

CONSTRUCTION INDUSTRY COUNCIL (NO. 2) BILL

(Clauses 2, 5, 7, 9, 10, 12, 13, 14, 15, 71 and 82 and new Schedule 1A, Schedule 2, Schedule 3 and Schedule 5)

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires –
- “appointed day” (指定日期) means the day on which Part 9 comes into operation;
- “appointed member” (委任成員) means a member of the Council appointed under section 9(1)(a) or (d);
- “authorized person” (獲授權人), in relation to construction operations, means –
- (a) the authorized person appointed or nominated under section 4 of the Buildings Ordinance (Cap. 123) in respect of the construction operations; or
 - (b) if no authorized person is appointed under that section, the person appointed in accordance with section 68 in respect of the construction operations;
- “Board” (訓練委員會) means the Construction Industry Training Board established under section 31;
- “building” (建築物) has the meaning assigned to it in section 2(1) of the Buildings Ordinance (Cap. 123);
- “carry out” (進行), in relation to any construction operations, includes –
- (a) to manage, or to arrange for, the carrying out of the construction operations;
 - (b) to provide one’s own labour or that of any other person for the carrying out of the construction operations; and
 - (c) otherwise to undertake the construction operations;
- “CITA” (訓練局) means the Construction Industry Training Authority established by section 4 of the Industrial Training (Construction Industry) Ordinance (Cap. 317) and in existence before the commencement of section 73;
- “construction contract” (建造合約) means a contract between an employer and a contractor under which the contractor carries out construction operations but does not include a contract of employment;

“construction industry” (建造業) means the industry in which construction operations are carried out;

“construction operations” (建造工程) has the meaning assigned to it in Schedule 1;

“contract of employment” (僱傭合約) has the meaning assigned to it in section 2(1) of the Employment Ordinance (Cap. 57);

“contractor” (承建商), in relation to any construction operations (whether the construction operations are carried out under a contract or otherwise), means –

- (a) the person appointed as contractor under section 9 of the Buildings Ordinance (Cap. 123) in respect of the construction operations; or
- (b) if no such person is appointed, the person who carries out the construction operations;

“Council” (議會) means the Construction Industry Council established by section 4;

“employer” (聘用人) means a person for whom a contractor carries out construction operations, whether under a contract or otherwise;

“Executive Director” (執行總監) means the Executive Director appointed under section 14;

“financial year” (財政年度) means the period fixed as the financial year of the Council under section 24(1);

“function” (職能) includes a power, authority or duty;

“further penalty” (另加罰款) means any further penalty payable under section 48(3);

“levy” (徵款) means the Construction Industry Levy referred to in section 34(2);

“notice of assessment” (評估通知) means a notice of assessment described in section 35(3);

“notice of surcharge” (附加費通知) means a notice of the surcharge referred to in section 43(3);

“Objections Committee” (處理反對事宜委員會) means the committee established under section 56;

“objector” (反對者) means a person who makes an objection under section 57;

“penalty” (罰款) means any penalty payable under section 48(2);

“Secretary” (局長) means the Secretary for the Environment, Transport and Works;

“surcharge” (附加費) means any surcharge imposed under section 43;

“term contract” (固定期合約) means a construction contract –

- (a) that provides for completion of all construction operations to which the contract relates within a specified period (whether or not such period may be varied by agreement); and
- (b) under which a contractor carries out construction operations as required by the employer by any notice issued from time to time within the specified period by or on behalf of the employer to the contractor;

“total value” (總價值), in relation to any construction operations, means the total value of the construction operations as defined in section 55;

“value” (價值), in relation to any construction operations, means the value of the construction operations as determined under section 54;

“works order” (施工通知) means a notice issued by or on behalf of an employer to a contractor under a term contract, by which the employer requires construction operations to be carried out.

