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**Report of the Bills Committee on Construction Industry Legislation
(Miscellaneous Amendments) Bill 2012**

Purpose

This paper reports on the deliberations of the Bills Committee on Construction Industry Legislation (Miscellaneous Amendments) Bill 2012.

Background

2. In January 2001, the Construction Industry Review Committee¹ (CIRC) completed a comprehensive review of the state of the local construction industry and recommended, among others, the setting up of a statutory industry coordinating body to spearhead reforms and sustain momentum to achieve continuous improvements across the construction industry. CIRC also supported in principle the implementation of a worker registration scheme through legislative means. Subsequently, the Construction Workers Registration Ordinance (Cap. 583) (CWRO) and the Construction Industry Council Ordinance (Cap. 587) (CICO) were enacted in July 2004 and May 2006 respectively. Two statutory bodies, namely the Construction Workers Registration Authority (CWRA) and the Construction Industry Council (CIC), were established under the two ordinances on 18 September 2004 and 1 February 2007 respectively. As stipulated in the CIC Bill, the Administration made clear its legislative intent for the construction co-ordinating body to take up training of construction personnel, workers registration and other self-regulatory regimes.

¹ CIRC was an independent committee appointed by the Chief Executive in April 2000 to examine the operation of the construction industry and to recommend measures to improve the industry practices. It comprised members with good standing and knowledge in the construction and related fields as well as those from other professions.

3. On 29 December 2005, CWRA started the registration of construction workers. Up to early March 2012, there were about 290 000 registered construction workers. As regards CIC, one of its major achievements since establishment include the amalgamation with the then Construction Industry Training Authority (CITA) on 1 January 2008². The Construction Industry Training Board was concurrently established to oversee the provision of construction training and trade testing activities.

4. According to the Administration, all along there has been close collaboration between CIC and CWRA. In fact, CIC has been extensively involved in the following administrative responsibilities related to the registration of construction workers in support of CWRA –

- (a) performing the role of Registrar of Construction Workers;
- (b) collecting levy on behalf of CWRA;
- (c) setting the trade qualification standards of the construction workforce;
- (d) offering training courses for provisionally registered construction workers; and
- (e) providing office accommodation for the CWRA secretariat.

5. The Administration considers that given the very close collaboration of CIC and CWRA, and that both share the common objectives of nurturing a high-quality construction workforce and ensuring the quality of construction works, synergy could be achieved to enhance efficiency and effectiveness by amalgamating CWRA with CIC at this stage. The Administration believes that the proposed organizational streamlining can improve the operational efficiency of CIC and the construction workers registration system on the following aspects -

- (a) establishment of a single statutory body for the construction industry;

² CIC is also responsible for formulating construction manpower training and development strategies, launching new training schemes to address the manpower demand of the industry, conducting research and development projects and issuing a series of guidelines to enhance the operations of the construction sector.

- (b) ensuring consistent policy and priority setting for the industry;
- (c) enhancement of administrative and operational efficiency;
- (d) elimination of ambiguity in demarcation of responsibilities; and
- (e) more effective deployment of resources and sharing of information.

6. On 23 November 2010 and 28 June 2011, the Administration briefed the Panel on Development on the legislative proposals to amend CICO and CWRO to -

- (a) amalgamate CIC and CWRA;
- (b) streamline the operational efficiency of the two statutory bodies;
- (c) facilitate the consolidation of various construction-related cards; and
- (d) take forward the implementation of the Phase Two Prohibition³ under CWRO, which will prohibit workers from undertaking construction works except for those trades they are registered for.

Panel members supported the proposals in principle.

Two-stage approach to legislative amendments

7. The Administration proposed to take forward the legislative amendments in paragraph 6 above in two stages.

³ At present, CWRA has only implemented Phase One Prohibition under CWRO, whereby unregistered construction workers are prohibited from carrying out construction work at construction sites. Employers are also prohibited from employing unregistered construction workers. Phase One Prohibition came into effect on 1 September 2007.

