



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2882 7152)

3 May 2012

Mr LAU Chun Kit
Chief Assistant Secretary for Development (Works) 6
Development Bureau
15/F., West Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Mr LAU,

**Re: Construction Industry Legislation
(Miscellaneous Amendments) Bill 2012**

I am scrutinizing the legal and drafting aspects of the Bill and would be grateful for your response to the following matters -

Functions and powers of the Construction Industry Council (Council)

The Bill amends the Construction Workers Registration Ordinance (Cap. 583) (CWRO) and the Construction Industry Council Ordinance (Cap. 587) (CICO) with a view to dissolving the Construction Workers Registration Authority (Authority) and transferring its powers and functions to the Council.

Clause 8 of the Bill amends section 8 of CWRO to the effect that the functions and powers of the Authority under CWRO be transferred to the Council. I note that section 8(2) which provides for the powers of the Authority is repealed but no corresponding provision is made to transfer these powers to the Council. Please explain the reasons.

It appears that the amended section 8 of CWRO contains only functions of the Council. Please consider deleting "and powers" from the section heading "Functions and powers of Council under this Ordinance" to reflect the contents of section 8 as amended.

Review of decisions of the Registrar under CWRO

Clause 26 of the Bill proposes to add a new section 45A to allow application for the extension of registration as registered skilled worker on specified grounds such as sickness and injury. Consequentially, references to section 45A(4) and (5) regarding the acceptance by the Registrar of an application for extension of registration are added to section 51 which provides that any person affected by a decision of the Registrar may request to review the decision. However, a review on the refusal of such an application under section 45A(7) is not provided for. The same situation is true of section 52 which provides that the person affected may further appeal against the decision of a review.

Please clarify whether the refusal by the Registrar of an application under section 45A(7) is reviewable or appealable under CWRO as amended and if it is the Administration's intention that no review or appeal is allowed, please explain the reasons for it.

Delegation of the Council's contracting power

Section 7(2)(c) of CICO provides that the Council has power to "enter into, assign or accept the assignment of, and vary or rescind, any contract or obligation". Section 16(2) of CICO prohibits, among others, the delegation of this power. Clause 50 of the Bill now seeks to amend section 16(2) by deleting the reference to section 7(2)(c) totally and the effect of which is to allow the delegation of this contracting power regardless of the type or amount of the contract. However, accordingly to paragraph 8 of the LegCo Brief (File Ref: DEVB(CR)W1-10/31), the Administration aims to alleviate the need for the Council's approval at a board meeting for "contracts of a minor and routine nature". Please consider revising the amendment to accord with the policy intent.

Application of CWRO to the Government

Currently, CICO is expressed to be binding on the Government while CWRO is not. The Bill proposes to add a new section 2A which provides that CWRO applies to the Government (Clause 5). Please explain the difference in meaning, if any, between the two formulations, namely "[t]his Ordinance binds the Government" (existing section 3 of CICO) and "[t]his Ordinance applies to the Government" (new section 2A of CWRO). In view of the Administration's aim to make CWRO consistent with CICO in this aspect (paragraph 11 of the LegCo Brief), please consider whether it would be more appropriate to use the same formulation in both Ordinances.

Proposed increase in fines for certain offences under CICO

The Bill proposes to increase the fine for the respective offences in sections 35(6), 36(6), 61(3) and 67(4) of CICO from level 1 (\$1-\$2,000) or 2(\$2,001 to \$5,000) to level 3 (\$5,001-\$10,000). Please explain the rationale for the proposed increase under the abovementioned sections.

Gender-neutral drafting

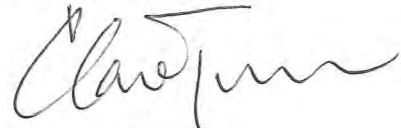
The Bill proposes to amend existing references "chairman" to "chairperson" and consequently the respective pronouns "his" or "he" are also subject to gender-neutral amendments. It is noted that while the pronouns for references to chairman are amended, the 'masculine inclusive' pronouns for other persons such as member of a board or committee (e.g. sections 31, 53, 57, 61 of CWRO and sections 3 and 8 of Schedule 4 to CICO) have remained unamended. As a result of the partial gender-neutral amendments, there is an undesirable mixture of "his" and "his or her" within the same ordinance. That may have unintended consequences on the interpretation of the relevant provisions. Please explain why gender-neutral drafting is not applied comprehensively in CWRO and CICO.

Chinese text of the Bill

I set out in the Appendix my queries on the Chinese text of the Bill for your clarification.

I would be grateful for your earliest response in both Chinese and English with soft copy to my secretary, Ms Christine LIU at ylliu@legco.gov.hk.

Yours sincerely,



(Clara TAM)

Assistant Legal Adviser

Encl

cc. LA

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DoJ (Attn: Mr Sunny CHAN, Sr Asst Law Draftsman/

Ms Lonnie NG SGC (Fax No.: 2845 2215))

Clerk to Bills Committee

**Legal Service Division's queries on
the Chinese text of the Construction Industry Legislation
(Miscellaneous Amendments) Bill 2012**

1. References to "管理局" in the existing section 26 of CWRO are to be amended to be "議會" under the Bill (clause 18) except the reference to "管理局" in section 26(2). Please amend the same.
2. The proposed section 46A of CWRO creates a new offence (clause 28 of the Bill). The Chinese text of new section 46A(5) which reads "獲發第(4)款所指通知的人，須在獲發該通知的日期後的 14 日將該註冊證交還註冊主任" is capable of carrying a meaning that the person must surrender the registration card within 14 days from the date he or she received the notice, which seems inconsistent with the meaning of English text "the person shall surrender the registration card within 14 days from the notice is given". Please clarify the date on which the 14 days period is to run under section 46A(5).
3. The Bill proposes to amend "交予" in section 49(7) of CWRO to be "交還" (clause 29 of the Bill) to correspond with "return" in the English text "return to the Registrar the registration card issued to him for revising the data recorded on the card...". It is noted that in the existing section 49(6), "交還" is used to render "surrender" in a situation that the registration card must be surrendered due to cancellation of the registration of a person. Please consider whether it is appropriate to use a different Chinese rendition for "return" in section 49(7) to distinguish the meaning of "surrender" and "return" in section 49.
4. The proposed new section 73 of CWRO enables the Council to complete certain acts that have not yet been completed by the Authority before the commencement date of the Bill, if enacted. In section 73(3), it is suggested that the Chinese text "而在生效日期前，管理局並未根據第 29(1)條就有關的反對作出決定" be revised as "而在生效日期前，管理局尚未根據第 29(1)條就有關反對作出決定". Please consider.