

立法會
Legislative Council

LC Paper No. CB(1)629/05-06
(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 nineteenth meeting held on
Thursday, 8 December 2005, at 4:30 pm
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 Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon LI Fung-ying, BBS, JP
Hon WONG Kwok-hing, MH
Hon Alan LEONG Kah-kit, SC
Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon LEE Cheuk-yan
Hon CHAN Yuen-han, JP
Hon Andrew CHENG Kar-foo
Hon Abraham SHEK Lai-him, JP
Hon CHEUNG Hok-ming, SBS, JP
- Public officers attending** : Mr Jack CHAN
Principal Assistant 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

Attendance by invitation : The Construction Industry Training Authority

Mr Tony YAU
Accounting Manager

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

Staff in attendance : Ms Kitty CHENG
Assistant Legal Adviser 5

Ms Sarah YUEN
Senior Council Secretary (1)6

Action

I Confirmation of minutes

(LC Paper No. CB(1)442/05-06 -- Minutes of meeting on 10 November 2005)

The minutes of the meeting held on 10 November 2005 were confirmed.

II Clause-by-clause examination of the Bill

(LC Paper No. CB(1)450/05-06(01) -- List of follow-up actions arising from discussion at the meeting on 24 November 2005

LC Paper No. CB(1)462/05-06(01) -- Administration's responses to follow-up actions arising from discussions at the meetings on 25 October and 10 November 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. With the aid of power-point, the Accounting Manager of the Construction Industry Training Authority briefed members on the system for collecting levy on construction operations. The hardcopy of the power-point presentation was tabled at the meeting.

(*Post-meeting note:* The hard copy of the power-point presentation was circulated to members vide LC Paper No.CB(1)501/05-06 on 9 December 2005.)

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

4. The Administration was requested to –

Clause 10

(a) clarify the policy intention of appointing members for not more than two consecutive terms or not more than six years and reflect the policy intention in the clause. In any event, members considered the proposed amendment to subclause (2) unclear;

Clause 12(a)

(b) clarify how the seeking of the Council's permission for absence from meetings would operate. The Administration was requested to provide information on how statutory bodies such as District Councils and Hospital Authority enforced a similar provision; and

Clause 12(d)

(c) review the appropriateness of using the plural form of the word "functions". Members were concerned that the proposed amendment would cause uncertainty as to whether a member would be removed because of his inability to perform functions in whole or in part.

III Any other business

5. Members noted that the twentieth meeting of the Bills Committee had been scheduled for Tuesday, 20 December 2005, at 8:30 am to continue clause-by-clause examination of the Bill.

