
**Provisional Construction Industry
Co-ordination Board**

**Legal Framework of the
Construction Industry Council**

December 2002

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Foreword

The Construction Industry Review Committee (CIRC) has carried out a comprehensive review of the current state of the local construction industry and submitted 109 recommendations to the Chief Executive in January 2001. Apart from uplifting the level of quality and cost-effectiveness, these recommendations are designed to inculcate a new culture of excellence and to inject impetus for change. As a focal point to pool together our efforts in pursuing this arduous task, a statutory industry co-ordinating body (ICB) will be established to forge consensus on long-term strategic issues and to sustain the momentum for continuous improvements.

Against this background, the Provisional Construction Industry Co-ordination Board (PCICB) has drawn up a legal framework for the ICB as contained in this consultation document. To ensure that it can truly become an entity set up by the industry for the industry, we would like to obtain input from all stakeholders before submitting a final proposal for consideration by the Government.

Since this important exercise is a joint effort, please take an active part by sending us your comments through the PCICB Secretariat at the following address by **30 January 2003** –

Room 2100, Murray Building,
Garden Road,
Central,
Hong Kong
(fax 2189 7990, e-mail – enquiry@pcicb.gov.hk)

Those who would like to access the consultation document electronically may visit our website at <http://www.pcicb.gov.hk>.

*Provisional Construction
Industry Co-ordination Board
December 2002*

Legal Framework of the Construction Industry Council

Part I – Construction Industry Council

1. Overview

1.1 To take firm ownership of the vast reform programme, CIRC has advocated that the statutory industry co-ordinating body (ICB) should be assigned with the following primary tasks –

- (a) to generate consensus on long-term strategic matters affecting the industry as a whole;
- (b) to communicate the needs and aspirations of the industry to the Government; and
- (c) to serve as the main channel for the Government to seek industry feedback on construction-related issues.

1.2 In keeping with its intended role and status, we propose that the statutory ICB should be called “Construction Industry Council (CIC)”. As with other similar entities, it will be a body corporate with perpetual succession and be capable of suing and being sued. It will also have a common seal, the affixing of which requires authentication by the signature of any two members.

2. Functions

2.1 In pursuance of the CIRC recommendations, we envisage that the CIC should exercise the following functions –

- (a) to tender advice and make recommendations to Government on strategic matters, including major policies or legislative proposals, that may affect or are connected with the industry;
- (b) to reflect the industry’s needs and aspirations to Government;

- (c) to elevate quality and competitiveness of the industry by promoting its on-going development and improvement;
- (d) to uphold professionalism and integrity within the industry by self-regulation and formulation of codes of conduct;
- (e) to improve the performance of stakeholders in the industry through administering registration and rating schemes;
- (f) to advance the skills of personnel in the industry through planning, promotion, supervision and co-ordination of training programmes;
- (g) to encourage research activities, use of innovative techniques and establishment of standards for the industry;
- (h) to promote industry good practice on procurement methods, site safety, environmental protection and other areas conducive to improved built quality;
- (i) to serve as a resource centre for the sharing of knowledge and experience within the industry;
- (j) to monitor improvements made by the industry through the compilation of performance indicators;
- (k) to make recommendations with respect to the rate of levy; and
- (l) to perform other functions relevant to the industry, including those imposed on it under the Ordinance or any other enactments.

3. General Powers

3.1 The CIC will be vested with powers to properly discharge its statutory functions. It may perform functions or exercise powers either alone or in association with any persons involved. Specifically, it may –

- (a) hold, acquire or lease all kinds of property;

- (b) sell or dispose of all kinds of property, except that prior approval of the Chief Executive (CE) is required for land granted at nil premium by the Government;
- (c) enter into, assign or accept the assignment of, and vary or rescind any contract or obligation;
- (d) borrow or raise money on such security as may be necessary, and charge all or any of its property for the purpose of meeting its expenditure, save that prior approval of the Financial Secretary (FS) is required above a certain limit;
- (e) make charges for use of any facility or service it provides;
- (f) engage technical, professional or other organizations/persons to provide services and determine all matters relating to such engagement;
- (g) devise, establish, operate and maintain registration and rating schemes in respect of stakeholders, companies or personnel of the construction industry;
- (h) conduct research into any matter relating to its purposes;
- (i) recommend and determine the adoption of standards for application in the construction industry covering design, processes, construction techniques, products, materials, and methods of procurement;
- (j) collect, analyse, compile, publish and disseminate information relating to the construction industry or such other subjects as may be necessary for the performance of its statutory functions;
- (k) formulate, issue and promulgate codes of conduct for construction personnel and industry good practices;
- (l) investigate complaints, conducting reviews, handle appeals and impose sanctions in enforcing the promulgated codes of conduct;
- (m) prescribe training requirements, provide and approve training courses, conduct examinations and tests in respect of any trades, award certificates of attendance and competence, oversee and administer apprenticeship schemes for the construction industry;

