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Legislative Council

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**Paper for the House Committee Meeting
on 2 March 2012**

**Legal Service Division Report on
Construction Industry Legislation (Miscellaneous Amendments) Bill 2012**

I. SUMMARY

- 1. Objects of the Bill** Amending the Construction Workers Registration Ordinance (Cap. 583) (CWRO) and the Construction Industry Council Ordinance (Cap. 587) (CICO) to dissolve the Construction Workers Registration Authority (CWRA) and transfer its functions to the Construction Industry Council (CIC); providing for miscellaneous matters; and making incidental, consequential and related amendments.
- 2. Comments** The Bill mainly seeks to effect the organizational change for the amalgamation of CWRA with CIC, some modifications to the implementation of the Construction Workers Registration system and other related matters.
- 3. Public Consultation** According to the Administration, consultation with CIC, CWRA, staff of CWRA Secretariat, trade associations and workers unions was conducted and they supported the legislative proposals.
- 4. Consultation with LegCo** The Panel on Development was consulted on the legislative proposal on 23 November 2010 and 28 June 2011. While Panel members expressed support for the legislative proposals in principle, some members expressed concerns on a wide range of issues relating to the amalgamation.
- 5. Conclusion** In view of the concerns expressed by members of the Panel on the proposals, Members may wish to set up a Bills Committee to study the Bill in detail.

II. REPORT

Objects of the Bill

- (a) To amend the Construction Workers Registration Ordinance (Cap. 583) and the Construction Industry Council Ordinance (Cap. 587) to -
 - (i) dissolve the Construction Workers Registration Authority and transfer its functions to the Construction Industry Council; and
 - (ii) provide for miscellaneous matters; and
- (b) To make incidental, consequential and related amendments.

LegCo Brief Reference

2. DEVB(CR)W1-10/31 issued by the Development Bureau in February 2012.

Date of First Reading

3. 29 February 2012.

Comments

Background

4. The Construction Workers Registration Ordinance (Cap. 583) (CWRO) and the Construction Industry Council Ordinance (Cap. 587) (CICO) were enacted in July 2004 and May 2006 respectively, followed by the establishment of the Construction Workers Registration Authority (CWRA) and the Construction Industry Council (CIC) in September 2004 and February 2007.

5. CWRO provides, among others, for the registration of construction workers and the regulation of construction workers who personally carry out construction work. CWRA was established under section 7 of CWRO and is mainly responsible for supervising the mandatory registration system of construction workers.

6. CIC is a co-ordinating body established under section 4 of CICO and is responsible for advising and making recommendations on major policies and legislative proposals in connection with the construction industry as well as collaborating with CWRA on the registration of construction workers such as performing the role of the Registrar of Construction Workers, setting trade qualification standards for registration of construction workers and offering specified training courses for provisionally registered workers to facilitate registration.

7. According to the Administration, CWRA commenced the registration of construction workers in December 2005 and is now matured in its operation. Given the close collaboration of CIC and CWRA and their common objectives, the Administration proposes the amalgamation of CWRA with CIC to improve the operational efficiency of CIC and the construction workers registration system. The amalgamation requires modification of CWRO and CICO. Hence amendments to the two Ordinances are necessary.

The Bill

8. The Bill consists of 4 Parts. Part 1 sets out the short title and the commencement of the Bill, if enacted. Parts 2 and 3 provide the amendments to CWRO and CICO respectively. Part 4 sets out the consequential amendments to two other ordinances. The major amendments are summarised in the ensuing paragraphs.

Amalgamation of CWRA with CIC

9. To effect the amalgamation of CWRA with CIC, the Bill seeks to amend CWRO and CICO with the effect of dissolving CWRA and transferring its functions to CIC (Parts 2 and 3 of the Bill). Under the Bill, CIC will administer CWRO in addition to CICO. Upon the dissolution of CWRA, a Construction Workers Registration Board will be established under CIC to take over largely the functions and powers of CWRA with some exceptions¹ (Clause 11 of the Bill). The Bill also provides for the composition, tenure of office of members and proceedings of the Construction Workers Registration Board and the subcommittees formed under it (Clause 42).

10. The Bill proposes to add a new Part 10 to CWRO to deal with the matters in connection with the dissolution of CWRA. It includes transitional and saving arrangements relating to vesting of rights of CWRA in CIC and

¹ Exceptions include the administration of CWRO and supervision of registration of persons; making recommendations with respect to the rate of levy; matters related to levy; appointment of Registrar; prosecution under CWRO; and making of regulations under section 63 of CWRO.

saving of validity of CWRA's acts, status of legal claims and pending legal proceedings, effect of existing agreement, and continuance of employment (Clause 40).

