

立法會
Legislative Council

LC Paper No. CB(1)228/05-06
(These minutes have been
seen by the Administration)

Ref : CB1/BC/1/04/2

Bills Committee on Construction Industry Council (No. 2) Bill

**Minutes of sixteenth meeting held on
Tuesday, 25 October 2005, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon KWONG Chi-kin (Chairman)
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Yuen-han, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon WONG Kwok-hing, MH
Hon Alan LEONG Kah-kit, SC
- Members absent** : Hon Abraham SHEK Lai-him, JP
Hon CHEUNG Hok-ming, SBS, JP
Hon Patrick LAU Sau-shing, SBS, JP
- Public officers attending** : Mr Clement CHEUNG
Deputy Secretary for the Environment, Transport and
Works (Works) 1
- Ms Agnes KWAN
Assistant Secretary for the Environment, Transport and
Works (Industry Review)
- Ms Frances HUI
Senior Government Counsel
Department of Justice

Ms Selina LAU
Government Counsel
Department of Justice

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (1)4

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Ms Sarah YUEN
Senior Council Secretary (1)6

Action

I Confirmation of minutes

- (LC Paper No. CB(1)100/05-06 -- Minutes of meeting on 3 October 2005
LC Paper No. CB(1)101/05-06 -- Minutes of meeting on 10 October 2005)

The minutes of the meetings held on 3 and 10 October 2005 were confirmed.

II Clause-by-clause examination of the Bill

- (LC Paper No. CB(1)99/05-06(01) -- List of follow-up actions arising from discussion at the meeting on 10 October 2005
LC Paper No. CB(1)99/05-06(02) -- Administration's responses to follow-up actions arising from discussion at the meetings on 3 and 10 October 2005
LC Paper No. CB(1)99/05-06(03) -- Draft Committee Stage Amendments to Clauses 2, 5, 7, 9, 18, 21, 56, 58, 59 and 71 and new Schedule 1A, Schedule 2 and Schedule 5
LC Paper No. CB(1)99/05-06(04) -- Marked-up version of the draft Committee Stage Amendments to Clauses 2, 5, 7, 9, 18, 21, 56, 58, 59 and 71 and new Schedule 1A, Schedule 2 and Schedule 5
LC Paper No. CB(1)2313/04-05(04) -- A comparison of the

- Construction Industry Council
(No. 2) Bill with relevant
provisions of the Industrial
Training (Construction
Industry) Ordinance
(Cap. 317)
- LC Paper No. CB(1)2024/04-05(04) -- Updated summary of
concerns/views expressed by
organizations and the Bills
Committee (as at 11 July
2005)
- LC Paper No. CB(1)2386/04-05(02) -- Administration's responses to
the updated summary of
concerns/views expressed by
organizations and the Bills
Committee (as at 11 July
2005)
- LC Paper No. CB(1)1120/04-05(01) -- Letter dated 14 March 2005
from Hon CHEUNG
Hok-ming expressing views
on certain clauses of the Bill
- LC Paper No. CB(1)1161/04-05(03) -- Administration's response to
the letter from Hon CHEUNG
Hok-ming
- LC Paper No. CB(1)1106/04-05(01) -- Assistant Legal Adviser's
letter dated 9 March 2005
commenting on certain
clauses of the Bill
- LC Paper No. CB(1)1201/04-05(01) -- Administration's response to
the letter from Assistant Legal
Adviser
- LC Paper No. CB(3)34/04-05 -- The Construction Industry
Council (No. 2) Bill
- LC Paper No. CB(1)153/04-05(02) -- Marked-up copy of the
consequential amendments
arising from the Bill)

2. The Bills Committee deliberated (Index of proceedings attached at the **Appendix**).

3. The Administration was requested to:

New clause 7A in Schedule 2

- (a) review the drafting of new clause 7A(2)(b)(ii). One suggested version was “涉及徵款、附加費、罰款或另加罰款的個別個案;”;

Clause 29

- (b) consider including in the first few annual reports submitted by the Construction Industry Council (CIC) to the Secretary for Environment, Transport and Works (Secretary) the system put in place by nominating organizations for their candidates for reporting to the stakeholder groups;

Clause 9

- (c) before the resumption of the Second Reading Debate on the Bill, advise which three public officers would be appointed by the Secretary to the CIC under clause 9(1)(c); and

Others

- (d) before the resumption of the Second Reading Debate on the Bill, provide a written report outlining work of the task force to be formed by the Provisional Construction Industry Co-ordination Board to tackle issues relating to the transitional arrangements.

