainly provide for the imposition of a levy on construction operations undertaken or carried out in Hong Kong and the assessment of levy payable by a contractor.
  - (f) **Part 7 (clauses 56 to 60)** provides for an objection and appeal mechanism in respect of any levy or surcharge imposed under the Bill.
  - (g) **Part 8 (clauses 61 to 72)** covers miscellaneous matters.
  - (h) **Part 9 (clauses 73 to 86 and Schedule 5)** includes the repeal of the Ordinance, dissolution of the CITA, vesting and transitional provisions, and consequential or related amendments to other Ordinances.

## **LEGISLATIVE TIMETABLE**

9. The legislative timetable will be –

Publication in the Gazette	8 October 2004
First Reading and commencement of Second Reading debate	13 October 2004
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **IMPLICATIONS OF THE PROPOSAL**

B 10. The economic and productivity, environmental, financial and civil service, sustainability implications as well as binding effect of the proposal are set out at Annex B.

11. The proposal is in conformity with the Basic Law, including the provisions concerning human rights.

## **PUBLIC CONSULTATION**

12. The Provisional Construction Industry Co-ordination Board (PCICB) consulted industry stakeholders on a draft legal framework of the CIC in early 2003. The overall response was positive, whilst some suggested amendments had been incorporated into the present proposal as appropriate.

13. The proposal was discussed at a joint meeting of the LegCo Panel on Planning, Lands and Works and the LegCo Panel on Manpower held on 25 November 2003. Although Members raised no objection to the proposal, some suggested including representatives nominated by major professional bodies and trade associations in the CIC, and increasing the number of representatives drawn from construction worker unions.

## **PUBLICITY**

14. A press release will be issued when the Bill is gazetted, and a spokesman will be available to handle media and public enquiries.

## **BACKGROUND**

15. The CIRC completed an examination of the current state of the construction industry and published in January 2001 a report entitled "Construct for Excellence" outlining 109 improvement measures spanning across the whole spectrum of construction activities aimed at lifting quality and cost-effectiveness.

16. We issued on 7 June 2001 a LegCo Brief stating an agreement in principle for the setting up of a statutory ICB and that a provisional body should be established pending its formation. The PCICB was formed in September 2001 and submitted a draft legal framework of the CIC to the Government in April 2003.

17. The Bill was subsequently introduced into the LegCo for first reading on 11 February 2004 but was not scrutinised due to limited time available in the last legislative session of its second term. Pursuant to section 9(4) of the Legislative Council Ordinance, consideration of the Bill lapsed at the end of term on 30 September 2004. We therefore need to re-introduce the Bill into the LegCo as soon as possible in the 2004-05 legislative session.

18. Although the Bill covers some amendments necessitated essentially by the Construction Industry Levy (Miscellaneous Amendments) Ordinance 2004 and the Construction Workers Registration Ordinance enacted in the last legislative session as well as some drafting refinements, its original policy intent has not been altered in any way.

## **ENQUIRIES**

19. Please contact Miss Agnes Kwan, Assistant Secretary for the Environment, Transport and Works (Industry Review) at 2848 2290 for enquiries on this subject.

**Environment, Transport and Works Bureau  
October 2004**

# **CONSTRUCTION INDUSTRY COUNCIL (No. 2) BILL**

## **ANNEXES**

Annex A - Construction Industry Council (No. 2) Bill

Annex B - Implications of the Proposal

**Annex A**

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

# CONSTRUCTION INDUSTRY COUNCIL (NO. 2) BILL

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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).

## SCHEDULE 1

[ss. 2 & 71]

### CONSTRUCTION OPERATIONS

1. In this Ordinance, “construction operations” (建造工程) means operations of any of the following descriptions –

- (a) building works as defined in section 2(1) of the Buildings Ordinance (Cap. 123);
- (b) street works as defined in section 2(1) of the Buildings Ordinance (Cap. 123);
- (c) construction, alteration, repair, maintenance, extension, demolition or dismantling of –
  - (i) any buildings, or other temporary or permanent structures forming, or to form, part of land;
  - (ii) any works forming, or to form, part of land;
  - (iii) any industrial plant or any industrial installations for the purposes of land drainage, coast protection, water supply or defence; or
  - (iv) any power-lines, telecommunications apparatus or pipelines,



- including walls, pylons, aircraft runways, docks and harbours, railways, inland waterways, reservoirs, water-mains, wells and sewers;
- (d) supply and installation of fittings or equipment in any buildings, or other structures forming part of land, including systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, refuse collection, water supply, fire protection, security or communications, lift or escalator and other extra low voltage works;
  - (e) external or internal cleaning of any buildings, or other temporary or permanent structures forming part of land, to the extent that it is carried out in the course of construction, alteration, repair, maintenance, extension or restoration of such buildings or structures;
  - (f) painting or decorating any external or internal surfaces or parts of any buildings, or other temporary or permanent structures forming part of land;
  - (g) operations which form an integral part of, or are preparatory to, or are for rendering complete, any of the operations described in paragraphs (a), (b), (c), (d), (e) and (f), including site clearance and investigation, earthmoving, excavation, tunnelling and boring, laying of foundations, erection, maintenance or dismantling of scaffolding, site restoration, landscaping and the provision of roadways and other access works.

2. Notwithstanding section 1, “construction operations” (建造工程) does not include operations of any of the following descriptions –

- (a) design, advice or consultation work, unless such design, advice or consultation work is incidental to any operations described in section 1;
- (b) manufacture of plant or machinery at a site for delivery of such plant or machinery to another site where the sole or principal activity at that other site is –
  - (i) power generation; or
  - (ii) the production, transmission, processing or bulk storage of any materials or manufactured products, including chemicals, pharmaceuticals, oil, gas, steel, food or drink or vehicles, which are intended for sale.

3. In this Schedule –

“extra low voltage” (特低壓) means voltage normally not exceeding –

- (a) 50V root mean square alternating current between conductors or between a conductor and earth; or
- (b) 120V direct current between conductors or between a conductor and earth;

“land” (土地) includes land under the sea.

## SCHEDULE 2

[ss. 16 & 71]

### MEETINGS AND PROCEEDINGS OF COUNCIL

#### 1. Interpretation

In this Schedule –

“chairman” (主席) means the chairman of the Council referred to in section 9(1)(a) of this Ordinance, and includes a person appointed under section 13(1) of this Ordinance to act in his place;

“member” (成員) means a member of the Council referred to in section 9(1) of this Ordinance, and includes a person appointed under section 13(1) or 14(2) of this Ordinance to act in his place.

