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Paper for the House Committee meeting on 5 December 2014

**Report of the
Bills Committee on Construction Workers Registration
(Amendment) Bill 2014**

Purpose

This paper reports on the deliberations of the Bills Committee on Construction Workers Registration (Amendment) Bill 2014 ("the Bills Committee").

Background

Registration of construction workers

2. Enacted in July 2004, the Construction Workers Registration Ordinance (Cap. 583) ("CWRO") provides for the registration of construction workers and the regulation of construction workers personally carrying out construction work on construction sites. The registration scheme commenced on 29 December 2005¹.

3. CWRO prohibits construction workers from carrying out construction work on construction sites without proper registration ("the Prohibition"). The Prohibition was implemented in phases. On 1 September 2007, the first phase of the Prohibition was implemented, i.e. to forbid unregistered construction workers from carrying out construction work on construction sites. The remaining phase of Prohibition, i.e. to forbid workers from carrying out construction works of designated trades

¹ The registration scheme was administered by the then Construction Workers Registration Authority ("CWRA") which was established under CWRO in September 2004. CWRA was later merged with the Construction Industry Council (CIC), and the Construction Workers Registration Board was formed under CIC on 1 January 2013 to administer the registration scheme.

unless they are registered against the relevant trades or under the "instruction and supervision" of the relevant trade-registered workers ("designated workers for designated trades"), has yet to be implemented².

The remaining phase of Prohibition

4. According to the Administration, before taking forward the remaining phase of Prohibition, it has embarked on a comprehensive study on the issues of concern in consultation with relevant stakeholders, who have expressed the following major issues of concern about the implementation of the remaining phase of Prohibition under CWRO³ --

- (a) Workers' difficulties in registration -- Fine division of labour has long been adopted in the construction industry to meet evolving market needs. As a result, quite a number of workers only concentrate on one or two of the skill sets of a trade⁴. Besides, some workers currently carry out trade works of a minor scale and a nature which, in practice, require only a lower skill level of respective trades and often involve a number of trades. Although these workers can well perform the small-scale construction works independently, they may not possess the full skill set or have attained the required skill level to satisfy the registration requirements of all the relevant trades involved in their works.
- (b) Limitation on working across trades -- The construction industry's prevailing practice of deploying workers of a trade to carry out other trade works of similar nature would be impeded by the requirements of "designated workers for designated trades".
- (c) Senior workers registration arrangement -- Most industry stakeholders have expressed strong wishes for a one-off grandfathering arrangement for senior construction workers to ensure their smooth transition under the remaining phase of Prohibition.

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

³ Source: Legislative Council Brief on the Construction Workers Registration (Amendment) Bill 2014 (File Ref: DEVB(CR)(W)1-10/31)

⁴ Under the current CWRO, the regulation basis is "trade", i.e. a worker is required to pass a trade test for the whole trade in order to register under CWRO.

- (d) Implications to emergency construction works and minor construction works --
- (i) Owing to the need to immediately carry out emergency construction works during emergency circumstances, it may not be practical to strictly follow the requirements of deploying registered skilled workers of a trade to carry out the relevant trade works.
 - (ii) The construction industry is still in the process of adapting to the new requirements of the minor works control system under the Building (Minor Works) Regulation ("B(MW)R") (Cap. 123N) launched in December 2010. Stakeholders for minor construction have requested that the remaining phase of Prohibition be implemented at a later stage for minor construction works.
 - (iii) The large amount of maintenance works under term contracts for maintenance will generate vast demand for resources for relevant stakeholders in complying with the new requirements and also for the Construction Industry Council ("CIC") to take enforcement action upon the implementation of the remaining phase of Prohibition.

5. Taking into account stakeholders' views on the remaining phase of Prohibition, the Administration considers that amendments to CWRO are necessary.

The Bill

6. The Administration published the Construction Workers Registration (Amendment) Bill 2014 ("the Bill") in the Gazette on 17 April 2014. The date of First Reading of the Bill was 30 April 2014. The Bill proposes amendments to CWRO to modify the existing registration scheme and to facilitate the implementation of the remaining phase of Prohibition under CWRO. The main provisions are summarized in the ensuing paragraphs.

