

## **HONG KONG**

We are a comprehensive architectural service provider in Hong Kong and the PRC. In particular, we have five major practice areas: (a) architecture; (b) landscape architecture; (c) town planning; (d) interior design; and (e) heritage conservation. The practices of architecture, landscape architecture and town planning are governed by comprehensive statutory licensing and qualification systems. As at the Latest Practicable Date, there was no statutory or mandatory licensing and qualification system governing the segments of interior design and heritage conservation but certain non-official certifications and/or membership schemes have been implemented.

### **Architecture**

#### *Licensing and qualification*

In the profession of architecture, there are two non-mutually exclusive statutory licenses: (a) Registered Architect (“**RA**”); and (b) Authorised Person (“**AP**”). The licensing of RA is principally governed by the Architects Registration Ordinance while the licensing of AP is principally governed by the Buildings Ordinance.

#### *Registered Architect (“RA”)*

The registration of RA is governed by the AR Board. According to section 13 of the Architects Registration Ordinance, to be a RA, a person must fulfil the following six criteria:

- (a) he/she is a member of the HKIA or possesses such membership, training and/or experience that the AR Board accepts;
- (b) he/she has 1 year’s relevant professional experience in Hong Kong;
- (c) he/she is ordinarily resident in Hong Kong;
- (d) he/she is not the subject of an inquiry committee or a disciplinary order under Part IV of the Architects Registration Ordinance which precludes him/her from being registered under the Architects Registration Ordinance;
- (e) he/she declares in writing that he/she is competent to practice as an architect; and
- (f) he/she is a fit and proper person to be registered.

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As to sub-paragraph (a) above, pursuant to rule 5A of the HKIA Rules, a member of the HKIA shall be a qualified architect, duly nominated and elected by the HKIA Council, who

- (a) is a member of any other architects' association, institution or register recognised by the HKIA Council for the purpose of admission; or
- (b) holds a degree or diploma in architecture recognised by the HKIA Council, has two years post — graduate architectural experience or its equivalent as defined by the HKIA Council from time to time and who has passed the HKIA/AR Board Professional Assessment or its approved equivalent.

Further, under section 13(2) of the Architects Registration Ordinance, the AR Board can refuse to register a person as a RA who (a) has been convicted in Hong Kong or elsewhere of any offence which may bring the profession into disrepute and sentenced to imprisonment, whether suspended or not; or (b) has committed misconduct or neglect in a professional respect.

According to section 16(1) of the Architects Registration Ordinance, the entry in the registration of a RA remains in force for 12 months from the date of being registered and needs to be renewed annually. A certificate of registration will be issued to the RA under section 18 of the Architects Registration Ordinance.

### *Authorised Person ("AP")*

In Hong Kong, any person who intends to carry out building works is required by law, i.e. section 4(1) of the Buildings Ordinance, to appoint an AP as the co-ordinator of such building works, and to prepare and submit plans for the approval of Building Authority under the Buildings Ordinance, he/she is also required to appoint a registered contractor to carry out the building works.

AP has statutory responsibilities, i.e. section 4(3) of the Buildings Ordinance, for co-ordinating, supervising and carrying out building works and submitting stability certificates and test reports. When breach of statutory provisions is identified, the Building Authority may order works to cease or to be remedied. Offenders are also liable to prosecution or disciplinary proceedings.

Under section 3 of the Buildings Ordinance, the Building Authority shall keep a register of AP for public inspection. The major requirements for registration as AP pursuant to regulation 3 of the Building (Administration) Regulations is summarized as follows:

- (a) the applicant is a RA; and
- (b) the applicant has, for a continuous period of 1 year within the 3 years preceding the date of his/her application, such practical experience gained in Hong Kong as the AP registration committee considers appropriate.

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The AP registration committees will examine the qualifications and experience of the applicants and conduct professional interviews with the applicants. An applicant must satisfy the AP registration committee on his/her suitability for inclusion in the AP register. In this context, an applicant has to demonstrate that he/she has adequate practical experience and general knowledge in the architectural profession to meet local requirements and to discharge his duties in Hong Kong. He/she will also be expected to have acquired a working knowledge of the Buildings Ordinance and allied matters: the main criterion is a thorough understanding of general principles and fundamental requirements. For details of the application for registration as AP, please refer to the Practice Note “APP-7” published by the Buildings Department.

### *Corporate membership in HKIA*

HKIA allows corporate membership. In other words, the architectural practice can be carried out by the architects through an incorporation of a company limited by shares. According to rule 5C of the HKIA Rules, corporate members shall be corporations carrying on an architectural practice in Hong Kong at least one of whose directors is a foundation member, a member or a fellow of HKIA. In the event that a corporate member ceases to fulfil this requirement, the HKIA Council may terminate its membership, but may reinstate the corporate membership upon the requirement being fulfilled.

According to rule 5D of the HKIA Rules, a corporate member shall abide by the HKIA Rules but its obligations shall be separate and distinct from the individual obligations of such persons who may be directors or members or employees of the corporate member who may also be members of HKIA. As such, there is no statutory requirement governing the establishment of an architectural firm/company in Hong Kong (save and except the use of titles by this firm/company; for details, please refer to the coming section named “Use of title”). In practice, a Hong Kong architectural firm/company must have an AP because all the drawings and plans must be endorsed by an AP before submitting to the Building Authority for approval.

### *Use of title*

Section 30(1) of the Architects Registration Ordinance states that a person whose name does not appear on the register shall not be entitled to describe himself as “architect” or “registered architect” or to use the initials “R.A.” after his name. Section 30(3)(b) of the Architects Registration Ordinance further states that a person whose name is not on the register may describe himself as an architect if he describes himself by reference to a membership of an overseas body or institute of architects which description does not imply that he has the right to practise architecture in Hong Kong under the description of architect.

Section 30(4) of the Architects Registration Ordinance states that a person, including a firm or company shall not use the description of “architects” or “registered architects” or the initials “R.A.” unless (a) at each place where the person carries on the business of architecture, the business is conducted under the supervision of a RA who does not act at the same time in a similar capacity for any other person other than a firm or company that has substantially the same beneficial ownership and management as the person (where

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the person is a firm or company); (b) where the person carries on a multidisciplinary practice, the business, so far as it relates to architecture, is under the full time control and management of a RA who does not act at the same time in a similar capacity for any other person other than a firm or company that has substantially the same beneficial ownership and management as the person (where the person is a firm or company).

Any person who breaches the aforesaid provisions commits an offence and is liable to a fine of HK\$50,000.00 and to imprisonment for 1 year.

### *Professional conduct*

According to section 21 of the Architects Registration Ordinance, a RA commits a disciplinary offence if he/she commits misconduct or neglect in any professional respect. In deciding whether a person has committed a disciplinary offence, the code of professional conduct or practice promulgated by the AR Board ("**AR Board Code**") and currently in use by the HKIA ("**HKIA Code**") will be referred to.

Corporate membership in HKIA has been permitted since 2007. Therefore, the code of professional conduct applicable to individual members equally applies to corporate members. The following is a brief summary of the principle terms of the code of professional conduct currently in use:

- (a) A RA shall faithfully carry out the duties which he undertakes, and shall have a proper regard for the interests both of those who commission and of those who may be expected to use or enjoy the product of his work — (*Principle 1 of HKIA Code; Clause 2 of AR Board Code*).
- (b) A RA shall avoid any action or situation inconsistent with his professional obligations or likely to raise doubts about his integrity — (*Principle 2 of HKIA Code; Clause 5 of AR Board Code*).
- (c) A RA shall rely only on ability and achievement as the basis for his advancement — (*Principle 3 of HKIA Code; Clause 6 of AR Board Code*).
- (d) A RA shall endeavour to promote architectural excellence through his work and by the encouragement of others — (*Principle 4 of HKIA Code; Clause 1 of AR Board Code*).
- (e) A RA shall at all times, whether in the course of business or not, conduct himself with the honesty, integrity and propriety to be expected of a member of an honourable profession. He shall not act in any manner which is liable to bring the professional of architecture in Hong Kong into disrepute — (*Clause 4 of AR Board Code*).
- (f) A RA shall act impartially and professionally at all times. He shall administer building contracts under his control with fairness and integrity — (*Rule 1.3 of HKIA Code; Clause 4 of AR Board Code*).