## 2. **Holding of meetings**

(1) Subject to subsection (2), a meeting of the Council shall be held at such time and place as the chairman may appoint.

(2) The Council shall meet if there is a notice in writing, signed by not less than half of its members, requesting that a meeting be held.

## 3. **Notice of meetings**

Unless otherwise determined by the chairman, a notice of meeting shall be served on each member at least 14 days before the day on which the meeting is to be held.

## 4. **Quorum**

(1) At a meeting of the Council, a quorum is not less than half of its members.

(2) If a member is disqualified from taking part in a decision or deliberation in respect of a matter under section 6, he shall be disregarded for the purposes of constituting the quorum for deciding or deliberating on that matter.

## 5. **Proceedings of Council**

(1) Subject to subsection (2), the chairman is to preside at a meeting of the Council.

(2) If, for any reason, the chairman is not able to preside at a meeting of the Council, the members present at the meeting are to elect a member from among themselves to preside.

(3) All questions for determination are to be decided by a majority of votes of the members present and voting, and if there is an equality of votes, the member presiding has a casting vote in addition to his original vote.

**6. Disclosure of interests of members**

If a member has a pecuniary interest, whether direct or indirect, in any matter under consideration at a meeting of the Council, the member –

- (a) shall, as soon as practicable after the commencement of the meeting, disclose to the Council the fact and nature of his interest;
- (b) shall withdraw from the meeting while the Council is considering the matter, if so required by the meeting; and
- (c) shall not in any case vote on the matter.

**7. Validity of proceedings**

The validity of any proceedings of the Council shall not be affected by –

- (a) any defect in the appointment of a member; or
- (b) any vacancy in the membership of the Council.

**8. Council to determine procedures**

Subject to the provisions of this Ordinance, the Council may determine its own procedures.

**9. Resolutions without meetings**

(1) Anything which may be done by resolution of the Council in a meeting may be validly done, without a meeting, by a resolution in writing if the resolution is signed by more than half of the members who, on the date on which the resolution is made, would be entitled to attend and vote at a meeting of the Council.

(2) If a resolution is in the form of more than one document, the requirement under subsection (1) is to be regarded as satisfied if each document

is in the like form and the documents together bear the signatures of more than half of the members.

(3) A telex, cable or facsimile, or an electronically transmitted document, that bears the signature of a member is to be regarded as having been signed by that member.

(4) A resolution in the form of more than one document is to be regarded as made on the date on which the resolution is signed by the last member to sign it.

### SCHEDULE 3

[ss. 21, 32 & 71]

## COMPOSITION, MEETINGS AND PROCEEDINGS OF BOARD, ETC.

### 1. Interpretation

In this Schedule –

“Board member” (訓練委員會成員) means a member of the Board referred to in section 2, and includes a person appointed under section 5 to act in his place;

“chairman” (主席) means the chairman of the Board appointed under section 2(4).

### 2. Composition of Board

(1) The Board is to consist of 13 members appointed by the Council.

(2) Of those members –

(a) 4 are to be persons who, in the opinion of the Council, represent professionals or consultants connected with the construction industry;

(b) 3 are to be persons who, in the opinion of the Council, represent contractors in the construction industry;

- (c) one is to be a person who, in the opinion of the Council, represents a training institute or tertiary educational institution connected with the construction industry;
- (d) 2 are to be persons who, in the opinion of the Council, are from trade unions representing workers employed in the construction industry that are registered under the Trade Unions Ordinance (Cap. 332);
- (e) one is to be such other person as the Council thinks fit to be a member of the Board; and
- (f) 2 are to be public officers.

(3) The Council may not appoint a public officer under subsection (2)(a), (b), (c), (d) or (e).

(4) The Council is to appoint a Board member to be the chairman of the Board.

### **3. Term of office of Board member who is not public officer**

(1) A Board member who is not a public officer holds office for a period determined by the Council.

(2) A Board member who is not a public officer is eligible for reappointment on the expiry of his term of office.

### **4. Resignation of Board member who is not public officer**

(1) A Board member who is not a public officer may resign at any time by giving notice in writing to the Council.

(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 Council receives the notice.

### **5. Casual vacancies**

(1) If a Board member, other than a member who is a public officer, 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.

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

## **6. Holding of meetings**

A meeting of the Board shall be held at such time and place as the chairman may appoint.

## **7. Quorum**

(1) At a meeting of the Board, a quorum is not less than 6 Board members.

(2) If a Board member is disqualified from taking part in a decision or deliberation in respect of a matter under section 9, he shall be disregarded for the purposes of constituting the quorum for deciding or deliberating on that matter.

## **8. Proceedings of Board**

(1) Subject to subsection (2), the chairman is to preside at a meeting of the Board.

(2) If, for any reason, the chairman is not able to preside at a meeting of the Board, the Board members present at the meeting are to elect a member from among themselves to preside.

(3) All questions for determination are to be decided by a majority of votes of the Board members present and voting.

(4) If there is an equality of votes, the member presiding has a casting vote in addition to his original vote.

## **9. Disclosure of interests of Board members**

If a Board member has a pecuniary interest, whether direct or indirect, in any matter under consideration at a meeting of the Board, the member –

- (a) shall, as soon as practicable after the commencement of the meeting, disclose to the Board the fact and nature of his interest;
- (b) shall withdraw from the meeting while the Board is considering the matter, if so required by the meeting; and
- (c) shall not in any case vote on the matter.

#### **10. Validity of proceedings**

The validity of any proceedings of the Board shall not be affected by -

- (a) any defect in the appointment of a Board member; or
- (b) any vacancy in the membership of the Board.

#### **11. Board to determine procedures**

Subject to the provisions of this Ordinance, the Board may determine its own procedures.

#### **12. Resolutions without meetings**

(1) Anything which may be done by resolution of the Board in a meeting may be validly done, without a meeting, by a resolution in writing if the resolution is signed by more than half of the Board members who, on the date on which the resolution is made, would be entitled to attend and vote at a meeting of the Board.

(2) If a resolution is in the form of more than one document, the requirement under subsection (1) is to be regarded as satisfied if each document is in the like form and the documents together bear the signatures of more than half of the Board members.

