

## REGULATORY OVERVIEW

This section sets out a summary of certain aspects of the Hong Kong laws and regulations which are relevant to the Group's operations and business in Hong Kong. Information contained in this section should not be construed as a comprehensive summary of the laws and regulations applicable to the Group.

### LAWS AND REGULATIONS IN RELATION TO CONSTRUCTION LABOUR, HEALTH AND SAFETY

#### Factories and Industrial Undertakings Ordinance

The Factories and Industrial Undertakings Ordinance (Chapter 59 of the Laws of Hong Kong) provides for the safety and health protection to workers in the industrial undertaking. Under the Factories and Industrial Undertakings Ordinance, it is the duty of every proprietor of an industrial undertaking to ensure, so far as is reasonably practicable, the health and safety at work of all persons employed by him at the industrial undertaking. The duties of a proprietor, so far as is reasonably practicable, extend to include:

- (i) the provision and maintenance of plant and systems of work that are safe and without risks to health;
- (ii) arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (iii) the provision of such information, instruction, training and supervision as is necessary to ensure the health and safety at work of all persons employed by him at the industrial undertaking;
- (iv) as regards any part of the industrial undertaking under the proprietor's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks; and
- (v) the provision and maintenance of a working environment for all persons employed by him at the industrial undertaking that is safe, and without risks to health.

A proprietor who contravenes any of these duties commits an offence and is liable to a fine of HK\$500,000. A proprietor who contravenes any of these requirements willfully and without reasonable excuse commits an offence and is liable to a fine of HK\$500,000 and to imprisonment for 6 months.

Matters regulated under the subsidiary regulations of the Factories and Industrial Undertakings Ordinance, including the Construction Sites (Safety) Regulations (Chapter 59I of the Laws of Hong Kong), include (i) the prohibition of employment of persons under 18 years of age (save for certain exceptions); (ii) the duty to ensure safety of places of work; (iii) the duty to comply with miscellaneous safety requirements; and (iv) provision of first aid facilities. Non-compliance with any of these rules commits an offence and different levels of penalty will be imposed and a contractor being found guilty of the relevant offence could be liable to a fine up to HK\$200,000 and to imprisonment up to 12 months.

## REGULATORY OVERVIEW

### Occupational Safety and Health Ordinance

The Occupational Safety and Health Ordinance (Chapter 509 of the Laws of Hong Kong) provides for the safety and health protection to employees in workplaces, both industrial and non-industrial.

Every employer must, as far as reasonably practicable, ensure the safety and health at work for all employees by :

- (i) providing and maintaining plant and systems of work that are safe and without risks to health;
- (ii) making arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage or transport of plant or substances;
- (iii) providing such information, instruction, training and supervision as may be necessary to ensure the safety and health at work of the employees;
- (iv) as regards any workplace under the employer's control, maintaining the workplace in a condition that is safe and without risks to health or providing or maintaining means of access to and egress from the workplace that are safe and without any such risks; and
- (v) providing or maintaining a working environment for the employees that is safe and without risks to health.

Failure to comply with the above provisions constitutes an offence and the employer is liable on conviction to a fine of HK\$200,000. An employer who fails to do so intentionally, knowingly or recklessly commits an offence and is liable on conviction to a fine of HK\$200,000 and to imprisonment for six months.

The Commissioner for Labour may issue improvement notices against contravention of this ordinance or the Factories and Industrial Undertakings Ordinance, or suspension notices against activity or condition or use of workplace which may create imminent risk of death or serious bodily injury to the employees. Failure to comply with such notices without reasonable excuse constitutes an offence punishable by a fine of HK\$200,000 and HK\$500,000, respectively, and imprisonment of up to 12 months.

### Employment Ordinance

A principal contractor is subject to the provisions on subcontractor's employees' wages in the Employment Ordinance (Chapter 57 of the Laws of Hong Kong). Pursuant to section 43C of the Employment Ordinance, a principal contractor or a principal contractor and every superior subcontractor to the subcontractor is/are jointly and severally liable to pay any wages that become due to an employee who is employed by a subcontractor on any work which the subcontractor has contracted to perform, and such wages are not paid within the period specified in the Employment Ordinance. The liability of a principal contractor or a superior subcontractor (where applicable) shall be limited to (i) the wages of an employee whose employment relates wholly to the work which the principal contractor has contracted to perform and whose place of employment is wholly on the site of the building works; and (ii) the wages

## REGULATORY OVERVIEW

due to such an employee for two months without any deductions under the Employment Ordinance and such months shall be the first two months of the period in respect of which the wages are due to the employee.