Provisions of the Bill

Registration by reference to a designated "trade division"

7. Under the Bill, the basis of registration under CWRO 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".

8. Under the new registration scheme, a registered skilled worker of a designated trade division is allowed to carry out works of other trade divisions involving similar skills. Relevant trade divisions are set out in the proposed new Schedule 1A.

Senior workers registration arrangement

9. Under the Bill, a 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. Eligible workers are required to have possessed an aggregate of not less than 10 years' relevant working experience in an individual trade division upon commencement of the proposed arrangement. Under the prerequisite of 10 years' relevant working experience, those satisfying the requirement of possessing an aggregate of not less than six years' relevant working experience in a trade division before 29 December 2005 (i.e. the 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.

10. 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 the 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

11. The requirements for registration and the Prohibition provided under CWRO 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 CWRO. The Bill proposes, by amending the relevant definitions, to exclude Class III minor works and designated exempted works as defined in the B(MW)R from the application of CWRO due to their minor nature and small scale.

12. The Bill also proposes to empower the Secretary for Development ("SDEV") to make regulation for exempting construction works (on the basis of the scale, monetary value and urgency of the works) or persons from the application of CWRO.

Staged implementation of the remaining phase of Prohibition

13. To facilitate gradual adaption by industry stakeholders and smooth implementation of the remaining phase of Prohibition, the Administration has proposed a staged approach whereby major works will be regulated first, leaving maintenance works under term contract for maintenance and minor construction works (including works under a construction contract with a total value of all construction operations not exceeding \$10 million, as well as Class I and II Minor Works under B(MW)R) to be regulated under the remaining phase of Prohibition at a later stage. It is proposed that the remaining phase of Prohibition for major works will come into operation upon the expiry of two years from the commencement of the relevant provisions of the Bill, but SDEV may by notice published in the Gazette extend the period as necessary.

Amendments relating to the administration of the Construction Workers Registration Ordinance

14. The Bill includes the following major amendments relating to the administration of CWRO --

- (a) 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 the "instruction and supervision" of the relevant trade-registered workers;
- (b) introducing a defence for workers in relation to the offence of carrying out construction works without proper registration under circumstances that a worker was led to believe that he or she was carrying out exempted works or working under the

"instruction and supervision" of the relevant trade-registered workers;

- (c) empowering CIC to issue a code of practices to provide guidance on the reasonable measures for the reference of the construction industry for complying with the requirements under CWRO or any subsidiary legislation made under it; and
- (d) extending the validity period of worker registration from three years to five years to alleviate workers' burden for card renewal.

Amendments to other enactments

15. The Bill sets out proposed amendments to other construction-related enactments so that a construction worker registration card issued under CWRO, after storing the necessary information, can be recognized as a valid proof of possession of other construction-related cards issued under those other enactments.

The Bills Committee

16. At the House Committee meeting on 2 May 2014, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Dr Hon LO Wai-kwok, the Bills Committee has held four meetings. The membership list of the Bills Committee is in **Appendix I**. The public including relevant trade associations and labour unions have been invited to give views on the Bill. The Bills Committee received oral representations from deputations at the meeting on 27 June 2014. A list of the organizations and individuals which/who have given views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

17. The Bills Committee is generally in support of the Bill to facilitate the implementation of all the measures under the CWRO. Members believe that the Bill can help ensure the quality of construction works and raise the status of construction workers through acknowledging their skill levels. Members have however stressed that any changes to the existing registration scheme should only be introduced after full consultation with the construction industry and should not affect the livelihood of the existing construction workers.

18. The main issues deliberated by the Bills Committee include the modification of the registration scheme, registration arrangement for senior workers, exemption of small-scale construction works, arrangement for workers carrying out construction works under instruction and supervision, and the identification of registered workers, etc. Details of the deliberations are set out below.

Modification of the registration scheme (clauses 3(9), (12), (13) and (14))

19. Clauses 3(9), (12), (13) and (14) deal with changing the expression "designated trade" to "designated trade divisions". This is required by the modification to the construction workers registration system made by the Bill to cope with the modular skills developed under the current practice of division of labour adopted in the industry. For this purpose, all existing trades will be referred to as "designated trade divisions" with their respective descriptions of work set out in the proposed new Schedule 1.

