

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

**Administration's Responses to Follow-up Actions  
Arising from Discussions at the Meetings on 24 November and 8 December 2005**

	<b>Follow-up actions</b>	<b>Administration's responses</b>
(1)	To review clauses 14 and 15 to address members' concern about the relation between the Executive Director and the Construction Industry Council (CIC).	The proposed Committee Stage Amendments to clauses 14 and 15 have been provided under separate cover.
(2)	To review the drafting of clause 19. Members were concerned about its relation with clause 82. A suggested version was to add at the beginning of the clause “除了 82 條另有規定外,”.	In view of the concern, we propose to amend clause 82 as shown at <b>Annex A</b> with its legal effect remain unchanged.
(3)	<ul style="list-style-type: none"> <li>- To provide provisions in other ordinances which are similar to clause 21.</li> <li>- To advise whether and how clause 21 would affect liability for accident arising from work and claim for compensation.</li> </ul>	<ul style="list-style-type: none"> <li>- Similar provisions appearing in other ordinances are extracted at <b>Annex B</b>.</li> <li>- Clause 21(2) already ensures that the liability of CIC for any damage or injury to a third party caused by an act done or omitted to be done by its employees will not be affected by the protection in subclause (1).</li> </ul>

	<b>Follow-up actions</b>	<b>Administration's responses</b>
(4)	To review if there are any grey area in clause 34 which might affect imposition of levy on construction operations.	Clause 34 only sets out basic tenets of the existing levy mechanism, whose scope has been widely accepted by key industry stakeholders as a pragmatic balance struck between administrative effectiveness and funding needs.
(5)	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 clause 10. In any event, members considered the proposed amendment to clause 10(2) unclear.	We propose to clarify that appointed members serving on CIC should not be allowed to hold office for more than six consecutive years by amending clause 10(2) as outlined at <b>Annex C</b> .
(6)	To clarify how the seeking of the CIC's permission for absence from meetings as stipulated in clause 12(a) would operate. The Administration was requested to provide information on how statutory bodies such as District Councils enforced a similar provision.	Some relevant guidelines promulgated by District Councils are at <b>Annex D</b> . We will request CIC to draw up a set of objective criteria and transparent procedures in dealing with application for absence from meetings.
(7)	To review the appropriateness of using the plural form of the word "functions" in clause 12(d). 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.	Clause 12(d) as drafted fully reflects our policy intention to adopt a holistic approach in assessing the performance of appointed members serving on CIC.

**82. Continuance of employment**

(1) Notwithstanding sections 19 and 20, As from the appointed day, a person who, immediately before that day, is an employee of the CITA under a valid contract of employment and who, if not for the dissolution of the CITA, would have been its employee under the contract on that day, becomes an employee of the Council on the same terms and conditions that applied immediately before that day to his employment with the CITA.

(2) There is no break or interruption in the employment of such a person by reason of the commencement of this Part.

**Extract of Similar Provisions as Clause 21 in Local Ordinances**

***(A) Consumer Council Ordinance (Cap.216)***

**19. Protection of members of Council and committees**

- (1) No member or employee of the Council or of any committee of the Council shall be personally liable for any act done or default made-
  - (a) by the Council; or
  - (b) by any committee of the Council, acting in good faith in the course of the operations of the Council or of the committee.
- (2) The protection hereby conferred on members and employees of the Council or of a committee in respect of any act or default shall not in any way affect any liability of the Council for that act or default.

***(B) Occupational Safety and Health Council Ordinance (Cap.398)***

**30. Protection of members of Council**

- (1) No-
  - (a) member of the Council;
  - (b) member of any committee of the Council;
  - (c) employee of the Council;
  - (d) person exercising powers in association with the Council under section 5(2)(f), acting in good faith shall be personally liable for any act done or default made by-
    - (i) the Council;
    - (ii) any committee of the Council;
    - (iii) any such member, employee or person, in the exercise and performance (or the purported exercise and performance) of the powers and duties conferred and imposed on the Council under this Ordinance.
- (2) The protection afforded under subsection (1) to any member, employee or other person in respect of any act or default shall not affect any liability of the Council for that act or default.

***(C) Hong Kong Council of Academic Accreditation Ordinance (Cap.1150)***

**21. Protection of members, employees, etc.**

- (1) A member or employee of the Council or of any committee of the Council or any person appointed by the Council under section 5(a) acting in good faith shall not be personally liable for any act done or default made-
  - (a) by the Council;
  - (b) by any committee of the Council; or
  - (c) by any such member, employee or person, in the exercise or purported exercise of the powers conferred or performance or purported performance of functions imposed under this Ordinance.
- (2) The protection conferred under subsection (1) on members or employees of the Council or of any committee of the Council or any person appointed by the Council under section 5(a) shall not in any way affect any liability of the Council for that act or default.