An employee who has outstanding wages from a subcontractor must serve a notice in writing on the principal contractor within 60 days (or such other additional period not exceeding 90 days as the Commissioner for Labour may permit) after the date on which the wages become due. A principal contractor and superior subcontractor (if any) shall not be liable to pay any wages to the employee of the subcontractor if that employee fails to serve a notice on the principal contractor in accordance with the Employment Ordinance.

Upon receipt of such notice from the relevant employee, a principal contractor shall, within 14 days after the receipt of the notice, serve a copy of the notice on every superior subcontractor to that subcontractor (if any) of whom he is aware. A principal contractor who without reasonable excuse fails to serve a notice on the superior subcontractor(s) shall be guilty of an offence and shall be liable on conviction to a fine at level 5 (currently at HK\$50,000).

Pursuant to section 43F of the Employment Ordinance, if a principal contractor or superior subcontractor pays to an employee any wages under section 43C of Employment Ordinance, the wages so paid shall be a debt due by the employer of that employee to the principal contractor or superior subcontractor, as the case may be. Such principal contractor or superior subcontractor may either (i) claim contribution from every superior subcontractor to the employee's employer or from the principal contractor and every other such superior subcontractor as the case may be, or (ii) deduct by way of set-off the amount paid by him from any sum due or which may become due to the subcontractor in respect of the work that he has subcontracted.

### **Employees' Compensation Ordinance**

The Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong) establishes a no-fault and non-contributory employee compensation system for work injuries and lays down the rights and obligations of employers and employees in respect of injuries or death caused by accidents arising out of and in the course of employment, or by prescribed occupational diseases.

Under the Employees' Compensation Ordinance, if an employee sustains an injury or dies as a result of an accident arising out of and in the course of his employment, his employer is in general liable to pay compensation even if the employee might have committed acts of faults or negligence when the accident occurred. Similarly, an employee who suffers incapacity or dies arising from an occupational disease is entitled to receive the same compensation as that payable to employees injured in occupational accidents.

Pursuant to section 24 of the Employees' Compensation Ordinance, a principal contractor shall be liable to pay compensation to a subcontractor's employee who is injured in the course of his/her employment to the subcontractor. Under section 40(1B) of the ordinance, a principal contractor may take out a policy of insurance to cover for employees of the subcontractor(s) in view of its potential liability under section 24 but it is not mandatory for a principal contractor to take out insurance cover for employees of the subcontractor(s). The principal contractor may rely on insurance taken out by subcontractors as employer for the subcontractors' employees as required under section 40(1) of the ordinance. The principal contractor is, nonetheless, entitled to be indemnified by the subcontractor who

## **REGULATORY OVERVIEW**

would have been liable to pay compensation to the injured employee under the Employees' Compensation Ordinance. The employee in question is required to serve a notice in writing on the principal contractor before making any claim or application against the principal contractor.

According to section 40 of the Employees' Compensation Ordinance, all employers (including principal contractors and subcontractors) are required to take out insurance policies to cover their liabilities both under the Employees' Compensation Ordinance and at common law for injuries at work in respect of all their employees (including full-time and part-time employees) for an amount not less than the applicable amount specified under the ordinance. Currently, the applicable amount is HK\$100 million per event where the number of employees in relation to whom the policy is in force does not exceed 200, and the applicable amount is HK\$200 million per event where the number of employees in relation to whom the policy is in force exceeds 200. Where a principal contractor has undertaken to perform any construction work, it may take out an insurance policy for an amount not less than HK\$200 million per event to cover his liability and that of his subcontractor(s) under the Employees' Compensation Ordinance and at common law.

An employer who fails to comply with the Employees' Compensation Ordinance to secure an insurance cover is liable on conviction upon indictment to a fine at level 6 (currently at HK\$100,000) and to imprisonment for two years, and on summary conviction to a fine at level 6 (currently at HK\$100,000) and to imprisonment for one year.

### **Occupiers Liability Ordinance**

The Occupiers Liability Ordinance (Chapter 314 of the Laws of Hong Kong) regulates the obligations of a person occupying or having control of premises on injury resulting to persons or damage caused to goods or other property lawfully on the land.