- (n) organise seminars, exhibitions, workshops, conferences, training courses or programmes, and share surpluses or losses;
- (o) carry out publicity in any form;
- (p) form or participate in the formation of a company to perform or carry out any of its statutory functions; and
- (q) receive funds, donations and gifts lawfully given and consistent with its statutory objects.

4. Composition

4.1 For the CIC to function effectively and take on a leadership role, CIRC has recommended that it should be driven by eminent members of the industry including clients, professionals, academics, consultants, contractors, subcontractors and workers. The Government will be represented as a client, while there should be an element of impartiality provided by the presence of independent members.

4.2 On the membership structure, we are aware that a trade-off has to be made between optimal representation and nimble decision-making. While a prescriptive approach with members nominated by individual trade associations and professional bodies will ensure a venue for direct participation, it hampers the flexibility in candidate selection and is not conducive to unfettered discussions. In practice, the same degree of representativeness could be preserved through a process of consultation.

4.3 With these principles in mind, we propose that a less restrictive model should be adopted as follows –

- (a) a chairman;
- (b) Executive Director of CIC;
- (c) not more than 4 members (not being public officers) who, in the opinion of the CE, represent construction clients;
- (d) not more than 4 members (not being public officers) who, in the opinion of the CE, represent construction professionals and consultants;

- (e) not more than 5 members (not being public officers) who, in the opinion of the CE, represent construction contractors, subcontractors and materials/equipment suppliers;
- (f) not more than 2 members (not being public officers) who, in the opinion of the CE, represent academic, research or training institutions;
- (g) not more than 2 members (not being public officers) who, in the opinion of the CE, represent construction workers;
- (h) not more than 3 members, not being public officers or persons connected with any of the categories above; and
- (i) not more than 3 public officers as ex-officio members.

4.4 The chairman and members, who are not public officers, will serve in their personal capacities for a term of not exceeding three years, subject to a maximum of two consecutive terms. Appointments may be staggered in the interest of continuity and will be published by notice in the Gazette. Except for the inaugural term, chairman of the CIC should be appointed based on nomination made by its own members.

4.5 In accordance with the usual practice, provisions will be made for the chairman or any members to be replaced for sufficient cause such as absent from consecutive meetings without permission, bankruptcy or entered into composition with creditors and incapacity caused by physical or mental illness.

5. Meetings and proceedings

5.1 As a pan-industry forum, the CIC should endeavour to arrive at decisions in a collective manner. But in the event that a resolution is required, a majority vote will be needed. Meetings will be held at such times and places as the chairman may appoint, or if requested by notice in writing signed by not less than half of its members. A 14-day notice will normally be served before the meeting takes place. If a member has direct or indirect pecuniary interest in any matter under consideration at a meeting, he must disclose such fact and the nature of his interest. He may then be required to withdraw from the meeting while the matter is being considered and in any case must not vote thereon.

5.2 The CIC may transact its business by circulation of papers, through electronic means or otherwise. A resolution approved in writing by a majority of members is as valid and effectual as if it had been passed at a formal meeting.

6 Committees

6.1 The CIC may set up boards or committees for the better discharge of its functions and may in writing delegate any of its powers as listed in paragraphs 3.1(e) – (q) and functions as listed in paragraph 2.1, except for approval of annual programmes or estimates and authorization to prepare financial statements. This will enable it to cultivate a close link with industry organisations whose activities carry significant impact on local construction such as clients, training institutions, universities, professional bodies, trade associations and workers' unions.

7 Appointment of employees and conditions of service

7.1 The CIC may appoint such employees as it thinks fit, including an Executive Director who will be the head of its secretariat. It may determine all matters relating to the terms and conditions of appointment or employment including payment of allowances, benefits, gratuities, pensions and remuneration.

Part II – Financial Provisions and Reports

8. Estimates and Annual Report

8.1 In each financial year, the CIC will submit to CE a programme of its proposed activities and a set of budget estimates. Furthermore, it will submit to CE within six months after the end of each financial year an annual report and audited accounting statements for tabling in the Legislative Council.

