

(Revised)

CB(1) 599/04-05(02)

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

**Summary of concerns/views expressed by organizations and the Bills Committee
(as at 30 December 2004)**

Issue/Clause	Organization	Concern/view
Interpretation <i>Clause 2</i>	KCR	Wide definition of “construction operation”. Suggest to state expressly in the Bill that levy is imposed on construction work only.
	HKIA	No definition of “professionals”, “consultants”, “training institutes or academic or research institutions”.
Establishment of Construction Industry Council (CIC) <i>Clause 4</i>	REDA CITA HKMGMA HKHS PGBC MTR HKIA HKCA HKCSCA HKIE KCR HKIS APS HKKBSGMA HKGBCA	Support the establishment of CIC.

Issue/Clause	Organization	Concern/view
	CITASA	Support industry reform.
	HKCIEGU	In principle does not oppose to the establishment of CIC but doubts whether CIC can meet the industry's expectations in consideration of the work done by Provisional Construction Industry Co-ordination Board over the past years.
Functions of CIC <i>Clause 5</i>	HKEEATWU	CIC should draw up guidelines to reduce multi-layer subcontracting and set up insurance fund to protect self-employed workers.
	HKIS	The strategic framework governing the relationship between CIC and Environment, Transport and Works (ETWB) should be spelt out in the Bill.
	Bills Committee	Views expressed: <ul style="list-style-type: none"> - The role of Government vis-a-vis CIC should be further examined. - Some members consider it necessary to include the functions of CIC to address the problems in the industry such as multi-layer subcontracting, wage arrears, difficulty in ensuring insurance coverage for genuine construction workers who take up self-employed status. - Some members consider it inappropriate to specify such functions in the Bill the main objective of which is to provide a legal framework for setting up CIC.

Issue/Clause	Organization	Concern/view
<p>Powers of CIC</p> <p><i>Clause 7</i></p>	<p>HKIA</p>	<p>CIC should have power to allocate fund to the private sector and institutions on projects relating to improvement of the construction industry.</p>
	<p>PCICB</p>	<ul style="list-style-type: none"> - The present mix of powers proposed in the Bill is essential for CIC to discharge its role as an umbrella organization for the construction industry. - Strongly advise against adding specific provisions to control industry practices such as subcontracting and wage payments as this may create legal complications, impose unnecessary restrictions and create uncertainty in enforcement.
<p>Composition of CIC</p> <p><i>Clause 9</i></p>	<p>PCICB</p>	<p>The concept of specific representation for certain institutes or associations was thoroughly discussed by PCICB and considered inappropriate.</p> <p>Reasons:</p> <ul style="list-style-type: none"> - The industry is based on an outsourcing model requiring specialist skills in many areas. This model often creates adversarial relationships and inter-party disputes. Need to foster the spirit of partnership. This spirit could not be achieved by adopting rigid and formulaic appointments. - Organisations associated with the industry are many. Selection of a limited number of organisations to represent the industry invites politicization of CIC.

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		<ul style="list-style-type: none">- Selection of a limited number of organisations narrows down the scope of representation and does not necessarily ensure the appropriate energy and enthusiasm required of CIC members. <p>The proposed mode of model based on appointees serving in their personal capacity was thoroughly debated and preferred by PCICB.</p> <p>Reasons:</p> <ul style="list-style-type: none">- Need to have a flexible structure to adapt to future changes in the industry.- The statutory form of CIC modelled on similar statutory bodies in HK and similar construction forums in jurisdiction such as UK, Australia and Singapore.- Appointment by Government on personal basis provides a reasonable proper balance on CIC.- Adaptable procedure would allow replacement of CIC members who were considered to have contributed little to the debate.- Appointment of members is limited to two terms with a phased cycle to allow new members to join. <p>PCICB considers the following points relevant in considering composition of CIC:</p> <ul style="list-style-type: none">- Large enough to achieve representation but not so large as to be unwieldy.

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		<ul style="list-style-type: none"> - The principal sectors, namely employers, consultants, contractors and labour to be properly represented but with no party dominant. - The composition of PCICB offers a good model. - Appointment by Government on an ad personam basis after consultation with relevant institutes, trade associations and unions.
	REDA	Support proposed composition of CIC.
	HKCSCA	Support proposed composition of CIC and hope to be represented on CIC.
	HKMGMA	Support representation of subcontractors on CIC.
	MTR	Support appointment of members to CIC on individual capacity to provide members with autonomy to contribute actively. Industry bodies may suggest candidates for appointment but the selection must be based on personal capability.
	HKHS HKCA HKIA CITA PGBC HKIE HKIS HKEEATWU HKLPA	Object appointment of members on individual capacity. Suggest that members of CIC other than public officers should be appointed by Government from candidates nominated by professional bodies, trade associations and labour unions. Reasons given include: <ul style="list-style-type: none"> - Nominees will be accepted by the representing professions.