Mechanism for adding/deleting/changing the "trade divisions"

20. The Bills Committee notes that, under the proposed new Schedule 1, there are 139 trade divisions against which construction workers can be registered, after obtaining the relevant qualifications (such as passing the relevant trade tests or possessing the relevant certificates under other ordinances). Concerned with the flexibility in the demarcation of trade divisions, the Bills Committee has examined the mechanism for adding/deleting/changing the trade divisions in the proposed new Schedule 1. Views have been expressed that the list of designated trade divisions under the proposed new Schedule 1 should be reviewed as and when necessary to dovetail with the development of the construction industry.

21. On the trade divisions in Schedule 1, members have made various suggestions to the Administration for consideration. To this end, Hon POON Siu-ping and Hon Cyd HO have asked the Administration to consider adding a new trade division for operation of the equipment on dump trucks. Hon LEE Cheuk-yan has requested that a new trade division be added for operation of the equipment on concrete mixers.

22. The Administration has advised that the Construction Workers Registration Board ("CWRB") under CIC⁵ has established principles and

⁵ CWRB was established by CIC according to section 11A of CWRO. Its members include representatives of labour unions, trade associations and training institutions, etc.

mechanism for adding new trades (or trade divisions after the Bill is enacted) to Schedule 1 of CWRO to address the changing need of the industry. When there is such a need, the industry may raise a request to CIC for consideration. CWRB will scrutinize and discuss the proposal, including the work description and registration qualification of the proposed trade/trade division, according to the established principles, and will then widely consult the industry stakeholders.

23. Upon reaching a consensus on adding a trade/trade division to Schedule 1, and when the relevant training institution is ready to launch the trade test for the trade/trade division, CWRB will submit a proposal to the Development Bureau for amending CWRO. Proposals for deleting and changing trades/trade divisions will also be processed with reference to the above arrangement, details of which are available at CIC's website for the industry's reference. The Administration has confirmed that any amendments to the proposed new Schedule 1 will be gazetted under section 65 of CWRO, which is subject to negative vetting by LegCo.

24. As regards the case of operation of equipment on dump trucks, CIC has advised that CWRB has considered the suggestion of adding a trade to Schedule 1. However, since the skills required for operating the equipment on dump trucks cannot meet all the established principles mentioned in paragraph 22 above, a separate trade/trade division will not be created for this. The Administration has advised that currently dump truck drivers may register under CWRO as "Truck Drivers (Medium Goods Vehicles)" or "Truck Drivers (Heavy Goods Vehicles)".

25. As for the case of operation of equipment on concrete mixers, the Administration has advised that the proposal of adding a trade division for this is being studied by CWRB.

Imported workers

26. The Bills Committee has also enquired about how the experience and skill levels of imported workers can be verified, and if they use forged documents to prove their registrations, what liabilities the subcontractors/principal contractors will have. Hon KWOK Wai-keung is of the view that the verification of experience of imported workers should be carried out in Hong Kong and the employers should have the responsibility to verify their skills and suitability.

27. The Administration has confirmed that imported workers have to be registered under CWRO if they have to carry out construction work at

construction sites. On the liabilities of employers in the case of imported workers using forged documents to prove their registrations, there are defence provisions for the employers under CWRO in this respect.

Impact of the implementation of the remaining phase of Prohibition on the supply of construction workers and labour mobility

28. The Bills Committee holds the view that the implementation of the remaining phase of Prohibition, which would require skilled workers to be registered against designated trade divisions, should not make an adverse impact on the supply of workers in the construction industry or affect the labour mobility.

29. The Administration has explained to members that as the trade divisions proposed under the Bill were formulated according to the existing division of works in the construction industry, the implementation of the remaining phase of Prohibition should not have adverse impact on the supply of skilled workers. Further, registered skilled workers of selected trade divisions are allowed to independently carry out works of other similar trade divisions to enhance labour mobility and overall productivity of the construction industry. Moreover, a worker not registered under a trade division is allowed to undertake works of that trade division if the worker is under the "instruction and supervision" of a registered skilled or semi-skilled worker of that trade division. Small-scale and emergency construction works will also be exempted from the remaining phase of Prohibition. To encourage multi-skill development of workers and provide a ladder for skill enhancement, the Administration has proposed to create a trade division (namely, "master") for each group of trade divisions, as appropriate, under the Bill, so as to allow workers possessing registrations for a group of trade divisions to register as "master skilled worker" of that particular group.