9. Bank deposits and investment of funds

9.1 The CIC will be required to open and maintain accounts with such banks approved by the Director of Accounting Services, and to pay all moneys received by it into these accounts. All funds that are not immediately required may be placed on fixed deposit in any banks or savings institutions nominated by FS, or if approved by FS, in such investments as it thinks fit.

10. Accounts and statements

10.1 The CIC should maintain proper accounts and financial records lasting for at least seven years. It will also prepare annual statements of income and expenditure and of assets and liabilities, both to be audited and reported by external auditors.

10.2 Without extinguishing its right, the CIC may write off, in whole or in part, any debt due which it reasonably considers irrecoverable.

Part III – Miscellaneous

11. Construction Industry Training Authority

11.1 One core responsibility to be borne by the CIC is to provide guidance to the Construction Industry Training Authority (CITA) and set strategic direction for its work. Moreover, CIRC has recommended that construction levies should be pooled together to provide a reliable source of finance for future operation of the CIC and to improve overall effectiveness in resource deployment.

11.2 To accomplish this goal, we propose to integrate CITA as a subsidiary body under the CIC known as “Construction Industry Training Board (CITB)” governed by the same piece of legislation. Under such an arrangement, the CIC will absorb the statutory functions of CITA, including advice on the rate of levy, but will in turn delegate to CITB all relevant responsibilities on training and trade testing covering –

- (a) provision of training courses for the construction industry;

- (b) establishment and maintenance of industrial training centres;
- (c) assistance, including by way of financial provision, in the placement of persons completing training courses; and
- (d) conducting skill tests, assessment of standards and award of competence certificates.

11.3 As a consequence, the Industrial Training (Construction Industry) Ordinance (Cap 317) will have to be repealed so that the assets, liabilities, powers and duties of CITA, including registration of title of properties, may be transferred to the CIC. We expect that no stamp duty will be payable in this regard.

11.4 We are conscious that the past success gained by CITA is due in no small part to the diligence and dedication of its staff. The assurance of a seamless transition will encourage them to carry on the good work, and we propose that all serving staff should deem to be employed by the CIC on existing terms with no break to continuity for the purpose of determining their rights to pension, gratuity or other benefits.

11.5 Thinking along the same lines, we propose that the membership structure of CITB should closely resemble the CITA board except that a less restrictive model should again be adopted as follows -

- (a) 3 members representing construction contractors;
- (b) 3 members representing practicing construction professionals;
- (c) 1 member representing construction workers;
- (d) 1 member representing training or tertiary institutions;
- (e) 2 members being public officers; and
- (f) 3 co-opted members.

11.6 All members of the CITB board will be appointed by the CIC and a chairman will be selected from among the 11 non-official members. There will be no change to meeting and voting procedures, but CITB will be required to submit a set of annual business plan, budget, accounting statements and audit reports for endorsement by the CIC.

12. Pneumoconiosis Compensation Fund Board

12.1 We have examined the case for and against an amalgamation with the Pneumoconiosis Compensation Fund Board (PCFB), given that it is also a recipient of industry levies. However, given the nature of its role as an administrative body handling compensation payments with a small team of staff, there does not appear to be strong justifications for a direct affiliation with the CIC both from an organization or resource management perspective.

12.2 In the course of our deliberations, we understand that PCFB is obliged to grant compensation to all claimants irrespective of their employment history while deriving its income primarily from the industry. Since it imposes an onerous financial burden and erodes the long-term funding position, we will pursue this further when PCFB has completed a review of its mode of operation.

13. Mechanism for levy assessment and collection

13.1 In order to minimize disruption, the CIC will be empowered to assess and collect levies through a mechanism modeled upon that provided for in the Industrial Training (Construction Industry) Ordinance. Subject to transitional arrangements catering for known commitments, the pool of funds accumulated by CITA prior to the merger could be used for purposes within an expanded purview of the CIC.

14. Consequential amendments

14.1 The CIC should be included in the Schedule of Public Bodies under the Prevention of Bribery Ordinance (Cap 201).

14.2 Upon establishment of the CIC, legislative amendment will be made to enable it to take up the role of the Registration Authority under the proposed Construction Workers Registration System.

15. Implementation Schedule

15.1 Depending on the outcome of this consultation exercise, we will proceed with the implementation schedule below –

Timing	Activity/Milestone
February 2003	● Collation of comments and formulation of final proposal for approval by PCICB
March 2003	● Submission of proposals to the Government for consideration and commencement of law drafting aimed at introduction to the Legislative Council in 2003/2004