Stage 1 legislative amendments

8. Stage 1 involves legislative amendments for the amalgamation of CIC and CWRA, streamlining the operational efficiency of the amalgamated body, and allowing the future construction workers registration card to store and display information of other construction-related cards/certificates issued by other authorities.

Stage 2 legislative amendments

9. Stage 2 will deal mainly with legislative amendments to facilitate the implementation of the Phase Two Prohibition under CWRO. In anticipation of the difficulties encountered in taking forward Phase Two Prohibition and the time required for consultation with relevant industry stakeholders, the Administration intends to introduce Stage 2 legislative amendments into the Legislative Council (LegCo) in the fourth quarter of 2013.

The Bill

10. The Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 (the Bill) was introduced into LegCo on 29 February 2012. It seeks to effect the organizational change for the amalgamation of CWRA with CIC, enhance operational efficiency of CIC and convenience to construction workers, make CWRO bind on the Government as CICO⁴, provide for the continuation of the employment contracts for the staff of the CWRA Secretariat upon the amalgamation of CIC and CWRA, and other related matters.

11. The Bill consists of 4 Parts. Part 1 sets out the short title and the commencement of the Bill, if enacted. Parts 2 and 3 provide the amendments to CWRO and CICO respectively. Part 4 sets out the consequential amendments to the Prevention of Bribery Ordinance (Cap. 201) and the Pneumoconiosis and Mesothelioma (Compensation) (Assessment of Levy) Regulations (Cap. 360 sub. leg. A). The main proposals contained in the Bill include –

- (a) amending CWRO and CICO to dissolve CWRA and transfer its functions to CIC;

⁴ At present, CICO is binding on the Government while CWRO is not.

- (b) providing for miscellaneous matters; and
- (c) making incidental, consequential and related amendments.

The Bills Committee

12. At the House Committee meeting on 2 March 2012, Members formed a Bills Committee to scrutinize the Bill. The membership list of the Bills Committee is in **Appendix I**.

13. Under the chairmanship of Ir Dr Hon Raymond HO, the Bills Committee has held four meetings with the Administration, and received views from the affected organizations and their staff unions as well as relevant trade associations and labour unions at one of the meetings. A list of the organizations which have given views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

14. The Bills Committee supports the policy intent of the Bill to improve efficiency of the construction workers registration system and the operation of CIC. The main issues deliberated by the Bills Committee include the job security and transitional arrangements for staff concerned, the proposal to allow extension of the validity of provisional registration, proposed consolidation of construction-related cards, and how the operational efficiency of CIC and the construction workers registration system could be enhanced upon the amalgamation of CIC and CWRA.

Job security and transitional arrangements for staff concerned

15. Some members of the Bills Committee including Ir Dr Hon Raymond HO, Hon LI Fung-ying and Hon IP Wai-ming have expressed concern about the transitional staff arrangements for the CWRA Secretariat⁵ and have relayed some CWRA staff members' concern about their long-term job security as some of their duties overlap with those of their counterparts in CIC. Members note that provisions are included in the Bill to ensure the continuation of the existing employment contracts for staff of the CWRA Secretariat upon the amalgamation of CIC and

⁵ There are 23 staff members in the CWRA Secretariat.

CWRA. Nevertheless, the Bills Committee has requested the Administration to conduct a briefing to clearly explain to the staff of CWRA about the transitional arrangements and address their concerns. Hon LI Fung-ying has, in particular, highlighted that employment-related complaints arising from the previous amalgamation of CIC and the ex-CITA in 2008 have been received from staff concerned from time to time, and LegCo Members are still dealing with them. The Bills Committee has urged the Administration to follow through the staffing arrangements in the amalgamation exercise and afterwards to ensure that the same problem would not arise.

