

LEGISLATIVE COUNCIL BRIEF

INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE

Industrial Training (Construction Industry) (Amendment) Bill 1999

INTRODUCTION

At the meeting of the Executive Council on 28 September 1999, the Council ADVISED and the Acting Chief Executive ORDERED that the Industrial Training (Construction Industry) (Amendment) Bill 1999 ("Bill"), at Annex A, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

Construction Industry Training Authority

2. The Construction Industry Training Authority ("CITA") was established in 1975 as a statutory body to provide training for persons employed in the construction industry. Under section 5 of the Industrial Training (Construction Industry) Ordinance, Chapter 317 ("Ordinance"), CITA's primary functions are to provide training courses for the construction industry through its industrial training centres, and to assist in the placement of its trainees. CITA is funded by a levy payable by contractors on the value of all construction works undertaken in Hong Kong over the value of \$1 million. The current rate, prescribed by the Legislative Council in 1975 under section 22(1) of the Ordinance, is 0.25%.

3. CITA carries out a programme of full-time and part-time training courses for the construction industry. In addition, CITA has also carried out voluntary skills assessment tests since 1991. Following the Housing Department's and Works Bureau's decisions in 1995 and 1996 to introduce contractual requirements specifying that a certain percentage of workers in their construction sites for new projects should be qualified tradesmen who have passed the relevant trade tests offered by CITA, there has been a significant increase in demand for such tests. The number of workers taking such tests has increased from 50 per year in 1991 to approximately 500 per month currently.

4. Construction workers are usually paid on a daily rate basis. Newly trained CITA graduates working to individual sub-contractors are not guaranteed steady work or income and many of them leave the industry if and when they encounter a slack demand for workers during their first year of employment. To encourage employers to employ CITA graduates on a monthly salary basis at least for the initial period, CITA has, since late 1998, introduced a Pilot Subsidy Scheme. Under the scheme, each employer who employs a CITA graduate under a proper contract of apprenticeship lasting for 6 months to 2 years would receive a monthly subsidy at \$2,000 during the period of apprenticeship. The scheme serves to provide newcomers to the construction industry with a stable income thereby providing an incentive for them to stay in the industry. So far the Pilot Scheme has been well received with employers agreeing to engage 500 CITA graduates on a monthly salary basis. CITA plans to expand the scheme so as to enable a larger number of graduates to benefit from it.

Proposed Amendments to the Ordinance

5. The Department of Justice has raised doubt whether existing provisions of the Ordinance give adequate legal authorisation to CITA to carry out the following two activities:

- (i) to conduct skills assessment tests which are not part and parcel of the training courses provided by CITA; and

- (ii) to provide subsidies to employers of CITA graduates.

As it is important that CITA should continue to carry out these two activities, we therefore propose to amend the Ordinance so as to provide a clear legal basis to enable CITA to do so.

6. We also propose to take the opportunity to effect a minor amendment of the Ordinance. At present, the CITA consists of 13 members appointed by the Chief Executive. According to Section 7(1)(d) of the Ordinance, one member shall be a person nominated by the Hong Kong branch of the Royal Institution of the Chartered Surveyors ("the RICS"). The RICS Hong Kong branch was however dissolved on 31 August 1997. Although the Hong Kong Institute of Surveyors ("the Institute") has since played exactly the same role as the former RICS Hong Kong branch, we have been advised by the Department of Justice that we cannot accept nomination from the Institute under the present provisions in the Ordinance. To rectify this, we propose that Section 7(1)(d) of the Ordinance should be amended by replacing the Hong Kong branch of the Royal Institution of Chartered Surveyors by the Hong Kong Institute of Surveyors. Relevant provisions of the Ordinance are now attached at Annex B.

