

**立法會**  
**Legislative Council**

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**Report on Construction Workers Registration Bill  
by the Bills Committee  
on Construction Workers Registration Bill**

**Purpose**

1.1.1. This paper 11.1.reports on the deliberations of the Bills Committee on Construction Workers Registration Bill (the Bill).

**Background**

2. In July 1999, the then Construction Advisory Board (CAB) decided to set up a Working Group on Registration of Construction Workers (Working Group), which comprised stakeholders of the construction industry, to study the proposal for implementing a workers registration system. In May 2000, the Working Group concluded and recommended to the then CAB that given the merits of a mandatory registration system for construction workers, it should be implemented by way of legislation.

**The Bill**

3. The principal object of the Bill is to establish a system for the registration of construction workers and to regulate construction workers who personally carry out construction work on construction sites. Under the proposed registration system, construction workers are registered for individual designated trades and at different skill levels.

4. Based on the categorization of skill levels of workers widely accepted by the construction industry and agreed by the Working Group, three categories of registration are proposed for construction workers according to their skill levels: a skilled worker; or a semi-skilled worker of individual designated trades, or a general worker. Skilled and semi-skilled workers are required to pass the relevant trade tests and intermediate trade tests respectively conducted by the Construction Industry Training Authority (CITA) or the Vocational

Training Council.

5. Workers who are in possession of relevant qualifications under existing legislation such as registered electrical workers, registered gas installers and licensed plumbers etc. or other equivalent qualifications are allowed to register as skilled workers of the respective trades.

### **The Bills Committee**

6. The House Committee agreed at its meeting on 21 March 2003 to form a Bills Committee to study the Bill. Chaired by Hon CHAN Kwok-keung, the Bills Committee held a total of 12 meetings to discuss the Bill. The membership list of the Bills Committee is in **Appendix I**.

7. The Bills Committee has received views from 37 organizations. The list of the organizations is in **Appendix II**.

### **Deliberations of the Bills Committee**

8. The Bills Committee recognizes the merits of implementing a mandatory registration system for construction workers by legislation as it will ensure the quality of construction work through assessment and certification of the skill levels of all construction workers, make available more reliable manpower data to facilitate manpower planning and training, raise the status of construction workers, foster a quality culture in the construction industry, etc. The proposed registration system is targeted at construction workers engaged on construction sites in new construction work and in major addition, alteration, improvement and term maintenance works. It is not intended to cover workers on decorative and minor maintenance works. Alterations of drainage systems or decoration works in existing buildings not involving the structure of any "specified structure" as provided for in Schedule 3 of the Bill also fall outside the scope of "construction work" for the purpose of the registration system. The Administration has advised that it will conduct further studies to examine the possibility of expanding the registration to cover other construction personnel including decorative and minor maintenance workers, and supervisory staff, etc.

9. In the course of deliberation, the Bills Committee has examined, inter alia, the following issues:

- (a) impact of the proposed registration system on construction workers (paragraphs 10 - 13);
- (b) registration arrangement for senior workers (paragraphs 14 - 30);

- (c) certification of workers' past experience (paragraphs 31 - 32);
- (d) trade tests involved (paragraph 33);
- (e) review and appeal mechanism (paragraphs 34 - 37);
- (f) composition, functions and powers of the Construction Workers Registration Authority and its Standing Committees (paragraphs 38 - 44);
- (g) application for registration and renewal of registration (paragraphs 45 - 48); and
- (h) other issues (paragraphs 49 - 61)

#### Impacts of the proposed registration system on construction workers

10. The Bills Committee is mindful of the need to ensure that the implementation of the proposed registration system would not, in one way or another, force any existing "competent" workers out of work or affect their wages or employment-related benefits.

11. The Administration advises that the mandatory registration system would only provide registered construction workers an objective certification of their skill levels, and thus would not affect their present employment if they are engaged to carry out construction work relevant to the skill levels and trades they are registered. The proposed registration system aims to ensure the quality of construction works. Those who have yet to attain the skill level expected from their work could still be engaged as provisional skilled/semi-skilled workers or general workers.

12. The Bills Committee also notes the Administration's view that the proposed registration system would not affect the wages of construction workers as wage level is essentially market driven and affected by the supply and demand of workers in the construction industry. With the registration system in place, registered workers would have their skill levels certified, which could be an objective reference for the employers to pay them market wages corresponding to their skill levels and trades.

13. The Administration points out that the existing employment related benefits of the workers would not be affected. On the other hand, the proposed registration system would help protect the interests of workers. Since more reliable site attendance records would be available with the implementation of the proposed registration system, such records would be useful in confirming the attendance of a registered worker in case of insurance

claims or wage disputes.

