

**Bills Committee on
Construction Industry Levy (Miscellaneous Amendments) Bill 2003**

**Administration's Responses to
Issues raised by the Bills Committee**

Purpose

This paper sets out the Administration's responses to a number of issues raised by the Bills Committee at its meeting held on 17 October 2003.

Background

2. At the meeting, Members requested the Administration to:
 - (a) consider providing an undertaking by the Secretary for Education and Manpower in his speech delivered during the resumption of Second Reading debate on the Bill that the fee charging principle adopted by the Construction Industry Training Authority (CITA) for determining the test fee for E&M trade tests would be the same as that for the fees of the construction trade tests;
 - (b) consult the Hong Kong Institution of Engineers (HKIE) on the proposed revision of the composition of the CITA Board i.e. proposed amendments to section 7(1)(e) and (f) of the Industrial Training (Construction Industry) Ordinance (ITCIO);
 - (c) review the drafting of paragraph 2 of the proposed schedule 1 to ITCIO to reflect more clearly the policy intent; and
 - (d) respond to the issues raised by the legal adviser to the Bills Committee in her letter dated 6 October 2003 to the Administration.

The fee charging principle adopted by CITA

3. Since CITA's establishment in 1975, its operation has been funded by the construction industry levy without Government's subvention. As its source of funding is coming from the industry, CITA has full autonomy in determining the fees for its training courses and trade testing. The Government is not therefore in a position to provide any undertaking that the fee charging principle for determining the test fee for E&M trade tests would be the same as that for the fees of the construction trade tests.

4. At present, the fees for construction trade tests administered by CITA are heavily subsidised by charging only the material costs. According to CITA, the same fee-charging principle will likely be extended to the E&M trade tests. However CITA is unable to finalise the testing fee for E&M tests at this stage as the actual test contents have not yet been finalised.

Consultation with the Hong Kong Institution of Engineers

5. Members may wish to note that the origin of having two HKIE representatives sitting on the CITA Board dates back to 1975 when the Board comprised a total of 13 representatives, including one each from the Institution of Structural Engineers (Hong Kong Branch) and the Engineering Society of Hong Kong. In December 1975, the Hong Kong Institution of Engineers Ordinance (Cap. 1105) was enacted and section 6 thereof provided, inter alia, that HKIE shall succeed to all rights of the Engineering Society of Hong Kong. Later on in June 1978, the Institution of Structural Engineers (Hong Kong Branch) was amalgamated into HKIE as its Structural Division. Section 7(1)(e) and (f) of ITCIO were amended in 1982 to reflect these changes, and HKIE has since had two seats on the CITA Board.

6. Following the need for enhancing the scope and content of courses run by CITA, the Construction Industry Review Committee recommended that the composition of the CITA Board should be reviewed with the objective of achieving an appropriately balanced membership to cope with its expanded responsibilities. The Working Group on Skills Development for Construction Workers subsequently formed by the Provisional Construction Industry Co-ordination Board suggested that a representative of E&M contractors should be

appointed for this purpose. Since only one seat is allocated to each of the other two professional bodies on the CITA Board (i.e. the Institute of Architects and the Institutes for Surveyors), the Working Group also recommended that the number of seats allocated to HKIE should be reduced from two to one. This proposal received unanimous support from the CITA Board, which comprises two HKIE representatives, in May 2002.

The drafting of paragraph 2 of the proposed Schedule 1

7. A Member requested the Administration to review the drafting of paragraph 2 of the proposed Schedule 1 to ITCIO to ensure it clearly reflects the policy intent. During the last meeting, the use of the expression "incidental to" in paragraph 2 in the context of determining "design, advice and consultation work" as part of the construction operations was discussed. The Administration explained that for one thing to be "incidental to" another, it meant that it was less important than the other thing and it followed on that other thing which was more worthy, or principal. Applying this to the context, if any "design, advice and consultation work" formed a major part of a construction contract or a separate contract had been entered into between the employer (as defined in section 2(1)) and the person who carried out such works for the employer, the operations could not be regarded as "incidental to" the construction operations. At this stage, the Administration is of the view that the paragraph does achieve the policy intent.

Response to the issues raised by the legal adviser

8. We will issue a reply letter to the legal adviser to the Bills Committee addressing the issues raised in her letter dated 6 October 2003 to the Administration. We will separately forward a copy of the reply to Members.

Education and Manpower Bureau
November 2003