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- (g) A RA shall be automatically disqualified to serve or act as a partner or director of any architectural practice proffering services to the public when he becomes an undischarged bankrupt or has his application for renewal of registration rejected by the AR Board — (*Rule 2.6 of HKIA Code; Clause 7 of AR Board Code*).

If a RA is found to have committed a disciplinary offence, depending on the seriousness of the offence, he/she may be reprimanded in writing by the registrar of the AR Board, or his/her name of RA may be removed from the register (whether for a fixed period or not), and/or he/she may be ordered to pay the costs of the disciplinary proceedings.

### *Continuing professional development (CPD)*

According to rule 23B of the HKIA Rules, every member must fulfil the requirements of CPD which HKIA Council may from time to time determine, failing which his/her membership may be terminated. The current requirement is that members are required to undertake a minimum 25 hours of CPD activities in one year. The CPD credit hours can be obtained through participating in the CPD activities organised by HKIA or other recognized service providers which include the various tertiary institutions, professional and allied institutions, government agencies and commercial course providers.

### *Marketing and advertising*

Marketing and advertising are restricted in Hong Kong architectural profession. According to rule 2.3 of HKIA Code, a member shall not take discounts, commissions, or gifts as an inducement to show favour to any person or body, nor shall he/she in his/her professional capacity recommend in advertisements any service or product associated with his/her profession.

Point-to-point promotion is permitted. Pursuant to clause 2.2 of the HKIA Guidelines on Dissemination of Information and Promotion of Professional Services ("**HKIA Promotion Guidelines**"), a member may make his/her availability and experience known to potential clients by providing information which in substance and in presentation is factual, relevant and accurate, neither misleading nor unfair to other members nor discreditable to the profession. Clause 2.3 of the HKIA Promotion Guidelines limits the use of generalized terms, such as "best", "largest" and "most" in regard to quality or size of practice or projects in promotional materials. Clause 2.4 of the HKIA Promotion Guidelines disallows any member to make comparison of his/her own practice with any other members' practice.

### *Operation*

According to rule 3.1 of the HKIA Code, members of the HKIA shall uphold and apply the HKIA Agreement between Client and Architect and the Scale of Professional Charges contained therein ("**HKIA Agreement**"). The HKIA Agreement is for the mutual

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benefit of clients and architects. It determines the minimum fees for which members of the HKIA may undertake work and describes the professional services which clients may expect in return.

The appendix to the HKIA Agreement sets out the scale and calculation method of the professional charges. In general, the construction projects are classified into three types (i) complex; (ii) medium-complex; and (iii) simple. Different types have different scales. The scale is in terms of a particular percentage of the total project value. With the same project values, the “complex” type has a higher percentage of scale than the “simple” type.

The HKIA Agreement also suggests the portion of remuneration for different work stages, the minimum hourly rate of different positions of staff in architectural firm/company and the minimum charges for some other services, such as preparing and/or signing of assignment plans, preparing and/or signing deed of mutual covenants plans, etc.

Pursuant to section 14(1) of the Buildings Ordinance, no person shall commence or carry out any building works or street works without having first obtained from the Building Authority (a) his approval in writing of documents submitted to him in accordance with the regulations; and (b) his consent in writing for the commencement of the building works or street works shown in the approved plan. Pursuant to section 14AA of the Buildings Ordinance, section 14(1) of the Buildings Ordinance does not apply in respect of minor works commenced under the simplified requirements.

The prescribed plans and in respect of building works are set out under section 8 of the Building (Administration) Regulations. Pursuant to section 12 of the Building (Administration) Regulations, all plans, structural details and calculations submitted to the Building Authority for approval shall be prepared and signed by an authorised person, and his signature shall be deemed to be his assumption of all responsibility for the plan, structural details or calculations, as the case may be.

Pursuant to section 16(1) of the Buildings Ordinance, the Building Authority may refuse to give his approval of any plans of building works under the following situations (not exhausted):

- the plans are not endorsed with or accompanied by a certain certificate from the Director of Fire Services;
- the building works shown in the plans would contravene any approved or draft plan prepared under the Town Planning Ordinance (Cap. 131);
- the building works are within a comprehensive development area of an approved or draft plan prepared under the Town Planning Ordinance (Cap. 131) and the works contravene a master lay-out plan approved by the Town Planning Board under section 4A(2) of the Town Planning Ordinance (Cap. 131); and/or

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- the carrying out of the building works shown thereon would result in a building differing in height, design, type or intended use from buildings in the immediate neighbourhood or previously existing on the same site.

Pursuant to section 16(3) of the Buildings Ordinance, the Building Authority may refuse to give his consent to the commencement of any building works or street works under the following situations (not exhausted):

- any condition or requirement imposed by him under section 17(1) of the Buildings Ordinance in respect of the building works or street works has not been complied with to his satisfaction;
- he is not satisfied that the authorised person, registered structural engineer, registered geotechnical engineer, registered general building contractor or registered specialist contractor has adequately provided precautionary and other protective measures for demolition works;
- the authorised person has not lodged a supervision plan for the works; and/or
- a period exceeding 2 years has elapsed since the approval of any of the prescribed plans in respect of the building works or street works.

Pursuant to section 21(1) of the Buildings Ordinance, no new building shall be occupied in any way except by not more than 2 caretakers unless (a) in respect of such building the Building Authority has issued an occupation permit; or (b) in respect of the whole or any part of the building which is being occupied there is a temporary occupation permit, issued by the Building Authority, which temporary occupation permit has not expired and has not been revoked by the Building Authority.

Pursuant to section 21(6) of the Buildings Ordinance, the Building Authority may refuse to issue a temporary occupation permit or an occupation permit under this section under the following situations (not exhausted):

- any part of the building works has been carried out in contravention of any of the provisions of the Buildings Ordinance;
- in the case of a building in which a liftway is provided, a lift has not yet been installed therein, unless the liftway has been protected to the satisfaction of the Building Authority in such manner as to avoid any danger to persons using the building;
- in the case of a building the plans whereof were certified by the Director of Fire Services in the terms indicated in section 16(1)(b)(ii) of the Buildings Ordinance, the applicant for the permit fails to produce to the Building Authority a certificate from the Director of Fire Services in such form as may be prescribed certifying that he is satisfied that the fire service installations and equipment shown on the plans aforesaid have been provided and are in efficient working order and satisfactory condition; and/or



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- in the case of a building to which by regulations a supply of water is required to be connected for any purpose, the Building Authority is not satisfied that connexion of a supply of water for every such purpose, which complies in every respect with all the requirements of the regulations, has been made to the building.

Pursuant to section 40(1AA) of the Buildings Ordinance, any person who knowingly contravenes section 14(1) of the Buildings Ordinance in respect of building works (other than minor works) or street works shall be guilty of an offence and shall be liable on conviction (a) to a fine of \$400,000 and to imprisonment for 2 years; and (b) to a fine of \$20,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

Pursuant to section 40(1) of the Buildings Ordinance, any person who contravenes section 21(1) of the Buildings Ordinance shall be guilty of an offence and shall be liable on conviction (a) to a fine at level 6 and to imprisonment for 2 years; and (b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

### **Landscape Architecture**

#### *Licensing and qualification*

In the profession of landscape architecture, there is one statutory license: Registered Landscape Architect (“**RLA**”). The licensing of RLA is principally governed by the Landscape Architects Registration Ordinance.

#### *Registered Landscape Architect (“RLA”)*

The registration of RLA is governed by the LAR Board. According to section 12 of the Landscape Architects Registration Ordinance, to be a RLA, a person must fulfil the following six criteria:

- (a) he/she is a member of the HKILA or possesses such membership, training and/or experience that the LAR Board accepts;
- (b) he/she has 1 year’s relevant professional experience in Hong Kong;
- (c) he/she is ordinarily resident in Hong Kong;
- (d) he/she is not the subject of an inquiry committee or a disciplinary order under Part IV of the Landscape Architects Registration Ordinance which precludes him/her from being registered under the Landscape Architects Registration Ordinance;
- (e) he/she declares in writing that he/she is competent to practise as a landscape architect; and
- (f) he/she is a fit and proper person to be registered.