16. The Administration has advised that it has been maintaining close communication with the affected staff in the amalgamation exercise. In addition, the CIC's Executive Director (ED/CIC) and CWRA's Chief Executive Officer have held regular meetings to discuss the preparatory work required for the amalgamation, including the staff matters and future operational workflow. In response to members' concern, the Administration has provided a detailed account of the actions taken (in **Appendix III**) to ensure that all CWRA staff members have been duly informed of the following transitional arrangements as undertaken by CIC –

- (a) subject to the agreement of individual staff members, CIC would respect and honour their respective employment contracts until their natural expiry; and
- (b) CIC would commit to extend the employment contracts of all serving CWRA Secretariat staff, subject to the agreement of individual staff members, to until two years after the date of the amalgamation in terms and conditions not less favourable than their prevailing contracts.

In response to the Bills Committee's request at its meeting on 13 April 2012 for the Administration to conduct a briefing for the staff of CWRA on the transitional arrangements, representatives from the Administration, CWRA and CIC Secretariat met the staff of the CWRA Secretariat on 25 April 2012. At that meeting, CIC representative undertook to give CWRA staff an interim reply to their questions raised within two weeks. ED/CIC and other CIC staff also briefed the staff on 16 May 2012 regarding the transitional arrangements. The Administration has assured Bills Committee members that it would follow up with CIC on the progress in addressing CWRA staff's concerns.

17. Apart from the staff serving the CWRA Secretariat, the Bills Committee has also expressed concern about the employment prospect of the 14 contract staff filling established posts under CIC who are performing registration functions on behalf of CWRA. The Administration has confirmed with the CIC management that the terms and conditions of the 14 contract staff will not be affected by the amalgamation of CIC and CWRA. At the request of the Bills Committee, the Administration has requested the CIC management to meet the concerned contract staff members as soon as possible with a view to giving the staff members written assurance that their employment terms and conditions will not be affected by the amalgamation.

18. The Bills Committee has been informed that apart from the staff of the CWRA Secretariat and the contract staff filling established posts under CIC who are performing registration functions, CIC also employs temporary staff on short-term contracts to cope with peak periods for renewal of workers registration. The Administration has pointed out that the staff members concerned are only temporarily employed to meet fluctuations in demand for registration service, and it is considered appropriate to maintain the present employment arrangement.

19. Bills Committee members including Hon LI Fung-ying and Hon IP Wai-ming have requested the Administration to urge the CIC management to handle the transitional staff arrangements properly. The Administration has responded that the CIC management has been requested to provide the staff concerned with a detailed account of the transitional staff arrangements, including assurance that their terms and conditions as well as seniority would not be affected by the amalgamation of CIC and CWRA, at least three months' before the amalgamation.

20. A table showing the type and number of the affected staff, their terms of employment and the related transitional arrangements is in **Appendix IV**.

Extension of the validity of provisional registration

21. The Bills Committee notes that section 45 of CWRO provides for the registration of an experienced worker as a skilled worker (provisional) or semi-skilled worker (provisional) if, as at December 2005, the worker has six years' and two years' experience respectively in the relevant trade. Within the provisional registration period which will last for three years, the worker is required to pass a test/an assessment for registration as skilled worker or semi-skilled worker for the specific trade. There is no

provision for extension of the period upon expiry even when illness or injury has prevented the workers from attending the test/assessment for registration. To allow for circumstances beyond the control of the workers concerned such as illness or injury, it is proposed under the Bill to include a new provision to allow extension of this period. The Bills Committee is supportive of the proposed new provision to provide for flexibility to defer the provisional registration period suitably where circumstances warrant.

Consolidation of construction-related cards

22. On the proposed new provision in CWRO to enable a construction worker registration card issued under CWRO to store and display information of other construction-related cards/certificates issued by other authorities so as to reduce the number of cards that a worker would need to carry, the Bills Committee has expressed concern about the detailed design and durability of the card. Bills Committee members have suggested that the trades for which a worker was registered should be shown on the registration card as far as practicable.

23. The Administration has advised that to tie in with the proposed amalgamation of CIC and CWRA, as well as with provisions for the proposed consolidation of the worker registration card and other construction-related cards, the registration card will be redesigned. The present worker registration card issued by CWRA is a smart card of a size of an octopus card. All trades for which a worker has registered are shown on the rear part of the present registration card which is made of polyvinylchloride (commonly known as PVC), a durable material resistant to atmospheric gases, water and most chemicals. The Administration has advised that these characteristics will remain unchanged for the new design.