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		<ul style="list-style-type: none"> - Nominees could better reflect the views of the representing professions, trade associations and labour unions. - Nominees representing the profession will have a duty to report back to the professions/trade associations, which enhances accountability. - Performance of nominees will be monitored by nominating organizations. - Nomination through professional institutes, trade associations and labour unions will enhance transparency. - Where nominees could not attend meetings of CIC, the nominating organizations may find authorized representatives. - Appointment on individual capacity may lead to empire building and cronyism.
	PGBC	Suggest PGBC being one of the professional bodies to make nominations.
	CEFRSSA	Suggest to expressly provide in clause 9(3)(e) that site supervisory staff be represented.
	CSSA HKDTDA HKEEATWU	Suggest to increase the number of members representing construction workers on CIC.
	MTDA	Suggest to increase the number of members representing construction workers on CIC to three.

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	HKDTDA	Concern which sector represent the transport trade on CIC.
	HKEEATWU	Suggest to include representatives from Labour Department, Electrical and Mechanical Services Department as the work of these departments are relevant to construction industry.
	HKIA	<p>Support the CIC Chairman not being a public officer.</p> <p>Suggest:</p> <ul style="list-style-type: none"> - Membership of CIC be increased to allow greater representation. - Members of CIC representing professionals and consultants be increased (clause 9(3)(b)). - Lay members representing consumers be increased from 3 to 4 (clause 9 (3)(f)). - HKIA be represented on CIC. - A Vice Chairman be considered given the size of CIC.
	HKIE	Suggest two candidates be nominated by HKIE for appointment to CIC.
	HKIS	Suggest size of membership of CIC be increased.
	HKCA	<p>Suggest:</p> <ul style="list-style-type: none"> - Nominees of organizations need to meet qualifications prescribed by CIC.

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		<ul style="list-style-type: none"> - Organizations to nominate more than one candidate to allow CIC to choose. - The nominating organizations to delegate full authority to their representatives and stand by their views. - Members of other key CIC committees be nominated by key industry associations and professional institutions.
	CIBHK	Suggest to increase members representing professionals and consultants from 4 to 5.
	HKLPA	Suggest licensed plumbers be represented on CIC.
	KCR	Hope to have representation on CIC.
	HKGBCA	CIC should have wide representation and members should look beyond interest of individual sectors.
	Bills Committee	<p>Views expressed:</p> <ul style="list-style-type: none"> - The option of professional bodies and trade unions nominating a list of candidates for selection and appointment by the Secretary for the Environment, Transport and Works (Secretary) should be considered. - Mixed mode of composition of CIC should be explored. Depending on the nature of the trade/sector, some members might be nominated by the relevant professional bodies or trade associations for appointment by the Secretary.

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		<ul style="list-style-type: none"> - Appointment of members of CIC by the Secretary was appropriate but objective criteria should be drawn up for the appointment. - The number of representatives for construction workers on CIC should be increased from two to five. - Architects and engineers should be represented on CIC by candidates nominated by their respective professional institutes. - The meaning of “employers” in clause 9(3)(a) is unclear and should be reviewed. - Clause 9(3)(f) provides the Secretary with excessive flexibility for appointment of members and should be reviewed.
<p>Submission of reports by CIC to Secretary</p> <p><i>Clause 29</i></p>	<p>HKIS</p>	<p>The annual report submitted by CIC to the Secretary should cover long-term issues such as CIC’s strategic plan and target objectives. ETWB should assume a monitoring role to ensure the target and objectives be met.</p>
<p>Establishment and composition of Construction Industry Training Board (CITB)</p> <p><i>Clause 31 and section 2 in</i></p>	<p>HKHS HKIA REDA CITA HKCA HKIA</p>	<p>Support CITB taking over the functions of CITA.</p> <p>Support the proposed composition of CITB.</p> <p>Suggest that professional bodies and industry associations nominate candidates for appointment to CITB.</p>

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<i>Schedule 3</i>	HKIE	Reasons given include: <ul style="list-style-type: none"> - In line with the present mode of composition of CITA. - Greater representation and accountability.
	HKIA	Suggest: <ul style="list-style-type: none"> - HKIA be represented in CITB. - The Chairman of CITB not being a public officer. Support continuance of employment of CITA staff by CIC.
	HKCA	Suggest: <ul style="list-style-type: none"> - The Chairman of CITB should be appointed from one of the representatives of HKCA as is traditionally the case.
	HKIE	Suggest: <ul style="list-style-type: none"> - HKIE nominate two candidates for appointment to CITB.
	HKIS	<ul style="list-style-type: none"> - The Bill is unclear as to how and to what extent assets and liabilities of CITB will remain to be used for education and training purpose. - The Bill is unclear if CITB could receive fees from other organization such as the Construction Workers Registration Authority.