(3) A telex, cable or facsimile, or an electronically transmitted document, that bears the signature of a Board member is to be regarded as having been signed by that member.



(4) A resolution in the form of more than one document is to be regarded as made on the date on which the resolution is signed by the last member to sign it.

### **13. Delegation of Board's functions and appointment of subcommittee**

(1) The Board may appoint any subcommittee as it considers appropriate.

(2) The Board may delegate in writing any of its functions to a subcommittee appointed under subsection (1).

(3) The Board may not delegate under subsection (2) any of the following powers –

- (a) the power to appoint a subcommittee under subsection (1);
- (b) the power to delegate under subsection (2);
- (c) 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 Council;
- (d) the power to authorize the preparation of its accounts or other financial records.

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

(5) A delegation does not prevent the concurrent performance by the Board of the functions delegated.

(6) The Board may amend or revoke a delegation.

### **14. Estimates of the Board**

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

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

**15. Accounts of the Board and submission of reports, etc. to Council**

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

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

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

(4) The Board shall submit to the Council, before a date determined by the Council, a report on the activities of the Board during the financial year and a copy of the statement of accounts referred to in subsection (2).

**SCHEDULE 4** [ss. 34, 36, 37, 38, 68 & 72]

**LEVY**

**PART 1**

**SPECIFIED AMOUNT**

\$1,000,000.

**PART 2**

**SPECIFIED RATE**

0.4% of the value of the construction operations concerned.

**SCHEDULE 5**

[s. 86]

## CONSEQUENTIAL OR RELATED AMENDMENTS

### Construction Sites (Safety) Regulations

#### 1. Restriction on employment of persons under 18 years of age on construction sites

Regulation 4A(2) of the Construction Sites (Safety) Regulations (Cap. 59 sub. leg. I) is amended, in the definition of “Authority”, by repealing everything after “means” and substituting –

“\_

- (a) the body known as the Construction Industry Training Authority before the commencement of section 73 of the Construction Industry Council (No. 2) Ordinance ( of 2004); or
- (b) the Construction Industry Council established by section 4 of the Construction Industry Council (No. 2) Ordinance ( of 2004).”.

### Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) Regulations

#### 2. Operators of cranes and lifting appliances

Regulation 15A of the Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) Regulations (Cap. 59 sub. leg. J) is amended -

- (a) in paragraph (1)(b), by repealing “Construction Industry Training Authority” and substituting “specified body”;
- (b) by adding –

“(4) In this regulation, “specified body” (指明機構) means –

- (a) the body known as the Construction Industry Training

- Authority before the commencement of section 73 of the Construction Industry Council (No. 2) Ordinance ( of 2004); or
- (b) the Construction Industry Council established by section 4 of the Construction Industry Council (No. 2) Ordinance ( of 2004).”.

### **Inland Revenue Ordinance**

#### **3. Institutions that may accredit or recognize training or development courses for the purpose of section 12(6)(c)(iii)**

Schedule 13 to the Inland Revenue Ordinance (Cap. 112) is amended –

- (a) by adding –
- “3A. The Construction Industry Council established by section 4 of the Construction Industry Council (No. 2) Ordinance ( of 2004)”;
- (b) in item 4, by adding “and in existence before the commencement of section 73 of the Construction Industry Council (No. 2) Ordinance ( of 2004)” after “(Cap. 317)”.

### **Prevention of Bribery Ordinance**

#### **4. Public bodies**

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended by adding –

- “103. Construction Industry Council.
- 104. Construction Industry Training Board.”.

### **Industrial Training (Construction Industry) Ordinance**

#### **5. General powers of the Authority**

Section 6(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317) is amended by adding –

- “(da) provide such funds as may be requested by the Secretary for the Environment, Transport and Works under the Construction Industry Council (No. 2) Ordinance ( of 2004) to meet the expenses incurred by the Construction Industry Council established under that Ordinance;”.

### **Pneumoconiosis (Compensation) Ordinance**

#### **6. Interpretation**

Section 2 of the Pneumoconiosis (Compensation) Ordinance (Cap. 360) is amended –

- (a) in subsection (1) –
  - (i) by repealing the definition of “authorized person” and substituting –
    - ““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 the Pneumoconiosis (Compensation) (Assessment of Levy) Regulations (Cap. 360 sub. leg. A) in respect of the construction operations;”;
- (ii) in the definitions of “construction contract”, “contractor”, “term contract” and “works order”, by repealing “Industrial Training (Construction Industry) Ordinance (Cap. 317)” and substituting “Construction Industry Council (No. 2) Ordinance ( of 2004)”;
- (iii) by repealing the definition of “construction employer” and substituting –
- ““construction employer” (建造工程聘用人)
- means an employer as defined in section 2(1) of the Construction Industry Council (No. 2) Ordinance ( of 2004);”;
- (iv) by repealing the definition of “construction operations” and substituting –

““construction operations” (建造工程) has the meaning assigned to it in section 2(1) of the Construction Industry Council (No. 2) Ordinance ( of 2004);”;

- (v) by repealing the definition of “levy” and substituting –
  - ““levy” (徵款) –
    - (a) in relation to construction operations, means the levy referred to in section 35(1); and
    - (b) in relation to quarry products, means the levy referred to in section 35(7);”;
- (vi) in the definition of “quarry products”, by adding “from” before “or”;
- (vii) by repealing the definitions of “specified amount” and “specified rate”;
- (viii) by repealing the definition of “total value” and substituting –
  - ““total value” (總價值), in relation to any construction operations, means the total value of the construction operations as defined in section 39D;”;
- (ix) by repealing the definition of “value” and substituting –
  - ““value” (價值) –

- (a) in relation to any construction operations, means the value of the construction operations as determined under section 39C; and
- (b) in relation to any quarry products, means the value of the quarry products as determined under section 39E;”;

(x) by adding -

““carry out” (進行) has the meaning assigned to it in section 2(1) of the Construction Industry Council (No. 2) Ordinance ( of 2004);

“notice of assessment” (評估通知) means a notice of assessment described in section 35(6);”;

(b) by repealing subsections (3) and (4) and substituting -

“(2) Without affecting the generality of the definitions of “construction employer” and “contractor” 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 construction employer and the contractor 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 construction employer and the contractor in respect of the construction operations.”.

## 7. Sections repealed

Sections 2A, 2B, 2C and 3A are repealed.