#### Registration arrangement for senior workers

14. The most contentious issue considered by the Bills Committee lies with the registration arrangement for senior workers. To this end, three major issues have been considered:

- (a) the qualifying period for senior workers to be registered as registered skilled workers (transitional);
- (b) whether a person who obtained the first registration through grandfathering arrangement should be allowed to apply for re-registration if he fails to renew his registration as required; and
- (c) whether the registration of a registered skilled workers (transitional) should have a validity of three years to allow time for such workers to re-sit trade tests if required.

15. The Bills Committee notes that since 1995, the Government has been implementing a contractual requirement requiring the contractors of the Housing Department to employ a given percentage of qualified tradesmen<sup>1</sup> in specified trades to improve the quality of construction works. Similar contractual requirement has also been included in public works contracts since 1996. Over the years, with the availability of more and more trade-tested workers in the construction industry, the percentage requirement of engaging a certain proportion of workers from the pool of qualified tradesmen has been adjusted upward.

16. According to the Administration, one major objective to implement the proposed registration system is to improve the quality of construction works through certification of the skill levels of workers. Towards this objective, the initial proposal requires all skilled and semi-skilled workers in the construction industry to pass a trade test before they can obtain the registration. Provisional registration is also allowed for experienced workers who have not yet acquired the trade test certificates or equivalent qualifications for obtaining registration. Workers who possess no less than six years' experience in the respective trade can apply for registration as skilled worker (provisional), while those who have no less than two years' relevant experience can apply for registration as semi-skilled worker (provisional). A period of three years is allowed for these workers to pass the respective trade tests to formally register as skilled or semi-skilled workers. To recognize the skill level of the senior workers and their contribution to the industry, senior workers with relevant experience of no less than 10 years will be exempted

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<sup>1</sup> This refers to skilled workers who hold a trade test certificate or an equivalent qualification.

from trade test and be registered as registered skilled workers by passing an assessment interview.

17. The Bills Committee notes the divergent views from various stakeholders over the registration arrangement for senior workers under the proposed registration scheme. The workers unions, which represent the interests of workers, are of the view that the qualifying period for senior workers should be reduced from 10 years to five or six years. The trade associations and training institutes, on the other hand, maintain that 10 years' experience is the bottom line to ensure the skills level of exempted workers.

18. The workers unions consider that workers with six years' experience should have had the necessary skill up to the level of a skilled worker. The example of the one-off exemption requirement set at six years under the registration of electrical workers for Grade A electrical workers has been quoted. Given the poor economic situation, a qualifying period of six years or shorter would help alleviate the concerns of workers.

19. The trade associations and training institutes are of the view that since the skill level of construction workers cannot be ascertained in the absence of an objective assessment. Ten years' experience is therefore necessary to give a reasonably degree of assurance of their skillfulness and craftsmanship. The views and arguments of the workers unions and the trade associations together with the Administration's response are set out in **Appendix III**.

20. The Bills Committee is aware that the various parties stand firm on their stance and a consensus cannot be reached easily. As the scheme is implemented for the benefit of the construction industry, its effectiveness will be undermined if a consensus cannot be reached among various stakeholders. The Bills Committee therefore invited the Administration to consult the relevant stakeholders with a view to reaching a consensus among them.

21. In December 2003, the Administration, after examining the views of all parties concerned, recommended that a qualifying period of eight years for the senior workers should be adopted. The Administration's view at that time was that this was a reasonable compromise as an experience of eight years can give a reasonable degree of assurance on the skill level of the exempted workers whilst addressing the concerns of the construction workers to a certain extent. However, the proposal was not supported by the workers unions.

*Revised proposal*

22. After further consultations with the workers unions and trade associations, taking into account the suggestion from some members, the Administration subsequently proposes a new one-off provisional registration arrangement to replace the original transitional registration arrangement for senior workers. In essence, under the revised proposal, provisional registration is allowed for experienced workers who possess no less than six years' experience in the respective trade to apply for registration as registered skilled worker (provisional). The registered skilled worker (provisional) may choose to attend and complete a training course specified by the Construction Workers Registration Authority (the Authority) for the trade including an assessment which forms part of the training course, or to pass the trade test. If the worker successfully completes the course or if he passes the trade test, he can obtain registration as a registered skilled worker for the trade.

23. In respect of the revised proposal from the Administration, the Bills Committee reiterates that the proposed registration system shall not, in one way or another, render existing "competent" workers out of work. Some members are still concerned about the need for senior workers with six years' experience to attend a training course specified by the Authority before they can register as a skilled worker. These members hold the view that as senior workers with six years' experience or more are fully competent to do their work with the necessary skill and technique, an assessment interview for workers should suffice. In their view, some workers may be reluctant to attend the training courses and some would consider the registration requirement for senior workers too stringent.

24. The Administration explains that the new proposal has already struck a balance between the concerns of workers unions and the expectations of trade associations, major employers and training institutes. The revised proposal has given a reasonable degree of assurance on the skill level of the workers. A training course pinpointing at common weaknesses observed in the respective trade tests would be helpful to workers. To be fair to the 110,000 workers<sup>2</sup> who have spent their effort and time to pass the trade tests or operator tests, the new proposal should require the applicants to go through some form of assessment for quality assurance.