THE BILL

7. **Clause 2** of the Bill at Annex A amends the long title of the Ordinance so that it can provide for matters in connection with the training of persons employed in the construction industry and the payment of levy. **Clauses 3** and **6** change the name of the levy from "industry training levy" to "industry levy". **Clause 4** expands the scope of CITA's functions to cover the provision of a financial provision for the purpose of assisting the placement of its graduates and the holding of skills assessment tests. **Clause 5** changes the constitution of the CITA by replacing "Hong Kong branch of the Royal Institute of Chartered Surveyors" with "Hong Kong Institute of Surveyors".

PUBLIC CONSULTATION

8. The proposed amendments have direct impact on the construction industry only. The above proposals have the support of the Construction Advisory Board, the Hong Kong Construction Association and the Real Estate Developers Association of Hong Kong.

BASIC LAW IMPLICATIONS

9. The Department of Justice advises that the Bill is consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

10. The Department of Justice advises that the Bill has no human rights implications.

BINDING EFFECT

11. The Bill will not affect the current binding effect of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

12. The Bill has no financial or staffing implications for the Government.

ECONOMIC IMPLICATION

13. The activities of CITA described in para. 3 and 4 above

should benefit the construction workers.

LEGISLATIVE TIMETABLE

14. The Bill will be introduced to the Legislative Council on 13 October 1999 for the First Reading and commencement of Second Reading Debate.

PUBLICITY

15. A press release will be issued when the Bill is published in the Gazette on 30 September 1999. A spokesman for CITA will be made available to answer media enquiries.

ENQUIRIES

16. Enquiries on this Brief may be directed to Mr Ivan K B Lee, Principal Assistant Secretary for Education and Manpower, at 2810 3036.

Education and Manpower Bureau

File Reference: EMB 15/3231/75 V

29 September 1999

Industrial Training (Construction Industry) Ordinance

Industrial Training (Construction Industry) (Amendment) Bill 1999

Annexes

Annex A

Industrial Training (Construction Industry) (Amendment) Bill
1999

Annex B

Relevant provisions of the Industrial Training (Construction
Industry) Ordinance

A BILL

To

Amend the Industrial Training (Construction Industry) Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Industrial Training (Construction Industry) (Amendment) Ordinance 1999.

2. Long title substituted

The long title to the Industrial Training (Construction Industry) Ordinance (Cap. 317) is repealed and the following substituted -

"To provide for the establishment, functions and management of the Construction Industry Training Authority, for a levy to be paid by contractors in respect of construction works, and for connected purposes."

3. Interpretation and application

Section 2(1) is amended, in the definition of "levy", by repealing "training".

4. Functions of the Authority

Section 5 is amended -

- (a) in paragraph (c), by adding ", including to assist by way of financial provision," after "assist";
- (b) in paragraph (d), by repealing the full stop and substituting a semicolon;

(c) by adding -

"(e) to assess the standards of skills achieved by anyone in any kind of work involving or in connection with the construction industry, conduct examinations or tests, issue or award certificate of competence and establish the standards to be achieved in respect of such work."

5. Constitution of Authority

Section 7(1)(d) is amended by repealing "Hong Kong branch of the Royal Institution of Chartered Surveyors" and substituting "Hong Kong Institute of Surveyors".

6. Imposition of construction industry levy

Section 21 is amended by repealing "training".

Explanatory Memorandum

This Bill aims at -

- (a) expanding the functions of the Construction Industry Training Authority (the "Authority") so as to cover the assessment and establishment of standards of skills in respect of work in connection with the construction industry, and to assist in the placement of persons completing training courses by way of financial provision;
- (b) changing the constitution of the Authority by replacing the Hong Kong branch of the Royal

Institution of Chartered Surveyors which was
dissolved on 31 August 1997 with the Hong Kong
Institute of Surveyors.

CHAPTER 317**INDUSTRIAL TRAINING (CONSTRUCTION
INDUSTRY)**

To establish the Construction Industry Training Authority, to provide for facilities for the training of persons employed in the construction industry and for a levy to be paid by contractors in respect of construction works.