## 8. Sections substituted

Section 35 is repealed and the following substituted –

### “35. Imposition of levy

(1) A levy at the rate specified in Division 1 of Part 2 of Schedule 5 is to be imposed in respect of construction operations carried out in Hong Kong.

(2) The levy referred to in subsection (1) is to be assessed and paid according to this Ordinance.

(3) Construction operations the total value of which does not exceed the amount specified in Part 1 of Schedule 5 are not liable to the levy.

(4) Subject to subsection (5), the levy is payable by a contractor of any construction operations which are subject to the payment of a levy.

(5) A contractor is liable to make a payment pursuant to subsection (4) only if the Board gives him a notice of assessment.

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

(7) A levy at the rate specified in Division 2 of Part 2 of Schedule 5 is to be imposed in respect of quarry products.

(8) The levy referred to in subsection (7) is to be assessed and paid according to this Ordinance.

(9) The levy is payable by the quarry operator of the quarry from or in which the quarry products are extracted or produced.

### **36. Power to amend Schedule 5**

(1) The Legislative Council may by resolution amend Schedule 5.

(2) Any amendment to Schedule 5 shall come into effect on the expiry of the specified period.

(3) Despite the coming into effect of any amendment to Part 1 or Division 1 of Part 2 of Schedule 5, Schedule 5 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 construction 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.”.

## 9. **Payment of levy and surcharge**

Section 37 is amended –

- (a) in subsections (1A) and (1B), by adding “fully” before “paid”;
- (b) by repealing subsection (1C) and substituting –

“(1C) The Board 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.

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

(1E) If, in respect of any construction operations, the Board receives more than the proper amount of the levy due to more than one contractor paying the whole or part of amount due, the Board shall refund the excess to the contractor entitled to the refund.”;

- (c) in subsection (2), by repealing “object to the levy assessed or surcharge imposed under this Ordinance” and substituting “make an objection under the Pneumoconiosis (Compensation)(Assessment of Levy) Regulations (Cap. 360 sub. leg. A)”.

#### 10. Sections added

The following are added immediately after section 39 –

##### **“39A. Application to certain construction operations**

(1) This Ordinance 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.

##### **39B. Power of Chief Executive in Council to exclude certain construction operations from application of this Ordinance**

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

(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.”.

#### 11. **Part VIIA added**

The following is added -

#### “PART VIIA

#### VALUE OF CONSTRUCTION OPERATIONS AND QUARRY PRODUCTS, ETC.

#### **39C. 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 Board 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 Board 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 Board considers appropriate.

**39D. 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.

### **39E. Value of quarry products**

(1) For the purposes of this Ordinance, “value” (價值), in relation to any quarry products, means the value of the quarry products.

(2) The Board may have regard to any or all of the following matters when ascertaining the value of any quarry products –

(a) the type and volume of the quarry products;

(b) the market price of the quarry products at the time of production.”.

## **12. Regulations**

Section 47 is amended –

(a) in paragraph (b), by repealing “method of assessing the levy payable under section 35” and substituting “assessment of levy”;

(b) in paragraph (b)(vi) –

(i) by repealing “information” and substituting “the information that is”;

(ii) by repealing “僱主” and substituting “聘用人”;



- (c) in paragraph (c) –
  - (i) by repealing “records” and substituting “the records that are”;
  - (ii) by repealing “僱主” and substituting “聘用人”.

### 13. Section added

The following is added –

#### **“50. Transitional provisions in relation to certain construction operations**

(1) The amendments to this Ordinance, including its subsidiary legislation, as effected by sections 6 to 25 (except section 13) of Schedule 5 to the Construction Industry Council (No. 2) Ordinance ( of 2004)(“the amendments”) do not apply to the following construction operations –

- (a) construction operations the tender for which had been submitted to the construction 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) The pre-amended Ordinance continues to apply to the construction operations referred to in subsection (1).

(3) In this section –

“commencement day” (生效日期) means the day on which sections 6 to 25 of Schedule 5 to the Construction Industry Council (No. 2) Ordinance ( of 2004) come into operation;

“pre-amended Ordinance” (修訂前的本條例) means this Ordinance, including its subsidiary legislation, as in force immediately before the commencement of the amendments.”.

#### 14. Levy

Schedule 5 is amended by repealing “[ss. 2 & 35]” and substituting “[ss. 35 & 36]”.

### **Pneumoconiosis (Compensation)(Assessment of Levy) Regulations**

#### 15. Interpretation

Regulation 2 of the Pneumoconiosis (Compensation)(Assessment of Levy) Regulations (Cap. 360 sub. leg. A) is amended –

- (a) in the definition of “石礦業”, by repealing “業。 ” and substituting “業 ;”;
- (b) by adding -

““notice of completion” (竣工通知) means a notice given under regulation 5A, and includes a copy of a notice sent to the Board in accordance with paragraph (6) of that regulation;

“notice of payment” (付款通知) means a notice given under regulation 5, and includes a copy of a notice sent to the Board in accordance with paragraph (6) of that regulation;

“notice of surcharge” (附加費通知) means a notice of the surcharge referred to in regulation 6D(3);

“objector” (反對者) means a person who makes an objection under regulation 12;”.

**16. Contractor and authorized person to notify Board of their carrying out of construction operations**

Regulation 4 is amended –

- (a) by repealing paragraphs (1), (2), (3) and (4) and substituting –

“(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 Board, by a notice, that he is such contractor or authorized person.

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

(3) A notice is required to be given under this regulation 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 5 to the Ordinance.

(3A) The Board may in a particular case extend the period for giving a notice under this regulation.

(4) A contractor or authorized person in respect of the construction operations complies with this regulation if he –

- (a) had given a notice to the Construction Industry Council under section 36 of the Construction Industry Council (No. 2) Ordinance ( of 2004) in respect of the construction operations; and
  - (b) sent a copy of that notice to the Board within the specified period.”;
- (b) in paragraph (5), by repealing “give a notice when required to do so by paragraph (1)” and substituting “comply with this regulation”;
- (c) by adding –
- “(6) In this regulation, “specified period” (指明期間) means the period of 14 days referred to in paragraph (1) or, if the Board has extended that period under paragraph (3A), the extended period.”.

#### **17. Notice of payment made in respect of construction operations**

Regulation 5 is amended –

- (a) by repealing paragraphs (1), (1A), (2), (3), (4) and (5);
- (b) by renumbering paragraph (6) as paragraph (7);
- (c) by adding -

“(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 Board.

