

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

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本署檔號 Our reference : DEVB(CR)(W)1-10/39 Pt.2
來函檔號 Your reference : LS/B/12/11-12
電話號碼 Tel No.: : 3509 8336
傳真號碼 Fax No.: : 2882 7152

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10 May 2012

Ms Clara TAM
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Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
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Hong Kong

Dear Ms TAM

**Bills Committee on Construction Industry Legislation
(Miscellaneous Amendments) Bill 2012**

In response to your letter of 3 May 2012 concerning the legal and drafting aspects of the Bill, we provide the Administration's Response in the attached Appendix.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ricky C K Lau', written over a white background.

(Ricky C K LAU)
for Secretary for Development

c.c. DoJ (Attn: Mr Sunny CHAN, Sr. Asst Law Draftsman/
Ms Lonnie NG, SGC (Fax No: 2845 2215)
Clerk to Bills Committee

**Construction Industry Legislation (Miscellaneous Amendments) Bill 2012
Response to LegCo's letter ref. LS/B/12/11-12 dated 3 May 2012**

Paragraph of
LegCo's letter
of 3 May 2012 Responses

Functions and powers of the Construction Industry Council (Council)

Para. 3 Transferring the powers under section 8(2) of CWRO to the Council would not be required as CICO already provides the Council with those powers. We list below the relevant sections of CICO corresponding to the provisions under section 8(2) of CWRO –

<u>Section of CWRO to be repealed</u>	<u>Section of CICO providing the Council with the relevant power</u>
8(2)(a)	15
8(2)(b)	17
8(2)(c)	7(2)(a) and (b)
8(2)(d)	7(2)(c)
8(2)(e)	7(2)(d)
8(2)(f)	5(m)

Para. 4 We will consider to delete “and powers” from the heading of section 8 of CWRO.

Review of decisions of the Registrar under CWRO

Para. 5 & 6 It is the policy intention that the Registrar's decision to reject an application to extend a registration under new section 45A(1) is reviewable under section 51(1) and appealable under section 52(1). We consider that the drafting of new section 45A(4) and amended sections 51(1) and 52(1) reflects that intention.

Section 45A(4) provides that “the Registrar may accept the application only if the Registrar is satisfied that a specified ground exists or the Registrar thinks it fair and reasonable to accept the application”. This subsection enables the

Registrar to grant an extension of the relevant registration subject to the specified conditions. Therefore, upon receipt of an application under new section 45A(1), the Registrar has to make a decision under new section 45A(4) as to whether he grants an extension. If the Registrar's decision is not to grant the extension, the person who is the subject of the decision may request for a review under amended section 51(1), and if appropriate, appeal against that decision under amended section 52(1).

New section 45A(7) is not a basis on which the Registrar may reject an application under new section 45A(1). Section 45A(7) provides for the Registrar's duty to notify the applicant if such an application is rejected. A reference to new section 45A(7) therefore does not appear in amended sections 51(1) and 52(1). However, this does not mean that a decision not to grant an extension is neither reviewable nor appealable.

Delegation of the Council's contracting power

Para. 7 Our policy intent for the amendments to section 16(2) of CICO by deleting the reference to section 7(2)(c) of CICO is to remove the too restrictive provisions for the need of Council's approval at a board meeting even for contracts of a minor and routine nature. We have no intention to restrict the Council's power for delegation of its power under section 7(2)(c) of CICO as the Council would set out different delegation limits to its Boards, Committees, chairperson, members and employees respectively. We confirm that the amendment to CICO under Clause 50 of the Bill reflects the policy intent.

Application of CWRO to the Government

Para. 8 Both formulations (i.e. "[t]his Ordinance binds the Government" and "[t]his Ordinance applies to the Government") have the same effect of rebutting the presumption under section 66 of Cap. 1 that an Ordinance does not bind the Government. The new formulation is the current standard version adopted since 2009 when it was used in the Adaptation of Laws Ordinance 2009.

As regards your suggestion of amending section 3 of CICO to bring it in line with new section 2A of CWRO under the Bill, we consider that it is not necessary to do so as the 2 formulations reflect the same policy intentions and there is no legal need to make the relevant sections identical.

Proposed increase in fines for certain offences under CICO

Para. 9 CWRO and CICO were enacted in July 2004 and May 2006 respectively. While CWRO imposes a heavier fine at Level 3, CICO which was enacted two years later has a relatively lighter fine at Level 1 or Level 2 for similar offences. The anomaly is due to the fact that the provisions of CICO in particular the fine levels were based on those contained in the repealed Industrial Training (Construction Industry) Ordinance which was first enacted in 1975. As the value of construction operations has significantly increased over the years, we consider that a fine level at Level 3 is more appropriate for the relevant offences.

Gender-neutral drafting

Para. 10 A new Construction Workers Registration Board will be established under the Bill and some amendments are made to the Construction Workers Qualifications Committee (to be renamed as Construction Workers Qualifications Board) and the Construction Workers Review Committee (to be renamed as Construction Workers Review Board). To reflect the current practice of gender-neutral drafting, "chairperson" instead "chairman" is adopted for these boards. To avoid the situation where the head of a board established under CIC is called the "chairperson" and that of another under the same body is called the "chairman", consequential amendments have been made to all other organisations established under CIC.

You have rightly pointed out that gender-neutral related amendments have not been made for other persons of the various organisations established under CIC. This is related to the fact that the Bill is intended to be a relatively straightforward item focusing on the matters set out in paragraphs 7 to 13 of the LegCo Brief. If the gender-neutral related amendments are made to CWRO and

CICO comprehensively, these purely stylistic amendments will greatly outnumber the substantive amendments, making the objectives of the Bill less precise and its contents much lengthier. Since we are confident that leaving certain existing gender-specific words or expressions unamended will not give rise to interpretation problems, we are content to deal with them in any subsequent legislative exercises.

Chinese text of the Bill

Appendix

- Item 1 We will consider to insert the amendment.
- Item 2 The English text of new section 46A(5) of CWRO (clause 28 of the Bill) provides that “[A] person to whom a notice is given under subsection (4) must, not later than 14 days after the date on which the notice is given, return the registration card to the Registrar.”. The policy intention is that the date on which the notice is given is not counted, and the 14 days period starts to run from the following day. We will consider to amend the Chinese text to better reflect the intention.
- Item 3 While it is not uncommon in legislation that the same Chinese expression is used for different English expressions, we will consider to review the existing Chinese expression for “surrender” and examine other options for “return” in respect of new sections 46A(4) and (5) and 49(7) of CWRO.
- Item 4 We believe you referred to the new section 73(2) and (3) of CWRO in this context. By using “並未”, the focus is on the end result which is wider in scope. We see no great difference between “並未” and “尚未” and do not propose to amend it. Also, “的” has been used in “有關的人”, “有關的財政年度” and “有關的付款” in this Bill and we suggest to retain the version published in the Gazette.