[5 September 1975] *L.N. 215 of 1975*

Note: Under s. 1(2) of 25 of 1998, the amendment to this enactment by that Ordinance is deemed to have come into operation on 1 July 1997. The aforesaid s. 1(2) is subject to article 12 of the Hong Kong Bill of Rights set out in Part II of Cap. 383.

PART I**PRELIMINARY****1. Short title**

This Ordinance may be cited as the Industrial Training (Construction Industry) Ordinance.

2. Interpretation and application

(1) In this Ordinance, unless the context otherwise requires—
“Authority” (訓練局) means the Construction Industry Training Authority established by section 4;

“authorized person” (獲授權人) means—

- (a) in relation to building or street works not carried out by or on behalf of the Crown, the authorized person appointed under section 4 of the Buildings Ordinance (Cap. 123);
- (b) in relation to construction works carried out by or on behalf of the Crown, the person appointed under section 34(1);

- (c) in relation to other construction works, the person appointed under section 34(2);
- “building works” (建築工程) has the meaning assigned to it in section 2(1) of the Buildings Ordinance (Cap. 123);
- “chairman” (主席) means the chairman of the Authority appointed under section 8;
- “construction industry” (建造業) means the industry in which building works or construction works are carried out;
- “contractor” (承建商) means—
- (a) in relation to building or street works not carried out by or on behalf of the Crown, the person appointed as contractor under section 9 of the Buildings Ordinance (Cap. 123);
 - (b) in relation to construction works carried out by or on behalf of the Crown, the person carrying out the construction works;
 - (c) in relation to other construction works, the person carrying out the construction works;
- “employer” (僱主) means any person who contracts with a contractor for the undertaking of construction works, or at whose request, or on whose behalf, any such works are undertaken and any person claiming under him whose rights are acquired after the commencement of the works;
- “financial year” (財政年度) means the period fixed by the Authority under section 15(2);
- “further penalty” (另加罰款) means the further penalty payable under section 27(1B); (*Added 7 of 1981 s. 2*)
- “levy” (徵款) means the construction industry training levy prescribed under section 22;
- “member” (委員) means a member of the Authority appointed under section 7;
- “penalty” (罰款) means the penalty payable under section 27(1A); (*Added 7 of 1981 s. 2*)
- “street” (街道) has the meaning assigned to it in section 2(1) of the Buildings Ordinance (Cap. 123);
- “street works” (街道工程) has the meaning assigned to it in section 2(1) of the Buildings Ordinance (Cap. 123);
- “surcharge” (附加費) means the surcharge under section 26(7);
- “trade union” (職工會) means a trade union registered under the Trade Unions Ordinance (Cap. 332);
- “value” (價值), in relation to any construction works, means the value of the construction works as assessed under this Ordinance.
- (2) Subject to subsections (3) and (4), for the purposes of this Ordinance “construction works” (建造工程) includes any kind of work involving or in connexion with—
- (a) building works;

5. Functions of the Authority

The Authority shall have the following functions—

- (a) to provide training courses for the construction industry;
- (b) to establish and maintain industrial training centres therefor;
- (c) to assist in the placement of persons completing training courses;
- (d) to make recommendations with respect to the rate of levy.

6. General powers of the Authority

(1) The Authority may do all such things as are necessary for, or incidental or conducive to, the better carrying out of the functions of the Authority and may in particular, but without prejudice to the generality of the foregoing—

- (a) hold, acquire or lease all kinds of property, whether movable or immovable;
- (b) subject to subsection (2), sell or otherwise dispose of all kinds 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 subsection (3), meet expenditure on any item shown in the approved estimates of expenditure of the Authority, borrow or otherwise raise money on such security as may be necessary, and for that purpose, charge all or any of the property of the Authority;
- (e) make charges for the use of any facility or service provided by the Authority.

(2) The Authority shall not sell or otherwise dispose of land granted at nil premium by the Government except with the prior approval of the Governor.