25. The Bills Committee has examined the criteria for assessment upon completion of the training course. The Bills Committee notes that apart from meeting the attendance rate, the workers should pass an assessment which forms part of the course before they could successfully complete the course. The assessment would be in a form of multiple choice questions. Assistance

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<sup>2</sup> As some of the workers possess more than one type of certificate and hence, the actual number of workers is actually smaller than this figure.

would be provided to those workers who have difficulties in reading or understanding the questions.

26. Regarding the content and duration of the training courses, the Administration advises that they have yet to be worked out. In view of the specific nature and skill level of each trade, the content and duration of each training course would be trade related. The initial proposal is that the course content would cover essential elements of a particular trade. In particular, emphasis would be placed on areas which the workers commonly failed in the trade tests. For course duration, courses which last for up to a few days would be considered. Regarding course fee, the Administration advises that it is intended to keep the course fee as low as possible to alleviate the burden of the workers. The fee is intended to be set at a level similar to the charges for trade tests, i.e. between \$300 and \$700. Notwithstanding the Administration's explanation, some members have urged the Administration to shorten the duration of the training course. They also consider that the fees of the related training should be absorbed by the Authority.

27. Whilst the Bills Committee will not move Committee Stage amendments (CSAs) to change the registration requirement for senior workers, individual member may consider moving CSA to lower the registration requirement for senior workers, say six years' experience plus an assessment interview.

*Re-registration arrangements for senior workers registered under the grandfathering arrangement*

28. As a person who obtained his registration through trade test could apply for re-registration if he still holds a valid trade test certificate, the Bills Committee is of the view that the same should apply to persons relying on the grandfathering arrangement to obtain their first registration, and that such persons should be allowed to apply for re-registration even if they fail to renew their registrations.

29. Having considered members' view, the Administration comes up with a new proposal in connection with the newly proposed provisional registration arrangements for senior workers. A senior worker who successfully completes the training course will receive a certificate of completion as a life long qualification. He can obtain his registration as a registered skilled worker based on this qualification. If he fails to renew his registration as required, he could still rely on such qualification to apply for re-registration. However, if the senior worker fails to complete the course or pass a trade test within 3 years from the date of the registration, his registration as a registered skilled worker (provisional) will expire after the lapse of this period.

30. In connection with the newly proposed provisional registration arrangements, the Bills Committee notes that amendments will be made to the related clauses on “qualifications for registration” (clause 37), “acceptance and rejection of registration” (clause 38), “special provision on registration for certain trades” (clause 40) and “assessment interview and trade test for registered skilled workers (transitional)” (clause 41). Clause 39 on “registration as registered skilled worker (transitional)” and clause 36(3) about the assessment interview will also be deleted. In connection with the above amendments, corresponding amendments to clause 2(1), 3(2), 3(3), 6(8), 35(1), 43(2), 43(4), 46(1), 52(1), headings of Parts 1 and 2 of Schedule 1 are also necessary.

#### Certification of workers' past experience

31. One of the concerns raised by the trade unions and members of the Bills Committee is related to the difficulty faced by workers in obtaining verification of past experience. The Bills Committee has examined the means to facilitate the workers in having their past experience certified.

32. The Administration advises that if workers had genuinely been working in the construction industry for such a period, they could obtain the requisite certification from their past employers, the relevant trade associations or workers unions. The experience claimed by the workers can be certified either by the employers concerned or the relevant workers unions or trade associations. Further, a certain part of their experience (no more than two years) could be certified by statutory declaration. This arrangement will be used as the basis for the Authority to develop the necessary guidelines for registration of workers in future.

#### Trade tests involved

33. The Bills Committee notes the workers' concern about the difficulty in passing trade tests and has examined means to assist workers to sit for the necessary trade tests. The Bills Committee notes that workers would mainly be tested on day-to-day work performed at construction sites. In fact, the trade tests for some of the trades would be conducted at works sites. As such, it should not be difficult for an experienced worker to pass such tests. According to the trade test records of CITA, the average passing rate for trade tests of skilled workers of the building and civil engineering discipline is about 68% (the passing rate for semi-skilled worker of the discipline is about 81%). Interested parties may contact CITA to arrange refresher training course to assist workers in passing the trade tests. Some relevant workers unions also provide briefing sessions and mock tests for workers to prepare them for taking the trade tests.



### Review and appeal mechanism

34. The Bills Committee notes that a Review Committee will be established to allow a person to request for a review of a decision of the Registrar in respect of an application for registration or renewal of registration in accordance with the Bill, and the cancellation of registration of a person. In addition, an Appeal Board, comprising representatives from relevant trade unions, trade associations and professional institutions, etc will be appointed by the Administration to handle appeals from construction workers.