The Occupiers Liability Ordinance imposes a common duty of care on an occupier of premises to take such care as in all the circumstances of the case is reasonable to see that the visitors will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

### **Immigration Ordinance**

Pursuant to section 38A of the Immigration Ordinance (Chapter 115 of the Laws of Hong Kong), a construction site controller (the principal or main contractor and includes a subcontractor, owner, occupier or other person who has control over or is in charge of a construction site) should take all practicable steps to (i) prevent having illegal immigrants from being on the construction site; or (ii) prevent illegal workers who are not lawfully employable from taking employment on the construction site.

Where it is proved that (i) an illegal immigrant was on a construction site; or (ii) such illegal worker who is not lawfully employed took employment on a construction site, the construction site controller commits an offence and is liable to a fine of HK\$350,000.

## **REGULATORY OVERVIEW**

### **Minimum Wage Ordinance**

The Minimum Wage Ordinance (Chapter 608 of the Laws of Hong Kong) provides for a prescribed minimum hourly wage rate (currently set at HK\$32.5 per hour) during the wage period for every employee engaged under a contract of employment under the Employment Ordinance (except those specified under section 7 of the Minimum Wage Ordinance). A provision of a contract of employment that purports to extinguish or reduce any right, benefit or protection conferred on the employee by the Minimum Wage Ordinance is void.

## **LAWS AND REGULATIONS IN RELATION TO ENVIRONMENTAL PROTECTION**

### **Air Pollution Control Ordinance**

The Air Pollution Control Ordinance (Chapter 311 of the Laws of Hong Kong) is the principal legislation in Hong Kong for controlling emission of air pollutants and noxious odour from construction, industrial and commercial activities and other polluting sources. Subsidiary regulations of the Air Pollution Control Ordinance impose control on air pollutant emissions from certain operations through the issue of licences and permits.

A contractor shall observe and comply with the Air Pollution Control Ordinance and its subsidiary regulations, including without limitation to the Air Pollution Control (Open Burning) Regulation (Chapter 311O of the Laws of Hong Kong), the Air Pollution Control (Construction Dust) Regulation (Chapter 311R of the Laws of Hong Kong) and the Air Pollution Control (Smoke) Regulations (Chapter 311C of the Laws of Hong Kong). The contractor responsible for a construction site shall devise, arrange methods of working and carrying out the works in such a manner so as to minimise dust impacts on the surrounding environment, and shall provide experienced personnel with suitable training to ensure that these methods are implemented. Asbestos control provisions in the Air Pollution Control Ordinance require that building works involving asbestos must be conducted only by registered qualified personnel and under the supervision of a registered consultant.

### **Noise Control Ordinance**

The Noise Control Ordinance (Chapter 400 of the Laws of Hong Kong) controls, among others, the noise from the construction, industrial and commercial activities. A contractor shall comply with the Noise Control Ordinance and its subsidiary regulations in carrying out construction work.

Under the Noise Control Ordinance, any person who at any place between the hours of 7 p.m. and 7 a.m., or at any time on a general holiday, use or cause or permit to be used, any powered mechanical equipment for the purpose of carrying out any construction work other than percussive piling unless construction noise permit has been obtained from the Noise Control Authority in advance or the work is carried out in accordance with the conditions of the construction noise permit. Any person who carries out any construction work except as permitted is liable on first conviction to a fine of HK\$100,000 and on second or subsequent conviction to a fine of HK\$200,000, and in any case to a fine of HK\$20,000 for each day during which the offence continues. Further, certain equipment is subject to restrictions, for example handheld percussive breakers and air compressors must comply with noise emission standards and be issued with a noise emission label from the Noise Control Authority.

## REGULATORY OVERVIEW

### **Waste Disposal Ordinance**

The Waste Disposal Ordinance (Chapter 354 of the Laws of Hong Kong) controls and regulates the production, storage, collection and disposal including the treatment, reprocessing and recycling of waste. At present, livestock waste and chemical waste are subject to specific controls whilst unlawful deposition of waste is prohibited. Import and export of waste is generally controlled through a permit system.

A contractor shall observe and comply with the Waste Disposal Ordinance and its subsidiary regulations, including without limitation to the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Chapter 354N of the Laws of Hong Kong) and the Waste Disposal (Chemical Waste) (General) Regulation (Chapter 354C of the Laws of Hong Kong).