III Any other business

4. Members noted that the seventeenth meeting of the Bills Committee had been scheduled for Thursday, 10 November 2005, at 4:30 pm, to continue clause-by-clause examination of the Bill.

5. The meeting ended at 12:35 pm.

**Proceedings of the sixteenth meeting of the
Bills Committee on Construction Industry Council (No. 2) Bill
on Tuesday, 25 October 2005, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000037	Chairman	Confirmation of minutes of the meetings held on 3 and 10 October 2005 (LC Paper Nos. CB(1)100/05-06 and CB(1)101/05-06 respectively)	
000038 - 000133	Chairman	Opening remarks	
000134 - 002056	Administration Ms Emily LAU ALA Chairman Mr WONG Kwok-hing	<p>Briefing by the Administration on item (1) of the Administration's responses to follow-up actions arising from discussion at the meetings on 3 and 10 October 2005 (Annexes A and B to LC Paper No. CB(1)99/05-06(02))</p> <p>Administration's agreement in response to a member to further review the drafting of new clause 7A(2)(b)(ii) in Schedule 2. The member's suggested version was “涉及徵款、附加費、罰款或另加罰款的個別個案;”</p> <p>ALA's comment in response to the member that similar provisions in ordinances applicable to other statutory bodies and case law on the meaning of “reasonableness” as given in Annex B could provide some objective criteria for ascertaining “reasonableness”</p> <p>A member's view on the need to define the expression “reasonably considers” in new clause 7A(2)(c) in Schedule 2 to ensure any decision made by the Construction Industry Council (CIC) to conduct closed</p>	The Administration to take action under paragraph 3(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>meetings would be properly made with regard to reasonableness</p> <p>Some members' view on the need for the CIC secretariat to compile rules of procedures and guidelines for meetings, and brief CIC members on what constituted "reasonableness" to facilitate decisions on whether closed meetings should be conducted</p> <p>Administration's agreement that rules of procedures for conducting closed sessions should be compiled by the CIC Secretariat, and expression of the following points –</p> <p>(a) The expression "reasonably considers" in new clause 7A(2)(c) was introduced with the aim to ensure the discretions exercised by CIC in conducting closed meetings would be made with regard to objective principles as shown in the relevant case law;</p> <p>(b) CIC's meetings should in principle be conducted in public. As such, in the event that a decision to conduct a closed meeting was needed to be made according to new clause 7A(2)(c), proper justification would be required; and</p> <p>(c) Such decisions would be made collectively by members of CIC as part of its meeting procedures.</p>	
002057 - 002410	Administration	Briefing by the Administration on item (2) of LC Paper No. CB(1)99/05-06(02)	

002411 - 003831	Mr WONG Kwok-hing	Members' expression of the following	
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Time marker	Speaker	Subject(s)	Action required
	<p>Mr LEE Cheuk-yan Ms LI Fung-ying Ms Emily LAU Administration</p>	<p>views –</p> <p>(a) A member’s comment that the Administration should be more forthcoming in providing the written undertaking concerning smooth transition of the staff of the Construction Industry Training Authority (CITA) upon the amalgamation of CITA and CIC (the undertaking), especially as the voluntary exit scheme (VES) launched by CITA had attracted 87 applications in excess of the target of 50;</p> <p>(b) Members’ enquiry about how the above applications would be handled and their effect on CITA’s financial position;</p> <p>(c) Some members’ statement that they would not support the Bill unless the undertaking was given. A member opined that the undertaking should guarantee the continued employment of CITA staff for five years. Another member opined that there should not be a specified year for the transitional period;</p> <p>(d) A member’s emphasis of the need to provide the undertaking before the Bills Committee (BC) examined clause 82;</p> <p>(e) Some members’ emphasis of the need to ensure CITA management could not play tricks to cut staff before the amalgamation of CITA and CIC; and</p> <p>(f) A member’s view that the undertaking could also help</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>uphold the spirit of contract by ensuring that the employer could not change the employment terms without first securing the agreement of the employee(s) concerned.</p> <p>Administration's expression of the following points –</p> <p>(a) The Administration would aim to provide the undertaking in writing before BC examined clause 82. The length of the transitional period would be carefully examined based on the principle that no undue restrictions should be imposed on the future operation of CIC;</p> <p>(b) The response to VES so far was satisfactory. While the outcome had yet to be ascertained pending screening of the applications, it was expected that CITA would be able to maintain its financial viability up to 2010; and</p> <p>(c) The problems between the management and staff sides of CITA had been caused by insufficient communication and a lack of mutual trust. According to clause 82 of the Bill, the continued employment of CITA staff with their terms and conditions preserved upon completion of the amalgamation exercise had already been assured.</p>	