(2) Without affecting the generality of the definitions of “contractor” and “employer” under subsection (1), the following applies for the purposes of construing those terms –

- (a) where a person carries out construction operations for any other person under a contract of employment –
 - (i) if the first-mentioned person is appointed as contractor under section 9 of the Buildings Ordinance (Cap. 123) in respect of the construction operations, he (and not that other person) is the

- contractor in respect of the construction operations;
and
- (ii) if the first-mentioned person is not appointed as contractor under section 9 of the Buildings Ordinance (Cap. 123) in respect of the construction operations, the first-mentioned person is not the contractor in respect of the construction operations;
- (b) where a person carries out construction operations for himself without any arrangement for the carrying out of the construction operations by any other person, the first-mentioned person is both the contractor and the employer in respect of the construction operations;
- (c) where a person carries out construction operations for himself with the assistance, under a contract of employment, of one or more other persons none of whom is appointed as contractor under section 9 of the Buildings Ordinance (Cap. 123) in respect of the construction operations, the first-mentioned person is both the contractor and the employer in respect of the construction operations.

5. Functions of Council

The functions of the Council are –

- (a) to advise and make recommendations to the Government on strategic matters, major policies and legislative proposals, that may affect or are connected with the construction industry, and on matters of concern to the construction industry;
- (b) to reflect to the Government the construction industry's needs and aspirations;
- (c) to elevate the quality and competitiveness of the construction industry by promoting the ongoing development and improvement of the industry;
- (d) to uphold professionalism and integrity within the construction industry by promoting self-regulation, formulating codes of conduct and enforcing such codes;
- (e) to improve the performance of persons connected with the construction industry through establishing or administering registration schemes or rating schemes;
- (f) to advance the skills of personnel in the construction industry through planning, promotion, supervision, provision or coordination of training courses or programmes;
- (g) to encourage research activities and the use of innovative techniques and to establish or promote the establishment of standards for the construction industry;
- (h) to promote good practices in the construction industry in relation to dispute resolution, environmental protection, multi-layer subcontracting, occupational safety and health, procurement methods, project management and supervision, sustainable construction and other areas conducive to improving construction quality;

- (ha) to enhance the cohesiveness of the construction industry by promoting harmonious labour relations and the observance of statutory requirements relating to employment, and by facilitating communication among various sectors of the industry;
- (i) to serve as a resource centre for the sharing of knowledge and experience within the construction industry;
- (j) to assess improvements made by the construction industry through the compilation of performance indicators;
- (k) to make recommendations with respect to the rate of the levy imposed under this Ordinance; and
- (l) to perform any other functions relevant to the construction industry, including those functions conferred or imposed on it by or under this Ordinance or any other enactment.

7. Powers of Council

(1) The Council may do all such things as are necessary for, or incidental or conducive to, the performance of its functions.

(2) Without limiting subsection (1), the Council may –

- (a) hold, acquire or lease any kind of property, whether movable or immovable;
- (b) subject to section 8(1), sell or otherwise dispose of any kind of property, whether movable or immovable;
- (c) enter into, assign or accept the assignment of, and vary or rescind, any contract or obligation;
- (d) subject to section 8(2) and (3), meet the expenditure on any item shown in the estimates of expenditure of the Council, borrow or otherwise raise money on such security as may be necessary, and charge all or any of the property of the Council for the purposes of meeting its expenditure;
- (e) charge fees for the use of any facility or service provided by the Council or in respect of any registration scheme or rating scheme established or administered by the Council;
- (f) engage any technical, professional or other person to provide any such facility or service, and determine any matter relating to such engagement;
- (g) devise, establish, operate and maintain registration schemes or rating schemes in respect of persons connected with the construction industry;
- (h) conduct research into any matter relating to its functions;
- (i) determine standards for application in the construction industry, in particular the standards for designs, processes, construction techniques, products, materials and methods of procurement and recommend the adoption of such standards;

