

# 立法會

## *Legislative Council*

LC Paper No. LS6/04-05

### **Paper for the House Committee Meeting on 15 October 2004**

### **Legal Service Division Report on Construction Industry Council (No. 2) Bill**

#### **I. SUMMARY**

1. **Objects of the Bill**
  - (a) To establish a Construction Industry Council ("CIC"), which is to be funded by construction levies, to take over the functions of the Construction Industry Training Authority ("CITA") established under the Industrial Training (Construction Industry) Ordinance (Cap. 317).
  - (b) To impose a levy on construction operations carried out in Hong Kong on a basis similar to that on which the construction industry levy is imposed under Cap. 317, which will be repealed upon the enactment of this Bill.

The Construction Industry Council Bill ("the original Bill") was introduced into Legislative Council on 11 February 2004. Pursuant to a decision of the House Committee at its meeting held on 13 February 2004, a Bills Committee was formed to scrutinize the original Bill. However, owing to the unavailability of a Bills Committee slot, the original Bill was not enacted and it lapsed upon the dissolution of the second term of the Legislative Council.

2. **Comments**

The Bill seeks to implement a new policy of promoting the culture of self-regulation in a market driven environment in the construction industry through the creation of an umbrella organisation which encompasses all key sectors.
3. **Public Consultation**

The Provisional Construction Industry Co-ordination Board ("PCICB") consulted industry stakeholders on a draft legal framework of CIC in early 2003. According to the Administration, the overall response was positive and some suggested amendments had been incorporated into the proposals in the Bill.
4. **Consultation with LegCo Panel**

Members were briefed on the proposed establishment of CIC and the introduction of a Bill at the joint meeting of the LegCo Panels on Planning, Lands and Works and on Manpower on 25 November 2003. While Panel members did not raise objection to the proposal, some of them expressed concerns about the mode of appointment of members to CIC, the proposed establishment of Construction Industry Training Board under the CIC to replace CITA, the composition of CIC and representation from labour unions in CIC.
5. **Conclusion**

Members may wish to follow up on the concerns expressed in the last term in the joint Panel meeting by setting up a Bills Committee.

## **II. REPORT**

### **Objects of the Bill**

- (a) To establish a statutory body to be known as the Construction Industry Council ("CIC"), which is to be funded by construction levies, to take over the functions of the Construction Industry Training Authority ("CITA") established under the Industrial Training (Construction Industry) Ordinance (Cap. 317).
- (b) To impose of a levy on construction operations carried out in Hong Kong on a basis similar to that on which the construction industry levy is imposed under Cap. 317, which will be repealed upon the enactment of this Bill.

### **LegCo Brief Reference**

2. ETWB(IR)310/13(02) issued by the Environment, Transport and Works Bureau in October 2004.

### **Date of First Reading**

3. 13 October 2004.

### **Comments**

#### ***Background***

4. In January 2001, the Construction Industry Review Committee ("CIRC") submitted a report, *Construct for Excellence*, to the Chief Executive in which 109 improvement measures relating to the construction activities with the aim of improving quality and cost-effectiveness were made. CIRC observed that the construction industry was a highly fragmented industry and beset with an adversarial culture which would impede its long-term development. It therefore recommended that a statutory industry coordinating body be formed to encompass all key sectors of the industry to promote the culture of self-regulation in a market driven environment. This Bill seeks to provide a legal framework for the statutory body of CIC and to implement the recommendations of CIRC in the above report.

5. In September 2001, a Provisional Construction Industry Co-ordination Board ("PCICB") was formed and it submitted a draft legal framework of CIC to the Administration in April 2003.

6. In drawing up the legal framework of CIC in June 2003, the Administration's objective is to establish a statutory body which will be 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. With a view to propagating improvements across the entire industry, the Administration holds the view that 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. CITA will also be dissolved and subsumed under CIC as a committee named as the Construction Industry Training Board ("CITB"). (Ref: para. 4 of LegCo Brief)

7. The Construction Industry Council Bill ("the original Bill") was introduced into Legislative Council on 11 February 2004. Pursuant to a decision of the House Committee at its meeting held on 13 February 2004, a Bills Committee was formed to scrutinize the original Bill. However, owing to the unavailability of a Bills Committee slot, the original Bill was not enacted and it lapsed upon the dissolution of the second term of the Legislative Council.

### ***Main Provisions***

8. The main provisions of the Bill are substantially same as the original Bill and are as follows -

(a) *Part 1 - Preliminary provisions*

Part 1 makes preliminary provisions including the commencement and interpretation of the Bill. Clause 3 expressly provides that the Bill binds the Government.

(b) *Part 2 - Construction Industry Council*

Part 2 sets out the functions, powers and composition of CIC. It also deals with the appointment of CIC members and their terms of office. Provisions are made for the meetings and proceedings of CIC, establishment of committees by CIC and its staff and staff benefits.