Senior workers registration arrangement (clause 18)

30. Clause 18 adds a new section 40A which provides for a channel by which experienced construction workers may be registered as registered skilled workers for a designated trade division. To be registered under the senior workers registration arrangement, they must meet the specified conditions and make their applications within the specified period. The Bills Committee has examined the proposed one-off arrangement mentioned in paragraph 9 for senior workers. Members in general agree that while the registration of senior workers should be facilitated and the original purpose of maintaining the standard/quality of construction

workers should be upheld, the assessment standard for senior workers not meeting the 'six years' requirement as mentioned in paragraph 9 above should not be too high. To this end, Hon KWOK Wai-keung has suggested that senior workers should be allowed to re-take the assessment if they fail it. Otherwise, the livelihood of senior workers may be adversely affected.

31. The Administration has explained that there is a subcommittee under CWRB to advise on matters relating to the proposed one-off registration arrangement for senior workers. The subcommittee will consider the views of various stakeholders to set the assessment at an appropriate level to facilitate senior workers to register as skilled workers. In working out the relevant arrangement, close liaison will be maintained between CIC and labour unions. Moreover, senior workers will be allowed to choose either the written or the oral test. The Bill specifies that construction workers will be required to submit applications for the one-off arrangement for senior workers within 18 months⁶ after the commencement of clause 18 of the Bill, allowing another six months for CIC to complete the registration process upon the implementation of the remaining phase of Prohibition scheduled for 24 months⁷ after the commencement of the relevant provisions of the Bill. Those workers who fail the assessment may retake it before the senior workers registration arrangement expires, i.e. within 24 months after the commencement of the arrangement.

32. The Bills Committee has enquired about the verification mechanism for work experience of senior workers, in particular, the work experience of those who have worked for many employers on a daily-wage basis. Hon Tony TSE has suggested that the Administration should prepare guidelines for the concerned labour unions and trade associations to facilitate their adoption of the same criteria in the verification of work experience of senior workers.

33. The Administration has advised that CWRB, which undertakes the registration work, will seek the assistance of labour unions, trade associations, etc., to verify the experience of senior workers. In fact, a mechanism is in place to verify workers' work experience under the existing "provisional registration" arrangement⁸ for skilled workers by requesting the employers or labour unions to verify workers' experience.

⁶ SDEV may extend the period by notice published in the Gazette.

⁷ SDEV may extend the period by notice published in the Gazette.

⁸ Under the "provisional registration" arrangement, workers who have the required work experience and passed the course assessments after taking the specified training courses can register as skilled workers.

According to the Administration, the mechanism has been working smoothly. Senior workers may register as skilled workers through one of the three channels, namely (i) the above one-off arrangement to be implemented when the Bill comes into effect, (ii) registering as provisional skilled workers and then completing the specified training course and passing the assessment, and (iii) passing the relevant trade test(s).

Exemption of emergency and small-scale construction works (clause 33)

34. Clause 33 of the Bill adds the proposed new sections 63A, 63B and 63C to CWRO. Under the proposed new section 63A, SDEV is empowered to make regulations ("the Exemption Regulation"), subject to negative vetting by LegCo, providing for exemptions for certain construction works (on the basis of the scale, monetary value and urgency of the works) or persons from the application of CWRO. In this connection, the Administration has proposed that emergency construction works and small-scale construction works will be exempted from the remaining phase of Prohibition. For the small-scale construction works, they will be exempted from the remaining phase of Prohibition if they are: (i) designated small-scale construction works, (ii) works with quantities not exceeding designated exemption thresholds, or (iii) works with a value in monetary terms below a certain amount (proposed to be \$50,000, subject to the enactment of the Exemption Regulation, and this threshold will be adjusted in line with inflation). Yet, some trade divisions will not be exempted due to considerations such as safety concern or the fact that they are already regulated by other legislations.