- (j) collect, analyse, compile, publish and disseminate information relating to the construction industry or such other subject as may be necessary for the performance of its functions;
- (k) formulate, issue and promulgate codes of conduct for personnel and good practices in the construction industry;
- (l) investigate or otherwise dispose of complaints concerning any code of conduct, registration scheme or rating scheme;
- (m) conduct reviews in respect of codes of conduct, registration schemes and rating schemes;
- (n) set training requirements, provide and approve training courses and conduct examinations and tests, in respect of construction operations;
- (o) issue and award certificates of attendance or competence in respect of such training courses, examinations and tests and oversee and administer apprenticeship schemes for the construction industry;
- (p) organize and arrange seminars, exhibitions, workshops, conferences or training courses or programmes for the construction industry;
- (q) engage in publicity activities in any form that the Council considers appropriate;
- (r) form or manage or participate in the formation or management of any company or engage the services of any other body;
- (s) acquire or dispose of shares in any company; and
- (t) receive any funds, donations or gifts lawfully given for a purpose consistent with its functions.

9. Composition of Council

- (1) The Council is to consist of –
 - (a) a chairman appointed by the Secretary;
 - (c) not more than 3 public officers appointed by the Secretary;
and
 - (d) not more than 21 other members appointed by the Secretary.
- (2) The Secretary may not appoint a public officer under subsection (1)(a) or (d).
- (3) Of the members referred to in subsection (1)(d) –
 - (a) not more than 4 are to be persons who represent employers;
 - (b) not more than 4 are to be persons who represent professionals or consultants connected with the construction industry;
 - (c) not more than 5 are to be persons who represent contractors, subcontractors, materials suppliers or equipment suppliers in the construction industry;
 - (d) not more than 2 are to be persons who represent training institutes or academic or research institutions connected with the construction industry;
 - (e) not more than 3 are to be persons who are from trade unions representing workers employed in the construction industry that are registered under the Trade Unions Ordinance (Cap. 332); and
 - (f) not more than 3 are to be such other persons as the Secretary thinks fit to be members of the Council.
- (4) The Secretary shall give notice in the Gazette of an appointment under subsection (1)(a), (c) or (d).
- (5) When appointing a member referred to in subsection (3)(a), (b), (c) or (e), the Secretary shall have regard to any nomination made for the purposes of such appointment by any one or more of the specified bodies.

- (6) In subsection (5), “specified bodies” (指明團體) means –
- (a) in relation to subsection (3)(a), the bodies set out in Part 1 of Schedule 1A;
 - (b) in relation to subsection (3)(b), the bodies set out in Part 2 of Schedule 1A;
 - (c) in relation to subsection (3)(c), the bodies set out in Part 3 of Schedule 1A; and
 - (d) in relation to subsection (3)(e), the bodies set out in Part 4 of Schedule 1A.

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.

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

12. Removal of appointed member

The Secretary may terminate the appointment of an appointed member if the member –

- (a) has been absent from 3 consecutive meetings of the Council without the Council's permission;
- (b) becomes bankrupt or enters into a voluntary arrangement within the meaning of section 2 of the Bankruptcy Ordinance (Cap. 6) with his creditors;
- (c) is incapacitated by physical or mental illness; or
- (d) is for any other reason unable or unfit, in the opinion of the Secretary, to perform his functions as such member.

14. Executive Director of Council

(1) The Council shall appoint a person who is not a public officer to be the Executive Director of the Council.

(2) The Executive Director shall be responsible to the Council for the management, conduct and administration of the Council and shall perform his functions as the Executive Director subject to the Council's directions.

71. Power to amend Schedules 1, 1A, 2 and 3

The Secretary may, by order published in the Gazette, amend Schedules 1, 1A, 2 and 3.

82. Continuance of employment

(1A) The employment of an employee of the CITA is not to be terminated by reason of the dissolution of the CITA.

(1) 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, 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 a person referred to in subsection (1) by reason of the commencement of this Part.

(3) This section applies notwithstanding sections 19 and 20.