**10. Term of office of appointed member and member who is public officer**

(1) An appointed member holds office for a period not exceeding 3 years as determined by the Secretary.

(2) An appointed member is eligible for reappointment on the expiry of his term of office, but *he* may not serve as such a member continuously for more than 6 years ~~hold office for more than 2 consecutive terms.~~

(3) A member who is a public officer holds office at the discretion of the Secretary.

**Relevant Guidelines on  
Permission of Absence from Meetings Promulgated by District Councils**

**(Translation)**

**(A) Yam Tsim Mong District Council**

42. (1) If a member of the Council cannot attend a meeting of the Council because of attendance at another meeting or an activity on behalf of the Council, he or she is required to notify the Secretary by using the notification form at Annex B before the meeting. The Secretary shall inform the Council of the notification and the Council shall decide at the commencement of the meeting whether consent should be given to the absence.
- (2) If a member of the Council cannot attend a meeting of the Council because of sickness, he or she is required to notify the Secretary by using the notification form at Annex B before the meeting and the Council shall decide at the commencement of the meeting whether consent should be given to the absence.
- (3) If a member of the Council cannot attend a meeting of the Council because of sickness but fails to notify the Secretary of his or her absence before the meeting, he or she is required to notify the Secretary by using the notification form before the next meeting and the Council shall decide whether consent should be given to the absence.
- (4) If a member of the Council is absent from a meeting of the Council on the grounds stated in Order (42)(2) and (3), he or she is required to submit the medical certificate before the next meeting.
- (5) The Council shall only give consent to applications for absence from a meeting of the Council on the grounds of sickness or attendance at another meeting or an activity on behalf of the Council. Save for the exceptional circumstances stated on Order (42)(3), the Council shall not accept any application for absence after the meeting.

**(B) Sham Shui Po District Council**

42. (1) If a member of the Council cannot attend a meeting of the Council, he or she is required to notify the Secretary in writing before the meeting. The Secretary shall inform the Council of the notification and the Council shall decide at the commencement of the meeting whether consent should be given to the absence. Normally, the Council shall only give consent to notifications of absence filed on the grounds of attendance at another meeting or an activity on behalf of the Council. In the event a member's absence contravenes the District Councils Ordinance and may lead to disqualification of the member, the application for absence will be dealt with separately by the Council.

**(C) Tai Po District Council**

40. (1) If a member of the Council cannot attend a meeting of the Council because of sickness or attendance at another meeting or an activity on behalf of the Council, he or she is required to notify the Secretary by using the notification form at Appendix VII before the meeting. If the member is unable to notify the Secretary by using the notification form at Appendix VII before the meeting because of sickness, he or she should notify the Secretary orally before the meeting. A member who applies for absence from a meeting on the grounds of sickness shall submit the medical certificate (only those issued by registered medical practitioners and listed Chinese medical practitioners) within two clear working days after he or she submits the notification form or notifies the Secretary orally. The Secretary shall inform the Council of the notification and the Council shall decide at the commencement of the meeting whether consent should be given to the absence. The Council shall only give consent to notifications of absence filed on the grounds of sickness or attendance at another meeting or an activity on behalf of the Council. The Council shall not accept any notification of absence after the meeting.

**Notification of Absence from District Council Meetings**

To : Secretary of xxx District Council (Fax: xxxx xxxx)

I will not be able to attend the District Council meeting to be held on \_\_\_\_\_ for the following reason:

# sickness (Please attach medical certificate)<sup>@</sup>

# official commitment on behalf of the Council

\_\_\_\_\_  
(Please specify)

# others

\_\_\_\_\_  
(Please specify)

Please inform the Council of the above and seek its consent.

Signature: \_\_\_\_\_

Name of Member: \_\_\_\_\_

Date: \_\_\_\_\_

# Please tick as appropriate

@Please submit the medical certificate (photocopy is acceptable) within two clear working days if it is not attached to this notification form

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**Notification of Consent to Absence from District Council Meetings**

To: DC member Mr/Ms/Mrs\* \_\_\_\_\_

xxx District Council at its meeting held on \_\_\_\_\_ consented / did not consent\* to your absence from the above meeting.

Signature of DC Chairman: \_\_\_\_\_

Name of DC Chairman : \_\_\_\_\_

Date : \_\_\_\_\_

c.c. Secretary of xxx District Council

\* Please delete as appropriate