Small-scale construction works with value below fifty thousand dollars

35. The Bills Committee has expressed concerns on the low threshold proposed, i.e. \$50,000, for the value of construction works to be subject to the remaining phase of Prohibition. Members have enquired how the threshold was arrived at and whether household renovation works, a large number of which would likely exceed \$50,000, will be subject to the regulation under CWRO. They urge that the Administration should launch publicity on the implementation of the remaining phase of Prohibition targeting at property owners and owners' committees so that they will be aware of the types of works that will or will not be subject to the regulation under CWRO. Hon TANG Ka-piu has expressed the concern that works contractors might lower the contract prices for certain works to below \$50,000 so as to avoid engaging registered skilled workers. The Chairman has pointed out that the result of lowering contract prices to

less than \$50,000 might have an impact on the quality and operation efficiency of the works.

36. The Administration has advised that after studying the works orders issued by works departments, other public bodies and specified bodies, it has been found that over 98% of the relevant works orders issued were small-scale construction works with a value each below \$50,000. Upon consultation, the construction industry considers this value level appropriate as the threshold for exemption from the remaining phase of Prohibition. Addition, renewal or alteration works will be subject to that Prohibition only if they involve the structure of a "specified structure" set out in Schedule 3 of CWRO. The Administration has confirmed that in general, household maintenance and renovation works do not involve structure and therefore will not be regulated under CWRO.

37. The Administration has explained that the construction industry has already established its own practices on what types of workers should be deployed for different types of works. It considers that the industry will not change its long-established practices in order to circumvent the regulation of the remaining phase of Prohibition. Further, exemption of works with a value not exceeding \$50,000 from the remaining phase of Prohibition will only apply to discrete work items which are isolated from other construction works by location and not physically connected with other construction works.

Instruction and supervision (clause 7)

38. Under section 4 of CWRO, as amended by clause 7 of the Bill for changing "trade" to "trade division", construction workers not registered under a designated trade division may carry out construction works under the "instruction and supervision" of a registered skilled worker, or a registered semi-skilled worker, for the trade division.

39. Members have expressed concerns that the number of workers allowed to work under the "instruction and supervision" of a registered skilled/semi-skilled worker is not specified under the CWRO. Moreover, there is no requirement that the worker providing "instruction and supervision" has to be present in the vicinity of the work area of the workers under "instruction and supervision". Some members have urged the Administration to review the "instruction and supervision" arrangement to ensure that the workers concerned are properly supervised.

40. The Administration has advised the Bills Committee that CIC has discussed with the relevant trades in the industry whether a ratio between trade-registered workers and non-trade-registered workers should be established for the "instruction and supervision" arrangement. The relevant stakeholders hold the view that such a ratio should not be fixed, as individual trades have their own construction practices and operation modes at different construction sites under different projects. Nevertheless, CIC will issue guidelines in consultation with the industry stakeholders on the "instruction and supervision" arrangement for the compliance of the industry.

Identification of registered skilled workers providing "instruction and supervision" (clause 8)

41. Under the new section 4A of CWRO added by clause 8 of the Bill, where a registered worker (who is not a registered skilled/semi-skilled worker of a designated trade division) is applying any skills of a trade division on a construction site under the "instruction and supervision" of a registered skilled or semi-skilled worker for the trade division ("the relevant skilled worker"), the employer of the registered worker or the principal contractor for the construction site must implement reasonable measures to ensure that the registered worker can identify the relevant skilled worker as a registered skilled or semi-skilled worker for the trade division, and those measures must be brought to the attention of the registered worker.

42. The Bills Committee holds the view that it is important to ensure consistent practices in the construction industry for the reasonable measures to identify the relevant skilled workers under the "instruction and supervision" arrangement. The Chairman has enquired if the Administration has discussed with the industry and CIC the reasonable measures to be taken. Hon Tony TSE has sought clarification on whether the principal contractor or subcontractors would be held responsible, if the proposed new section 4A(2) or 4A(3) (i.e. implementation of reasonable measures and that the reasonable measures should be brought to the attention of registered workers) is contravened. He is also concerned that confusion might arise from the implementation of reasonable measures if the principal contractor and subcontractors use different identification systems. Hon Cyd HO and Hon KWOK Wai-keung have stressed that the Administration and CIC should set out clear guidelines for the possible reasonable measures, for the easy reference of both the contractors and the workers. Hon Cyd HO considers that when the principal contractor or the subcontractor notify the registered workers of the measures for the

identification of the relevant skilled workers, they should cater for the need of those ethnic minority workers who are not conversant with English or Chinese.