Under the Waste Disposal (Charges for Disposal of Construction Waste) Regulation, construction waste may be accepted for disposal at a designated waste disposal facility only if the facility is a prescribed facility. A main contractor who undertakes construction work with a value of HK\$1 million or above under a contract that has been awarded, shall within 21 days after being awarded the contract, make an application to the Director of Environmental Protection to establish a billing account solely in respect of that contract to pay the prescribed charge payable in respect of the construction waste generated from construction work undertaken under that contract.

Under the Waste Disposal (Chemical Waste) (General) Regulation, a person shall not produce or cause to be produced chemical waste unless he is registered as a chemical waste producer. The waste must be packaged, labelled and stored properly before disposal. Only a licensed collector can transport the waste to a licensed reception point for disposal. Chemical waste producers also need to keep records of their chemical waste disposal for inspection by the staff of the Environmental Protection Department.

Under the Waste Disposal Ordinance, a person shall not use, or permit to be used, any land or premises for the disposal of waste unless he has a licence from the Director of Environmental Protection to use the land or premises for that purpose. A person who contravenes this commits an offence and is liable (i) for the first offence, to a fine of HK\$200,000 and to imprisonment for six months; (ii) for a second or subsequent offence, to a fine of HK\$500,000 and to imprisonment for six months; and (iii) in addition, if the offence is a continuing offence to a fine of HK\$10,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

### **Environmental Impact Assessment Ordinance**

The Environmental Impact Assessment Ordinance (Chapter 499 of the Laws of Hong Kong) is to avoid, minimise and control the adverse environmental impacts from designated projects as specified in Schedule 2 of the Environmental Impact Assessment Ordinance (for example, public utility facilities, certain large-scale industrial activities, community facilities, etc.) through the application of the environmental impact assessment process and the environmental permit system prior to their construction and operation (and decommissioning, if applicable), unless exempted.

According to the Environmental Impact Assessment Ordinance, a person commits an offence if he constructs or operates a designated project listed in Part I of Schedule 2 of the Environmental Impact Assessment Ordinance (which includes roads, railways and depots, dredging operation, residential and other developments, etc.) without an environmental permit for the project or contrary to the conditions,

## REGULATORY OVERVIEW

if any, set out in the permit. The offender is liable (i) on a first conviction on indictment to a fine of HK\$2 million and to imprisonment for six months; (ii) on a second or subsequent conviction on indictment to a fine of HK\$5 million and to imprisonment for two years; (iii) on a first summary conviction to a fine at level 6 (currently at HK\$100,000) and to imprisonment for six months; (iv) on a second or subsequent summary conviction to a fine of HK\$1 million and to imprisonment for one year, and in any case where the offence is of a continuing nature, the court or magistrate may impose a fine of HK\$10,000 for each day on which he is satisfied the offence continued.

### CONTRACTOR LICENSING AND REGISTRATION REGIME

#### Specialist contractor in public sector

A contractor who wishes to undertake public works must be approved by the Development Bureau to be included in either the List or the Specialist List maintained by the Works Branch of the Development Bureau. The List comprises contractors who are approved for carrying out public works in one or more of the five categories of building and civil engineering works. The Specialist List comprises suppliers and contractors who are approved for carrying out public works in one or more of the 50 categories of specialist works. Lap Kei is an approved specialist contractor in the following category of specialist works on the Specialist List:

Category	Group	Scope of category
Air-conditioning Installation	I (Confirmed)	The supply, installation and maintenance of air-conditioning installations comprising chillers, refrigeration systems, heat rejection plants, pipeworks, water handling equipment, air ducts, air handling equipment, thermal insulation, control and monitoring systems, etc.

Contractors in some categories on the Specialist List are further divided into classes according to the type of works within that particular category and groups (groups I and II or groups I, II and III) according to the value of contracts for which they are normally eligible to tender. Group tender limits are applicable to eight categories of works in the Specialist List. The authorised contract sum for each of the groups within the category of air-conditioning installation are set out as below:

Category	Group	Authorised contract sum
Air-conditioning Installation	I	Contracts/subcontracts up to HK\$5.7 million
	II	Contracts/subcontracts of unlimited value

Contractors are required to meet the financial, technical, management, personnel and safety criteria applicable to their appropriate category and group for admission and retention on the Specialist List. For retention on the Specialist List, a contractor should generally possess at least a positive capital value. In addition, a contractor is required to maintain certain minimum levels of employed and working capital applicable to the appropriate category and group. The minimum levels are periodically adjusted. At



## REGULATORY OVERVIEW

present, to be retained on the air-conditioning installation category (Group I) of the Specialist List, a contractor must satisfy the requirements of having minimum employed capital of HK\$570,000 and minimum working capital of HK\$570,000.