(c) *Part 3 - Financial Provisions*

Part 3 states the composition of the funds and property of CIC and makes provisions relating to estimates, financial year, bank accounts, accounts, the auditor and the duty to report to the Secretary for the Environment, Transport and Works. Clause 30 provides that CIC is exempt from taxation under the Inland Revenue Ordinance (Cap. 112).

(d) *Part 4 - Construction Industry Training Board*

CITB as a committee under CIC is established under this Part to perform the supplementary functions provided in clause 6 of the Bill.

(e) *Parts 5 and 6 - Construction Industry Levy*

These Parts provides for the imposition of a Construction Industry Levy ("CIL") on construction operations carried out in Hong Kong and the assessment procedure. Clause 54 empowers the Chief Executive in Council to exclude any construction operation from the application of Part 5 of the Bill (imposition of CIL).

(f) *Part 7 - Objections and appeals*

Part 7 provides for the establishment of an Objection Committee to deal with objections to levy or surcharge. Any appeal against the decision of the Objections Committee will be heard by the District Court. 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 is paid.

(g) *Parts 8 and 9 - Miscellaneous provisions*

Part 8 makes miscellaneous provisions. Clause 69 provides that a person commits an offence if he is knowingly concerned in the fraudulent evasion of the payment of a levy, or in taking steps with a view to the fraudulent evasion of the payment of a levy. A person also commits an offence if he, with intent to deceive, produces a false document or record for the purposes of this Bill, or in providing any information for the purposes of this Bill, makes a false statement.

(h) *Part 9 - Transitional provisions*

The transitional provisions deal with the dissolution of CITA and the vesting of all rights, assets, liabilities and obligations of CITA in CIC. Clause 82 states that existing employees of CITA shall become employees of CIC on the same terms and conditions that applied immediately before the commencement of Part 9 of the Bill and there is no break or interruption in the employment of such a person by reason of the commencement that Part.

## **Public Consultation**

9. The PCICB consulted industry stakeholders on a draft legal framework

of CIC in early 2003. According to the Administration, the overall response was positive and some suggested amendments had been incorporated into the proposals in the Bill (para. 12 of LegCo Brief).

### **Consultation with LegCo Panel**

10. In the last term, Members were briefed on the proposed establishment of CIC and the introduction of a Bill at the joint meeting of the LegCo Panel on Planning, Lands and Works and LegCo Panel on Manpower on 25 November 2003. While Panel members did not raise objection to the proposal, some of them expressed the following concerns -

(a) *Mode of appointment of members to CIC*

Since members of existing CITA were nominated by professional bodies, trade associations and labour unions, some Panel members suggested that CIC and CITB, which were to take over the functions of CITA, should include some representatives nominated by major professional bodies and trade associations. The Administration undertook to discuss with PCICB and other relevant industry bodies in light of the views conveyed by members.

(b) *Proposed establishment of CITB to replace CITA*

According to the Administration, all serving staff of CITA would be taken as employees of CIC with their existing terms preserved and no service break would be counted for the purpose of determining their rights to employment benefits. A member sought assurance from the Administration that the jobs and benefits of the serving staff of CITA would be properly safeguarded upon transfer to CITB. The Administration assured members that for the 500 odd staff in CITA, their existing terms of employment would be unchanged upon transfer to the CIC but it was not appropriate for the Administration to impose too many constraints on how CIC should manage CITB.

(c) *Composition of CIC*

Members noted the proposal that there would be no more than 2 members representing construction workers in CIC. Members who spoke on this issue considered the number of representatives for construction workers not sufficient, and demanded that the number of seats allocated to construction workers be brought up to match the number of seats for construction contractors, subcontractors and suppliers of building materials or equipment (i.e. not more than 5).

The Administration agreed to review the number of seats allocated to construction workers on CIC but declined to give an undertaking that it would be brought up to match the number of representatives for construction contractors, subcontractors and suppliers of building materials or equipment. In the Bill, no more than 2 persons who are from trade unions representing workers employed in the construction industry are to be appointed as members of CIC (clause 9).

(d) *Representatives from labour unions*

Members generally considered that the representatives for construction workers in CIC should come from labour unions. The Administration agreed to consider this view. In the Bill, clause 9(3)(e) provides that those persons (not more than 2) whom are to be appointed to CIC shall come from trade unions representing workers employed in the construction industry that are registered under the Trade Unions Ordinance (Cap. 332).

## **Conclusion**

11. The Bill involves an important policy matter and the creation of a new statutory body in relation to a main pillar of the economy of Hong Kong. Since members of the last term have expressed concerns in the joint Panel meeting held on 25 November 2003 and a Bills Committee was formed during the last term, members may wish to follow up on these concerns by setting up a Bills Committee.

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