

Drafter: L PENG

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CONSTRUCTION WORKERS REGISTRATION BILL

CONSTRUCTION WORKERS REGISTRATION BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment,
Transport and Works

Clause

Amendment Proposed

2(1)

- (a) In the definition of "construction work", by deleting ", except in relation to Part 4".
- (b) In the definitions of "registered general worker", "registered semi-skilled worker", "registered semi-skilled worker (provisional)", "registered skilled worker", "registered skilled worker (provisional)" and "registered skilled worker (transitional)", by deleting "currently".
- (c) In the definition of "sub-contractor", by deleting everything after "contractor," and substituting "means any person who enters into a contract with another person (whether or not the principal contractor) to undertake all or any part of the construction work that the principal contractor has undertaken;".

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- (a) In subclause (3), by deleting "set out in subsection (8) is true" and substituting "exists".
- (b) In subclauses (5) and (6)(a), by deleting "set out in subsection (8)" and substituting "exists".
- (c) In subclause (7), by deleting "has" where it twice appears and substituting "had".
- (d) In subclause (8) -
 - (i) by deleting "The relevant matter referred to in subsections (3), (5) and (6)(a) is" and substituting "For the purposes of subsections (3), (5) and (6)(a), the relevant matter exists if";
 - (ii) in paragraph (a) -
 - (A) by adding "an offence in relation to" before "a contravention";
 - (B) by deleting "that";
 - (iii) in paragraphs (b), (c) and (d) -
 - (A) by adding "an offence in relation to" before "a contravention";
 - (B) by deleting "that" where it first appears;

(C) by deleting "involves" and substituting "involved".

- 7(3)(b) (a) By deleting "17" and substituting "18".
- (b) In subparagraph (v), by deleting "2" and substituting "3".
- 12(2)(b) (a) By deleting "12" and substituting "13".
- (b) By deleting subparagraphs (ii), (iii), (iv), (v), (vi), (vii) and (viii) and substituting -
- "(ii) 2 persons, each of whom is, in the opinion of the Authority, a person from a training institute in the construction industry in Hong Kong;
 - (iii) 1 person who is, in the opinion of the Authority, a person from a professional body connected with the construction industry in Hong Kong;
 - (iv) 2 persons, each of whom is, in the opinion of the Authority, a person from a contractor in the construction industry in Hong Kong;

- (v) 2 persons, each of whom is, in the opinion of the Authority, a person from a trade association representing workers in the construction industry in Hong Kong; and
- (vi) 1 person who is, in the opinion of the Authority, a person from the major employers in the construction industry in Hong Kong."

16(2) By deleting paragraphs (e), (f), (g) and (h) and substituting -

- "(e) 2 persons, each of whom is, in the opinion of the Authority, a person from a contractor in the construction industry in Hong Kong; and
- (f) 2 persons, each of whom is, in the opinion of the Authority, a person from a trade association representing workers in the construction industry in Hong Kong."

18 (a) In the heading, by deleting "**and application**".

(b) In subclause (1) -

(i) by deleting the definition of
"construction works" and
substituting -

"construction operations" (建
造工程), subject to
section 18C, has the
meaning assigned to it
in Schedule 1 to the
Industrial Training
(Construction Industry)
Ordinance (Cap. 317);";

(ii) by deleting the definition of
"value" and substituting -

"value" (價值), in relation to
construction operations,
has the meaning assigned
to it in section 18A";

(iii) by adding -

"construction contract" (建造
合約) has the meaning
assigned to it in
section 2(1) of the
Industrial Training
(Construction Industry)
Ordinance (Cap. 317);

"contract of employment" (僱傭合約) has the meaning assigned to it in section 2(1) of the Employment Ordinance (Cap. 57);

"term contract" (固定期合約) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317);

"total value" (總價值), in relation to construction operations, has the meaning assigned to it in section 18B;

"works order" (施工通知) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317).".

(c) By deleting subclause (2).

(d) In subclause (3), by deleting "construction works" and substituting "construction operations".