## REGULATORY OVERVIEW

As to sub-paragraph (a) above, according to article 1.2 of the HKILA Bye-laws, a professional member shall have completed at least two years' working experience in landscape architecture, one year of which must have been in Hong Kong, and to have obtained professional status in landscape architecture either by having passed the HKILA's Professional Practice Examination ("PPE") or the examination of a national institute approved by the HKILA Council and listed in article 10 of the HKILA Bye-Laws.

According to paragraph 4 of the Rules and Regulations of the PPE, to be eligible for taking the PPE, the applicant must have been an associate member of the HKILA for at least 12 months. According to article 1.5 of the HKILA Bye-Laws, an associate member shall have graduated from an accredited course and such other courses which have been approved by the HKILA Council and listed in article 9 of the HKILA Bye-laws, i.e. Master of Landscape Architecture in the University of Hong Kong.

Further, under section 12(2) of the Landscape Architects Registration Ordinance, the LAR Board can refuse to register a person as a RLA who (a) has been convicted in Hong Kong or elsewhere of any offence which may bring the profession into disrepute and sentenced to imprisonment, whether suspended or not; or (b) has committed misconduct or neglect in a professional respect.

According to section 15(1) of the Landscape Architects Registration Ordinance, the entry in the registration of a RLA remains in force for 12 months from the date of being registered and needs to be renewed annually. A certificate of registration will be issued to the RLA under section 17 of the Landscape Architects Registration Ordinance.

### *List of Registered Practices under HKILA*

According to article 4.8 of the HKILA Bye-Laws, the registration committee of the HKILA Council shall retain and update a register of practices. According to part A of the Notes to Application/Renewal for Inclusion in the Register of Practices under HKILA, the practice/office which is engaged in providing services for landscape architecture may apply for inclusion in the List of Registered Practices under the HKILA, the practice/office must have: (a) at least one landscape principal having professional or fellow HKILA membership; and (b) he/she is a partner or director of the practice with full legal, managerial and financial responsibility for the landscape work of the practice.

In other words, a landscape architectural practice can be carried out by the RLA through the incorporation of a company limited by shares.

In order to be included in the Register of Practices under the HKILA, our company applicant must declare to be bound by the constitution of the HKILA, HKILA Bye-Laws, Code of Professional Conduct and Conditions of Engagement and Professional Charges of the HKILA.

In the premises, there is no statutory requirement governing the establishment of a landscape architectural firm/company in Hong Kong (save and except the use of titles by this firm/company; for details, please refer to the coming section named "Use of title").

*Use of title*

Section 29(1) of the Landscape Architects Registration Ordinance states that a person whose name does not appear on the register shall not be entitled to describe himself as “landscape architect” or “registered landscape architect” or to use the initials “R.L.A.” after his name. Section 29(3) of the Landscape Architects Registration Ordinance further states that a person whose name is not on the register may describe himself as a landscape architect if he describes himself by reference to a membership of an overseas body or institute of landscape architects which description does not imply that he has the right to practise landscape architecture in Hong Kong under the description of landscape architect.

Section 29(4) of the Landscape Architects Registration Ordinance states that a person, including a firm or company shall not use the description of “landscape architects” or “registered landscape architects” or the initials “R.L.A.” unless (a) at each place where the person carries on the business of landscape architecture, the business is conducted under the supervision of a RLA who does not act at the same time in a similar capacity for any other person other than a firm or company that has substantially the same beneficial ownership and management as the person (where the person is a firm or company); (b) where the person carries on a multidisciplinary practice, the business, so far as it relates to landscape architecture, is under the full time control and management of a RLA who does not act at the same time in a similar capacity for any other person other than a firm or company that has substantially the same beneficial ownership and management as the person (where the person is a firm or company).

Any person who breaches the aforesaid provisions commits an offence and is liable to a fine of HK\$50,000.00 and to imprisonment for 1 year.

*Professional conduct*

According to section 20 of the Landscape Architects Registration Ordinance, a RLA commits a disciplinary offence if he/she commits misconduct or neglect in any professional respect. In deciding whether a person has committed a disciplinary offence, the code of professional conduct or practice promulgated by the LAR Board and currently in use by the HKILA will be referred to.

As aforesaid, in order to be included in the Register of Practices under the HKILA, the company applicant must declare to be bound by the Code of Professional Conduct of the HKILA (“**HKILA Code**”). Therefore, the HKILA Code applicable to individual members equally applies to the company being listed in the Register of Practices under the HKILA. The following is a brief summary of the principle terms of the HKILA Code currently in use:

- (a) A HKILA member is remunerated either by salary or by professional fees. The information on professional fees and charges contained in the HKILA’s publication ‘Conditions of Engagement and Professional Charges’ is for the guidance of HKILA members. A HKILA member shall advise his clients in advance of the Conditions of Engagement that appertain, and of the category of membership to which he belongs — (*Clause 3 of HKILA Code*).

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- (b) HKILA members shall act impartially in all cases in which they are acting between parties and shall interpret the conditions of contract with fairness as between their client or employer and contractor — (*Clause 4 of HKILA Code*).
- (c) HKILA members shall agree with their client, in writing, at the outset of a commission, the terms and conditions for the professional services to be supplied — (*Clause 6 of HKILA Code*).
- (d) HKILA members may promote and advertise their services provided always that the information presented is factual, relevant, and neither misleading nor discreditable to the profession — (*Clause 7 of HKILA Code*).

If a RLA is found to have committed a disciplinary offence, depending on the seriousness of the offence, he/she may be reprimanded in writing by the registrar of the LAR Board, or his/her name of RLA may be removed from the register (whether for a fixed period or not), and/or he/she may be ordered to pay the costs of the disciplinary proceedings.

### *Continuing professional development (“CPD”)*

According to the Information Sheet of CPD of HKILA (May 2009), CPD program is a mandatory requirement for members of the HKILA commencing 1 April 2003, failing which the HKILA Council may refuse to renew his/her membership. The current requirement is that members are required to undertake a minimum 12 CPD points in one year. The CPD points can be obtained through participating in various CPD activities organised by HKILA, such as tertiary academic course, formal supervised research, professional training course, information gathering, etc.

### *Marketing and advertising*

According to clause 7 of the HKILA Code, HKILA members may promote and advertise their services provided always that the information presented is factual, relevant, and neither misleading nor discreditable to the profession.

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Clause 3 of the HKILA Code states that the information on professional fees and charges contained in the HKILA’s publication ‘Conditions of Engagement and Professional Charges’ (“**Conditions of Engagement and Professional Charges**”) is for the guidance of HKILA members. A HKILA member shall advise his clients in advance of the Conditions of Engagement that appertain, and of the category of membership to which he belongs. Clause 0.3 of the Conditions of Engagement and Professional Charges states that it is the duty of HKILA members to uphold and apply the Conditions of Engagement and Professional Charges.

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Landscape submissions will only be required in planning permissions or lease conditions where new landscape features are required to fulfil planning objectives/conditions or lease conditions. Landscape master plans (LMP) could be prepared by a RLA or any competent person.

Planning Department will be responsible for processing and vetting of the Landscape master plans (LMP) submitted in connection with planning applications under section 16 of the Town Planning Ordinance (Cap. 131) including compliance with planning conditions. Lands Department will be responsible for processing and vetting of landscape master plans (LMP) under the lease in consultation with the Architectural Services Department.

The applicant may appoint a RLA to certify that the landscape master plans (LMP) or the landscape proposal has been implemented in accordance with the approved landscape master plans (LMP) or landscape proposal respectively and submit a self-certificate of compliance (SCC) to Planning Department. For details, please refer to the joint practice note no. 3 namely “Re-engineering of Approval Process for Land and Building Developments”.