(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 Board.

(3) A notice of payment shall be in a form specified by the Board 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 regulation 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 5 to the Ordinance.

(5) The Board may in a particular case extend the period for giving a notice under this regulation.

(6) A contractor complies with this regulation if he –

- (a) had given a notice to the Construction Industry Council under section 37 of the Construction Industry Council (No. 2) Ordinance ( of 2004) in respect of the relevant payment; and
- (b) sent a copy of that notice to the Board within the specified period.”;
- (d) in paragraph (7), by repealing “give a notice when required to do so by paragraph (1), (1A) or (2)” and substituting “comply with this regulation”;
- (e) by adding –
  - “(8) In this regulation, “specified period” (指明期間) means the period of 14 days referred to in paragraph (1) or (2) or, if the Board has extended that period under paragraph (5), the extended period.”.

## 18. **Regulation added**

The following is added -

### **“5A. 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 Board.
- (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 Board.

(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 Board may in a particular case extend the period for giving the notice.

(4) The notice shall be in a form specified by the Board 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 regulation 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 5 to the Ordinance.

(6) A contractor or authorized person complies with this regulation if he –

- (a) had given a notice to the Construction Industry Council under section 38 of the Construction Industry Council (No. 2) Ordinance ( of 2004) in respect of the relevant completion; and
- (b) sent a copy of that notice to the Board within the specified period.

(7) A person who, without reasonable excuse, fails to comply with this regulation commits an offence and is liable to a fine at level 2.

(8) In this regulation, “specified period” (指明期間) means the period of 14 days referred to in paragraph (3) or, if the Board has extended that period under that paragraph, the extended period.”.

## 19. Regulations substituted

Regulation 6 is repealed and the following substituted –

### **“6. Assessment pursuant to notice of payment or notice of completion**

(1) On receiving a notice of payment, the Board 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 paragraph (1), on receiving a notice of completion, the Board 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 paragraph (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 regulation 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.

### **6A. Assessment for construction operations under term contract may be deferred**

If the construction operations are carried out under a term contract, the Board may, subject to regulation 6E, defer the making of any assessment under regulation 6 until such time as the Board considers appropriate.



**6B. 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 the Ordinance.

**6C. Powers of Board to make assessment**

(1) The Board may, subject to regulations 6E and 6G, 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 Board.

(2) If it appears to the Board that any assessment of levy made by it is less than the proper amount, subject to regulations 6E and 6G, the Board may make an additional assessment of the levy.

**6D. Imposition of surcharge**

(1) If a contractor fails to give a notice under regulation 5 or 5A and fails to give, within a period allowed by the Board, a reasonable excuse for that failure, the Board may, subject to regulations 6F and 6H, impose a surcharge on him.

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

(3) Notwithstanding paragraph (1), the contractor is liable to pay a surcharge only if the Board 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.

**6E. 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 Part 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 Board to justify the making of the assessment, comes to its knowledge.

**6F. 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 Board to justify the imposition of the surcharge, comes to its knowledge.

**6G. 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 Part 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 Board to justify the making of the assessment, comes to its knowledge.

**6H. 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 Board to justify the imposition of the surcharge, comes to its knowledge.”.

**20. Time within which levy or surcharge is to be paid**

Regulation 11(a) is amended by repealing “given to a contractor under regulation 6” and substituting “of assessment or a notice of surcharge”.

**21. Objection**

Regulation 12 is amended –

- (a) in paragraph (1) –
  - (i) by repealing “regulation 6(8) or 10(6) of an assessment of levy, or imposition of surcharge”

- and substituting “regulation 6D(3) or 10(6) or section 35(5) of the Ordinance”;
- (ii) by adding “(“notice of objection”)” before “served”;
- (b) in paragraph (2) -
  - (i) by repealing “under paragraph (1)”;
  - (ii) by repealing “precisely”;
- (c) in paragraph (4) -
  - (i) by repealing “under paragraph (1)”;
  - (ii) by repealing everything after “reduced,” and substituting “the Board 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).”.

## 22. Appeals

Regulation 13 is amended –

- (a) in paragraph (1), by repealing “with” and substituting “by”;
- (b) in paragraph (4)(b), by repealing “excluding the amount of any” and substituting “and any amount of the”.

## 23. Provision of information and production of documents

Regulation 14 is amended –

- (a) in paragraph (1)(a) –
  - (i) by adding “information on” after “including”;
  - (ii) by repealing “undertaken” and substituting “carried out”;

- (iii) by adding “for the purposes of performing its or his functions under the Ordinance and these regulations” after “require”;
- (b) in paragraphs (1)(b) and (2)(b), by adding “a document or record relating to” after “including”;
- (c) in paragraph (1), by repealing “僱主” and substituting “聘用人”;
- (d) in paragraph (2)(a) –
  - (i) by adding “information on” after “including”;
  - (ii) by adding “for the purposes of performing its or his functions under the Ordinance and these regulations” after “require”.

**24. Protection of information given under regulation 14**

Regulation 15 is amended –

- (a) by repealing paragraph (2)(a)(i) and substituting –
  - “(i) to the provision of information under section 61 or 62 of the Construction Industry Council (No. 2) Ordinance ( of 2004);
  - (ia) to the provision of information under section 31(1) of the Construction Workers Registration Ordinance (18 of 2004);”;
- (b) in paragraph (2)(a)(ii), by repealing “僱主” and substituting “聘用人”;
- (c) in paragraph (2)(a)(iii), by repealing “or” at the end;
- (d) in paragraph (2)(a)(iv), by repealing “Construction Industry Training Authority established under the Industrial Training (Construction Industry) Ordinance (Cap. 317)” and substituting “Construction Industry

Council established under the Construction Industry Council (No. 2) Ordinance ( of 2004)’’;

- (e) in paragraph (2)(a), by adding –
- “(v) to the disclosure of information by the Board to the Construction Workers Registration Authority established under the Construction Workers Registration Ordinance (18 of 2004); or
  - (vi) 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);”.