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		<ul style="list-style-type: none"> - Hope to work with CITB for training of technicians who could become professionals.
	HKCSCA	Proposed composition of CITB not include subcontractors.
	Bills Committee	<p>Views expressed:</p> <ul style="list-style-type: none"> - The approach of allowing relevant professional bodies and trade unions for nominating candidates for appointment by Government should be considered.
<p>Funding matters and imposition of levy</p> <p><i>Clauses 33 to 53</i></p> <p><i>Schedule 4</i></p>	CITA	<p>Suggest:</p> <ul style="list-style-type: none"> - The Administration to provide fund or an interest-free loan for the setting up of CIC. - The levy collected under the Industry Training (Construction Industry) Ordinance (Cap. 317) is for training and trade-testing and should not be deployed for other purposes.
	CITA HKCA	Owing to the big drop in the value of construction operations subject to levy since 2002 and the expanded functions of CIC, the levy could not sustain the operation of CIC. Need to work out financial arrangement early.
	HKCA	<p>Financial resources for CITB should not be substantially reduced during the first three years after the transition.</p> <p>CIC should inherit privileges presently enjoyed by CITA, such as free land grant for training centres.</p>

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	HKIS	<ul style="list-style-type: none"> - The specified amount of construction operations subject to levy is too low. - Important to ensure sufficient resources to finance operation of CIC. - Important to publicize the Bill because Authorized Persons may not be appointed for some construction projects and lay employers may have difficulties in filing relevant returns to CIC.
	HKIE	<p>Not oppose imposition of levy but the money must be used for the discharge of functions of CIC for the benefits of the industry. Should the levy be increased in future, thorough consultation with the industry is necessary.</p>
	Bills Committee	<p>Views expressed:</p> <ul style="list-style-type: none"> - The existing privileges enjoyed by CITA should be carried over to CIC/CITB. - Concern whether CIC would have adequate resources to discharge its functions as the levies on construction operations are declining.
<p>Provision of information</p> <p><i>Clause 61</i></p>	CITA	<p>Relevant Government departments and utility companies should be required to provide information relating to engineering and mechanical works in order that works subject to levy could be traced. A new Part 3 under Schedule 4 should be added for the purpose.</p>

Issue/Clause	Organization	Concern/view
<p>Production of documents</p> <p><i>Clause 62</i></p>	HKIA	<p>Definition of “any document ... that relates to the construction ...” in clause 62(1) is too wide and should be narrowed because most of the documentation in construction projects does not relate directly to the functions of CIC. The clause is about levy and should be put in Part 5.</p>
	KCR	<p>Concern that sensitive information, in particular in relation to pricing and contractual disputes may be disclosed to third parties. Suggest that the Bill imposes an obligation to treat all documents and records produced as confidential and not to be disclosed to third parties, without the consent of producer, unless required by law to do so.</p>
<p>Power to sign CIC’s documents and admissibility of documents</p> <p><i>Clauses 65 and 66</i></p>	HKIA	<p>Need to clarify definition of “officer” referred to in the clauses. Concern that there is no reference of “officer” in clause 9 about composition of CIC.</p>
<p>Continuance of employment</p> <p><i>Clause 82</i></p>	CITA CITASA	<p>Support continuance of employment of CITA staff by CIC on same terms and conditions.</p>
	CITASA	<ul style="list-style-type: none"> - The remuneration and benefits of the staff concerned should not be cut to meet additional expenses arising from the expanded roles of CIC. - Industry reform should not adversely affect the rights of CITA staff. - Communication between CITA and its staff need to be improved.

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	Bills Committee	<p>Views expressed:</p> <ul style="list-style-type: none"> - The Administration should make reference to Sports Development Board in dealing with employment matters upon transition of CITA to CIC. - The Administration should work with CITA and its staff to sort out ways to address staff concern and report back to the Bills Committee. - The Administration should review the present drafting of clause 82 in reflecting the policy intention of protecting continued employment upon transition of CITA to CIC. A suggested version is to add at the end of clause 82(1) “provided that no employment of any employee of CITA should be terminated by reasons only of and in anticipation of the dissolution”.
<p>Proceedings of CIC</p> <p><i>Schedule 2 Clause 5</i></p>	HKIA	Need to clarify who has the casting vote in the event of an equality of votes.
	Bills Committee	<p>View expressed:</p> <ul style="list-style-type: none"> - The Administration should review whether opening up the meetings of CIC could help address concerns about its mode of composition.