6. The meeting ended at 6:30 pm.

**Proceedings of the nineteenth meeting of the
Bills Committee on Construction Industry Council (No. 2) Bill
on Thursday, 8 December 2005, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000019	Chairman	Confirmation of minutes of the meeting held on 10 November 2005 (LC Paper No. CB(1)442/05-06)	
<i>Discussion on imposition of levy on construction operations</i>			
000020 – 001038	Chairman CITA	Briefing by the Construction Industry Training Authority (CITA) on the system for collecting levy on construction operations with the aid of power-point	
001039 – 001508	Chairman Mr Howard YOUNG CITA	<p>CITA's expression of the following points in response to a member –</p> <p>(a) The employer in respect of any construction operations should, if no authorized person was appointed under section 4 of the Buildings Ordinance (Cap. 123), appoint a person to perform the functions of an authorized person, and supply his name to CITA; and</p> <p>(b) Irrespective of the nature of ownership, levy would be imposed on renovation works whose total value exceeded HK\$1 million as long as the works concerned were not carried out for a person who occupied the domestic unit himself/herself.</p>	
001509 – 011953	Chairman Ms LI Fung-ying CITA	<p>A member's expression of concern about possible evasion of levy payment by making use of the exemption applicable to renovation works of domestic units</p> <p>CITA's assurance that it was the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>contractor's responsibility to report to CITA the commencement/completion/payment received in respect of any leviable construction operations. Such requirements had been in place and followed by contractors for over two decades</p>	
001954 –004939	<p>Chairman Ms Emily LAU Ir Dr Raymond HO Mr Patrick LAU CITA Administration</p>	<p>CITA and Administration's expression of the following points in response to members –</p> <p>(a) The contractor and the authorized person were both required to report the commencement/completion of any leviable construction operations to CITA to facilitate cross-check of the value of the works;</p> <p>(b) The maximum fine imposed for failing to give notice of the commencement/completion of any leviable construction operations was \$2,000 in the Bill, while the penalty for failing to pay levy within the specified period was 5% of the unpaid amount. Further penalty could be imposed if non-payment continued. The above were modeled on existing practices well accepted by the industry and any change would need to go through a consultation exercise; and</p> <p>(c) Among the more than 2 000 notices of assessment issued each month, the number of objections to levy was insignificant. So far only one case had been brought to the court.</p> <p>Members' expression of the following views –</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(a) A member's comment that the maximum fine of \$2,000 for failing to give notice was too low to have any deterrent effect. She however agreed not to follow up in consideration of the need to conduct consultation on any proposal to increase the fine;</p> <p>(b) Another member's view on the need to increase the maximum fine in consideration of the substantial resources incurred in ensuring levy payment; and</p> <p>(c) Some members' view that the Bill provided an opportunity to address any existing problems in levy collection, in particular those relating to term contracts, contract claims, large-scale operations deliberately conducted in phases to evade levy payment, and renovation works the commencement of which did not require the Building Authority's approval.</p> <p>Administration's expression of the following points –</p> <p>(a) Members' view in (c) above might more appropriately be followed up by the Construction Industry Council (CIC) as a self-regulatory body. Meanwhile, CITA would continue to review and improve the operational arrangements as and when necessary;</p> <p>(b) CITA had already established an efficient mechanism for levy collection and contractors would normally effect levy payment upon receipt of the demand letter;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) Where the contract was a term contract, the total value referred to the aggregate value of all construction operations carried out as required under the works orders. The contractor concerned was required, within 14 days after the last day of the month in which a payment was made to him in respect of any operations carried out under the term contract, to give notice of the payment to CITA;</p> <p>(d) Where contract claims were involved, the relevant case files would not be closed until receipt of the confirmation of final payment. Once a file on a case was opened, it would be reviewed every six months until the case was settled;</p> <p>(e) The Bill provided that any construction operations whose total value exceeded HK\$1 million was subject to levy, and “total value” referred to the aggregate of the values of all stages of the construction operations concerned. It was observed that contractors could incur more costs for deliberately splitting up a large contract into smaller contracts, which was not conducive to project management, than in paying the levy; and</p> <p>(f) Letters were regularly sent to relevant trade unions and professional institutes to publicize the liability for payment of the levy.</p>	

Time marker	Speaker	Subject(s)	Action required
<i>meetings on 25 October and 10 November 2005</i>			
004940 –010225	Chairman Administration Ms Emily LAU Mrs Selina CHOW Ms LI Fung-ying Mr Alan LEONG	<p>Briefing by the Administration on item (1) of its responses to follow-up actions arising from discussions at the meetings on 25 October and 10 November 2005 (LC Paper No. CB(1)462/05-06(01))</p> <p>Administration’s expression of the following points in response to members –</p> <p>(a) As was the normal practice with similar statutory bodies, there was a need to confer flexibility to the relevant policy secretary in determining the term of appointment of members. This would enable staggered tenure where necessary to facilitate continuity of work; and</p> <p>(b) The proposed amendment to clause 10(2) should make clear that a member might hold office for not more than two consecutive terms.</p> <p>Members’ expression of the following views –</p> <p>(a) A member’s indication of support for the flexibility in determining the term of appointment to facilitate experience sharing and meet the needs of individual members;</p> <p>(b) Two members’ concern that the proposed amendment to clause 10(2) might give the impression that a member might hold office for three consecutive terms; and</p> <p>(c) Members’ general view that the</p>	<p>The</p>