43. The Administration has advised that the details of the reasonable measures will be stipulated in the relevant code of practices to be issued by CIC, and CIC is currently discussing with the relevant stakeholders the possible measures, such as specifying the colour of the safety helmet for the workers providing "instruction and supervision", requiring the wearing of badges, etc. The code of practices will set out a few reasonable measures for the reference of the principal contractors and subcontractors. However, unifying the identification measures among the whole industry will be subject to the feasibility and practicability of doing so.

44. The principal contractors and the employer of workers (e.g. sub-contractors) are responsible for implementing the reasonable measures. As regards prosecution, the Administration has advised that any decision to prosecute the principal contractor and/or the subcontractor for contravening the proposed new section 4A(2) or 4A(3) will depend on the circumstances of individual cases.

Publicity on the implementation of the remaining phase of Prohibition targeted at ethnic minorities

45. Taking into consideration that quite a large number of construction workers in Hong Kong are ethnic minorities, members have stressed that the new requirements under CWRO (e.g. reasonable measures to be implemented by the principal contractors and employers of workers) and the registration arrangements have to be made known to construction workers of ethnic minorities. Some of these workers may only speak languages other than Chinese or English. Hon Cyd HO has suggested that the Administration and CIC should liaise with the Labour Department and the Equal Opportunities Commission to share their experience in the provision of information to ethnic minorities.

46. The Administration has responded that it will discuss with the working group on publicity established under CIC the measures to assist workers of ethnic minorities, e.g. by providing relevant information in languages other than Chinese and English.

Use of the levies collected by the Construction Industry Council (clause 14)

47. Clause 14 seeks to add a new section 28A to CWRO to make it beyond any doubt that CIC can make use of the levies collected under CWRO⁹ at its discretion in allocating funds to its activities. Hon SIN Chung-kai has expressed concern on whether the registration fees collected from workers will be pooled together with CIC's other income. He holds the view that while CIC could use the moneys collected from sources other than the registration fees to subsidize the operation of the registration system, registration fees collected by CIC should be exclusively used for the registration purpose to safeguard the interests of construction workers.

48. At members' request, the Administration has provided information about the financial situation of CWRA between 2005-2006 and end 2012 (before the amalgamation of CWRA and CIC) and that of CIC in respect of workers registration in 2013. It has explained that throughout the period, the registration fees collected have all along been insufficient to cover the expenditures for workers registration. Hence, there is no question of diverting registration fees collected to cover expenses other than those for registration. The shortfalls are met by levies collected and other incomes of CIC. According to the Administration, it has conveyed to CIC the view that the registration fees collected should be used for workers registration services only.

Committee Stage amendments

49. The Administration has proposed a number of Committee Stage amendments ("CSAs") to the Bill to make clear the requirements or arrangements under certain provisions, to refine the drafting of the Chinese text of the Bill, and to make technical amendments. The Bills Committee has examined the proposed CSAs.

Proposed CSAs to Clause 33 of the Bill

50. Under the Exemption Regulation to be made by SDEV under clause 33 of the Bill, the "obligations" to be discharged by persons concerned in exempted construction works will have to be stipulated (e.g. the persons concerned are required to implement measures to indicate that the

⁹ Under section 23(1) of CWRO, a levy at the prescribed rate shall be imposed on the value of all construction operation undertaken or carried in Hong Kong. Notwithstanding section 23(1), construction operations the total value of which does not exceed the prescribed amount shall not be liable to the levy. Pursuant to the Construction Workers Registration (Levy) Notice (Cap. 583A), the prescribed rate and the prescribed value are set at 0.03% and \$1,000,000 respectively.

concerned construction works have been exempted). According to the proposed new section 63A(4)(c), the Exemption Regulation may contain any incidental, supplementary, consequential, transitional or saving provisions that are necessary or expedient. To avoid any doubt, the Administration has proposed, as CSAs, to add provisions to make it clear that under the Exemption Regulation, "obligations" may be imposed on "persons concerned" in the construction works exempted and a maximum fine at level 3 (i.e. \$10,000) may be prescribed if those persons fail to discharge the obligations.