Modifications to the registration system of construction workers

11. The Bill proposes some modifications to the registration system as follows -

- (a) extension of the existing three-month period to six months in respect of the applications for the renewal of certain classes of the construction worker's registration under CWRO (Clause 24);
- (b) provision for the extension of a registration as a registered skilled worker (provisional) or as a registered semi-skilled worker (provisional), for a designated trade before the expiry of the current registration on the ground that due to illness or injury the worker could not attend the test or assessment for registration (Clauses 25 and 26); and
- (c) enabling the Registrar of Construction Workers to store and display in a registration card issued under CWRO information of other construction-related cards/certificates issued by other authorities to reduce the cards a worker has to carry (Clause 28).

Application of CWRO to the Government

12. At present, CICO is binding on the Government while CWRO is not. The Bill provides for the application of CWRO to the Government to make it consistent with CICO (Clause 5).

Increase in workers' representation in statutory boards

13. The Bill propose to increase the number of workers unions' representatives in the statutory boards under CICO and CWRO, namely Construction Industry Training Board, Construction Workers Qualifications Committee (to be renamed as "Construction Workers Qualifications Board" under the Bill), and Construction Workers Review Committee (to be renamed as "Construction Workers Review Board" under the Bill), from two persons to three persons to align the workers unions' representation in all statutory boards under the CICO and CWRO (except the Objections Board²) (Clauses 12, 14 and 63).

² The Objection Board deals with contractors' objection to levy assessment and is not concerned with workers.

Powers and functions of CIC

14. Under the Bill, a new function is added to CIC to conduct or finance educational, publicity, research or other programmes relating to occupational safety and health, environmental protection or sustainable development in the construction industry (Clause 45(2)). Also, the Bill proposes to amend CICO to allow CIC to delegate its power to its members and employees in respect of entering into contracts (Clause 50(1)) and to enable CIC to deposit in banks nominated by the Financial Secretary any of its funds not immediately required to be used, or invest those funds in certain investment if prior approval of the Financial Secretary is obtained (Clause 52).

Amendments relating to the Construction Workers Appeal Board (Appeal Board)

15. The Bill proposes to amend CWRO in relation to the procedures and membership of the Appeal Board³ (Clauses 31 to 34) and to add a new provision to confer privileges and immunities on members of the Appeal Board (Clause 39).

Transitional staff arrangement for CWRA

16. In view of the concern raised by the staff of CWRA Secretariat which was shared by the Panel on Development, a new section 80 is proposed to be added to CWRO to provide for the continuation of employment of employees of CWRA despite the dissolution of CWRA (Clause 40).

Consequential amendments to other legislation

17. Consequential upon the dissolution of CWRA, the Bill also proposes to amend the reference to CWRA in the Prevention of Bribery Ordinance (Cap. 201) (Clause 64), and to repeal regulation 15(2)(a)(v) of the Pneumoconiosis and Mesothelioma (Compensation) (Assessment of levy) Regulations (Cap. 360 sub. leg. A), which relates to the disclosure of information to CWRA (Clause 65).

Commencement

18. If enacted, the Bill shall come into operation on a day to be appointed by the Secretary for Development by notice published in the Gazette.

³ Under section 52 of CWRO, a person may appeal against a decision of the Registrar of Construction Workers in respect of acceptance, rejection, expiry and renewal of registration, which he or she has applied for a review.

Public Consultation

19. According to paragraph 18 of the LegCo Brief, the Administration conducted consultation with CIC, CWRA, trade associations and workers unions and they supported the legislative proposals. Views were also sought from staff of CWRA Secretariat and they supported the amalgamation and expected its early implementation to clear the uncertainty on their employment.

Consultation with LegCo

20. The Panel on Development was consulted on the Administration's proposal on 23 November 2010 and 28 June 2011. At the meetings, while Panel members expressed support for the legislative proposals in principle, some members expressed concerns on various issues including -

- (a) protection of statutory rights of existing employees during the amalgamation of CIC and CWRA;
- (b) transitional arrangements for existing staff of the two organizations;
- (c) division of work and monitoring of the work of CIC after the amalgamation;
- (d) room for reduction of fees for registration;
- (e) training and trade tests for construction workers after the amalgamation; and
- (f) merging of various construction-related cards that workers were required to carry.

Conclusion

21. The Legal Service Division is still scrutinising the legal and drafting aspects of the Bill. In view of the concerns expressed by members of the Panel on the details of the legislative proposals, Members may wish to set up a Bills Committee to study the Bill in detail.

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