

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

**Administration's Responses to Follow-up Actions
Arising from Discussions at the Meetings on 25 October and 10 November 2005**

	Follow-up actions	Administration's responses
(1)	<ul style="list-style-type: none"> - To consider the need to state expressly that an appointed member might hold office for not more than six consecutive years. - To review the Chinese rendition of clause 10(1). 	<ul style="list-style-type: none"> - Since "hold office" in clause 10(2) does not mean hold office "on re-appointment", we are of the view that the clause, as it is, is sufficient to ensure that an appointed member of the Construction Industry Council (CIC) does not hold office continuously for more than six years (i.e. two consecutive terms). - We are also of the view that the Chinese rendition of clause 10(1) can accurately reflect the policy intent and is consistent with the English text. However, in view of Members' comments, a revised version of clause 10 is provided as at Annex A.
(2)	<ul style="list-style-type: none"> - To review clause 12(a) with regard to the need to seek "the Council's permission" for being absent from meetings. One suggestion was to amend it to provide that the office of an appointed member might be terminated if he had been absent from 3 consecutive meetings "without reason". 	<ul style="list-style-type: none"> - We consider that there are merits in retaining clause 12(a) to provide a basis for CIC to exercise control over the attendance of its meetings. An extract of similar provisions applicable to other statutory bodies is at Annex B.

	Follow-up actions	Administration’s responses
	<ul style="list-style-type: none"> - To review clause 12(d) with regard to “functions assigned to” an appointed member. The functions to be performed by appointed members were specified in clause 5 and not assigned individually. 	<ul style="list-style-type: none"> - Since the expression “functions assigned to” may not be acceptable to some Members, an alternate version of clause 12(d) is proposed as at Annex C.
(3)	<p>To consider including in the first few annual reports submitted by CIC to the Secretary for Environment, Transport and Works (the Secretary) the system put in place by nominating organizations for their candidates for reporting to the stakeholder groups.</p>	<p>We will request CIC to include the communication with key stakeholder groups as an area of major activity in the annual report during its initial stage of formation.</p>
(4)	<ul style="list-style-type: none"> - To review the need for clause 13 and clarify the meaning of “temporarily” in subclause (1) and the mechanism for invoking the acting appointment. - If the Administration considers it necessary to retain clause 13 which is modeled on an existing provision of the Industrial Training (Construction Industry) Ordinance, information should be provided on the reason of such a provision, the frequency of invoking the provision and the effect. - To consider the need to include a provision concerning appointment of members to fill up vacancies 	<ul style="list-style-type: none"> - We agree that clause 13 of the bill is unnecessary from the policy angle given that a similar provision in the Industrial Training (Construction Industry) Ordinance (Cap.317) has never been invoked. - The Secretary is vested with power of appointment under clause 9 and such power can be exercised, by virtue of section 39(1) of the Interpretation and General Clauses Ordinance (Cap.1) at Annex D, to fill vacancies arising from the resignation or termination of an incumbent CIC member.

	Follow-up actions	Administration's responses
	<p>arising from resignation or termination of office of appointed members. Members consider clause 9 inadequate for the purpose.</p>	
(5)	<ul style="list-style-type: none"> - To review the need for clause 14(2) and (3) as the Executive Director (ED) would not be a member of CIC. - To consider the need to provide expressly the relationship between the ED and CIC. Members were concerned about how the work of the ED would be monitored. 	<ul style="list-style-type: none"> - The proposed amendments to clauses 14 and 15 at Annex E only cover broad scope of duties and accountability of the ED in the policy perspective, whilst other employment conditions such as performance appraisal and pay package will be dealt with through contractual arrangements as other staff working for CIC.
(6)	<ul style="list-style-type: none"> - To advise which three public officers would be appointed by the Secretary to CIC under clause 9(1)(c) before the resumption of the Second Reading Debate on the bill. - To provide a written report outlining work of the task force to be formed by the Provisional Construction Industry Co-ordinating Board to tackle the issues relating to the transitional arrangements before the resumption of the Second Reading Debate on the bill. 	<p>Relevant information will be provided in due course.</p>

	Follow-up actions	Administration's responses
(7)	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”.	We have reviewed the suggestion of Members and propose to amend 7A(2)(b)(ii) as at Annex F . The legal effect of the revised version will remain unchanged.