51. Hon SIN Chung-kai opines that the word "obligations" in the proposed CSAs might not be the appropriate word to reflect the mandatory nature of the relevant requirements. He has suggested that the Administration should consider whether "conditions" or "instructions" are the more appropriate options. Hon CHAN Yuen-han is concerned that the words "any persons concerned in any construction work exempted" could include the workers other than principal contractors and employers of workers, thus obligations might also be imposed on workers who carry out exempted construction works, possibly in an unfair manner, for failing to meet the "obligations" that should have been discharged by employers for carrying out exempted construction works.

52. The Administration has explained that the word "obligations" in a legal document normally refers to mandatory duties or obligations, rather than obligations taken voluntarily. Neither "conditions" nor "instructions" could precisely reflect the meaning of "obligations" in the context of the new section 63A(4).

53. As regards the meaning of "any persons concerned in any construction work exempted", the Administration has advised that while at the present stage, it intends to impose the relevant obligations on principal contractors and employers of workers only, it prefers to maintain some flexibility in the regulation by keeping the phrase "any person concerned in any construction work exempted" unchanged, so that the provision could cater for changes in the future. The Administration has assured members that the details about the obligations and the responsible parties will be given in the Exemption Regulation to be made. The Administration will consult industry stakeholders, including labour unions, before making the Regulation which is subject to negative vetting by LegCo.

Proposed CSAs to Clause 37 of the Bill

54. Clause 37 adds the proposed new Schedule 5 (Transitional and Saving Provisions Relating to Registration of Construction Workers) to CWRO. The Legal Adviser to the Bills Committee ("the Legal Adviser") has suggested that in the proposed new Schedule 5, the relevant transitional arrangements for decisions pending review or appeal under the existing sections 51 and 52 of CWRO respectively should be stipulated. The Administration has taken the Legal Adviser's suggestion and proposed to amend Schedule 5 accordingly.

55. In deliberating the amendments to the proposed new Schedule 5, Hon SIN Chung-kai drew the Administration's attention to the inconsistency between the English and Chinese versions of the new proposed section 6(4) of Schedule 5, i.e. the use of "request" in the English version vis-à-vis "覆核要求" in the Chinese version. The Administration has considered Mr SIN's views and will change ""覆核要求" to "要求" to correspond with the English text.

56. Other proposed CSAs are textual or technical amendments. Members have no objection to the CSAs proposed by the Administration. A full set of the draft CSAs proposed by the Administration is in **Appendix III**. The Bills Committee has not proposed any amendment in its name.

Recommendation

57. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 17 December 2014.

Advice sought

58. Members are invited to note the Bills Committee's deliberations and the recommendation in paragraph 57.

**Bills Committee on
Construction Workers Registration (Amendment) Bill 2014**

Membership list

Chairman Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Members Hon LEE Cheuk-yan
Hon Abraham SHEK Lai-him, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon CHAN Hak-kan, JP
Hon IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon CHAN Yuen-han, SBS, JP
Hon KWOK Wai-keung
Hon SIN Chung-kai, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen, BBS

(Total : 15 members)

Clerk Ms Sharon CHUNG

Legal Adviser Ms Clara TAM

**Bills Committee on
Construction Workers Registration (Amendment) Bill 2014**

**List of organizations/individuals which/who have
provided views to the Bills Committee**

1. Construction Industry Council
2. Construction Site Workers General Union
3. Contractor's Authorised Signatory Association
4. The Federation of Hong Kong Electrical and Mechanical Industries Trade Unions
5. Hong Kong Construction Association
6. Hong Kong Construction Industry Employees General Union
7. Hong Kong Construction Sub-contractors Association
8. Labour Party
9. The Real Estate Developers Association of Hong Kong
10. Mr YEUNG Wai-sing, Eastern District Council member