A confirmed contractor in the air-conditioning installation category (Group I) of the Specialist List who wishes to be promoted to the air-conditioning installation category (Group II) of the Specialist List may apply in writing to the Secretary of Development. Promotion will be subject to the contractor being able to meet the applicable financial criteria, having the appropriate technical and management capabilities, a satisfactory record of performance and in all respects being considered suitable for promotion. A contractor applying for promotion will usually be admitted initially on probation to the air-conditioning installation category (Group II) of the Specialist List.

To become an approved contractor with a probationary status on the air-conditioning installation category (Group II) of the Specialist List, the contractor must meet, inter alia, the following requirements:

(i) Capital requirements:

Minimum employed capital — HK\$4.7 million

Minimum working capital — HK\$3.4 million

(ii) Job experience:

In general, the applicant shall have:

- (a) adequate experience in the type and size of work of the category, with satisfactory quality of work compatible with the Government standard; and
- (b) adequate experience in contract management of work of the category, solely and fully, including coordination with building contractor and other building services/electrical and mechanical contractors.

Job reference to be submitted by the applicant shall fulfill all requirements set out in the Contractor Management Handbook published by the Development Bureau in May 2014, including:

- (a) The applicant shall submit at least two contracts, which were completed within the past three years for site inspection;
- (b) At least one of the two contracts shall be completed within the past 12 months or at final stage; and
- (c) The scope of work for each of the two contracts must fulfill all of the following requirements:
  - (1) contract value of the work related to the category under application for inclusion exceed 180% of Group I tender limit;



## REGULATORY OVERVIEW

- (2) the contract shall cover major scope of works as described in the "Brief Scope of Category" for the air-conditioning installation category;
  - (3) the air-conditioning installation shall be of central type, which shall include chiller, chilled water pipeworks, pumps, air-handling equipment, etc., and the cooling capacity of the chillers is not less than 1,000kW; and
  - (4) the contract shall be of a completely new building construction project or a whole building refurbishment project.
- (iii) Registration with relevant authorities in Hong Kong:
- (a) The applicant shall be a registered specialist contractor on the ventilation sub-register under the Buildings Ordinance (Chapter 123 of the Laws of Hong Kong) and a registered electrical contractor registered under the Electricity Ordinance (Chapter 406 of the Laws of Hong Kong).
  - (b) The applicant shall have obtained quality management system certificate issued under the rules of the Hong Kong Certification Body Accreditation Scheme operated by the Hong Kong Accreditation Services, and quality management system certificates bearing the accreditation mark of other accreditation bodies which are considered as having an equivalent standard by the Environment, Transport and Works Bureau.
- (iv) Technical staff:
- The applicant shall have employed the following technical staff:
- (a) at least one qualified engineer (mechanical or building services discipline) with adequate and relevant project management experience;
  - (b) at least two technicians, four site supervisors and two draftsmen with adequate and relevant academic qualification and working experience;
  - (c) adequate number of craftsman in the following trades with relevant qualifications:
    - (1) plumbers or air-conditioning mechanic; and
    - (2) electricians;
  - (d) staff meeting the statutory registration requirements:
    - (1) at least two registered electrical worker (Grade 2) ("REW") registered under the Electricity Ordinance;
    - (2) at least one licensed plumber ("LP") registered under Waterworks Ordinance (Chapter 102 of the Laws of Hong Kong); and
  - (e) at least two qualified welders ("QW").

## REGULATORY OVERVIEW

*(the REW, LP and QW can be the qualified engineer, technical support staff or craftsman)*

- (v) Other requirements:
  - (a) The applicant shall have the required equipment/tools and testing instruments for air-conditioning installation.
  - (b) The applicant is required to have a suitable local office/workshop in Hong Kong.

A probationary contractor for the air-conditioning installation category (Group II) is eligible for the award of any number of Group I contracts/subcontracts, and a maximum of two Group II contracts/subcontracts provided that the total value of Group II works does not exceed HK\$20 million.