### **Town Planning**

#### *Licensing and qualification*

In the profession of town planning, there is one statutory license: Registered Professional Planner (“RPP”). The licensing of RPP is principally governed by the Planners Registration Ordinance.

#### *Registered Professional Planner (“RPP”)*

The registration of RPP is governed by the PR Board. According to section 12 of the Planners Registration Ordinance, to be a RPP, a person must fulfil the following six criteria:

- (a) he/she is a member of the HKIP or possesses such membership, training and/or experience that the PR Board accepts;
- (b) he/she has 1 year’s relevant professional experience in Hong Kong;
- (c) he/she is ordinarily resident in Hong Kong;
- (d) he/she is not the subject of an inquiry committee or a disciplinary order under Part IV of the Planners Registration Ordinance which precludes him/her from being registered under the Planners Registration Ordinance;
- (e) he/she declares in writing that he/she is competent to practise as a planner; and
- (f) he/she is a fit and proper person to be registered.

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As to sub-paragraph (a) above, clause 48 of the HKIP Bye-Laws states about the ways to be the full member of HKIP, in particular, the applicant (i) has been a student member for not less than one year; (ii) possesses a two-year full-time postgraduate degree or postgraduate diploma in town planning and has not less than two years of practical town planning experience, at least one year of which shall be in Hong Kong town planning work that shall have been gained after conferment of the degree or diploma but within the last five years before application for full membership; (iii) has passed such qualifying examination as may be prescribed by the HKIP, unless otherwise exempted; and (iv) has satisfied the HKIP Council that he has suitable breadth and depth of planning experience and knowledge and is suitable for election as a full member.

Further, under section 12(2) of the Planners Registration Ordinance, the PR Board can refuse to register a person as a RPP who (a) has been convicted in Hong Kong or elsewhere of any offence which may bring the profession into disrepute and sentenced to imprisonment, whether suspended or not; or (b) has committed misconduct or neglect in a professional respect.

According to section 15(1) of the Planners Registration Ordinance, the entry in the registration of a RPP remains in force for 12 months from the date of being registered and needs to be renewed annually. A certificate of registration will be issued to the RPP under section 17 of the Planners Registration Ordinance.

### *Corporate membership of HKIP*

A company which is engaged in the provision of the services of town planning may apply for inclusion in the HKIP List of Planning Consultants.

### *Use of title*

Section 29(1) of the Planners Registration Ordinance states that a person whose name does not appear on the register shall not be entitled to describe himself as “registered professional planner” or to use the initials “R.P.P.” after his name.

Section 29(3) of the Planners Registration Ordinance states that a person, including a firm or company shall not use the description of “registered professional planners” or the initials “R.P.P.” unless (a) at each place where the person carries on the business of planning, the business is conducted under the supervision of a RPP who does not act at the same time in a similar capacity for any other person other than a firm or company that has substantially the same beneficial ownership and management as the person (where the person is a firm or company); (b) where the person carries on a multidisciplinary practice, the business, so far as it relates to planning, is under the full time control and management of a RPP who does not act at the same time in a similar capacity for any other person other than a firm or company that has substantially the same beneficial ownership and management as the person (where the person is a firm or company).

Any person who breaches the aforesaid provisions commits an offence and is liable to a fine of HK\$50,000.00 and to imprisonment for 1 year.

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### *Professional conduct*

According to section 20 of the Planners Registration Ordinance, a RPP commits a disciplinary offence if he/she commits misconduct or neglect in any professional respect. In deciding whether a person has committed a disciplinary offence, the code of professional conduct or practice promulgated by the PR Board (“**PR Board Code**”) and currently in use by the HKIP (“**HKIP Code**”) will be referred to.

The following is a brief summary of the principle terms of the code of professional conduct currently in use:

- (a) RPPs in discharging their responsibilities to their employers and the professional shall at all times be cognisant of the interests of the general public in matters of town and country planning — (*Clause 6 of HKIP Code; Clause 6 of PR Board Code*).
- (b) RPPs advertising or authorising an advertisement of professional planning services shall ensure that the advertisements are neither misleading to the public nor, such as to prejudice their professional status or the reputation of the profession. In particular, no advertisement of planning services shall contain any of the following: (i) an inaccurate statement; (ii) an explicit comparison between the service offered by the RPP advertising and the service offered by other RPPs; (iii) any endorsement for a commercial product or company; or (iv) statement which runs counter to the provisions of the Planners Registration Ordinance — (*Clause 10 of HKIP Code; Clause 10 of PR Board Code*).
- (c) RPPs must not undertake any duties or carry out any instruction of an employer, client or supervisor which involve making statements purporting to be their own but which are contrary to their bona fide professional opinion — (*Clause 14 of HKIP Code; Clause 14 of PR Board Code*).
- (d) Remuneration: (i) RPPs shall be remunerated for their planning services solely by professional fee paid by clients and/or a salary and other benefits of the conditions of employment with the employers. In particular, RPPs must not undertake any planning services, or participate in any actions, which run counter to the provisions of the Prevention of Bribery Ordinance; (ii) RPPs who are offering professional services shall not reduce a fee quotation to take account of the fee quoted by another planner for the same service — (*Clause 16 of HKIP Code; Clause 16 of PR Board Code*).

If a RPP is found to have committed a disciplinary offence, depending on the seriousness of the offence, he/she may be reprimanded in writing by the registrar of the PR Board, or his/her name of RPP may be removed from the register (whether for a fixed period or not), and/or he/she may be ordered to pay the costs of the disciplinary proceedings.

## REGULATORY OVERVIEW

### *Continuing professional development (CPD)*

The motions to empower the HKIP Council to make rules, regulations and guidelines for the implementation of a mandatory CPD scheme and to incorporate the CPD requirements as part of the HKIP Code were endorsed by the EGM on 21 December 1999. The policy on CPD was subsequently brought into effect from 1 January 2000. All members of HKIP, except retired members and student members in full-time study, are required to undertake 25 hours of CPD activities in one year. There are three main categories for countable CPD hours, not less than 5 hours shall be spent on each category and for the category on personal development, a maximum of 12 hours limit has been set. As a general rule, day-to-day work and job-related activity should not be counted towards CPD hours. Failing to fulfil the CPD requirements will be a breach of the HKIP Code. The CPD points can be obtained through participating in various CPD activities organised by HKIP, such as conference, training courses, public forum, research, writing articles for journals, etc.

### *Marketing and advertising*

Marketing and advertising are restricted in Hong Kong profession of town planning. According to clause 10 of the HKIP Code, RPPs advertising or authorising an advertisement of professional planning services shall ensure that the advertisements are neither misleading to the public nor, such as to prejudice their professional status or the reputation of the profession. In particular, no advertisement of planning services shall contain any of the following: (a) an inaccurate statement; (b) an explicit comparison between the service offered by the RPP advertising and the service offered by other RPPs; (c) any endorsement for a commercial product or company; or (d) statement which run counter to the constitution of the HKIP.

### *Operation*

There is no statutory requirement governing the daily business operation by a RPP.

The outline zoning plan (OZP) prepared under sections 3(1)(a) and 4(1) of the Town Planning Ordinance (Cap. 131) is accompanied by a schedule of notes showing the uses always permitted (column one uses) and uses that would require permission from the Town Planning Board (column two uses) within a particular zone. There may be additional controls on developments within a particular land use zone and these are specified under the 'Remarks' column in the notes for that land use zone. When your proposed use or development is under 'Column Two' or as required by the 'Remarks' of the notes, you are required to apply for permission under section 16 of the Town Planning Ordinance (Cap. 131).

If the proposed use neither falls within column one uses nor column two uses, you are required to submit an application for amendment of plan under section 12A of the Town Planning Ordinance (Cap. 131).

Any person can submit an application for permission under sections 12A and 16 of the Town Planning Ordinance (Cap. 131). It should be noted that it is not a mandatory requirement to engage qualified professionals in making a submission.



## REGULATORY OVERVIEW

For more information about the documents required for submissions under sections 12A and 16 of the Town Planning Ordinance (Cap. 131), please refer to the guidance notes on planning applications namely “Application for Amendment of Plan under Section 12A” and “Guidance Notes on Application for Permission under Section 16 of the Town Planning Ordinance”.