24. While Bills Committee members in general have expressed support for the above proposed new measure, they have stressed the need to protect the data privacy of the workers and monitor the card issuing process by CIC. They have urged the Administration to liaise with the future amalgamated body to ensure that the personal data of the workers would not be leaked to any unauthorized third party.

25. The Administration has explained that when a worker applies for registration as a registered construction worker, he has to complete an application form for submission to CWRA for processing. During the registration process, CWRA only collects essential personal information

(e.g. Hong Kong Identity Card number, address and contact phone number) and documents on registration qualifications. The data so collected has been handled by CWRA in accordance with the provisions under the Personal Data (Privacy) Ordinance (Cap. 486). The Administration has advised that upon amalgamation, CIC will also strictly comply with the relevant provisions.

26. The Administration has further advised that on registration, a construction worker will be issued with a worker registration card. Only the worker's name, photo, registered designated trades, skill level and expiry date of the registration will be imprinted on the card. Since 1 September 2007, construction workers have to show their worker registration cards for data verification via card-reading device upon entering the construction sites for carrying out construction work. Under section 58 of CWRO, the principal contractor of the construction site has to install card-reading device on site to facilitate retrieval of the data stored electronically in the card. For this reason, the Personal Information Collection Statement on the Application Form for Construction Workers Registration states "The Authority may give some of the information to contractors, government departments and other organizations authorized to receive the same".

27. The Administration has advised that to protect privacy of workers while at the same time ensuring that the contractors have sufficient information to complete the verification process mentioned above, contractors using card-reading device can have access only to part of the workers' data, i.e. name, English prefix and the first three digits of the Hong Kong Identity Card, information on Green Card⁶, registration number, designated trades registered, skill levels and expiry date of registration. Card-reading device installed at construction sites are only accessible to the principal contractors and other designated persons who need to handle these data.

Operational efficiency of CIC and the construction workers registration system

28. The Bills Committee notes that upon amalgamation of CIC and CWRA, CWRA will be dissolved and its functions will be conferred on CIC. A new body entitled "Construction Workers Registration Board" will be formed under CIC to administer the workers' registration. While

⁶ If the worker already chooses to amalgamate the information of the Green Card with the worker registration card.

the Administration has stressed that amalgamation of CIC and CWRA will help achieve synergy and improve operational efficiency and effectiveness, some members have queried that amalgamation might inflate the organizational structure resulting in rigidity, and asked how operational efficiency could be enhanced.

29. The Administration has explained that CIC and CWRA share common objectives and have very close collaboration over the years. The Administration considers it appropriate to amalgamate CIC and CWRA at this stage to enable CIC to take up the role as the construction co-ordinating body. The Administration has pointed out that the composition of CIC includes employers, professionals, academics, contractors, workers, independent persons and government officials. As such, views of all sectors are fully reflected when CIC formulates long term strategies for the construction industry which help promote development of manpower resources and the healthy and sustainable development of the industry. As regards concerns on the structure of the amalgamated CIC, the Administration has advised that both staff of CIC and CWRA discharge different functions and responsibilities. On amalgamation, staff will continue to perform their present functions which will facilitate the smooth transition of the amalgamation. In the circumstances, there should not be any overlapping in organizational structure.