SCHEDULE 1A
SPECIFIED BODIES

[ss. 9 & 71]

PART 1

EMPLOYERS

1. Airport Authority
2. Kowloon-Canton Railway Corporation
3. MTR Corporation Limited
4. The Real Estate Developers Association of Hong Kong Limited

PART 2

PROFESSIONALS AND CONSULTANTS

1. The Hong Kong Institute of Architects
2. The Hong Kong Institute of Landscape Architects
3. The Hong Kong Institute of Planners
4. The Hong Kong Institute of Surveyors
5. The Hong Kong Institution of Engineers

PART 3

CONTRACTORS , SUBCONTRACTORS, MATERIALS SUPPLIERS AND
EQUIPMENT SUPPLIERS

1. The Association of Plastering Sub-contractors Limited
2. Hong Kong Bar-bending Contractors Association, Limited
3. The Hong Kong Construction Association, Limited
4. Hong Kong Construction Materials Association Limited
5. The Hong Kong Federation of Electrical and Mechanical Contractors Limited
6. Hong Kong General Building Contractors Association Limited
7. Hong Kong Hydraulic Truck Cranes Association Limited
8. Hong Kong & Kowloon Scaffolders General Merchants Association Limited
9. Hong Kong Licensed Plumbers Association Limited
10. The Hong Kong Marble & Granite Merchants Association, Limited

11. The Registered Elevator and Escalator Contractors Association Limited

PART 4

TRADE UNIONS

1. Construction Site Workers General Union
2. Consultant Engineering Firm Resident Site Staff Association
3. Hong Kong and Kowloon Electrical Engineering and Appliances Trade
Workers Union
4. Hong Kong Construction Industry Employees General Union
5. Hong Kong Electrical Engineering Professional Employees Association
6. Hong Kong General Union of Lift and Escalator Employees
7. Union of Hong Kong Electrical Engineering Assistants

SCHEDULE 2

[ss. 16 & 71]

MEETINGS AND PROCEEDINGS OF COUNCIL

1. Interpretation

In this Schedule –

“chairman” (主席) means the chairman of the Council referred to in section 9(1)(a) of this Ordinance;

“member” (成員) means a member of the Council referred to in section 9(1) of this Ordinance.

2. Holding of meetings

(1) Subject to subsection (2), a meeting of the Council shall be held at such time and place as the chairman may appoint.

(2) The Council shall meet if there is a notice in writing, signed by not less than half of its members, requesting that a meeting be held.

3. Notice of meetings

Unless otherwise determined by the chairman, a notice of meeting shall be served on each member at least 14 days before the day on which the meeting is to be held.

4. Quorum

(1) At a meeting of the Council, a quorum is not less than half of its members.

(2) If a member is disqualified from taking part in a decision or deliberation in respect of a matter under section 6, he shall be disregarded for the purposes of constituting the quorum for deciding or deliberating on that matter.

5. Proceedings of Council

(1) Subject to subsection (2), the chairman is to preside at a meeting of the Council.

(2) If, for any reason, the chairman is not able to preside at a meeting of the Council, the members present at the meeting are to elect a member from among themselves to preside.

(3) All questions for determination are to be decided by a majority of votes of the members present and voting, and if there is an equality of votes, the member presiding has a casting vote in addition to his original vote.

6. Disclosure of interests of members

If a member has a pecuniary interest, whether direct or indirect, in any matter under consideration at a meeting of the Council, the member –

- (a) shall, as soon as practicable after the commencement of the meeting, disclose to the Council the fact and nature of his interest;
- (b) shall withdraw from the meeting while the Council is considering the matter, if so required by the meeting; and
- (c) shall not in any case vote on the matter.

6A. Keeping of register by Council

(1) The Council is to establish and maintain a register for the purpose of keeping a record of any disclosure made by a member.

(2) The Council may determine the form of the register, including the manner of making entries in it.

