

立法會
Legislative Council

LC Paper No. LS46/13-14

**Paper for the House Committee Meeting
on 2 May 2014**

**Legal Service Division Report on
Construction Workers Registration (Amendment) Bill 2014**

I. SUMMARY

- 1. The Bill** The Bill seeks to amend the Construction Workers Registration Ordinance (Cap. 583) to modify the construction workers registration scheme by changing the basis of registration from "trade" to "trade division" and providing arrangements for senior construction workers; and to provide for the phased implementation of the prohibition on carrying out construction work without proper registration and other related matters.
- 2. Public Consultation** The Administration conducted discussion and consultation with relevant industry stakeholders including trade associations and labour unions from 2010 to 2013.
- 3. Consultation with LegCo Panel** The Panel on Development was consulted on 20 December 2013. Various suggestions and concerns were raised by members.
- 4. Conclusion** In view of the concerns raised on the legislative proposal by Panel members, Members may wish to form a Bills Committee to study the Bill in detail. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill.

II. REPORT

The date of First Reading of the Bill is 30 April 2014. Members may refer to the LegCo Brief (File Ref.: DEVB(CR)(W)1-10/31) issued by the Development Bureau in April 2014 for further details.

Object of the Bill

2. The Bill proposes to amend the Construction Workers Registration Ordinance (Cap. 583) to -

- (a) modify the construction workers registration scheme;
- (b) provide for –
 - (i) the phased implementation of the prohibition on carrying out construction work without proper registration;
 - (ii) the power to make exemptions from Cap. 583 by regulation;
 - (iii) amendments that facilitate the administration of the Ordinance; and
 - (iv) related matters.

Background

3. Enacted in July 2004, Cap. 583 provides for the registration of construction workers and the regulation of construction workers personally carrying out construction work. The construction workers are to be registered against designated trades as specified in Schedule 1 to Cap. 583 according to different skill levels, or as registered general workers. The registration scheme commenced on 29 December 2005¹.

4. Cap. 583 prohibits construction workers from carrying out construction work on a construction site without proper registration. The prohibition was implemented in phases. On 1 September 2007, the first phase of prohibition was implemented, i.e. to forbid unregistered construction workers from personally carrying out construction work on construction sites. The remaining

¹ The registration scheme was administered by the Construction Workers Registration Authority (CWRA) which was established under Cap. 583 in September 2004. CWRA was later merged with the Construction Industry Council to form the Construction Workers Registration Board on 1 January 2013 to administer the registration scheme.

phase of prohibition, i.e. to forbid workers from carrying out construction works of designated trades unless they are registered against the relevant trade or under instruction and supervision of the relevant trade-registered workers, has yet to be implemented².

Provisions of the Bill

5. The Bill proposes amendments to Cap. 583 to modify the existing registration scheme and to facilitate the implementation of the remaining phase of prohibition under Cap. 583. The main provisions are summarized in the ensuing paragraphs.

Registration by reference to a designated trade division

6. Under the Bill, the basis of registration under Cap. 583 is changed from "trade" to "trade division". The construction workers are required to be registered by reference to a designated trade division instead of a designated trade (proposed new section 3(2) and new Schedule 1).

7. Under the new registration scheme, a registered skilled worker of designated trade division is allowed to carry out works involving skills required for another trade division, if the two trade divisions are related as set out in the new Schedule 1A (proposed new section 3A).

8. The Bill also introduces transitional and saving provisions relating to the pre-existing registration (proposed new section 50A and new Schedule 5).

Senior workers registration arrangement

9. Under the Bill, an one-off arrangement is proposed for experienced construction workers without the requisite certificates or qualifications to be registered as registered skilled workers for a designated trade division.

10. Under the proposed new section 40A, the eligible workers are required to have possessed an aggregate of not less than ten years' relevant working experience on an individual trade division upon commencement of the proposed arrangement. Under the prerequisite of ten years' relevant working experience, those satisfying the requirement of possessing an aggregate of not less than six years' relevant working experience on a trade division before 29 December 2005 (i.e. commencement date of the registration scheme) may directly apply for registration as registered skilled workers. For those senior workers not satisfying the six years' requirement, they may take an assessment for registration as registered skilled workers.