35. The Bills Committee has examined the review and appeal mechanism and made a number of suggestions to improve its operation.

36. In view of members' comments that the five members of an Appeal Board should be selected from different groups of the Appeal Board panel, the Administration has accepted the Bills Committee's suggestion to amend clause 55(2) so that no more than 2 members are selected in rotation from each of the 3 groups of Appeal Board panel members i.e. members from professional bodies (clauses 54(1)(a), (b) and (c)), from contractors (clause 54(1)(d)) and from trade unions (clause 54(1)(e)) to make up the five members of an Appeal Board.

37. The Bills Committee notes that clause 53(4) provides that each notice of appeal shall be accompanied by a small prescribed fee. The Administration proposes to set the fee at around \$30, so that part of the administrative cost can be recovered and possible abuse of the appeal mechanism can be avoided.

### Composition, functions and powers of the Construction Workers Registration Authority and its Standing Committee

38. Clause 7(3) of the Bill provides that the Authority shall consist of the Secretary for the Environment, Transport and Works (the Secretary) or his representative; and 17 other members appointed by the Secretary as follows:

- (a) a chairman;
- (b) 3 public officers;
- (c) 2 persons, each of whom is, in the opinion of the Secretary, a person from a training institute in the construction industry in Hong Kong;
- (d) 2 persons, each of whom is, in the opinion of the Secretary, a person from a contractor in the construction industry in Hong Kong;

- (e) 2 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;
- (f) 1 person who is, in the opinion of the Secretary, a person from a real estate developer in Hong Kong; and
- (g) 6 persons, each of whom is, in the opinion of the Secretary, a person connected with the construction industry in Hong Kong.

39. The Bills Committee considers that there is a need to maintain a balanced composition with adequate workers union and trade association representatives and other professionals so as to enhance the representativeness of the Board and to pool together more expertise for advice on construction-related matters. To this end, the Administration has agreed to increase the number of representatives from trade unions from 2 to 3. It will also expressly specify that there will be three members from the professional bodies connected with the construction industry. As a result of the change, the number of members connected with the construction industry as stipulated in clause 7(3)(b)(vii) will be reduced from 6 to 3. Corresponding amendments to the Bill will be made.

40. As a general rule, the Bills Committee is of the view that composition of the Authority, Qualifications Committee, Review Committee and Appeal Board Panel should not make specific reference to the names of the trade associations, trade unions or training institutes. The Administration has accepted the Bills Committee's view and will move CSAs to clauses 7, 12, 16 and 54 to this effect.

*Power to appoint members of the Construction Workers Registration Authority*

41. The Bills Committee has examined whether members of the Authority should be appointed by the Chief Executive (CE) instead of by the Secretary.

42. The Administration points out that it has recently completed an internal review of the statutory powers and functions vested in the offices of the Chief Secretary and the Financial Secretary (some of these may be delegated by the CE) with a view to determining whether any of these powers and functions should be transferred to the responsible Directors of Bureaux under the accountability system. The general principles and guidelines are that, except for the important powers held by the CE, all those statutory powers and functions that clearly fall within the policy portfolio of a Director of Bureau should be considered for transfer to the latter to better reflect its policy portfolios and responsibilities. As the appointment of members to the statutory Construction Workers Registration Authority falls within the policy portfolios of the Secretary, the appointment arrangement stipulated in clause 7 of the Bill

is in line with the above guidelines. The Administration also points out that it is not uncommon for members of statutory boards and committees be appointed by the Secretary of the responsible Bureau, for example, members of the Land Surveyors Registration Committee (Land Survey Ordinance, s.6, Cap.473) are appointed by the Secretary for Housing, Planning and Lands; and members of the Personal Data (Privacy) Advisory Committee (Personal Data (Privacy) Ordinance, s.11, Cap.486) are appointed by the Secretary for Home Affairs.

43. While some existing Ordinances confers powers or imposes duties upon the CE to the appointment of members to the specified statutory boards or committees, the CE may delegate any person to exercise such powers or perform such duties on his behalf according to s.63 of Cap.1. It is common that the CE may delegate such routine appointments to the Directors of Bureaux or other government officials.

#### *Qualifications Committee (Clause 12)*

44. Clause 12 establishes the Construction Workers Qualifications Committee and sets out its constitution and membership. The Administration has accepted the Bills Committee's suggestion to expand the composition of the Qualifications Committee to include representatives from the professional bodies. CSA to this effect will be moved by the Administration.

#### Application for registration and renewal of registration

45. The Bills Committee has examined whether the Administration would consider waiving the first registration fee. The Administration advises that the proposed registration fee is set at \$100 for three years (the fee is reduced by half if workers have recognized registration/certificate/license) which is already set at a very low level to alleviate the burden of workers. If the fee for the first registration is waived, the Authority, being a self-financing statutory body, may not have sufficient income to run the system. More importantly, the registration system may be subject to abuse as some persons, even without the need to carry out construction work on construction sites, may try to apply for registration and thus, adversely affect the objective of obtaining more reliable manpower data.