Time marker	Speaker	Subject(s)	Action required
003832 - 004126	Mr Howard YOUNG Administration Chairman	<p>A member's expression of the following views –</p> <p>(a) While the undertaking should be given, the length of the guaranteed period should not be fixed rigidly but should reflect the employment terms of individual CITA staff;</p> <p>(b) It might be premature to claim that the VES had exceeded its target because the applications had yet to be screened; and</p> <p>(c) The guarantee that serving staff of CITA would continue be employed on existing terms upon CITA's amalgamation with CIC within a certain period should not apply to CITA's contract staff and new staff.</p> <p>Administration's consent to take into account the member's views in drawing up the undertaking</p>	
004127 - 004440	Ms Emily LAU Administration Chairman	<p>Administration's advice in response to a member and the Chairman that the undertaking could be made in various forms such as in a letter to the BC, or in the speech of the Secretary for Environment, Transport and Works (the Secretary) at the Second Reading Debate. Whilst the length of the transitional period had yet to be fixed, it would most likely be shorter than five years</p> <p>Chairman's view that the undertaking could be given in different forms highlighted above</p>	
004441 - 004806	Administration	Briefing on item (3) of LC Paper No. CB(1)99/05-06(02) (Annexes C and D)	

Time marker	Speaker	Subject(s)	Action required
004807 - 005356	Mr WONG Kwok-hing Administration	<p>Administration's explanation in response to a member that the levy income of CITA had increased in 2001 and 2002 notwithstanding the drop in the value of construction works in these two years since –</p> <p>(a) there was some lead time for the impact of dwindling construction activities to kick in; and</p> <p>(b) the levy rate had been increased from 0.25% to 0.4% since 2000</p> <p>The member's request for Annex D to include a forecast on the value of construction works and levy income for the coming years, and the Administration's explanation that the financial sustainability of CITA up to 2010 had already been demonstrated in another submission to BC under separate cover</p>	
005357 - 005730	Ms Emily LAU Administration	<p>Administration's expression of the following points in response to a member –</p> <p>(a) It was assisting CITA to look into possible administrative arrangements with regulatory authorities and other parties concerned for an enhanced impact of the levy collection mechanism, including the feasibility of identifying leviable construction operations through the landfill charging system to be implemented by the Environmental Protection Department; and</p> <p>(b) CITA's board and management were keen to maximize levy income in recognition of CITA's stringent financial position. The</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>efficiency in collection of levy could be further improved in future when a closer liaison with various works departments were established through the co-ordination of CIC.</p>	
005731 - 011908	<p>Administration Ms Emily LAU Ms LI Fung-ying Mrs Selina CHOW Mr Alan LEONG Chairman</p>	<p>Briefing by the Administration on item (4) of LC Paper No. CB(1)99/05-06(02)</p> <p>A member's view on the need to specify the details of the requirement for nominating organizations to put in place a system for their candidates to consult and report back regularly to their stakeholder groups the work of CIC. Work done in this regard should also be covered in the annual reports submitted to the Secretary by CIC on core activities. She also saw a need to ensure before passage of the Bill that the stakeholder groups would agree to put in place the reporting system</p> <p>Some other members' view on the need for flexibility in recognition of the resource limitations of certain stakeholder groups, and hence the undesirability of imposing rigid requirements on how CIC members should consult and report back to the stakeholder groups they represented. Moreover, the proposed mode of appointment could already ensure CIC members could represent their respective industry sectors</p> <p>Another member's and the Chairman's view that CIC should provide resource support to the above report back system</p> <p>Administration's expression of the following points –</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(a) The consultation and report back system in different sectors might vary due to their unique circumstances. Notwithstanding, there was a need to ensure that nominating organizations were fully aware of their role in enabling the appointees to keep in regular contact with stakeholder groups belonging to their constituent sectors;</p> <p>(b) Consideration would be given to including in the first few annual reports submitted by CIC to the Secretary relevant systems put in place by nominating organizations; and</p> <p>(c) The CIC secretariat would be able to explore providing logistical support in relation to venue and publicity for the report back system.</p>	<p>The Administration to take action under paragraph 3(b) of the minutes</p>