Pursuant to section 4A(1)(b) of the Town Planning Ordinance (Cap. 131), the Town Planning Board may permit the undertaking of any building works in respect of a comprehensive development area (CDA). The Town Planning Board may require the applicant for such permission (a) to prepare a master layout plan (MLP) and submit it to the Town Planning Board for approval; and (b) to include information in the master layout plan (MLP) respecting building dimensions, floor area for each use, building development programmes and any other matter the Town Planning Board considers appropriate.

If approved by the Town Planning Board, the master layout plans (MLP) shall be deposited in the Land Registry for public inspection in accordance with section 4A(3) of the Town Planning Ordinance (Cap. 131).

For more information about the format of the master layout plan (MLP), please refer to the guidance note namely “Town Planning Board Guidelines for Submission of Master Layout Plan under Section 4A(2) of the Town Planning Ordinance”.

### **Interior Design and Heritage Conservation**

As at the Latest Practical Date, there is no statutory licensing and qualification requirements regarding the segments of interior design and heritage conservation. In stating so, there is a non-statutory registration system by the Hong Kong Interior Design Association (“HKIDA”) regarding the segment of interior design. HKIDA provides the registration of, in particular, professional member, ordinary member and corporate member.

Under section 3 of the Antiquities and Monuments Ordinance (Cap. 53), the Development Bureau may, after consultation with the Antiquities Advisory Board (AAB) and with the approval of the Chief Executive, by notice in the gazette, declare any place, building, site or structure, which the Development Bureau considers to be of public interest by reason of its historical, archaeological or palaeontological significance, to be a monument, historical building or archaeological or palaeontological site or structure.

Under section 6(1) of the Antiquities and Monuments Ordinance (Cap. 53), no person shall:

- (a) excavate, carry on building or other works, plant or fell trees or deposit earth or refuse on or in a proposed monument or monument; or
- (b) demolish, remove, obstruct, deface or interfere with a proposed monument or monument,

except in accordance with a permit granted by the Development Bureau.

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Under section 19(2) of the Antiquities and Monuments Ordinance (Cap. 53), any person who contravenes section 6(1) of the Antiquities and Monuments Ordinance (Cap. 53) shall be guilty of an offence and shall be liable on conviction to a fine of HK\$100,000 and imprisonment for 1 year.

Further, the Technical Circular (Works) No. 6/2009 “Heritage Impact Assessment Mechanism for Capital works Projects” issued by the Development Bureau dated 18 September 2009 (the “Circular”) must be observed.

Pursuant to paragraphs 5 and 6 of the Circular, “heritage sites” includes (i) all declared monuments; (ii) all proposed monuments; (iii) all sites and buildings graded by the Antiquities Advisory Board (AAB); (iv) all recorded sites of archaeological interest; and (v) government historic sites identified by Antiquities & Monuments Office (AMO).

Pursuant to paragraph 12 of the Circular, an heritage impact assessment (HIA) will be required by Antiquities & Monuments Office (AMO) if (i) the project is wholly or partly within a “heritage site” and Antiquities & Monuments Office (AMO) considers that the project will affect the heritage value of the “heritage site”; and/or (ii) Antiquities & Monuments Office (AMO) considers that the heritage value of any “heritage site” in the vicinity of the project will be affected.

Pursuant to paragraph 15 of the Circular, conservation management plan (CMP) will be required for projects involving large scale conversion works/alteration works/addition works/demolition works within historic buildings/sites in the “heritage sites” list.

### THE PRC

#### A. Laws and Regulations Relating to the Industry

##### *Basic Provisions on the Construction Design Industry*

The Construction Law of the PRC (中華人民共和國建築法) promulgated by the Standing Committee of the National People’s Congress on 1 November 1997 and amended on April 22, 2011 regulates and prescribes an administrative framework of construction design industry. Pursuant to the Construction Law of the PRC, the registered capital, professional technicians and equipment of the design units engaged in construction activities shall meet the requirements stipulated by laws and administrative regulations. Only when the design entities obtained appropriate qualification certificate may they engage in construction activities commensurate to the scope of their qualification. The Construction Law of the PRC also provides that the professional technicians engaged in construction activities shall obtain relevant qualification certificates and engage in construction activities within the scope of their qualification certificates.

### *Construction Engineering Design Qualification*

According to the Regulations on Management of Construction Engineering Reconnaissance and Design Qualification (建設工程勘察設計資質管理規定) (“**Regulations on Qualification Management**”), which was promulgated by the Ministry of Construction on 26 June 2007 and became effective on 1 September 2007, the construction engineering design qualification was divided into integrated qualification for design of construction projects (“integrated engineering design qualification”), industrial qualification for design of construction projects (“industry-specific engineering design qualification”), specialist qualification for design of construction projects (“specialist engineering design qualification”) and specific item qualification for design of construction projects (“specific item engineering design qualification”). Grade A is the only grade for integrated engineering design qualification; while the grades of industry-specific engineering design qualification, specialist engineering design qualification and industry-specific engineering design qualification are divided into Grade A and Grade B. Some industry-specific engineering design qualifications, specialist engineering design qualifications and specific item design qualifications may have Grade C and specialist engineering design qualification may have Grade D based on the nature and technical features of the construction engineering.

The Regulations on Qualification Management further provides that enterprises with integrated engineering design qualification may undertake construction design business of all grades in all industries; enterprises with industry-specific engineering design qualification may undertake construction engineering design business of its corresponding grades in its corresponding industry and may undertake specialist engineering or specific item design business of the same grade of its industry-specific engineering design qualification (except for the design-construction integration qualification); enterprises with specific item engineering design qualification may undertake construction design business of its corresponding grade in its specialized field.

According to the Regulations on Qualification Management, a design qualification shall be deregistered and the qualification licensing authority shall announce the invalidity of such certificate under any of the following circumstances: (i) the term of validity of the design qualification certificate has expired and no renewal application is filed in accordance with laws; (ii) the enterprise terminates in accordance with laws; (iii) the qualification certificate has been revoked, withdrawn or suspended in accordance with laws; or (iv) other circumstances as specified by laws or regulations.

The Ministry of Construction promulgated the Circular concerning the Issuance of the Construction Design Qualification Standards (關於印發《工程設計資質標準》的通知) (“**Circular on Design Qualification Standards**”) on March 29, 2007 to enumerate all 21 industries relating to the construction design business, such as construction industry, water conservation industry, railway industry, metallurgy industry, and etc. The Circular on Design Qualification Standards further elaborates the difference among construction design qualifications of different grades. Take the

industry-specific engineering design qualifications as an example, the industry-specific engineering design qualifications are divided into three grades — Grade A, Grade B and Grade C. The standards for applying for a Grade A industry-specific engineering design qualification are higher than that of a Grade B industry-specific engineering design qualification. To apply for a Grade A industry-specific engineering design qualification, the enterprise shall have larger amount of registered capital, more experienced technicians, and more relevant design experience than an enterprise with Grade B industry-specific engineering design qualification. As for the business scope, an enterprise with Grade B industry-specific engineering design qualification may only undertake the construction design business of medium and small projects in its industry; while an enterprise with Grade A industry-specific engineering design qualification may undertake any construction design business in its industry. Similarly, the application standards of specialist engineering design qualifications of higher grades are higher than those of lower grades and the business scopes of specialist engineering design qualifications of higher grades are wider than those of lower grades. Although the application standards and business scope of specific item engineering design qualifications are not stipulated in the Circular on Design Qualification Standards, but stipulated in specific regulations concerning such specific item engineering design qualifications, the differences among different grades of specific item engineering design qualifications are similar with those of industry-specific engineering design qualifications and specialist engineering design qualifications.