30. The Administration has further explained that the amalgamation of CIC and CWRA will enhance the operation efficiency of the amalgamated CIC and the worker registration system on the following aspects –

- (a) consistent policy and priority setting for the industry – prior to amalgamation, CIC and CWRA, each with its own functions and powers, formulate and set their own respective policies and priorities. Upon amalgamation, procedures will be streamlined and only the amalgamated CIC will formulate policies and set priorities for the construction industry as a whole. This will ensure consistent policy and priority setting to meet the needs of the industry more efficiently;
- (b) enhancement of administrative and operational efficiency – construction manpower development, training, trade testing and worker registration are closely linked. While CWRA is responsible for workers registration, others are handled by CIC. Upon amalgamation, only one single body will be

responsible for formulating, promoting, implementing and reviewing all the relevant functions. This will help enhance operational efficiency, achieve synergy and facilitate the nurturing of a high quality professional workforce to meet the demands of the construction industry; and

- (c) more effective deployment of resources and sharing of information – upon amalgamation, resources and information will be better deployed and shared. For example, resources of CIC may be used to upgrade the electronic facilities and computer system of CWRA; whereas the data on workers' skill levels maintained by CWRA will be useful for formulating longer-term and enhanced training and trade-testing programme for workers to meet the needs of the industry.

31. The Administration has advised that new measures (some of which are discussed in paragraphs 21-27 above) are also included in the Bill to better cater to the interests of workers and to further improve the operational efficiency of CIC. The Bills Committee notes that these new measures (other than those mentioned in paragraphs 21-27) are –

- (a) under section 44 of CWRO, a worker may apply for renewal of the worker's registration not earlier than three months before and not later than seven business days before the date of expiry of the registration. To facilitate workers in the registration process, an amendment is proposed to extend the three-month period to six months;
- (b) under CICO, CIC is not allowed to delegate its power to its members and employees in respect of entering into contracts regardless of their values. As such, even contracts of a minor and routine nature require approval of CIC at a board meeting. The Bill proposes to amend CICO to allow CIC to delegate its power to facilitate its operation; and
- (c) under CICO, CIC requires the approval of the Financial Secretary (FS) to deposit its funds as fixed deposits in a bank. To improve operational efficiency, the Bills proposes to amend CICO to facilitate CIC to have its funds deposited on fixed term or call deposit or in a savings account in any bank nominated by FS either generally or in any particular case for that purpose.

Committee Stage amendments

32. In the light of the comments of the legal adviser to the Bills Committee on drafting issues regarding certain provisions, the Administration will introduce Committee Stage amendments (CSAs) to –

- (a) delete "and powers" from the heading of section 8 of CWRO, as the amended section 8 of CWRO contains only the functions of CIC (clause 8 of the Bill);
- (b) replace Chinese text "管理局" by "議會" to reflect the policy intent (clause 18 of the Bill);
- (c) amend the Chinese text of the proposed new section 46A(5) of CWRO to better reflect the policy intent and tie in with the English text, i.e. "not later than 14 days after the date on which the notice is given" (clause 28 of the Bill); and
- (d) use another Chinese expression to correspond with "return" in the proposed new sections 46(5A), 46A(4) and (5) as well as 49(7) of CWRO, so as to avoid using the same Chinese text "交還" for "return" and "surrender" (clauses 27 to 29 of the Bill).

33. The Administration will also move other minor and consequential amendments. The Bills Committee has not proposed any amendment.

Resumption of Second Reading debate

34. Subject to the moving of the proposed CSAs by the Administration, the Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 6 June 2012.

Advice Sought

35. Members are invited to note the deliberations of the Bills Committee.

Consultation with the House Committee

36. At its meeting on 25 May 2012, the House Committee noted the deliberations of the Bills Committee.

Council Business Division 1
Legislative Council Secretariat
29 May 2012

**Bills Committee on Construction Industry Legislation
(Miscellaneous Amendments) Bill 2012**

Membership list

Chairman Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP

Members Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon Cyd HO Sau-lan
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon Alan LEONG Kah-kit, SC

(Total : 10 members)

Clerk Ms Joanne MAK

Legal Adviser Ms Clara TAM

Appendix II

Bills Committee on Construction Industry Legislation (Miscellaneous Amendments) Bill 2012

List of organizations which have submitted views to the Bills Committee

- I. Organizations which have made oral representations to the Bills Committee
 1. Construction Industry Council
 2. Hong Kong Construction Sub-contractors Association Limited
 3. H.K. General Building Contractors Association Ltd
 4. Hong Kong Construction Industry Employees General Union
 5. The Federation of Hong Kong Electrical and Mechanical Industries Trade Unions
 6. Hong Kong General Union of Lift and Escalator Employees
 7. Construction Industry Council Staff General Union