A probationary contractor may apply for "confirmed" status after satisfactory completion of works appropriate to its probationary status. To be promoted and retained as an approved contractor with a confirmed status on the air-conditioning installation category (Group II) of the Specialist List, the contractor must meet the following requirements:

- (i) Capital requirements:
  - Minimum employed capital — HK\$4.7 million
  - Minimum working capital — HK\$3.4 million
- (ii) Other requirements
  - (a) Satisfactory completion, within the past 12 months, at least one public works contract let by a Works Department.
  - (b) The scope of work for the contract must fulfill all the following requirements:
    - (1) contract value of the work related to the category under application for confirmation exceeds Group I tender limit;
    - (2) the contract shall cover major scope of works as described in the "Brief Scope of Category" for the air-conditioning installation category;
    - (3) the air-conditioning installation shall be of central type, which shall include chiller, chilled water pipeworks, pumps, air-handling equipment, etc., and the cooling capacity of the chillers is not less than 1,000kW;
    - (4) the contract shall be of a completely new building construction or a whole building refurbishment; and
    - (5) if the contract is a term contract, all of the above requirements (1) to (4) shall be fulfilled in one works order.

## REGULATORY OVERVIEW

### **Electrical contractor**

Under the Electricity Ordinance, all electrical contractors carrying out electrical work have to be registered with the Director of Electrical and Mechanical Services. The Electricity Ordinance provides for the registration and regulation of the electrical contractor in order to protect the general public in the use of electricity. Any person not being a registered electrical contractor who does business as an electrical contractor or contracts to carry out electrical work in Hong Kong commits an offence and is liable to a fine of HK\$50,000 on a first conviction and a fine of HK\$100,000 on a subsequent conviction for the same offence and in either case is liable to imprisonment for 6 months.

All contractors engaged in electrical work on fixed electrical installations must be registered with the EMSD. Under regulation 3 of the Electricity (Registration) Regulations (Chapter 406D of the Laws of Hong Kong), to be qualified as a registered electrical contractor the applicant for registration must either employ at least one registered electrical worker or:

- (i) if the applicant is an individual, he/she must be a registered electrical worker; or
- (ii) if the applicant is a partnership, one of the partners must be a registered electrical worker.

A registration or renewal registration for an electrical contractor is normally valid for three years. Under regulation 13 of the Electricity (Registration) Regulations, a registered contractor should submit to the Director of Electrical and Mechanical Services an application for renewal of registration at least one month before, and no earlier than four months before, the expiry date of the current registration.

### **Fire service installation contractor**

Pursuant to regulation 3(1) of the Fire Service (Installation Contractors) Regulations (Chapter 95A of the Laws of Hong Kong), any contractor having at least a director, partner or employee who is:

- (i) 21 years of age or more;
- (ii) resident in Hong Kong; and
- (iii) holding the qualifications specified in regulation 4(2) or (3) of the Fire Service (Installation Contractors) Regulations,

may apply to the Director of Fire Services for registration as a registered fire service installation contractor in class 1 or/and class 2.

Under regulation 4 of the Fire Service (Installation Contractors) Regulations, a registered fire service installation contractor in class 1 is fit to install, maintain, repair and inspect any fire service installation or equipment (other than portable equipment) which contains an electrical circuit or other apparatus for the detection and warning, by alarm or otherwise, of smoke or fire. A registered fire service installation contractor in class 2 is fit to install, maintain, repair and inspect any fire service installation or equipment (other than portable equipment) which contains (i) pipes and fittings designed or adapted to carry water or some other fire extinguishing medium; or (ii) any type of electrical apparatus other than those specified in class 1.

## REGULATORY OVERVIEW

A registered contractor who undertakes any work in connection with fire service installation or equipment, except work of the class in respect of which his name is entered in the register, shall be guilty of an offence and is liable to conviction and a fine at level 3 (currently at HK\$10,000).

### **Specialist contractor and minor works contractor under the Buildings Ordinance**

The Building Authority keeps (i) a register of general building contractors, (ii) a register of specialist contractors; and (iii) a register of minor works contractors.

#### *Specialist contractor*

Pursuant to the Buildings Ordinance, registered specialist contractors under the register of specialist contractors kept by the Building Authority are qualified to perform and carry out specialised works specified in the category in the sub-register in which they are entered. Lap Kei is registered as a specialist contractor in the ventilation works category. Pursuant to the Building (Ventilating Systems) Regulations (Chapter 123J of the Laws of Hong Kong), the scope of work in this category covers every ventilating system that embodies the use of ducting or trunking, which passes through any wall, floor or ceiling of the building in which the ventilating system is installed, from one compartment of such building to another.