## 25. **Appointment of authorized persons**

Regulation 16 is amended –

- (a) in paragraph (1) –
  - (i) by repealing “any construction operations are to be carried out for”;
  - (ii) by adding “is the construction employer in respect of any construction operations” before “, a”;
  - (iii) by repealing everything after “authorized person” and substituting a full stop;
- (b) by repealing paragraphs (2), (3) and (4) and substituting –
  - “(2) In any other case, the construction 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 Board to perform its functions, under the Ordinance and

these regulations, in relation to the collection or assessment of any levy payable in respect of any construction operations, a construction employer to whom paragraph (2) applies shall, before the commencement of the construction operations, supply to the Board, in a form specified by it, the name of the person appointed under that paragraph and the name of the contractor in respect of the construction operations.”;

- (c) in paragraph (5), by repealing “, (3) or (4)” and substituting “or (3)”;
- (d) by adding –
  - “(6) Paragraph (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 5 to the Ordinance.”.

### **Employees Retraining Ordinance**

#### **26. Training bodies**

Schedule 2 to the Employees Retraining Ordinance (Cap. 423) is amended –

- (a) by repealing item 2;
- (b) by adding –
  - “71. Construction Industry Council”.

### **Legislative Council Ordinance**

## 27. **Composition of the education functional constituency**

Section 20E(f) of the Legislative Council Ordinance (Cap. 542) is amended –

- (a) in subparagraph (ii) –
  - (i) by adding “repealed” before “Industrial”;
  - (ii) by adding “and maintained under the Construction Industry Council (No. 2) Ordinance ( of 2004)” after “(Cap. 317)”;
- (b) by adding –
  - “(ia) industrial training centres established under the Construction Industry Council (No. 2) Ordinance ( of 2004);”.

## **Chief Executive Election Ordinance**

### 28. **Election Committee**

Paragraph (4) of item 6 of Table 5 in section 2 of the Schedule to the Chief Executive Election Ordinance (Cap. 569) is amended –

- (a) in subparagraph (b) –
  - (i) by adding “repealed” before “Industrial”;
  - (ii) by adding “and maintained under the Construction Industry Council (No. 2) Ordinance ( of 2004)” after “(Cap. 317)”;
- (b) by adding –
  - “(ba) industrial training centres established under the Construction Industry Council (No. 2) Ordinance ( of 2004);”.

## **Construction Workers Registration Ordinance**



## 29. Interpretation

Section 2(1) of the Construction Workers Registration Ordinance (18 of 2004) is amended –

- (a) in the definition of “CITA”, by adding “and in existence before the commencement of section 73 of the Construction Industry Council (No. 2) Ordinance ( of 2004)” after “(Cap. 317)”;
- (b) in the definition of “覆核委員會”, by repealing “會。 ” and substituting “會 ; ”;
- (c) by adding –
  - ““CIC” (議會) means the Construction Industry Council established by section 4 of the Construction Industry Council (No. 2) Ordinance ( of 2004);”.

## 30. Interpretation

Section 19 is amended –

- (a) in subsection (1) –
  - (i) in the definitions of “authorized person”, “construction contract”, “construction operations”, “contractor”, “term contract” and “works order”, by repealing “Industrial Training (Construction Industry) Ordinance (Cap. 317)” and substituting “Construction Industry Council (No. 2) Ordinance ( of 2004)”;
  - (ii) by repealing the definition of “employer” and substituting –
    - ““employer” (聘用人) has the meaning assigned to it in section 2(1) of the

Construction Industry Council  
(No. 2) Ordinance ( of 2004);”;

- (b) in subsection (3)(a)(ii), by repealing “(a)(i) of the definition of “contractor” in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317)” and substituting “(a) of the definition of “contractor” in section 2(1) of the Construction Industry Council (No. 2) Ordinance ( of 2004)”;
- (c) in subsections (3) and (4)(a), by repealing “僱主” and substituting “聘用人”.

### 31. **Imposition of levy**

Section 23(5)(b)(i), (ii) and (iii) is amended by repealing “僱主” and substituting “聘用人”.

### 32. **Contractor and authorized person to notify Authority when undertaking construction operations**

Section 24(4)(a) is amended by repealing “CITA under section 24 of the Industrial Training (Construction Industry) Ordinance (Cap. 317)” and substituting “CIC under section 36 of the Construction Industry Council (No. 2) Ordinance ( of 2004)”.

### 33. **Notice by contractor and authorized person of payments made in respect of construction operations and of completion**

Section 25(6)(a) is amended by repealing “CITA under section 25 of the Industrial Training (Construction Industry) Ordinance (Cap. 317)” and substituting “CIC under section 37 or 38 of the Construction Industry Council (No. 2) Ordinance ( of 2004)”.

### 34. **Provision of information and production of documents**

Section 31 is amended –

- (a) in subsection (1), by repealing “僱主” and substituting “聘用人”;
- (b) by repealing subsection (3)(a)(i) and substituting –
  - “(i) section 61 or 62 of the Construction Industry Council (No. 2) Ordinance ( of 2004); or”;
- (c) in subsection (3)(c), by repealing “僱主” and substituting “聘用人”;
- (d) in subsection (3)(e), by repealing “CITA” and substituting “CIC”.

### 35. **Regulations**

Section 63(1)(f) is amended by repealing “僱主” and substituting “聘用人”.

### 36. **Section added**

The following is added immediately after section 65 –

#### **“65A. Transitional provisions in relation to certain construction operations**

(1) The amendments to section 2 and Part 5 of this Ordinance as effected by sections 29 to 34 of Schedule 5 to the Construction Industry Council (No. 2) Ordinance ( of 2004)(“the amendments”) do 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) The pre-amended Ordinance continues to apply to the construction operations referred to in subsection (1).

(3) In this section -

“commencement day” (生效日期) means the day on which sections 29 to 34 of Schedule 5 to the Construction Industry Council (No. 2) Ordinance ( of 2004) come into operation;

“pre-amended Ordinance” (修訂前的本條例) means this Ordinance as in force immediately before the commencement of the amendments.”.