(e) By adding -

"(4) For the purposes of this Part -

(a) where a person carries out any construction operations for any other person under a contract of employment, the construction operations shall be regarded as carried out by -

(i) subject to subparagraph (ii), that other person;
or

(ii) where the first-mentioned person is a contractor by virtue of paragraph

(a)(i) of the
definition of
"contractor"
in section 2(1)
of the
Industrial
Training
(Construction
Industry)
Ordinance (Cap.
317), the
first-
mentioned
person;

(b) where a person carries
out any construction
operations for himself
without arrangement
(except under a contract
of employment) for the
carrying out of such
operations by any other
person, the first-
mentioned person shall,
apart from being the
person who carries out

the construction operations, also be regarded as the person for whom such operations are carried out, and the definitions of "contractor" and "employer" and the other provisions of this Part shall be construed accordingly.

(5) For the purposes of this Part, a person shall be regarded as undertaking or carrying out construction operations if -

- (a) he manages, or arranges for, the carrying out of the construction operations by any other person for the employer concerned, whether by way of sub-contracting or otherwise; or
- (b) he provides his own labour or that of any other person for the carrying out of the

construction
operations.".

New By adding -

"18A. Value of construction operations

(1) For the purposes of this Part,
"value" (價值), in relation to construction
operations, means -

- (a) where the construction
operations are carried out
under a construction
contract, the consideration
attributable to such
operations, as stated in, or
ascertainable by reference
to, the contract; or
- (b) where the construction
operations are not carried
out under a construction
contract, the reasonable
consideration to be expected
on the open market in respect
of the carrying out of such
operations.

(2) Notwithstanding subsection (1)(a),
if in a particular case the consideration

attributable to the construction operations concerned as determined in accordance with that subsection is below the reasonable consideration to be expected on the open market in respect of the carrying out of such operations, that subsection shall be deemed to contain a reference to the reasonable consideration described in this subsection instead of the consideration described in that subsection.

(3) For the purposes of subsections (1)(b) and (2), the Authority may, when ascertaining the reasonable consideration as referred to in those subsections in respect of the carrying out of any construction operations, have regard to all or any of the following matters -

- (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 Authority considers reasonable;
- (e) the reasonable profit to be expected on the open market in respect of the carrying out of the construction operations;
- (f) any other factors that the Authority considers appropriate.

18B. Total value of construction operations

For the purposes of this Part, "total value" (總價值), in relation to construction operations, means -

- (a) where the construction operations are carried out under a construction contract -
 - (i) in the case the construction contract is a term contract, the

aggregate of the
respective values
of all construction
operations carried
out as required by
works orders issued
under the contract;

(ii) in the case the
construction
operations are or
form part of any
construction
operations that are
carried out in
stages, the
aggregate of the
respective values
of all stages of
the operations so
carried out; or

(iii) in any other case,
the value of the
construction
operations; or

(b) where the construction
operations are not carried

out under a construction
contract -

- (i) in the case the
construction
operations are or
form part of any
construction
operations that are
carried out in
stages, the
aggregate of the
respective values
of all stages of
the operations so
carried out; or
- (ii) in any other case,
the value of the
construction
operations.

**18C. Application to construction
operations**

(1) This Part shall not apply to any
construction operations -

- (a) the tender for which was
submitted before the
commencement of this Part; or

(b) that began before that commencement.

(2) This Part shall not apply to any construction operations -

(a) which are carried out for a person who occupies any domestic premises or part of any domestic premises; and

(b) the sole or principal purpose of which is to decorate, alter, repair, maintain or renovate the premises or such part of such premises.

(3) This Part shall not apply to any construction operations, or any type or description of construction operations, which are or is excluded from the application of this Part by the Chief Executive in Council by order published in the Gazette.

(4) Without limiting the generality of subsection (3), an order made under that subsection may specify the circumstances under which or the purposes for which any construction operations, or any type or description of construction operations,

referred to in the order are or is to be excluded from the application of this Part.

(5) In this section -

(a) "domestic premises" (住用處所)

means premises used or intended to be used solely or principally for residential purposes and constituting a separate household unit;

(b) a person shall be regarded as a person who occupies a domestic premises if he intends to occupy the premises."

19

By deleting the clause and substituting -

"19. Imposition of levy

(1) A levy at the prescribed rate shall be imposed on the value of all construction operations undertaken or carried out in Hong Kong.