46. As regards the Bills Committee's comment that it will be unfair to those workers who need to pay the registration fee earlier than other workers due to the proposed phased submission of applications, the Administration has explained that there is a practical need for a phased submission programme in order to spread the applications evenly over a period of eight months. Nevertheless, the Administration agrees that the Authority would waive a corresponding amount of the registration fee depending on the time at which the payment is made. For example, if a worker needs to pay the registration

fee eight months earlier than the last batch of workers, the Authority would waive the worker from paying the fee for these eight months, calculated on a pro-rata basis.

*Expiry and renewal of registration (Clause 42)*

47. The Bills Committee notes that the Registrar shall not renew the registration of a person unless the person has attended and completed the specified development courses during the period of one year immediately before the date of application for renewal. This is similar to the arrangement of the "Green Card"<sup>3</sup> except the inclusion of a one-year requirement to ensure that the course completed by the person is more up-to-date. The Bills Committee notes that registered skilled workers will be required to attend two half-day sessions in order to complete the development course. Regarding the course content, trainees would be briefed on the latest standards, legislation-related matters, new construction technology and construction methods, etc.

48. The Bills Committee is of the view that maximum flexibility should be provided for workers to renew their registration. The Bills Committee notes that according to clause 42(6)(c), the application for renewal shall be submitted not later than seven business days before the expiry date of the applicant's registration. Having considered the views of the Bills Committee, the Administration now proposes to add a new clause 42(6A) to clarify that a person may make an application after the expiry of the period referred to in clause 42(6A)(a) but before the date on which the Registrar gives notice to cancel the person's registration. Alternatively, the person may submit an application for renewal of his registration within 14 days upon receipt of a cancellation notice from the Registrar under clause 47(3)(b). In both cases, the person shall complete the development courses before submitting his application.

Other issues

*Levy on construction works(Part 4)*

49. Part 4 of the Bill deals with the imposition of a levy on the construction works (as defined for the purposes of this Part) undertaken in Hong Kong. The levy collected will become the funds of the Authority. The basis on which the levy is imposed is similar to that on which the construction industry levy is imposed under the Industrial Training (Construction Industry) Ordinance (Cap. 317) and on which the levy is imposed under the

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<sup>3</sup> Under section 6BA of the Factories and Industrial Undertaking Ordinance (Cap. 59), a "Green Card" holder shall attend a training course (also called revalidation course) recognized by the Commissioner for Labour for the issue of another "Green Card". If the holder fails to attend the revalidation course, the Commissioner for Labour may not extend the date of expiry of the existing "Green Card" or issue another "Green Card" to the holder.

Pneumoconiosis (Compensation) Ordinance (Cap. 360). The provisions in Part 4 are modelled on the relevant provisions in those Ordinances.

50. Since the mechanism for imposition of levy under Part 4 of the Bill is modeled on Cap. 317 and Cap. 360, the Bills Committee notes that as a result of the enactment of the Construction Industry Levy (Miscellaneous Amendments) Bill 2003 at the Council on 11 February 2004, which sought to extend the application of construction industry levy to electrical and mechanical works in the construction industry, consequential CSAs to part 4 of the Bill will be required to bring the provisions therein in line with the amendments made to Cap. 317 and Cap. 360.

51. The Bills Committee notes that according to clause 20 of the Bill, the Secretary may by notice prescribe the rate of levy. The Bills Committee has remarked that in line with section 22 of Cap. 317, this clause should be amended so that the rate of levy would be prescribed by a resolution of the LegCo (i.e. subject to positive resolution procedure) instead of a notice made by the Secretary (i.e. subject to negative vetting procedure).

52. The Administration explains that the levy stipulated in the Bill is to meet the running costs of the proposed registration system and to alleviate the burden of construction workers in paying the registration/renewal fees. The rate of levy proposed is only at 0.03% of the value of construction operations<sup>4</sup>. The amount of levy so collected is less than one-tenth of that of the Industrial Training (Construction Industry) Ordinance (Cap. 317) which is currently at a rate of 0.4%. If there is a need to change the rate of levy in future, the Administration will widely consult the major trade associations and other relevant parties to ensure that the revised rate has their support. Though it is proposed that the Secretary may by notice prescribe the rate of levy, any changes to the rate of levy will be laid on the table of the LegCo and subject to LegCo's negative vetting process. Given the amount of levy is small, this administratively effective arrangement is considered adequate and appropriate.