### 37. **Designated trades**

Schedule 1 is amended in the following provisions by adding “or CIC” after “CITA” wherever it appears –

(a) Part 1 –

- (i) item 1;
- (ii) item 2;
- (iii) item 3;
- (iv) item 5;
- (v) item 6;
- (vi) item 7;
- (vii) item 8;
- (viii) item 9;
- (ix) item 16;
- (x) item 18;
- (xi) item 19;

- (xii) item 20;
- (xiii) item 22;
- (xiv) item 23;
- (xv) item 24;
- (xvi) item 25;
- (xvii) item 26;
- (xviii) item 27;
- (xix) item 30;
- (xx) item 36;
- (xxi) item 37;
- (xxii) item 41;
- (xxiii) item 42;
- (xxiv) item 43;
- (xxv) item 44;
- (xxvi) item 46;
- (xxvii) item 48;
- (xxviii) item 49;
- (xxix) item 52;
- (xxx) item 56;

(b) Part 2 –

- (i) item 1;
- (ii) item 2;
- (iii) item 3;
- (iv) item 5;
- (v) item 6;
- (vi) item 8;
- (vii) item 9;
- (viii) item 11;
- (ix) item 15;
- (x) item 16;
- (xi) item 17;

- (xii) item 18;
  - (xiii) item 19;
  - (xiv) item 20;
  - (xv) item 21;
  - (xvi) item 22;
  - (xvii) item 23;
  - (xviii) item 24;
  - (xix) item 25;
  - (xx) item 27;
  - (xxi) item 28;
  - (xxii) item 29;
  - (xxiii) item 30;
  - (xxiv) item 31;
  - (xxv) item 37;
  - (xxvi) item 38;
  - (xxvii) item 39;
  - (xxviii) item 40;
- (c) Part 3, item 1.

### **Explanatory Memorandum**

The main object of this Bill is to provide for the establishment of a body corporate to be known as the Construction Industry Council (“Council”). When the Council is in full operation, the Construction Industry Training Authority (“CITA”) established under the Industrial Training (Construction Industry) Ordinance (Cap. 317) will be dissolved and all rights, assets, liabilities and obligations of the CITA will, on its dissolution, be vested in the Council.

2. Part 1 contains preliminary provisions. Clause 1 provides for the short title and commencement of the Bill if enacted. Clause 2 is the interpretation clause which defines the terms used in the Bill. Clause 3 provides that the Bill, if enacted, binds the Government.

### **Construction Industry Council (Part 2)**

3. Clause 4 establishes the Construction Industry Council as a body corporate with perpetual succession.
4. Clauses 5, 6, 7 and 8 provide for the functions and powers of the Council.
5. Clauses 9 to 15 mainly set out the composition of the Council, the appointment of its members and their terms of office.
6. Clause 16 and Schedule 2 provide for the meetings and proceedings of the Council.
7. Clause 17 empowers the Council to establish committees for the better performance of certain functions of the Council.
8. Clause 18 deals with the delegation of certain powers and functions of the Council to such committees and provides for the appointment of subcommittees.
9. Clause 19 empowers the Council to employ persons on such terms and conditions as it may determine.
10. Clause 20 enables the Council to provide for gratuities, bonuses and other benefits and ex gratia payments to its employees and former employees.
11. Clause 21 provides for the protection of a person acting in good faith for the Council.
12. Clause 22 empowers the Secretary for the Environment, Transport and Works (“Secretary”), in certain circumstances, to request the CITA to provide such funds as are necessary to meet expenses reasonably incurred by the Council.

### **Financial provisions (Part 3)**

13. Clause 23 sets out what constitutes the funds and property of the Council.
14. Clause 24 empowers the Council, with the approval of the Secretary, to fix a period to be the financial year of the Council. That clause also requires the Council to submit to the Secretary a programme of its proposed activities and estimates of its income and expenditure for the next financial year.
15. Clause 25 requires the Council to maintain an account with a bank approved by the Director of Accounting Services and to pay all moneys received by it into the account.

16. Clause 26 provides that the Council may, with the approval of the Financial Secretary, deposit its surplus funds on fixed deposit in a bank or invest the surplus funds in such investments as the Council thinks fit.

17. Clause 27 requires the Council to maintain proper accounts and records of all its income and expenditure. It also requires the Council to cause to be prepared, as soon as practicable after the end of a financial year, a statement of accounts (including an income and expenditure account and a balance sheet) of the Council in respect of the financial year.

18. Clause 28 requires the Council to appoint an auditor and sets out his duties and powers.

19. Clause 29 requires the Council to submit to the Secretary, within 6 months after the end of each financial year, a report on the activities of the Council during the financial year, a copy of the statement of accounts caused to be prepared by the Council and the auditor's report. It also requires the Secretary to cause these documents to be laid on the table of the Legislative Council.

20. Clause 30 exempts the Council from taxation under the Inland Revenue Ordinance (Cap. 112).

#### **Construction Industry Training Board (Part 4)**

21. Clause 31 requires the Council to establish a committee to be known as the "Construction Industry Training Board" ("Board") to perform the functions set out in clause 6. Those functions are -

- (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.

22. Clause 32 and Schedule 3 provide for the composition, meetings and proceedings of the Board.

### **Levy (Part 5)**

23. This Part deals with the imposition of a levy on the construction operations (as defined in Schedule 1) carried out in Hong Kong. The Part will come into operation on the repeal of the Industrial Training (Construction Industry) Ordinance (Cap. 317) (“the repealed Ordinance”) and the dissolution of the CITA. The basis on which the levy is imposed is similar to that on which the construction industry levy is imposed under the repealed Ordinance.

24. Clause 33 defines the terms used in the Part.

25. Clause 34 provides for the imposition of a levy in respect of construction operations carried out in Hong Kong at the rate specified in Part 2 of Schedule 4. It is also provided that construction operations the total value of which does not exceed the amount specified in Part 1 of that Schedule are not liable to the levy.

26. Clause 35 makes it clear that the contractor of the construction operations in respect of which the levy is imposed is liable to pay the levy or any amount of the levy if he is given a notice of assessment by the Council.

27. Clause 36 requires the contractor and the authorized person to give notice to the Council, within 14 days after the commencement of the construction operations, that he is such contractor or authorized person.

28. Clause 37 requires the contractor to give notice to the Council of any payment made to him or for his benefit in respect of the construction operations or a stage or part of the construction operations.

29. Clause 38 requires the contractor and the authorized person to give notice to the Council of the completion of the construction operations or the completed stage of the construction operations.

30. Clauses 39 to 43 and 48 to 50 provide for the assessment, payment and recovery of the levy, and the payment and recovery of the surcharge, penalty or further penalty imposed under the Bill.

31. Clauses 44 to 47 provide for the time limitation on making an assessment or imposing a surcharge by the Council under the Bill.

32. Clause 51 empowers the Council to waive or refund the whole or any part of a levy, surcharge, penalty or further penalty.

33. Clause 52 sets out the situations to which the Part does not apply.

34. Clause 53 empowers the Chief Executive in Council to exclude certain construction operations from the application of the Part.