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<p>Proceeding of CITB</p> <p><i>Schedule 3 Clause 8</i></p>	HKIA	Need to clarify who has the casting vote in the event of an equality of votes.
	KCR	<ul style="list-style-type: none"> - The Bill should contain a mechanism by which CIC is able to raise complaints with the Secretary concerning the conduct/activities of Government departments and Government officials in the construction process. - Provision be made to require the Government to consult CIC and notify CIC of any legislative proposals which may affect the construction industry. - Provision be made to oblige the Secretary to supply to CIC for dissemination within the construction industry relevant information such as forthcoming projects and statistics, etc.
	HKCIEGU	Suggest to form a select committee to map out measures to address the problems in the industry such as subcontracting, illegal workers, unemployment, wage cuts, wage arrears, and lack of insurance coverage for genuine construction workers who take up self-employed status.
	MTR	Strongly support the initiatives pursued by the Construction Industry Review Committee (CIRC) and PCICB to achieve improvements in the construction industry.

Issue/Clause	Organization	Concern/view
	CIBHK	<ul style="list-style-type: none">- More importance be accorded to management of construction operations.- CIC should consider views of renowned overseas institutes in the industry which are influential in HK.
	HKLPA	<ul style="list-style-type: none">- Contract laws should be enacted to protect workers concerning wage payment.- Government should consider consolidating various types of plumber licences into one licence.

Council Business Division 1
Legislative Council Secretariat
30 December 2004

Submissions from organizations

Name of Organization	Reference No.
Hong Kong Construction Sub-Contractors Association (HKCSCA)	LC Paper No. CB(1) 306/04-05(01)
Hong Kong Marble & Granite Merchants Association (HKMGMA)	LC Paper No. CB(1) 306/04-05(02)
Construction Site Staff Association (建築地盤職工總會) (CSSA)	LC Paper No. CB(1) 306/04-05(03)
Construction Industry Training Authority (CITA)	LC Paper No. CB(1) 306/04-05(04)
Mixer Truck Drivers Association (MTDA)	LC Paper No. CB(1) 306/04-05(05)
Hong Kong Dumper Truck Drivers Association (HKDTDA)	LC Paper No. CB(1) 306/04-05(06)
Construction Industry Training Authority Staff Association (CITASA)	LC Paper No. CB(1) 306/04-05(07) LC Paper No. CB(1) 451/04-05(01)
Consultant Engineering Firm Resident Site Staff Association (CEFRSSA)	LC Paper No. CB(1) 306/04-05(08)
Hong Kong Construction Industry Employees General Union (HKCIEGU)	LC Paper No. CB(1) 306/04-05(09)
The Hong Kong Institute of Architects (HKIA)	LC Paper No. CB(1) 306/04-05(10) LC Paper No. CB(1) 597/04-05(01)
The Hong Kong Construction Association Ltd. (HKCA)	LC Paper No. CB(1) 306/04-05(11)
Professional Green Building Council (PGBC)	LC Paper No. CB(1) 306/04-05(12)
Hong Kong Housing Society (HKHS)	LC Paper No. CB(1) 306/04-05(13)

Name of Organization	Reference No.
The Real Estate Developers Association of Hong Kong (REDA)	LC Paper No. CB(1) 306/04-05(14)
MTR Corporation (MTR)	LC Paper No. CB(1) 306/04-05(15)
Provisional Construction Industry Co-ordination Board (PCICB)	LC Paper No. CB(1) 374/04-05(01) LC Paper No. CB(1) 451/04-05(02)
The Hong Kong Institution of Engineers (HKIE)	LC Paper No. CB(1) 374/04-05(02)
Hong Kong Institute of Real Estate Administration (HKIREA)	LC Paper No. CB(1) 374/04-05(03)
Kowloon-Canton Railway Corporation (KCR)	LC Paper No. CB(1) 400/04-05(01)
Hong Kong & Kowloon Electrical Engineering & Appliances Trade Workers Union (HKEEATWU)	LC Paper No. CB(1) 434/04-05(01)
The Hong Kong Institute of Surveyors (HKIS)	LC Paper No. CB(1) 597/04-05(02)
Hong Kong & Kowloon Bamboo Scaffolders General Merchants Association Limited (HKKBSGMA)	--
Hong Kong General Building Constructors Association Ltd. (HKGBCA)	--
Chartered Institute of Building (Hong Kong) (CIBHK)	--
Hong Kong Licensed Plumbers Association (HKLPA)	--
The Association of Plastering Subcontractors Ltd. (APS)	--