- II. Organizations providing submissions only
 1. Construction Workers Registration Authority Staff Side
 2. Resident Site Staff Association
 3. Construction Workers Registration Authority

Actions taken by the Administration on the transitional arrangements for staff of the Construction Workers Registration Authority

(a) Meeting with CWRA Secretariat staff on 3 December 2010

Representatives from the Development Bureau (DEVB) and CWRA met staff of CWRA Secretariat on 3 December 2010 to gauge their views and concerns on the proposed amalgamation of CIC and CWRA, which mainly involve continuance of employment and job security.

(b) Consulted CIC on transitional arrangements at meeting on 17 December 2010

The Administration consulted CIC at its meeting held on 17 December 2010 on the transitional arrangements for CWRA staff. CIC members approved the proposal “to respect and honour existing employment contracts and commit to extend the employment contracts of all serving CWRA Secretariat staff to until two years after the date of amalgamation in terms and conditions not less favourable than their prevailing contracts”. Relevant extracts of the discussion paper and minutes of meeting are at *Annexes B and C (not attached)*.

(c) Informed CWRA of approved transitional arrangements at CWRA meeting on 19 January 2011

The Administration reported to the CWRA at its meeting on 19 January 2011 the transitional arrangements for CWRA approved by CIC. The Chief Executive Officer of CWRA Secretariat (CEO/CWRA) confirmed at the meeting that all CWRA staff had been duly informed of the transitional arrangements. Extracts of the relevant discussion paper and minutes of meeting are at *Annexes D and E (not attached)*.

(d) Formation of Joint Working Group for Preparation for Amalgamation of CIC and CWRA since early 2011

A Joint Working Group headed by the Executive Director of CIC Secretariat (ED/CIC) and CEO/CWRA had also been formed since early 2011 to discuss regularly different issues relating to the amalgamation of CIC and CWRA.

(e) Meeting with CWRA Secretariat staff on 25 April 2012

Subsequent to the Bills Committee meeting on 13 April 2012, representatives from DEVB, CWRA and CIC Secretariat met all staff¹ of the CWRA Secretariat on 25 April 2012. Representative from DEVB reiterated that CIC had agreed “to respect and honour existing employment contracts and commit to extend the employment contracts of all serving CWRA Secretariat staff to until two years after the date of amalgamation in terms and conditions not less favourable than their prevailing contracts”. All staff present at the meeting were invited to sound out their concerns. Their main concerns include CWRA staff’s positions under the organizational structure of the amalgamated body and their terms and conditions of service. CIC representative undertook to give CWRA staff an interim reply on the questions raised within two weeks. We have also duly reflected concerns raised by CWRA staff to CIC’s senior management separately and will follow up with CIC on the progress in addressing their concerns.

**Development Bureau
30 April 2012**

¹ 21 out of a total of 23 CWRA staff attended the meeting. The remaining two staff submitted their written questions to the meeting although they were on vacation leave that day.

Appendix IV

Table showing the type and number of the affected staff, their terms of employment and the related transitional arrangements

Organisations	No. of affected staff	Terms of appointment	Transitional arrangements
CWRA Secretariat	23	2-year contract	<ul style="list-style-type: none"> • CIC has agreed to “respect and honour existing employment contracts and commit to extend the employment contracts of all serving CWRA Secretariat staff to until two years after the date of amalgamation in terms and conditions not less favourable than their prevailing contracts”.
CIC	14	2-year contract	<ul style="list-style-type: none"> • The terms and conditions of service of these staff will not be affected by the amalgamation.
	29	Short-term contracts	<ul style="list-style-type: none"> • These staff are appointed on short-term contracts to meet the fluctuating demands for renewal of workers registration. • They will continue to be appointed on short-term contracts to meet the varying operational needs.