(3) Except with the prior approval of the Financial Secretary, no sum shall be borrowed or otherwise raised under subsection (1)(d) which itself, or together with all other sums previously borrowed or otherwise raised under that subsection and still outstanding, exceeds, or in the aggregate exceeds, 10 per cent of the approved total estimated expenditure for the current financial year.

7. Constitution of Authority

(1) The Authority shall consist of 13 members appointed by the Governor of whom— (*Amended 36 of 1991 s. 2*)

- (a) 2 shall be persons nominated by the Hong Kong Construction Association Limited; (*Amended L.N. 336 of 1988*)

- (b) 2 shall be persons nominated by the Building and Civil Engineering Industry Training Board;
 - (c) 1 shall be a person nominated by the Hong Kong Institute of Architects;
 - (d) 1 shall be a person nominated by the Hong Kong branch of the Royal Institution of Chartered Surveyors;
 - (e) 1 shall be a person nominated by the Structural Division of Hong Kong Institution of Engineers; (*Amended 60 of 1982 s. 2*)
 - (f) 1 shall be a civil engineer nominated by the Hong Kong Institution of Engineers;
 - (g) 1 shall be a person who holds office as an official of a trade union representing workers employed in the construction industry;
 - (ga) 1 shall be a person nominated by the Executive Director of the Vocational Training Council; (*Added 36 of 1991 s. 2*)
 - (h) 2 shall be public officers; and (*Amended 36 of 1991 s. 2*)
 - (i) 1 shall be a person, not being a public officer or person connected with any of the organizations mentioned in paragraphs (a) to (ga). (*Amended 36 of 1991 s. 2*)
- (2) A member who is not a public officer appointed under subsection (1)(h) shall, unless his appointment is terminated or otherwise ceases, hold office for such period as the Governor may specify. (*Amended L.N. 258 of 1975*)
- (3) On the expiration of his period of appointment or reappointment, as the case may be, any such member shall be eligible for reappointment for such further term as the Governor may specify.
- (4) Any such member may at any time resign from office by giving notice in writing to the Governor, and he shall cease to be a member from the date specified in the notice or, if no date is specified, from the date of the receipt by the Governor of the notice.
- (5) If any member other than the chairman is absent from Hong Kong or is for any other reason unable to exercise the powers or perform the duties of his office as member, the Governor may appoint another person to be a temporary member in his place during his absence or incapacity.

8. Chairman of the Authority

(1) The Governor shall appoint a member to be chairman of the Authority.

(2) If the chairman is absent from Hong Kong or is for any other reason unable to act as chairman, the Governor may appoint another member to be chairman in his place during his absence or incapacity.

19. Auditors

(1) The Authority shall appoint auditors, who shall be entitled at any time to have access to all books of account, vouchers and other financial records of the Authority and to require such information and explanations thereof as they may think fit.

(2) The auditors shall audit the statements prepared under section 18(2) and shall report thereon to the Authority.

20. Statements and reports to be laid on table of Legislative Council

(1) The Authority shall, within 6 months after the end of each financial year or such further time as the Governor may in any particular year allow, submit to the Governor a report on the activities of the Authority and copies of the statements prepared under section 18(2) and the report made under section 19(2).

(2) The Governor shall cause the reports and statements received by him under subsection (1) to be laid on the table of the Legislative Council.

PART IV**LEVY****21. Imposition of construction industry training levy**

A levy, to be known as the construction industry training levy, shall be imposed in accordance with this Ordinance on the value of all construction works undertaken in Hong Kong and shall be payable by every contractor who undertakes any such works.

22. Rate of levy

(1) The Legislative Council may by resolution prescribe the rate of levy.

(2) The rate of levy prescribed under subsection (1) shall be based on the value of construction works.

(3) The rate of levy prescribed under subsection (1) shall come into effect 30 days after the publication of the resolution in the Gazette.

(4) A resolution under subsection (1) may provide that construction works the value of which does not exceed an amount specified in the resolution shall not be liable to the levy.