The Circular on Design Qualification Standards further stipulates the scope of architectural design services, which includes but not limited to building and structural design, outdoor engineering design, underground engineering design for residential building, design for small residential area and surrounding area of the industrial area and living area within the industrial area, planning design for small area, and simplex design. The design content and/or the relevant specialties involved in the above architectural services include but not limited to general layout planning, vertical design, design for various pipe networks and pipelines, landscape design, indoor and outdoor environmental design, building decoration, road network, fire services, intelligence, security, communications, lightning prevention, civil air defense, power supply and distribution, lighting, waste water treatment, air-conditioning facilities and earthquake resistance reinforcement.

According to the Circular on Design Qualification Standards, the major conditions of application for Grade A Qualification are as follows<sup>(note 1)</sup>:

**No. Conditions**

1. Status of a legal person as an enterprise.
2. Good reputation in society.
3. More than RMB3 million registered capital.

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4. More than 3 registered type I architects.
5. Having completed at least 1 large scale architectural design project or at least 2 medium scale architectural design projects as specified by relevant PRC regulations.
6. The main technical director or chief engineer of the enterprise shall have a bachelor's degree or above, be with more than 10 years of architectural design experience, be with the design experience of more than 2 large scale architectural projects as specified by relevant PRC regulations as technical director of such projects, and have registered qualification or relevant professional titles.
7. The non-registered staff of the enterprise shall have completed at least 3 medium or large scale architectural design projects, among which at least one is a large scale project, as specified by relevant PRC regulations as technical director of such projects.

As for the application procedures of Grade A Qualification, different provinces in the PRC may have different practices. Considering LWK Yiheng is a Grade A Qualification enterprise in Shenzhen City of Guangdong Province, we take the application procedures in Guangdong Province as an illustration.

### **No. Application procedure (normal duration)**

1. Filing the online application form and obtaining the adoption of the online filing.
2. Verification of the application materials by the Housing and Construction Bureau of Shenzhen Municipality.
3. Preliminary approval by the Administrative License Management Office of the Department of Housing and Urban-Rural Development of Guangdong Province (around 20 business days from the date of acceptance of the application, may extend 10 business days subject to relevant official's approval).
4. Approval by MOHURD (around 20 business days from the date of acceptance of the preliminary approval opinion and all application materials, may extend 10 business days subject to relevant Minister's approval) <sup>(note 2)</sup>.

#### *Notes:*

- (1) LWK Yiheng obtained the Grade A Qualification prior to the promulgation of the Circular on Design Qualification Standards. According to the Circular concerning the Issuance of the Implementation Opinions on the Regulations on Management of Construction Engineering Reconnaissance and Design Qualification promulgated by the Ministry of Construction and effective on 21 August 2008, the

## REGULATORY OVERVIEW

enterprises which obtained engineering design qualifications prior to the enforcement of the Circular on Design Qualification Standards can replace their qualification certificates for new equivalent qualification certificates with a valid period for five years prior to 31 March 2010. LWK Yiheng renewed its Grade A Qualification in accordance with the aforementioned regulations in 12 March 2010. Please refer to the paragraph below specifying the Circular concerning the Issuance of the Implementation Opinions on the Regulations on Management of Construction Engineering Reconnaissance and Design Qualification in this section.

- (2) Such duration may extend another 20 business days if departmental assessment is required, and may extend another 20 business days if expert assessment is required.

According to the Administrative Regulations for Construction Engineering Reconnaissance and Design Qualification (建設工程勘察設計管理條例), which was promulgated by the State Council and became effective on 25 September 2000, construction engineering design entities are prohibited from engaging in design business beyond the scope of their grade of qualification or in the name of other design entities, and from permitting other entities or individuals to undertake construction design business in their own names. Otherwise, the competent authorities shall have the power to order such design entities to stop the illegal act; impose a fine which is more than one time but less than two times of the design fee stipulated in the contract; and confiscate the illegal income, if any. In addition, the competent authorities shall have the power to order such design entities to suspend business for rectification, to reduce their grade of qualification, or even to revoke their qualification certificates if the circumstance involved is serious. Where an entity engages in design business without possessing a design qualification, the competent authorities shall have the power to ban the projects and impose a fine which is more than one time but less than two times of the design fee stipulated in the contract; and confiscate the illegal income, if any.

According to the Circular concerning the Issuance of the Implementation Opinions on the Regulations on Management of Construction Engineering Reconnaissance and Design Qualification (關於印發《建設工程勘察設計資質管理規定實施意見》的通知) (“Implementation Opinions on Design Qualification Management”) promulgated by the Ministry of Construction and effective on 21 August 2007, after the reorganisation or merger, the construction engineering design enterprise may inherit the higher grade and scope of design qualification which the former party or parties possessed. The Implementation Opinions on Design Qualification further provides that the enterprises with industry-specific engineering design qualifications, partial industry-specific engineering design qualifications or professional business office qualifications (except for interim grade) can replace their qualification certificates for new equivalent qualification certificates with a valid period for five years prior to 31 March 2010 as long as such enterprises meet the basic requirements specified in the Regulations on Qualification Management.



The Implementation Opinions on Design Qualification Management also specifies the business scope of enterprises with different design qualifications. An enterprise with comprehensive design qualification may engage in construction design business, construction project management and related technical services, consulting and management services of all industries. An enterprise with industry-specific engineering design qualification, specialist engineering design qualification or specific item design qualification may engage in construction design business, general contracting of construction projects, construction project management and related technical services, consulting and management services in the scope permitted by their design qualifications.

### *Regulations on Foreign-invested Construction Engineering Design Enterprises*

The Administrative Regulations on Foreign-invested Construction Engineering Design Enterprises (外商投資建設工程設計企業管理規定) (“Regulations on Foreign-invested Design Enterprises”), which was jointly promulgated by the Ministry of Foreign Trade and Economic Cooperation and the Ministry of Construction on 27 September 2002 and became effective on 1 December 2002, is the basic regulation relating to foreign-invested construction engineering design enterprise in the PRC. It provides that, in order to engage in construction engineering design activities in the PRC, foreign-invested construction engineering design enterprises shall obtain the certificate of approval for establishment of foreign-invested enterprise from competent foreign trade and economic administrative authority, register with competent industry and commerce administrative authority and obtain the qualification certificate for construction engineering design enterprise from competent construction administrative authority,

According to the Regulations on Foreign-invested Design Enterprises, the foreign trade and economic department under the State Council shall be responsible for the approval of the establishment of foreign-invested construction engineering design enterprises applying for Grade A construction engineering design qualification or Grade A or Grade B qualification for design of other construction projects; and the construction department under the State Council shall be responsible for the approval of the above-mentioned qualifications. The provincial foreign trade and economic department shall be responsible for the approval of the establishment of foreign-invested construction engineering design enterprises applying for other construction engineering design qualifications and the provincial construction department shall be responsible for the approval of the design qualifications of such enterprises. The Circular on Entrusting the Provincial Departments of Commerce with the Examination and Administration of Foreign-invested Construction Engineering Design Enterprises (關於委託省級商務主管部門審核管理外商投資建設工程設計企業的通知), which was promulgated by the Ministry of Commerce on 22 January 2006 and became effective on 31 March 2006, further provides that the provincial departments of commerce and the management committees of national economic and technological development zones are entrusted to examine and administer the foreign-invested construction engineering design enterprises.



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The Regulations on Foreign-invested Design Enterprises further provides that, as for a wholly foreign-owned construction engineering design enterprise, the number of its foreign service providers who are registered architects or engineers in the PRC shall constitute at least 1/4 of its total number of registered professionals as required by the grading criteria of its qualification; and the number of its foreign service providers with relevant design experience shall constitute at least 1/4 of its total number of its backbone technicians as required by the grading criteria of its qualification. As for a Chinese-foreign joint venture or a Chinese-foreign cooperative enterprise, the number of its foreign service providers who are registered architects or engineers in the PRC shall constitute at least 1/8 of its total number of registered professionals as required by the grading criteria of its qualification; and the number of its foreign service providers with relevant design experience shall constitute at least one-eighth of its total number of its backbone technicians as required by the grading criteria of its qualification. Moreover, the Regulations on Foreign-invested Design Enterprises provides that, as for a foreign-invested construction engineering design enterprise, each of its foreign service provides who are qualified as registered architects or engineers in the PRC and its backbone technicians shall live within the territory of the PRC for no less than six months accumulatively per year.