#### **Value of construction operations, etc. (Part 6)**

35. Clause 54 provides for the value of construction operations. It also empowers the Council to take into account certain matters for the purposes of ascertaining the reasonable consideration to be expected in the open market for the carrying out of any particular construction operations.

36. Clause 55 defines the term “total value” used in the Bill.

#### **Objections and appeals (Part 7)**

37. Clauses 56 to 59 provide for the objection by a contractor to a levy or surcharge imposed by the Council, the establishment by the Council of a committee to determine such an objection (“Objections Committee”), and the appeal against the Objections Committee’s decisions on the objection.

38. Clause 60 empowers the District Court Rules Committee to make rules of court for the purposes of appeals against the Objections Committee’s decisions.

#### **Miscellaneous (Part 8)**

39. Clauses 61 and 62 require an employer, a contractor and an authorized person to provide relevant information, documents and records to the Council or

to an officer authorized by the Council when required, and clause 63 provides for the protection of the information so given or obtained from such documents and records.

40. Clause 64 provides for the use of the common seal of the Council and the admissibility of documents executed under the common seal.

41. Clauses 65 to 67 provide for the power to sign the documents of the Council, admissibility of documents and evidence by certificate.

42. Clause 68 provides for the appointment of authorized persons.

43. Clause 69 provides for the offences in respect of fraudulent evasion of the payment of a levy, provision of false documents or record, and making of false statement.

44. Clause 70 empowers the Secretary to make regulations.

45. Clause 71 empowers the Secretary to amend Schedules 1, 2 and 3.

46. Clause 72 empowers the Legislative Council to amend Schedule 4.

**Repeal, vesting, transitional and savings provisions, and consequential or related amendments (Part 9)**

47. Clause 73 provides for the repeal of the Industrial Training (Construction Industry) Ordinance (Cap. 317) and the dissolution of the CITA.

48. Clauses 74 to 85 provide for vesting and transitional provisions in respect of the repeal of that Ordinance and of the dissolution of the CITA.

49. Clause 86 and Schedule 5 provide for consequential or related amendments to several Ordinances -

- (a) sections 1, 2, 3 and 4 of that Schedule amend regulation 4A(2) of the Construction Sites (Safety) Regulations (Cap. 59 sub. leg. I), regulation 15A of the Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) Regulations (Cap. 59 sub. leg. J), Schedule 13 to the Inland Revenue Ordinance (Cap. 112) and Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201);

- (b) section 5 of that Schedule amends section 6(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317) to the effect that if both the CITA and the Council exist at the same time, the CITA may, on request by the Secretary, provide funds to meet the expenses incurred by the Council;
- (c) sections 6 to 25 of that Schedule amend the Pneumoconiosis (Compensation) Ordinance (Cap. 360) and the Pneumoconiosis (Compensation) (Assessment of Levy) Regulations (Cap. 360 sub. leg. A);
- (d) section 26 of that Schedule amends Schedule 2 to the Employees Retraining Ordinance (Cap. 423);
- (e) section 27 of that Schedule amends section 20E(f) of the Legislative Council Ordinance (Cap. 542);
- (f) section 28 of that Schedule amends paragraph (4) of item 6 of Table 5 in section 2 of the Schedule to the Chief Executive Election Ordinance (Cap. 569); and
- (g) sections 29 to 37 of that Schedule amend the Construction Workers Registration Ordinance (18 of 2004).

## **Implications of the Proposal**

### **ECONOMIC AND PRODUCTIVITY IMPLICATIONS**

The construction industry is a strategic sector for the materialization of fixed investment in buildings and infrastructure, both in terms of development and maintenance activities. In this context, the CIC will provide a focal point to spur reform initiatives and tighten collaboration within the industry. It will also cultivate a sense of commitment to improve on efficiency, productivity, cost-effectiveness, quality and performance. Such efforts to be sustained by the CIC will lead to greater core competence and stronger export competitiveness.

### **ENVIRONMENTAL IMPLICATIONS**

2. As part of its proposed statutory functions, the CIC will encourage adoption of good practices on environmental protection not only by imposing contractual and procurement provisions on the part of clients, but also by enhancing awareness on the benefits of green building features. Establishment of the CIC should thus improve environmental performance of the construction industry as a whole.

### **FINANCIAL AND CIVIL SERVICE IMPLICATIONS**

3. The CIC will be empowered to assess and collect construction levies to support its daily operations, including the cost of running a permanent secretariat. Establishment of the CIC as an umbrella organisation for the industry will not result in any transfer of work from the Environment, Transport and Works Bureau as the lead agency within the Government for overseeing construction policy and related issues nor affect its establishment. Civil service posts will not be created within the CIC and no civil servant will be deployed to it.

4. An annual provision of \$9.2 million, inclusive of three directorate posts and nine non-directorate posts, have been allocated to the ETWB for three years with effect from July 2001 to implement the CIRC recommendations under its purview. In order to cope with the residual duties arising from a deferral of the Bill, resources have already been earmarked within the envelope of the Secretary for the Environment, Transport and Works to retain five non-directorate posts for twelve months. The transfer of policy responsibility in relation to construction training from the Education and Manpower Bureau to the ETWB is unlikely to result in any staffing implications.

## **SUSTAINABILITY IMPLICATIONS**

5. Working in close partnership with the Government and other industry stakeholders, the CIC will expedite implementation of the relevant CIRC recommendations aimed to widen the use of recycled materials, achieve greater waste reduction, pursue life cycle costing, promote energy efficiency measures and roll out green building features. The CIC may also advise the Government on a coherent policy framework for sustainable construction. These initiatives will enhance the quality of our living environment and are conducive to the long-term sustainability of Hong Kong.

## **BINDING EFFECT OF LEGISLATION**

6. To maintain continuity with the existing levy mechanism in Cap 317, levy imposed under the Bill is payable by contractors (including those employed by the Central People's Government (CPG) offices or the HKSAR Government) in respect of construction operations carried out in Hong Kong. This does not, however, affect the legal rights or obligations of the CPG offices or the HKSAR Government.

7. Consistent with Cap 317, the Bill is expressed to be binding on the HKSAR Government to ensure continuity of its role as employer and as contractor. Since the adaptation exercise on Cap 317 is still in progress, we propose that the question of binding effect of the Bill on the CPG offices be dealt with in a separate exercise.