DRAFT

Construction Workers Registration (Amendment) Bill 2014

Committee Stage

Amendments to be moved by the Secretary for Development

<u>Clause</u>	<u>Amendment Proposed</u>
5(1)	<p>In the Chinese text, by deleting the proposed section 3(2) and substituting—</p> <p>"(2) 除第 3A 及 4 條另有規定外，凡某建造工作涉及的技能，是附表 1 第 3 欄中與某指定工種分項相對之處所描述的技能，則除非某人是該工種分項的 —</p> <ul style="list-style-type: none">(a) 註冊熟練技工；(b) 註冊熟練技工(臨時)；(c) 註冊半熟練技工；或(d) 註冊半熟練技工(臨時)， <p>否則該人不得親自在建造工地，進行該建造工作。".</p>
6	<p>In the Chinese text, by deleting the proposed section 3A(1) and substituting—</p> <p>"(1) 凡某建造工作涉及的技能，是附表 1A 第 2 欄所指明的某指定工種分項的規定技能，則任何人如屬該附表第 1 欄中與該工種分項相對之處所指明的指定工種分項(主要工種分項)的註冊熟練技工，即可親自在建造工地，進行該建造工作。".</p>

- 7 In the Chinese text, by deleting the proposed section 4(1) and substituting—
- "(1) 凡某建造工作涉及的技能，是附表 1 第 3 欄中與某指定工種分項相對之處所描述的技能，則在符合第(2)款的規定下，任何屬註冊建造業工人的人，即使並非該工種分項的註冊熟練技工、註冊熟練技工(臨時)、註冊半熟練技工或註冊半熟練技工(臨時)，該人仍可親自在建造工地，進行該建造工作。".
- 8 In the proposed section 4A(1)(a), in the Chinese text, by deleting "，進行涉及以下技能的建造工作：" and substituting "進行建造工作，而該建造工作涉及的技能，是".
- 23(2) In the English text, by adding "designated" before "trade".
- 26(2) In the Chinese text, by deleting the proposed section 48(1)(b) and substituting—
- "(b) 該工人是某指定工種分項的 —
- (i) 註冊熟練技工；
 - (ii) 註冊熟練技工(臨時)；
 - (iii) 註冊半熟練技工；或
 - (iv) 註冊半熟練技工(臨時)，
- 並親自在建造工地進行建造工作，而該建造工作涉及的技能，是附表 1 第 3 欄中與該工種分項相對之處所描述的技能。".
- 33 In the proposed section 63A(2)(b), in the Chinese text, by adding "的" before "價值".
- 33 In the proposed section 63A(4)(b), by deleting "and".

- 33 In the proposed section 63A(4), by adding—
- "(ba) may impose obligations on any person concerned in any construction work exempted under the regulation;
 - (bb) may prescribe an offence for contravening the regulation which is punishable by a fine not exceeding level 3; and".
- 36 In the proposed Schedule 1A, in column 1, in the heading, by adding "trade" after "Major".
- 37 In the proposed Schedule 5, by deleting sections 6 and 7 and substituting—
- "6. Application, request for review and appeal under pre-amended Ordinance**
- (1) If an application under section 39, 44 or 45A of the pre-amended Ordinance remained pending immediately before the commencement date, the application is to be regarded as an application under section 39, 44 or 45A respectively.
 - (2) If a request for review under section 51 of the pre-amended Ordinance remained pending immediately before the commencement date, the request is to be regarded as a request under section 51.
 - (3) If an appeal under section 52 of the pre-amended Ordinance remained pending immediately before the commencement date, the appeal is to be regarded as an appeal under section 52.
 - (4) For the purposes of subsections (1), (2) and (3), section 2 or 3 of this Schedule applies to the registration to which the application, request or appeal relates, as if—

- (a) the registration were a pre-existing registration; and
 - (b) each reference to "has effect" in that section were a reference to "is to be regarded".
- (5) If—
- (a) an application is, under subsection (1), to be regarded as an application under section 45A; and
 - (b) the Registrar is satisfied that a specified ground within the meaning of section 45A(8) or (9) of the pre-amended Ordinance existed before the commencement date in relation to the application,
- a specified ground within the meaning of section 45A(8) or (9) is to be regarded as existing in relation to the application."