However, the Circular concerning Issuance of the Implementation Rules to the Administrative Regulations on Foreign-invested Construction Engineering Design Enterprises (關於印發《外商投資建設工程設計企業管理規定實施細則》的通知) (“**Implementation Rules for Foreign-invested Design Enterprises**”) which was promulgated by the Ministry of Construction and the Ministry of Commerce and effective on 5 January 2007 relaxed some of the restrictions specified in the Regulations on Foreign-invested Design Enterprises. According to the Implementation Rules for Foreign-invested Design Enterprises, foreign-invested construction engineering design enterprises temporarily unable to meet the requirements for the number of foreign service providers who are qualified as registered architects or engineers in the PRC as prescribed in the Regulations on Foreign-invested Design Enterprises may employ Chinese registered architects or engineers so as to meet such requirements. Where there is any requirement in the Regulations on Foreign-invested Design Enterprises in relation to the number of foreign service providers with relevant professional design experience, the foreign-invested construction engineering design enterprise may employ professional technicians with Chinese nationality to meet such requirement. Where a foreign service provider is tentatively unable to meet the residence requirement as set forth in the Regulations on Foreign-invested Design Enterprises, this requirement may be waived. In addition, a foreign-invested construction engineering design enterprise is not allowed to apply for the design qualifications for certain special industries, sectors or specialist fields concerning Chinese national security and confidentiality, etc.

According to the Order concerning the Promulgation of the Supplementary Provisions of the Provisions on the Administration of Foreign-funded Construction Engineering Design Enterprises (關於發佈《外商投資建設工程設計企業管理規定》的補充規定的命令) which was jointly promulgated by the Ministry of Construction and

the Ministry of Commerce on 19 December 2003 and became effective on 1 January 2004, service providers from Hong Kong or Macau may establish wholly-owned construction engineering design enterprises in the Mainland as of 1 January 2004. In addition, the establishment and qualification application of such construction engineering design enterprises shall comply with the Regulations on Foreign-invested Design Enterprises and relevant regulations governing the management of qualifications of construction engineering design enterprises.

According to the Circular on Issues concerning the Application of Specific Design Qualification of Foreign Wholly-owned Construction Design Consulting Enterprises or Institutes (建設部關於國外獨資工程設計諮詢企業或機構申報專項工程設計資質有關問題的通知) (“**Circular on Application of Specific Design Qualification**”), which was promulgated by the Ministry of Construction and became effective on 29 March 2000, foreign wholly-owned construction design consulting enterprises or institutes are allowed to involve in the architectural consulting service in respect of specific design of the integrated system for construction intelligence, specific design of construction decoration and specific design of environmental engineering in the PRC.

According to the Tentative Regulations on the Administration of Foreign Enterprises Engaged in Construction Engineering Design Activities within the People’s Republic of China (關於外國企業在中華人民共和國境內從事建設工程設計活動的管理暫行規定), which was promulgated by the Ministry of Construction on 10 May 2004 and became effective on 10 June 2004, any foreign enterprise is allowed to engage in the design activities prior to the preliminary design and the design of construction documentation. In order to engage in preliminary design and design of construction documentation of construction engineering design activities within the People’s Republic of China, a foreign enterprise shall cooperate with at least one Chinese design enterprise with construction engineering design qualification to carry out Sino-foreign cooperative design activities and can only undertake construction engineering design activities within the scope permitted by the design qualification of the Chinese design enterprise.

### **B. Other Laws and Regulations**

#### *Regulations on Foreign Investment*

According to the Provisions on Guiding Foreign Investment Direction (指導外商投資方向規定), which was promulgated by the State Council on 11 February 2002 and became effective on 1 April 2002, foreign-invested projects fall into four categories, namely encouraged, permitted, restricted and prohibited projects. Foreign investment projects that are categorized as encouraged, restricted, and prohibited are listed under the Catalogue for the Guidance of Foreign Investment Industries. Those foreign-invested projects that are not categorized as encouraged, restricted, and prohibited are permitted foreign-invested projects. On 24 December 2011 the Ministry of Commerce and NDRC jointly promulgated the current Catalogue for the Guidance of Foreign Investment Industries (外商投資產業指導目錄) (“Catalogue”), which became effective on 30 January 2012. The construction design

business is not listed in the Catalogue, which means foreign investment is permitted in the construction design industry in the PRC.

### *Regulations on Overseas Listings*

On 8 August 2006, six PRC regulatory authorities, namely the Ministry of Commerce, the State Assets Supervision and Administration Commission, the SAT, SAIC, CSRC and SAFE, jointly promulgated the M&A Rules, which became effective on 8 September 2006 and amended by Ministry of Commerce on 22 June 2009, to regulate foreign investment in PRC domestic enterprises. The M&A Rules contain provisions purporting, among other things, to require a domestic company, enterprise or individual intends to takeover its/his/her affiliated domestic company in the name of an offshore company which it/he/she lawfully established or controls, the takeover shall be subject to the examination and approval of the Ministry of Commerce. The M&A Rules further provide that where a domestic individual holds equity interest in a domestic company through an offshore special purpose company (“SPV”), the overseas listing of that SPV shall be subject to approval by the CSRC.

### *Regulations on Foreign Exchange Controls*

The Foreign Exchange Administrative Regulations of the PRC (中華人民共和國外匯管理條例) (“**Foreign Exchange Regulations**”) promulgated by the State Council on 29 January 1996, effective on 1 April 1996 and amended on 5 August 2008 forms an important legal basis for foreign exchange supervision in the PRC. Under the Foreign Exchange Regulations, the foreign exchange income in the capital accounts of domestic enterprises shall be deposited, in accordance with relevant State regulations, into foreign exchange accounts opened with banks designated. Any foreign exchange payment from capital account shall, in accordance with provisions enacted by State Council foreign exchange administrative department relating to foreign exchange payments and purchases, be made out of the payer’s own foreign exchange funds on the strength of valid documents or be made with foreign exchange purchased from any financial institution engaged in foreign exchange settlement and sales business. Where an approval from the relevant foreign exchange administrative authority is required in accordance with State provisions, the relevant approval formalities shall be completed before the foreign exchange payment is made. For foreign-invested enterprises wound up in accordance with the relevant laws, the amount of RMB that belongs to the relevant foreign investor(s) after liquidation and payment of tax pursuant to relevant State provisions may be used to purchase foreign exchange from any financial institution engaged in foreign exchange settlement and sales business in order to remit it outside the PRC.

On 29 August 2008, the SAFE promulgated the Circular of Relevant Operating Issues concerning the Improvement of the Administration of Payment and Settlement of Foreign Exchange Capital of Foreign-invested Enterprises (關於完善外商投資企業外匯資本金支付結匯管理有關業務操作問題的通知) (“**Circular 142**”), a circular regulating the conversion by foreign invested enterprises of foreign

currency into RMB. Circular 142 requires that the RMB funds obtained from the settlement of foreign currency-denominated registered capital of a foreign-invested enterprise may only be used for purposes within the business scope approved by the applicable governmental authority and may not be used for equity investments within the PRC unless otherwise provided for in the enterprise's business scope. In addition, SAFE strengthened its oversight of the flow and use of the RMB capital converted from foreign currency-denominated registered capital of a foreign-invested enterprise. The use of such RMB capital may not be altered without SAFE's approval, and may not in any case be used to repay RMB loans if the proceeds of such loans have not been used. Violations of Circular 142 will result in severe penalties, such as substantial fines.

On 21 October 2005, the SAFE promulgated the Circular on Issues concerning the Administration of Foreign Exchange in Fund-raising and Return Investment Activities of Domestic Residents Conducted via Offshore Special Purpose Companies (關於境內居民通過境外特殊目的公司融資及返程投資外匯管理有關問題的通知) ("SAFE Circular 75") effective on 1 November 2005 and further supplemented by an implementing notice promulgated by the SAFE on 24 November 2005. SAFE Circular 75 states that Chinese residents, whether natural or legal persons, must register with the relevant local SAFE branch prior to establishing or taking control of an offshore entity established for the purpose of overseas equity financing involving onshore assets or equity interests held by them. In 2009 and 2011, the SAFE issued an internal notice to its local branches on the operating rules with respect to the administration of foreign exchange under capital accounts. This internal notice provides for detailed operating processes and specific instructions for the SAFE registration under SAFE Circular 75.