² Sections 3(2) to (4), 4, 5 (partly), 6 (partly) and 48(1)(b) to (d) of Cap. 583 are not yet in operation.

11. However, this arrangement is not applicable to trade divisions with special registration requirements such as those requiring possession of relevant qualifications under other ordinances. The application for registration must be made within 18 months from commencement of the arrangement unless the Registrar of Construction Workers thinks it fair and reasonable to process a late application.

Exemption of small scale construction works and emergency construction works

12. The requirements for registration and the prohibition provided under Cap. 583 apply to a construction worker who personally carries out construction work on a construction site. The terms "construction work" and "construction site" are defined in Cap. 583 to exclude certain types of construction works and sites from its application. The Bill proposes, by amending the relevant definitions, to exclude Class III minor works and designated exempted works as defined in the Building (Minor Works) Regulation (Cap. 123N) from the application of Cap. 583 due to their minor nature and small scale.

13. The Bill also proposes to empower the Secretary for Development (the Secretary) to make regulation for exempting construction works or persons from the application of Cap. 583 on the basis of the scale, monetary value and urgency of the construction works (proposed new section 63A).

Implementation of remaining phase of prohibition

14. The remaining phase of prohibition is proposed to come into operation upon an expiry of two years from the commencement of the Bill (except provisions relating to the prohibition in the Bill), but the Secretary may by notice published in the Gazette extend the period (clause 1 (2) to (4) of the Bill).

Amendments relating to the administration of Cap. 583

15. The Bill includes the following amendments relating to the administration of Cap. 583 -

- (a) extending maximum period of registration as a registered skilled worker, registered semi-skilled worker or registered general worker from 48 months to 72 months (clause 21(1) and (2) of the Bill);
- (b) imposing obligations on both principal contractors and employers of workers (e.g. subcontractors) to implement reasonable measures regarding the arrangement for workers not registered under the relevant trade division to carry out construction work under instruction and supervision of the relevant trade-registered workers (proposed new section 4A);

- (c) introducing a defence for workers in relation to the offence of carrying out construction work without proper registration under circumstances that a worker was led to believe that he or she was carrying out exempted works or working under instruction and supervision of the relevant trade-registered workers (proposed new section 6(1A)); and
- (d) empowering the Construction Industry Council to issue a code of practice to provide guidance on the reasonable measures for reference of the construction industry (proposed new sections 63B and 63C).

Consequential amendments

16. Part 3 of the Bill sets out the proposed consequential amendments to other construction-related ordinances so that a construction worker registration card issued under Cap. 583, after storing the necessary information can be recognized as a valid proof of possession of other construction-related cards issued under those other ordinances.

Commencement

17. The Bill, if enacted, would come into operation on a day to be appointed by the Secretary by notice published in the Gazette.

Public Consultation

18. According to paragraph 22 of the LegCo Brief, the Administration conducted discussion and consultation with relevant industry stakeholders including trade associations and labour unions from 2010 to 2013. The Administration finalized the proposed amendments after incorporating the comments received, as appropriate.

Consultation with LegCo Panel

19. As advised by the Clerk to the Panel on Development, the Panel was consulted on 20 December 2013. Members suggested that the Administration should make clear to the construction sector the circumstances under which workers would be exempted from the remaining phase of prohibition under Cap. 583 so as to address the concerns of small and medium contractors; and assist construction workers, in particular the senior ones, in meeting the new registration requirements under Cap. 583 and adapting themselves to the changes. Members emphasized that the construction sector should be fully engaged in the introduction of the remaining phase of prohibition.

Conclusion

20. In view of the concerns raised on the legislative proposal by Panel members, Members may wish to form a Bills Committee to study the Bill in detail. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill.

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