#### *Complaints against registered construction workers (Part 6)*

53. Part 6 deals with complaints that may be made against registered construction workers. Clause 49 specifies the grounds on which complaints may be made against registered construction workers, and clauses 50 and 51 provide for the procedures for processing such complaints by the Authority and the Construction Workers Complaints Committee and the sanctions that may be

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<sup>4</sup> With the enactment of the Construction Industry Levy (Miscellaneous Amendments) Bill 2003, the previous definition of "construction works" under the Industrial Training (Construction Industry) Ordinance (Cap. 317) for the purposes of part 4 is no longer applicable. A new definition of "construction operations", which encompasses electrical and mechanical works, as shown in the new Schedule 1 to Cap. 317 is introduced. The new definition of "construction operations" will be used for the purposes of the amended part 4 of the Bill.

imposed by the Authority.

54. The Bills Committee has expressed concern about the possible abuse of the complaint mechanism by employers and that the provisions are considered inconsistent with the purpose of the registration system. After considering the views of the Bills Committee, the Administration agrees to move a CSA to delete part 6 and amend other relevant provisions of the Bill, including clauses 2(1), 8(1), 9(2), 12(3), 14, 15, 16(3), 35(1), 47(4), 47(6), 47(10), 47(11), 53, 54(2), 56(1), 58(3), 61(1), 61(2), 63(5), 64(1), Parts 3, 4 and 5 of Schedule 4.

*Powers of authorized officers to enter construction site*

55. The Bills Committee notes that the Administration has proposed specific amendments to the Bill to empower the Authority to take up prosecution and investigation actions in relation to offences under the Bill. These amendments are required as the Commissioner of Police has advised that they would not take up enforcement of the Ordinance. The amendments essentially cover the following:

- (a) The provisions (clauses 60(1) and (2)) on the appointment and power of the Authorized Officers have been expanded and are now placed under a new Part 3A (clauses 17A, 17B and 17C) immediately following Part 3 on the Authority and Standing Committees;
- (b) The appointment of the Levy Inspectors (clause 60(3)) is now placed in Part 4 as a new provision (clause 30A);
- (c) The offence provisions relevant to paragraph (a) above are incorporated into the existing clause 61 ; and
- (d) The provision on prosecution is placed immediately after clause 61 under a new clause 61A.

56. The Bills Committee has examined whether an authorized officer would be at risk when performing or exercising a function or power under this Ordinance at construction sites. Having considered the Bills Committee's view, the Administration has revised the provision to the effect that an authorized officer may perform or exercise any of his functions or powers under this Ordinance with the assistance of such police officers or other persons, or both, as the authorized officer thinks fit.

*Exemptions from prohibitions under section 3 (Clause 4)*

57. Under clause 4 of the Bill, a registered construction worker may

personally carry out on a construction site such construction work, which he is otherwise prohibited to do so, if he is under the instruction and supervision of a registered skilled worker or a registered semi-skilled worker for the trade. The Bills Committee has examined whether there is any restriction on the number of registered construction workers that a registered skilled worker or a registered semiskilled worker can supervise on a construction site.

58. The Administration advises that the policy intention is not to restrict the number of registered construction workers that a registered skilled worker or a registered semi-skilled worker can supervise on a construction site. The skill level of workers required to accomplish a given construction task depends on the work nature. For some construction works such as landslip preventive works and drainage maintenance works etc., the majority of workers required are normally general workers and hence, a small number of skilled workers may lead a large team of general workers to perform the work. Due to the wide variety of trades, nature of works and site conditions, there is no hard and fast rule as to the number of general workers that could be effectively supervised by a skilled or semi-skilled worker. It is for the contractor concerned to determine the right composition of the work team to complete the work on time, economically and meet the specifications and the requirements of the client. If workers not of the appropriate skill levels are intentionally employed to carry out the construction work, it is quite likely that the standard and the workmanship of the end product will fail to meet the requirements and be rejected by the client, resulting in rework and financial losses.

*Offences in relation to prohibitions under sections 3 and 5 (Clause 6)*

59. The Bills Committee has examined the legal responsibility of a principal contractor under clause 6, particularly whether or not the principal contractor will commit an offence if persons other than registered construction workers are employed to carry out construction work on construction site in contravention of clause 3 by a Sub-sub-sub-contractor.

60. The Bills Committee notes that clause 6(3) provides for a defence to a person charged under clause 6(2) for employing unregistered worker to personally carry out construction work on a construction site. A principal contractor will not be charged under clause 6(2) for any person employed by a sub-contractor (but not by the principal contractor). Thus, as far as a principal contractor is concerned, clause 6(3) has limited application. The test for an employer's defence is: whether the employer believed, and whether it was reasonable for the employer to believe, that the worker has the relevant registration. While it is reasonable to expect an employer to check a worker's registration before employing him, one does not expect a principal contractor to do so in relation to a worker to be employed by the principal contractor's sub-contractor.