Time marker	Speaker	Subject(s)	Action required
		<p>proposed amendment to clause 10(2) was unclear, and saw a need to clarify the policy intention of appointing members for not more than two consecutive terms or not more than six years and reflect the policy intention in the clause.</p>	<p>Administration to take action under paragraph 4(a) of the minutes</p>
<p>010226 – 011837</p>	<p>Chairman Administration Ms Emily LAU Mrs Selina CHOW Mr Patrick LAU Ms LI Fung-ying Mr Howard YOUNG</p>	<p>Briefing by the Administration on the first paragraph of item (2) of LC Paper No. CB(1)462/05-06(01)</p> <p>Members' expression of the following views on clause 12(a) –</p> <p>(a) It was doubtful how clause 12(a) could be enforced, in particular on how the seeking of CIC's permission for absence from meetings would operate;</p> <p>(b) Should the requirement for "the Council's permission" be retained, the circumstances under which the permission would be given should be clearly specified, preferably in CIC's rules of procedures;</p> <p>(c) The Administration should explain how other statutory bodies enforced a similar provision;</p> <p>(d) The Chairman's view that it was more appropriate to consider whether permission should be given for absence from a meeting every time instead of only when the member had been absent from two consecutive meetings;</p> <p>(e) A member's indication of her preference for a stringent provision; and</p> <p>(f) A member's view that permission</p>	<p>The Administration to take action under paragraph 4(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		<p>should be given for absence from a meeting if the member concerned was ill or out of town.</p> <p>Administration's expression of the following points –</p> <p>(a) CIC would be advised to promulgate clear guidelines on how the permission for any absence from its meeting could be secured, taking into consideration reasonable grounds like those raised by some members which were adopted by similar statutory organizations with relevant practices; and</p> <p>(b) The Administration would provide information on how statutory bodies such as District Councils and Hospital Authority enforced a similar provision.</p>	<p>The Administration to take action under paragraph 4(b) of the minutes</p>
011838 – 011926	Chairman Administration	Briefing by the Administration on item (3) of LC Paper No. CB(1)462/05-06(01)	
011927 – 012452	Chairman Administration Mrs Selina CHOW	<p>Briefing by the Administration on the second paragraph of item (2) of LC Paper No. CB(1)462/05-06(01)</p> <p>A member's concern that the proposed amendment to clause 12(d) would cause uncertainty as to whether a member would be removed because of his inability to perform functions in whole or in part</p> <p>Administration's explanation that the plural form of the word "functions" was used in similar provisions and the clause was intended to refer to a member's overall fitness to perform his functions as a member.</p>	<p>The Administration to take action under paragraph 4(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		However, in view of the member's concern, the Administration would review its proposed amendments to the clause and see if any further revision was required	
012453 – 012811	Chairman Administration Ms Emily LAU ALA5	Briefing by the Administration on item (4) of LC Paper No. CB(1)462/05-06(01) Assistant Legal Adviser's agreement that the Secretary for the Environment, Transport and Works (the Secretary) was vested with power of appointment under clause 9 and such power could be exercised, by virtue of section 39(1) of the Interpretation and General Clauses Ordinance (Cap.1), to fill vacancies arising from the resignation or termination of an incumbent CIC member Administration's confirmation that appointment of members to fill vacancies could be made under clause 9	
012812 – 013114	Chairman Administration	Briefing by the Administration on items (5) to (7) of LC Paper No. CB(1)462/05-06(01)	
<i>Clause-by-clause examination of the Bill</i>			

013115 – 014632	Chairman Administration Ms Emily LAU CITA Mr Patrick LAU Mrs Selina CHOW	<i>Clause 36 – Contractor and authorized person to notify Council of their carrying out of construction operations</i> Administration and CITA's expression of the following points in response to members –	
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Time marker	Speaker	Subject(s)	Action required
		<p>(a) Clause 36(4) provided that CIC could extend the period for giving a notice under specific circumstances. For example, if the contract concerned was a term contract under which many small-scale works orders were issued, the period for giving a notice might be extended at present;</p> <p>(b) CITA had not experienced difficulties in assessment and collection of levy that would require legislative amendments to the present system;</p> <p>(c) The term “authorized person”, was translated as “獲授權人” instead of “認可人士” because “認可人士” was defined under the Buildings Ordinance and “獲授權人” used in the Bill included persons appointed by the employer to perform the functions of an authorized person if no authorized person was appointed under section 4 of the Buildings Ordinance (clause 68(2)). In the case of renovation works, most of such persons appointed were staff of design houses instead of construction professionals; and</p> <p>(d) An employer should supply the name of the person appointed as “獲授權人” in a form specified by CIC (clause 68(3)).</p> <p>A member’s reiteration of the view that the Bill should provide an opportunity to tackle any problems in levy collection</p>	

Time marker	Speaker	Subject(s)	Action required
014633 – 015034	Chairman Administration Ms Emily LAU	<p><i>Clause 37 –Notice of payment made in respect of construction operations</i></p> <p>A member’s reference to complaints about serious delays in contract payment by the Government in respect of public works, and her call to relay to the Secretary her view on the need to improve the situation</p>	
015035 – 015806	Chairman Administration Mrs Selina CHOW CITA	<p><i>Clause 38 – Notice of completion of construction operations</i></p> <p>A member’s expression of concern about the enforceability of clause 38(3)</p> <p>CITA’s elaboration of the operation of its mechanism for monitoring the giving of notice of completion of construction operations. The mechanism had been operating effectively and all necessary information was normally received within one month</p>	
015807 – 015953	Chairman Ms Emily LAU Clerk	<p>Date of next meeting</p> <p>The Chairman’s report of the successful settlement of a labour dispute in CITA and hence improvement in CITA’s relations with its staff</p> <p>A member’s reference to the submission from Consultant Engineering Firm Resident Site Staff Association (LC Paper No. CB(1)458/05-06) and the Clerk’s report that the submission had been referred to the Administration for follow-up</p>	

Council Business Division 1
Legislative Council Secretariat
11 January 2006