10. 委任成員及身為公職人員的成員的任期

- (1) 委任成員在局長決定的一段不超逾3年的期間擔任該職位的任期由局長決定，但不得超逾3年。
- (2) 委任成員在任期屆滿後，有資格再獲委任，但他不可擔任該職位超過連續2屆任期他不可連續擔任該職位超過2屆任期。
- (3) 身為公職人員的成員的任免由局長酌情決定。

Extract of Relevant Statutory Requirements for Selected Organizations

(A) District Councils Ordinance (Cap.547)

14. Disqualification of appointed members

- (4) Subject to subsection (6), an appointed member is also disqualified from holding office for the remainder of that member's term of office if the member does not attend meetings of the District Council for 4 consecutive months ("disqualifying period") without obtaining the consent of the Council before the end of that period.*
- (5) The disqualifying period under subsection (4) begins on the day next following the date of the meeting of the Council at which the member is first absent without consent.*
- (6) If during the disqualifying period no meetings are held or only one meeting is held, that period is extended to end immediately after the 3rd consecutive meeting from which the member is absent.*

24. Disqualification of elected members

- (5) Subject to subsection (7), an elected member is also disqualified from holding office for the remainder of that member's term of office if the member does not attend meetings of the District Council for 4 consecutive months ("disqualifying period") without obtaining the consent of the Council before the end of that period.*
- (6) The disqualifying period under subsection (5) begins on the day next following the date of the meeting of the Council at which the member is first absent without consent.*
- (7) If during the disqualifying period no meetings are held or only one meeting is held, that period is extended to end immediately after the 3rd consecutive meeting from which the member is absent.*

* The relevant contents are shown in italic print.

(B) Hong Kong Arts Development Council Ordinance (Cap.472)

Schedule –

2. Terms and conditions of appointment and removal of Council members

(3) If an appointed member of the Council-

(a) has been absent from meetings of the Council for a period longer than 4 consecutive months without the permission of the Council;

(b) becomes bankrupt or enters into a composition or scheme of arrangement with his creditors, within the meaning of the Bankruptcy Ordinance (Cap 6);

(c) becomes incapacitated by physical or mental illness; or

(d) is in the opinion of the Chief Executive otherwise unable or unfit to discharge the functions of a member of the Council,

the Chief Executive may by notice in writing to the Council declare his office as a member of the Council to be vacant and may notify the fact in a manner that the Chief Executive considers appropriate, and upon the declaration the office becomes vacant.

(C) Hospital Authority Ordinance (Cap.113)

Schedule 3 –

7. Chief Executive may in certain circumstances declare office of member of Authority to be vacant

If the Chief Executive is satisfied that a member of the Authority appointed under section 3(3)(d) -

(a) has been absent from 3 consecutive meetings of the Authority without the permission of the Authority;

(b) has become bankrupt or made an arrangement with his creditors;

(c) is incapacitated by physical or mental illness; or

(d) is otherwise unable or unfit to discharge the functions of a member,

the Chief Executive may declare his office as a member of the Authority to be vacant, and shall notify the fact in such manner as the Chief Executive thinks fit; and upon such declaration the office shall become vacant.

* The relevant contents are shown in italic print.

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 ~~the functions assigned to him~~ his functions as such member.

Extract of The Interpretation and General Clauses Ordinance (Cap.1)

39. Exercise of powers

- (1) Where any Ordinance confers any power or imposes any duty, then the power may be exercised and the duty shall be performed from time to time as occasion requires.
- (2) Where any Ordinance confers any power or imposes any duty on the holder of any public office as such, then the power may be exercised and the duty shall be performed by the holder for the time being of that public office.

14. ~~Appointment of Executive Director~~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) If the Executive Director is temporarily absent from Hong Kong or is unable to perform the functions of his office for any other reason, the Council may appoint another person to act in his place during his absence or incapacity.~~

(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.

~~(3) The Council shall give notice in the Gazette of an appointment under this section.~~

~~15. Functions of Executive Director~~

~~Subject to the Council's direction, the Executive Director is responsible for the management, conduct and administration 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 ~~and is relevant to~~ 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.