(3) After a disclosure is made by a member, the Council is to cause the name of that member and the particulars of the disclosure to be recorded in the register; if a further disclosure is made, the Council is to cause those particulars to be recorded in the register after such disclosure is made.

(4) For the purpose of enabling any member of the public to ascertain the particulars of the disclosure made by a member, the Council is to make available the register for inspection by the public at any reasonable time.

(5) In this section, “disclosure” (披露) means a disclosure of pecuniary interest required to be made under section 6.

7. **Validity of proceedings**

The validity of any proceedings of the Council shall not be affected by –

- (a) any defect in the appointment of a member; or
- (b) any vacancy in the membership of the Council.

7A. **Meetings of Council to be held in public**

(1) Subject to subsection (2), a meeting of the Council shall be open to the public.

(2) Subsection (1) does not apply to a meeting of the Council or a part of a meeting of the Council in the following circumstances –

- (a) if, in the opinion of the Council, it is likely that the application of subsection (1) would result –
 - (i) in premature release of information concerning any financial matter or investment of the Council; or
 - (ii) in a disclosure of information in breach of any law, order or direction of a court or tribunal, duty of confidentiality, or other legal obligation or duty;
- (b) if, in the opinion of the Council, it is likely that any matter to be discussed or considered at the meeting or part of the meeting -
 - (i) concerns personnel matters; or
 - (ii) concerns a particular case that involves the carrying out of any provision of this Ordinance relating to the levy, surcharge, penalty or further penalty; or
- (c) if the Council, having regard to all the circumstances of a particular case, reasonably considers that subsection (1) should not apply to the meeting or part of the meeting.

8. Council to determine procedures

Subject to the provisions of this Ordinance, the Council may determine its own procedures.

9. Resolutions without meetings

(1) Subject to section 2(2) and this section, any business that may be transacted by a resolution of the Council in a meeting may be validly transacted, without a meeting, by a resolution in writing if –

(a) the resolution is signed and endorsed by more than half of the eligible members; and

(b) it is so signed and endorsed within the specified period.

(2) If a resolution is in the form of more than one document, the requirements of subsection (1)(a) are to be regarded as satisfied if each document is in the like form and the documents together bear the signatures of, and have been endorsed by, more than half of the eligible members.

(3) A telex, cable or facsimile, or an electronically transmitted document, that bears the signature of an eligible member is to be regarded as signed by that member.

(4) A resolution in the form of more than one document is to be regarded as made on the date on which the resolution is signed by the last member to sign and endorse it within the specified period.

(5) A member may, within the specified period, give notice in writing to the chairman requiring that the business to which the resolution relates be transacted at a meeting of the Council.

(6) Where a notice is given under subsection (5), the following applies –

(a) the business to which the resolution relates may not be transacted in the manner described in subsection (1);

(b) a resolution for the purposes of subsection (1) may not be made or regarded as having been made.

(7) For the purposes of this section –

“eligible member” () means a member who, on the date on which the resolution is made, is entitled to attend and vote at a meeting of the Council in respect of the business;

“endorse” (), in relation to a resolution, includes to endorse the transaction of the business by a resolution without a meeting of the Council;

“specified period” (), in relation to any business referred to in subsection (1), means a period –

(a) that is determined by the chairman and specified in the documents circulated for the purposes of transacting the business; and

(b) within which a member may indicate to the Council as to whether he endorses the resolution.

Extracted from Schedule 3

1. Interpretation

In this Schedule –

“Board member” (訓練委員會成員) means a member of the Board referred to in section 2;

“chairman” (主席) means the chairman of the Board appointed under section 2(4).

Extracted from Schedule 3**3. Term of office of Board member who is not public officer**

(1) Subject to subsection (2), a Board member who is not a public officer –

- (a) holds office for a period determined by the Council; and
- (b) is eligible for reappointment on the expiry of his term of office.

(2) A Board member who is not a public officer may not serve as such a member continuously for more than 6 years.