61. The Administration further advises that clause 6(5) provides for a defence for a principal contractor charged under clause 6(4). While one does not expect a principal contractor to check the registration of a worker to be employed by the principal contractor's sub-contractor, it is reasonable to ask the principal contractor to take reasonable steps, and exercise due diligence, to ensure the worker on the site to have the relevant registration. A principal contractor may also cite the various things that he has done to prove that he has taken reasonable steps, and exercised due diligence, to ensure the worker on the site to have the relevant registration. However, if he proves that he has established a proper system to ensure the worker has the relevant registration and ensured the effective operation of the system, he is regarded to have proved that he has taken reasonable steps, and exercised due diligence, to ensure the worker on the site to have the relevant registration.

### **Committee Stage amendments**

62. The Administration has accepted a number of suggestions from members and agreed to move CSAs to improve the proposed registration system and drafting of the Bill. The Bills Committee will not propose any CSAs.

### **Recommendation**

63. The Bills Committee recommends the resumption of the Second Reading debate on the Bill on 30 June 2004.

### **Consultation with the House Committee**

64. The House Committee at its meeting on 11 June 2004 supported the recommendation of the Bills Committee to resume the Second Reading debate on the Bill on 30 June 2004.

Council Business Division 1  
Legislative Council Secretariat  
14 June 2004



**Bills Committee on  
Construction Workers Registration Bill**

**Membership list**

**Chairman** Hon CHAN Kwok-keung, JP

**Members** Hon Cyd HO Sau-lan  
Ir Dr Hon Raymond HO Chung-tai, JP  
Hon LEE Cheuk-yan  
Hon CHAN Yuen-han, JP  
Hon LEUNG Yiu-chung  
Hon Andrew CHENG Kar-foo  
Hon Abraham SHEK Lai-him, JP  
Hon LI Fung-ying, JP  
Hon LEUNG Fu-wah, MH, JP  
Hon LAU Ping-cheung

(Total: 11 members)

**Clerk** Mr Andy LAU

**Legal Adviser** Miss Monna LAI

**Date** 2 July 2003

**Bills Committee on  
Construction Workers Registration Bill**

**List of parties which have submitted views to the Bills Committee**

1. Airport Authority\*
2. CLP Power\*
3. Construction Industry Training Authority
4. Construction Site Workers General Union
5. Electronic Communication Technical Staff Union
6. The Federation of Hong Kong Electrical & Mechanical Industries Trade Unions
7. Fire and Security Engineering Employees Association
8. H.K. & KLN. Brick-laying & Construction Trade Workers' Union
9. Hong Kong Air-conditioning and Refrigerating Trades Workers General Union
10. Hong Kong Construction Association
11. Hong Kong Construction Industry Bar-Bending Workers Union
12. Hong Kong Construction Industry Employees General Union
13. Hong Kong Construction Industry Formwork Workers Union
14. Hong Kong Construction Industry Surveying, Levelling and Project Supervision Staff Association
15. The Hong Kong Electrical Contractors' Association Ltd
16. The Hong Kong Federation of Electrical and Mechanical Contractors Limited\*
17. Hong Kong General Union of Lift and Escalator Employees
18. Hong Kong & Kowloon Bamboo Scaffolding Workers Union (Tung-King)

19. Hong Kong & Kowloon Carpenters General Union
20. Hong Kong & Kowloon Cement & Concrete Construction Trade Workers Union
21. Hong Kong & Kowloon Dockyards & Wharves Carpenters General Union
22. Hong Kong and Kowloon Electrical Engineering the Appliances Trade Workers Union
23. Hong Kong & Kowloon Masonry & Building Workers Union
24. Hong Kong and Kowloon Painters General Union
25. Hong Kong Housing Authority\*
26. Hong Kong Housing Society\*
26. The Hong Kong Institute of Architects
28. The Hong Kong Institute of Surveyors\*
29. The Hong Kong Institution of Engineers
30. Hong Kong Plumbing General Union
31. Joint Utilities Policy Group\*
32. Kowloon-Canton Railway Corporation\*
33. Provisional Construction Industry Co-ordination Board\*
34. The Neighbourhood and Workers' Service Centre
35. The Real Estate Developers Association of Hong Kong
36. Welding Industry Employees Association
37. Dr WONG Kam-din, Eastern District Councillor

\*Organizations/individuals which have provided written submissions to the Bills Committee.