(2) Notwithstanding subsection (1), construction operations the total value of which does not exceed the prescribed amount shall not be liable to the levy.

(3) Subject to section 24(8A), the levy shall be payable in accordance with this Part by every contractor who carries out the construction operations.

(4) The Secretary may by notice -

(a) prescribe the rate for the purposes of subsection (1);
and

(b) prescribe the amount for the purposes of subsection (2).

(5) Any rate prescribed under subsection (4)(a) -

(a) shall come into effect on the expiration of the period of 45 days after the publication of the notice in the Gazette;
and

(b) shall not apply to any construction operations if, before the expiration of the period referred to in paragraph (a) -

(i) the tender for the construction operations has been

submitted to the
employer concerned;

(ii) no tender for the
construction
operations has been
submitted to the
employer concerned,
but a construction
contract in respect
of the construction
operations has been
entered into; or

(iii) no tender for the
construction
operations has been
submitted to the
employer concerned
and no construction
contract in respect
of the construction
operations has been
entered into, but
the construction
operations have
begun.".

20 By deleting the clause.

21 By deleting the clause.

22 (a) In the heading, by deleting "**works**" and substituting "**operations**".

(b) In subclause (1) -

(i) by deleting "any construction works" and substituting "any construction operations";

(ii) in paragraph (a), by deleting "undertaking the construction works" and substituting "in respect of the construction operations";

(iii) in paragraph (b), by deleting "works" and substituting "operations";

(iv) by deleting "such a contractor undertaking the construction works or such an" and substituting "the contractor in respect of the construction operations or the";

(v) by deleting "works, as" and substituting "operations, as".

(c) By deleting subclause (2) and substituting -

"(2) Except in the case of a term contract, subsection (1) shall not apply in respect of any construction operations if it is reasonably estimated that the total value of such operations does not exceed the amount prescribed under section 19(4)(b)."

(d) In subclause (3), by deleting "value of the construction works" and substituting "total value of the construction operations".

(e) By deleting subclause (4) and substituting -

"(4) A contractor or authorized person complies with subsection (1) if he -

(a) had given a notice to CITA under section 24 of the Industrial Training (Construction Industry) Ordinance in respect of the construction operations; and

(b) sent a copy of that notice to the Authority within the period of 14 days, or such further time as the Authority

may have allowed, within which he shall give notice under that subsection."

23

(a) In the heading, by deleting "**works, etc.**" and substituting "**construction operations**".

(b) In subclause (1) -

(i) by deleting "Where" and substituting "Subject to subsection (1A), where";

(ii) by deleting "works" wherever it appears and substituting "operations";

(iii) by deleting "being".

(c) By adding -

"(1A) Where any payment or interim payment is made in any calendar month to a contractor or for his benefit in respect of any construction operations that are carried out under a term contract, the contractor shall, within 14 days after the last day of that month or such further time as the Authority may in any case allow, give

notice of it to the Authority in the specified form."

(d) In subclause (2) -

(i) by deleting "works" wherever it appears and substituting "operations";

(ii) by deleting "being".

(e) By deleting subclause (3) and substituting -

"(3) Except in the case of a term contract, subsections (1) and (2) shall not apply in respect of any construction operations if it is reasonably estimated that the total value of such operations does not exceed the amount prescribed under section 19(4)(b)".

(f) In subclause (4) -

(i) by adding ", (1A)" before "or (2)";

(ii) by deleting "works" where it twice appears and substituting "operations".

(g) By deleting subclause (5) and substituting -

"(5) A contractor or authorized person complies with subsection (1), (1A) or (3) if he -

(a) had given a notice to
CITA under section 24 of
the Industrial Training
(Construction Industry)
Ordinance in respect of
the relevant payment or
completion; and

(b) sent a copy of that
notice to the Authority
within the period of 14
days, or such further
time as the Authority
may have allowed, within
which he shall give
notice under that
subsection."

(h) In subclause (6), by adding ", (1A)" before
"or (2)".

24

(a) In subclause (1) -

- (i) by deleting "from the contractor";
- (ii) by deleting "works" where it twice
appears and substituting
"operations".