Extracted from Schedule 3

Extracted from Schedule 3

Extracted from Schedule 5**Prevention of Bribery Ordinance****4. Public bodies**

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended by adding –

- “104. Construction Industry Council.
- 105. Construction Industry Training Board.”.

Extracted from Schedule 5

Pneumoconiosis (Compensation) Ordinance

6. Interpretation

Section 2 of the Pneumoconiosis (Compensation) Ordinance (Cap. 360) is amended –

- (a) in subsection (1) –
- (i) by repealing the definition of “authorized person” and substituting –

““authorized person” (獲授權人), in relation to construction operations, means –

- (a) the authorized person appointed or nominated under section 4 of the Buildings Ordinance (Cap. 123) in respect of the construction operations; or
- (b) if no authorized person is appointed under that section, the person appointed in accordance with the Pneumoconiosis (Compensation) (Assessment of Levy) Regulations (Cap. 360 sub. leg. A) in respect of the construction operations;”;

- (ii) in the definitions of “construction contract”, “contractor”, “term contract” and “works order”, by repealing “Industrial Training (Construction Industry) Ordinance (Cap. 317)” and substituting “Construction Industry Council (No. 2) Ordinance (of 2004)”;
- (iii) by repealing the definition of “construction employer” and substituting –
 - ““construction employer” (建造工程聘用人)
means an employer as defined in
section 2(1) of the Construction
Industry Council (No. 2) Ordinance
(of 2004);”;
- (iv) by repealing the definition of “construction operations” and substituting –
 - ““construction operations” (建造工程) has the
meaning assigned to it in section 2(1)
of the Construction Industry Council
(No. 2) Ordinance (of 2004);”;
- (v) by repealing the definition of “levy” and substituting –
 - ““levy” (徵款) –
 - (a) in relation to construction operations, means the levy referred to in section 35(1); and
 - (b) in relation to quarry products, means the levy referred to in section 35(7);”;

- (vi) in the definition of “quarry products”, by adding “from” before “or”;
- (vii) by repealing the definitions of “specified amount” and “specified rate”;
- (viii) by repealing the definition of “total value” and substituting –
 - ““total value” (總價值), in relation to any construction operations, means the total value of the construction operations as defined in section 39D;”;
- (ix) by repealing the definition of “value” and substituting –
 - ““value” (價值) –
 - (a) in relation to any construction operations, means the value of the construction operations as determined under section 39C; and
 - (b) in relation to any quarry products, means the value of the quarry products as determined under section 39E;”;
- (x) by adding -
 - ““carry out” (進行) has the meaning assigned to it in section 2(1) of the Construction Industry Council (No. 2) Ordinance (of 2004);

“notice of assessment” (評估通知) means a notice of assessment described in section 35(6);”;

(b) by repealing subsections (3) and (4) and substituting -

“(2) Without affecting the generality of the definitions of “construction employer” and “contractor” under subsection (1), the following applies for the purposes of construing those terms -

(a) where a person carries out construction operations for any other person under a contract of employment –

(i) if the first-mentioned person is appointed as contractor under section 9 of the Buildings Ordinance (Cap. 123) in respect of the construction operations, he (and not that other person) is the contractor in respect of the construction operations; and

(ii) if the first-mentioned person is not appointed as contractor under section 9 of the Buildings Ordinance (Cap. 123) in respect of the construction operations, the first-mentioned person is not the contractor in

respect of the construction operations;

- (b) where a person carries out construction operations for himself without any arrangement for the carrying out of the construction operations by any other person, the first-mentioned person is both the construction employer and the contractor in respect of the construction operations;
- (c) where a person carries out construction operations for himself with the assistance, under a contract of employment, of one or more other persons none of whom is appointed as contractor under section 9 of the Buildings Ordinance (Cap. 123) in respect of the construction operations, the first-mentioned person is both the construction employer and the contractor in respect of the construction operations.”.