## Summary of views on the registration arrangements for senior workers

### Appendix III

Arguments/Views of the Workers Unions	Arguments/Views of the Trade Associations	ETWB's Remarks
<ul style="list-style-type: none"> <li>• Did support a qualifying period of 10 years previously, but situation had changed. Because of the poor economic climate and the high unemployment rate, some construction workers had grievance against the government. It would help maintain the stability of the society if we could address the grievance of some workers by shortening the qualifying period.</li> </ul>	<ul style="list-style-type: none"> <li>• Original proposal for the qualifying period was 15 years and they had given way to a shorter experience of 10 years</li> <li>• To have confidence in workers' skill level and to ensure works quality, the experience requirement should not be further relaxed and the 10-year experience requirement was a bottom line.</li> <li>• If qualifying period was unreasonably short, it only took care of the interest of the workers who had not passed trade tests but sacrificed the interest of the whole industry.</li> <li>• Contractors and subcontractors now employed more trade tested workers for improved quality of works. Workers without a trade test certificate would eventually be very difficult to find a job.</li> <li>• Long-term effects on the construction industry had to be considered, particularly those causing damages for decades. If the qualifying period was too short, the industry and customers would suffer from the work of an incompetent worker which might be as long as 30 years until he retired.</li> </ul>	<ul style="list-style-type: none"> <li>• Concur that the qualifying period should not be too short to ensure works quality and site safety. It should have no conflicts with other provisions in the Bill.</li> <li>• Workers with 6-year experience could obtain provisional registration and to pass trade test within 3 years. There would be a <b>major conflict</b> if the qualifying period was reduced to 6 years.</li> <li>• Over 70,000 workers have now passed the trade tests for skilled or semi-skilled workers. Based on a qualifying period of 10 years, it is estimated that about 20,000 workers would obtain registration through the exemption provision and about 35,000 workers would need to attend trade tests. If the qualifying period is shortened to 6 years, it is expected that a large number of these 35,000 workers could obtain registration without going through the certification process.</li> <li>• Exemption for senior workers(老行尊) aims to avoid the embarrassing situation where an experienced and senior worker had to undergo trade test invigilated by his former apprentice, and to recognize their contribution and long service in the construction industry. A too short qualifying period will defeat the original good intent and aims of granting exemption to senior workers. It will not fulfil the main objectives of the Construction Workers Registration System including certification of the skill level of workers through trade testing, promotion of the quality culture in the</li> </ul>

		<p>industry, and raising the status of the construction workers. It will also not protect the interest of those workers who are in the majority and had worked hard, spent the time and effort to pass trade tests.</p>
<ul style="list-style-type: none"> <li>• Exemption provision in the registration of electrical workers should be a useful reference for the construction workers registration.</li> <li>• Workers with experience of 6 years should be exempted from trade tests and be registered as skilled workers.</li> </ul>	<ul style="list-style-type: none"> <li>• Construction workers registration was a new initiative. It would not be appropriate to follow the transitional arrangements adopted in other registrations with different scope or nature and with the passage of time.</li> </ul>	<ul style="list-style-type: none"> <li>• The current manpower situation in the construction industry is different from that of the electrical workers registration. When the electrical workers registration was proposed, there was only a handful of workers who possessed the requisite qualification. It was necessary to adopt a less stringent exemption mechanism so that most electrical workers could continue to work in the industry.</li> </ul>
<ul style="list-style-type: none"> <li>• Registration requirements should be lenient initially and be tightened up later on. (先寬後緊)</li> <li>• Registered workers were required to attend short development courses every 3 years, even if a less stringent registration requirement for workers was adopted, the registered workers were still required to seek continuous improvement.</li> </ul>		<ul style="list-style-type: none"> <li>• The one-off provisional and transitional registration arrangements are considered reasonable arrangements to facilitate workers in obtaining registration to continue to work on construction sites, and in achieving the main objectives of improving works quality through certification of skill levels of workers.</li> <li>• The trade tests examine the day-to-day work and skills workers of the trade commonly perform on construction site, and the average workers who have the relevant experience in the trade should pass the trade tests. According to the trade test records of CITA, the average pass rates for trade tests of skilled and semi-skilled workers (building and civil engineering discipline) are about 68% and 81% respectively.</li> <li>• The development courses are not related to the workers' skill level. They cover basic safety training and provide some latest information on relevant regulations and construction practices,</li> </ul>

		etc.
<ul style="list-style-type: none"> <li>• Workers should be widely and sufficiently consulted. There were not enough consultations with the workers unions and other contractors associations.</li> <li>• Conduction of questionnaire survey at construction sites might be useful.</li> </ul>	<ul style="list-style-type: none"> <li>• Members of the HKCA undertook about 90% of the local construction contracts. All along, they had consulted their members on the subject matter and relayed their views in previous discussions.</li> <li>• The president of HKCA had talked to a number of trade tested workers and they all considered that there should be no exemption for the senior workers to obtain registration.</li> </ul>	<ul style="list-style-type: none"> <li>• Some leaders of the workers unions advised at meetings of the Working Group on Registration of Construction Workers that they were representing the interest of the majority of workers unions and would consult other relevant workers unions and reflect their views on the proposal.</li> <li>• CITA conducted a survey in 2001 through questionnaires to construction personnel who attended the basic safety training. Views on the proposed registration in the over 8,000 questionnaires collected were positive.</li> <li>• In recent visits to several construction sites, ETWB interviewed quite a number of trade tested workers. Most of them considered that workers with relevant experience in the trade should have no difficulty in passing the trade tests. They considered that all skilled workers should pass the trade tests, although some would have no objection to only granting exemption to the senior workers (老行尊) with 10 years working experience.</li> </ul>