(b) In subclause (2) -

- (i) by deleting "to the contractor";

- (ii) by deleting "works" wherever it appears and substituting "operations".
- (c) In subclause (3) -
 - (i) by deleting "works" wherever it appears and substituting "operations";
 - (ii) by deleting "from the contractor".
- (d) In subclause (4), by deleting "works" wherever it appears and substituting "operations".
- (e) By adding -
 - "(4A) Notwithstanding subsections (1), (2) and (3), where construction operations are carried out under a term contract, the Authority may defer the making of any assessment under subsection (1), (2) or (3) until such time as the Authority considers appropriate."
- (f) In subclauses (5) and (6) -
 - (i) by deleting "from the contractor";
 - (ii) by deleting "works" wherever it appears and substituting "operations".

(g) In subclause (7), by deleting "subsection (5)" and substituting "this section and payable by the contractor".

(h) By deleting subclause (8) and substituting -

"(8) Any assessment of levy or imposition of surcharge under this section shall be notified in writing by the Authority.

(8A) A levy or surcharge shall not be payable by a contractor -

(a) if he has not been notified by the Authority of an assessment of such levy or imposition of such surcharge, as the case may be, under subsection (8); or

(b) to the extent that the levy or surcharge, as the case may be, has been paid by any other contractor unless the levy or surcharge, as the case may be, may be required or ordered to

be repaid to that other contractor under section 25(4), 27(4) or 28(4).".

(i) In subclause (9) -

- (i) by deleting "An" and substituting "Subject to subsection (10), an";
- (ii) in paragraph (a), by deleting "works" and substituting "operations";
- (iii) in paragraph (b), by adding a comma after "surcharge".

(j) By adding -

"(10) If construction operations are carried out under a term contract, an assessment or surcharge under this section shall be made or imposed within -

- (a) 2 years after the completion of all construction operations to which the contract relates;
- (b) 2 years after the expiration of the period within which all construction operations

to which the contract relates have to be completed as provided for by the contract; or
(c) 1 year after evidence of facts, sufficient in the opinion of the Authority to justify the making of the assessment or the imposition of the surcharge, comes to its knowledge,

whichever is the last to occur.

(11) For the purposes of this section, where the amount of levy due in respect of a stage of any construction operations is assessed under this section, the amount of levy shall be assessed as if such stage of the construction operations separately constitutes construction operations subject to payment of levy under this Ordinance."

25(4)

(a) By adding "any levy or surcharge payable under subsection (1), or" after "part of".

(b) By adding a comma after "(3)".

29

(a) In subclause (1) -

(i) by deleting "any construction works" and substituting "any construction operations";

(ii) in paragraph (a) -

(A) by deleting "works" wherever it appears and substituting "operations";

(B) by deleting "being";

(iii) in paragraph (b), by deleting "works" where it twice appears and substituting "operations".

(b) In subclause (3)(c), by deleting "works" and substituting "operations".

35(1)(d)

By deleting "屆滿" and substituting "期滿的".

37

(a) In subclause (4) -

(i) by adding ", as at the commencement of this subsection," after "satisfied that";

(ii) by deleting "but less than 10 years" .

(b) In subclause (7), by adding ", as at the commencement of this subsection," after "satisfied that".

39(2) (a) By adding ", as at the commencement of this subsection," after "satisfied that".

(b) By deleting "10 years" and substituting "8 years".

50(6) (b) By deleting "宗" and substituting "項".

54(1) (a) By deleting "The Secretary" and substituting "Subject to subsection (2), the Secretary".

(b) By deleting paragraphs (d), (e), (f) and (g) and substituting -

"(d) not less than 10 are persons, each of whom is, in the opinion of the Secretary, a person from a contractor in the construction industry in Hong Kong; and

(e) not less than 10 are persons, each of whom is, in the opinion of the Secretary, a person from a trade association representing workers in the construction industry in Hong Kong."