011909 - 012025	Administration Ms Emily LAU	<p>Briefing by the Administration on item (5) of LC Paper No. CB(1)99/05-06(02) (Annex E)</p> <p>Administration's confirmation in response to a member that significant improvements achieved by the construction industry as a result of the initiatives introduced by CIC would be covered in its annual report</p>	
012026 - 012854	Administration Mr LEE Cheuk-yan Ms Emily LAU Chairman	<p>Briefing by the Administration on items (6) and (7) of LC Paper No. CB(1)99/05-06(02)</p> <p>Administration's confirmation in response to a member that the date of dissolution of CITA would be appointed by the Secretary by a notice subject to negative vetting</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Administration's undertaking in response to a member to provide before the resumption of the Second Reading Debate on the Bill a written report outlining major areas of work handled by the task force to be formed by the Provisional Construction Industry Co-ordination Board on preparatory activities essential for the establishment of CIC. It was however stressed that the task force would serve as a platform for industry stakeholders to forge consensus on practical transitional issues which did not warrant a detailed examination by BC nor any delay in the scrutiny of the Bill</p>	<p>The Administration to take action under paragraph 3(d) of the minutes</p>
<p>012855 - 014809</p>	<p>Administration Chairman Ms Emily LAU Ms LI Fung-ying Mr Alan LEONG Mr LEE Cheuk-yan</p>	<p>Briefing by the Administration on item (8) of LC Paper No. CB(1)99/05-06(02)</p> <p>Members' expression of the following views –</p> <p>(a) There was a need to provide more details on the contemplated liaison framework to be established by the Administration to maintain an effective interface with CIC;</p> <p>(b) There was a need to specify the bureau to whom complaints about CITA's operation could be directed for action;</p> <p>(c) There was a need to give details on whether decisions of CIC relating to policies would be accepted by Government, and how this would be achieved through the three public officers appointed to CIC (clauses 9(1)(c) and 9(3)(f)); and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(d) The Administration should undertake to implement measures through which consensus of the industry could be reflected to relevant departments by CIC.</p> <p>Administration's expression of the following points –</p> <p>(a) CITA was currently required to submit annual reports and financial statements for tabling at the Legislative Council. Apart from similar requirements applicable to CIC after its establishment, the monitoring role played by industry representatives would be further strengthened with an extensive scope of self-regulatory powers provided in the Bill;</p> <p>(b) ETWB as the lead agent within Government to co-ordinate construction-related activities and housekeeping bureau of CIC would keep a close watch over its effectiveness in performing statutory functions and arrange for consensus achieved by the industry be duly reflected to respective bureaux/departments for consideration. The liaison mechanism being contemplated was intended to supplement formal exchanges at regular meetings with prior discussion sessions among relevant parties on issues of concern; and</p> <p>(c) The Permanent Secretary for Environment, Transport and Works (Works) would probably be appointed under clause 9(1)(c) of the Bill as one of the three</p>	<p>The Administration to take action under paragraph 3(c)</p>

Time marker	Speaker	Subject(s)	Action required
		public officers sitting on CIC. In response to a member, details of the other two public officers to be appointed to CIC would be provided before the Second Reading Debate.	of the minutes
014810 - 014914	Chairman	Meeting arrangements	

Council Business Division 1
Legislative Council Secretariat
9 November 2005