The term "Chinese legal person residents" as used in the SAFE Circular 75 refers to those entities with legal person status or other economic organisations established within the territory of the PRC. The term "Chinese natural person residents" as used in the SAFE Circular 75 includes all Chinese citizens and all other natural persons, including foreigners, who habitually reside in the PRC for economic benefit. Chinese residents are required to complete amended registrations with the local SAFE branch upon (i) transfer of equity interests or assets of an onshore enterprise to the offshore entity, or (ii) subsequent overseas equity financing by such offshore entity. Chinese residents are also required to complete amended registrations or filing with the local SAFE branch within 30 days of any material change in the shareholding or capital of the offshore entity, such as changes in share capital, share transfers and long-term equity or debt investments, and provision of security. Chinese residents who have already incorporated or gained control of offshore entities that have made onshore investment in the PRC before SAFE Circular 75 was promulgated must register their shareholding in the offshore entities with the local SAFE branch on or before 31 March 2006.

Under SAFE Circular 75, Chinese residents are further required to repatriate back into the PRC all of their dividends, profits or capital gains obtained from their shareholdings in the offshore entity within 180 days of their receipt of such dividends, profits or capital gains. The registration and filing procedures under

## REGULATORY OVERVIEW

SAFE Circular 75 are prerequisites for other approval and registration procedures necessary for capital inflow from the offshore entity, such as inbound investments or shareholder loans, or capital outflow to the offshore entity, such as the payment of profits or dividends, liquidating distributions, equity sale proceeds, or the return of funds upon a capital reduction.

### *Regulation on Taxation*

#### *Enterprise Income Tax*

According to the EIT Law promulgated by the National People's Congress on 16 March 2007 and effective on 1 January 2008 and its implementing rules promulgated by the State Council on 6 December 2007 and effective on 1 January 2008, the enterprise income tax for both domestic and foreign-invested enterprises is unified at 25%. Under the EIT Law, enterprises are classified as "resident enterprises" and "non-resident enterprises". Pursuant to the EIT Law and its Implementing Rules, enterprises established under the laws of foreign countries or regions whose "de facto management bodies" are located in China are considered resident enterprises and will generally be subject to enterprise income tax at the rate of 25% on its global income. The implementing rules of the EIT Law define "de facto management bodies" as "establishments that carry out substantial and overall management and control over the production and operations, personnel, accounting, and properties" of the enterprise. If we are considered as a PRC tax resident enterprise under the above definition, then our global income will be subject to PRC enterprise income tax at the rate of 25%.

#### *Value-added Tax*

In accordance with the Provisional Regulations of the People's Republic of China concerning Value Added Tax (中華人民共和國增值稅暫行條例) promulgated by the State Council and effective on 1 January 2009 and the Rules for Implementation of the Provisional Regulations of the People's Republic of China concerning Value Added Tax (中華人民共和國增值稅暫行條例實施細則) promulgated by the Ministry of Finance on 18 December 2008, effective on 1 January 2009 and amended on 28 October 2011, value added tax is imposed on goods sold in or imported into the PRC and on processing, repair and replacement services provided within the PRC.

#### *Regulations on Employee Stock Option Plans*

On 25 December 2006, the People's Bank of China promulgated the Administrative Measures for Individual Foreign Exchange (個人外匯管理辦法). On 5 January 2007, SAFE promulgated the Implementation Rules of the Administrative Measures for Individual Foreign Exchange (個人外匯管理辦法實施細則) ("Individual Foreign Exchange Rules") which, among other things, specifies approval requirements for a PRC citizen's participation in the employee stock ownership plans or stock option plans of an overseas publicly-listed company. In February 2012, SAFE promulgated the Notices on Issues concerning the Foreign Exchange



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Administration for Domestic Individuals Participating in Stock Incentive Plan of Overseas Publicly-Listed Company (關於境內個人參與境外上市公司股權激勵計劃外匯管理有關問題的通知) (“**Stock Option Rules**”), which terminated the Application Procedures of Foreign Exchange Administration for Domestic Individuals Participating in Employee Stock Ownership Plan and Stock Option Plan of Overseas Publicly-Listed Company (境內個人參與境外上市公司員工持股計劃和認股期權計劃等外匯管理操作規程) promulgated by SAFE in March 2007. According to the Stock Option Rules, if a PRC resident participates in any stock incentive plan of an overseas publicly-listed company, a qualified PRC domestic agent must, among other things, file on behalf of such participant an application with SAFE to conduct the SAFE registration with respect to such stock incentive plan and obtain approval for an annual allowance with respect to the purchase of foreign exchange in connection with the exercise or sale of stock options or stock such participant holds. Such participating PRC residents’ foreign exchange income received from the sale of stock and dividends distributed by the overseas publicly-listed company must be fully remitted into a PRC collective foreign currency account opened and managed by the PRC agent before distribution to such participants.

### *Regulations on Labor and Social Insurance*

#### *Labor Contract Law*

As of 1 January 2008, labor contracts shall be concluded in writing if labor relationships are to be or have been established between enterprises or institutions and the laborers under the Labor Contract Law of the PRC (中華人民共和國勞動合同法) (“**Labor Contract Law**”). Enterprises and institutions are forbidden to force the laborers to work beyond the time limit and the employers shall pay laborers overtime working compensation in accordance with national regulations. In addition, the labor wages shall not be lower than local standards on minimum wages and shall be paid to the laborers timely. According to the Labor Law of the PRC (中華人民共和國勞動法) promulgated by the Standing Committee of the National People’s Congress on 5 July 1994 and effective on 1 January 1995, enterprises and institutions shall establish and perfect its system of work place safety and sanitation, strictly abide by state rules and standards on work place safety and sanitation, educate laborers of work place safety and sanitation. Work place safety and sanitation facilities shall comply with state-fixed standards. The enterprises and institutions shall provide laborers with work place safety and sanitation conditions which are in compliance with state stipulations and relevant articles of labor protection.

#### *Social Insurance and housing funds*

According to the Social Insurance Law of the PRC (中華人民共和國社會保險法) promulgated by the Standing Committee of the National People’s Congress on 28 October 2010 and effective on 1 July 2011, the Interim Regulations concerning the Levy of Social Insurance (社會保險費徵繳暫行條例) promulgated by the State Council and effective on 22 January 1999, the Interim Measures concerning the Administration of the Registration of Social Insurance (社會保險登記管理暫行辦法)

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promulgated and effective on 19 March 1999, the Regulations on Occupational Injury Insurance (工傷保險條例) promulgated by the State Council on 27 April 2003 and effective on 1 January 2004 and amended on 20 December 2010, the Interim Measures concerning the Maternity Insurance for Enterprise Employees (企業職工生育保險試行辦法) promulgated by the Ministry of Labor and Social Security on 14 December 1994 and effective on 1 January 1995 and the Regulations concerning the Administration of Housing Fund (住房公積金管理條例) promulgated by the State Council and effective on 3 April 1999 and amended on 24 March 2002, enterprises and institutions in the PRC shall provide their employees with welfare schemes covering pension insurance, unemployment insurance, maternity insurance, occupational injury insurance and medical insurance, as well as housing fund and other welfare plans.

### LISTING ON THE STOCK EXCHANGE

As to the best of the knowledge, information and belief of our Directors and as advised by our legal advisers as to Hong Kong laws and our PRC Legal Advisers, there are no express or implied provisions under the Hong Kong and PRC laws and the rules, regulations and guidelines from the relevant professional bodies, including the HKIA, HKILA and HKIP, to which our Group is subject to that may preclude our Company from becoming publicly listed company on the Stock Exchange or may otherwise invalidate the major licences/qualifications that are considered critical to our Group's operations once our Company becomes listed.