66 By deleting "Schedules" and substituting
"Schedule".

Schedule 1 (a) In Part 1 -

(i) in item 8 -

(A) in column 1, by deleting "清拆"
and substituting "拆卸";

(B) in column 2, by deleting "清
拆、拆卸" and substituting "拆
卸、拆除";

(C) in column 3, by deleting "清拆"
and substituting "拆卸";

(ii) in item 9 -

(A) in column 1, by deleting "清拆
工(違例建築物)" and substituting
"拆卸工(違例建築工程)";

(B) in column 2 -

(I) by deleting "building
works carried out" and
substituting "buildings
erected, or building
works carried out,";

(II) by deleting "清拆、拆卸"

and substituting "拆卸、拆除";

- (C) in column 3, by deleting "清拆工(違例建築物)" and substituting "拆卸工(違例建築工程)";
- (iii) in item 10, in column 2, in paragraph (a), by deleting "清拆" and substituting "拆卸";
- (iv) in item 11, in column 4, by adding "for Grade A, B, C or H electrical work" after "worker";
- (v) in item 12, in column 1, by deleting "機械";
- (vi) in item 15, in column 2, by deleting "supply systems" and substituting "utilization systems";
- (vii) in item 17, in column 1, by deleting "機械";
- (viii) in item 30 -
 - (A) in column 1, by deleting "(Demolition)" and substituting "(Demolition) - Excavator";
 - (B) in column 2, by deleting everything after "operate" and

substituting "excavators to demolish, dismantle and remove buildings or structures, or any part thereof";

- (C) by deleting column 3 and substituting -

"Not applicable";

- (D) by deleting column 4 and substituting -

"Both of the following -

- (a) trade test

certificate for

Plant and Equipment

Operator

(Demolition) -

Excavator issued by

CITA; and

- (b) certificate as

defined in section

2(1) of the

Factories and

Industrial

Undertakings

(Loadshifting

Machinery)

Regulation (Cap. 59

sub. leg.) and
 applicable to
 excavators";

(ix) in item 45, in columns 1, 2 and 4,
 by adding "起重機" after "吊臂";

(x) by adding -

"53A. Truck Driver (Medium goods vehicles)	To drive medium goods vehicles within the meaning of section 2 of the Road Traffic Ordinance (Cap. 374) to transport construction materials, building debris or excavated materials within, into or out of construction sites	Not applicable	Full driving licence within the meaning of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg.) to drive a medium goods vehicle".
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(b) In Part 2 -

(i) in item 1, in column 2, by
 deleting ", and" and substituting
 "and in";

(ii) in item 4, in column 2 -

- (A) by adding ", maintain and repair" after "install";
- (B) by deleting "and access control systems" and substituting ", access control systems, and building control and monitoring systems";
- (iii) in item 7, in column 2, by deleting everything after "wiring systems," and substituting "private automatic branch exchange systems, intercom systems, in-building coaxial cable distribution systems, and other wired or wireless signal transmission and reception systems";
- (iv) in item 10, in column 2, by adding "各類" after "用於";
- (v) in item 13, in column 1, by deleting "器" and substituting "氣";
- (vi) in item 21, in column 2, by deleting "building foundations" and substituting "underground caissons";

- (vii) in item 27, in column 2, by deleting "拆卸" and substituting "拆除";
- (viii) in item 33 -
 - (A) in column 2 -
 - (I) by adding "用於" after "修理";
 - (II) in paragraph (a), by deleting "用於";
 - (B) by deleting column 3 and substituting -
 - "Either one of the following -
 - (a) trade certificate for Refrigeration/Air-conditioning/Ventilation Mechanic (Electrical Control) issued by VTC; or
 - (b) certificate of registration as an electrical worker issued under

section 30 of the
Electricity
Ordinance (Cap.
406) on which the
Director of
Electrical and
Mechanical Services
specifies that the
holder is entitled
to do electrical
work on an air-
conditioning
installation";

(ix) in item 36 -

(A) in column 1, by deleting "and
Refrigerant";

(B) in column 2, by deleting
everything after "water" and
substituting "systems for
air-conditioning systems
(including air-handling and
water condensing equipment)";

(C) in columns 3 and 5, by
deleting "and Refrigerant".

(c) In Part 3, in item 2, in column 2, by adding
"(工人軀)" after "機".

Schedule 4, By deleting "9" and substituting "10".
section 2(2)