Under section 8B(2) of the Buildings Ordinance, an applicant for registration as a specialist contractor must satisfy the Building Authority on:

- (i) if it is a corporation, the adequacy of its management structure;
- (ii) the appropriate experience and qualifications of his personnel;
- (iii) his ability to have access to plant and resources;
- (iv) the ability of the person appointed by the applicant to act for the applicant for the purposes of the Buildings Ordinance to understand building works and street works through relevant experience and a general knowledge of the basic statutory requirements.

An applicant for registration as a specialist contractor must satisfy the Building Authority that he has the necessary experience and, where appropriate, professional and academic qualifications, to undertake works in the specialist category.

In considering each application, the Building Authority is to have regard to the qualifications, competence and experience of the following personnel of the applicant:

- (i) a minimum of one person appointed by the applicant to act for the applicant for the purposes of the Buildings Ordinance (the "**Authorised Signatory**");
- (ii) if the applicant is a corporation, a minimum of one director from the board of directors of the applicant who is authorised by the board (the "**Technical Director**") to:
  - (a) have access to plant and resources;

## REGULATORY OVERVIEW

- (b) provide technical and financial support for the execution of building works and street works;
- (c) make decisions for the company and supervise the Authorised Signatory and other personnel for the purpose of ensuring that the works are carried out in accordance with the Buildings Ordinance; and
- (d) for a corporation which appoints a director who does not possess the required qualification or experience as the Technical Director to manage the carrying out of building works and street works (the "**Other Officer**") authorised by the board of directors to assist the Technical Director.

In addition to the above key personnel, the applicant is also required to demonstrate that it has employed appropriate qualified staff to assist the applicant and the above key personnel to execute, manage and supervise the building works and street works. For registration as a registered specialist contractor, the applicant should also demonstrate that it has the access to engaging qualified persons to carry out the relevant specialised duties.

Under section 8C(2) of the Buildings Ordinance, a registered contractor may apply to the Building Authority for renewal of his registration not earlier than four months and not later than 28 days prior to the expiry date of the relevant registration.

### **Minor works contractor**

Registered minor works contractors may carry out such minor works belonging to the class, type and item specified in the register for which they are registered.

Under the Building (Minor Works) Regulation, a subsidiary legislation under the Buildings Ordinance, "minor works" are classified into three classes according to their nature, scale and complexity and the risk and safety: (i) Class I (total of 44 items) including mainly those relatively more complicated minor works; (ii) Class II (total of 40 items) comprising those of comparatively lower complexity and risk to safety; and (iii) Class III (total of 42 items) mainly including common household minor works. The size, location and respective criteria of each item of minor works are set out in Part 3 of Schedule 1 of the Building (Minor Works) Regulation. Minor works are further classified into seven types under Part 2 of Schedule 1 of the same regulation: (i) Type A (Alternation and Addition works); (ii) Type B (Repair Works); (iii) Type C (Works relating to Signboards); (iv) Type D (Drainage Works); (v) Type E (Works relating to Structures for Amenities); (vi) Type F (Finishes Works); and (vii) Type G (Demolition Works).

Class I minor works require higher technical experience and more stringent supervision and thus require the appointment of prescribed building professional ("**Building Professional**") such as authorised person and where necessary may include a registered structural engineer and/or registered geotechnical engineer and a prescribed registered contractor ("**Register Contractor**"). Classes II and III minor works can be carried out by a Registered Contractor without the involvement of a Building Professional.

## REGULATORY OVERVIEW

Under section 12(5) of the Building (Minor Works) Regulation, the Building Authority must not allow an application for registration as an registered minor works contractor unless the Authority is satisfied that:

- (i) in respect of each type of minor works under each class to which the application relates, at least one individual nominated as an authorised signatory for the type of minor works (a) has the qualifications and experience specified by the Building Authority; and (b) has the ability to understand that type of minor works through relevant experience and a general knowledge of the basic statutory requirements;
- (ii) the applicant has access to plants and resources;
- (iii) if the applicant is a corporation, (a) its management structure is adequate; and (b) at least one of its directors has the qualifications and experience specified by the Building Authority; and
- (iv) the applicant is suitable for registration in the register.

Under section 12(6) of the Building (Minor Works) Regulation, in deciding whether the applicant is suitable for registration in the register, the Building Authority must take into account (i) whether the applicant and the individual nominated as authorised signatory have any criminal record in respect of any offence under the laws of Hong Kong relating to the carrying out of any building works; and (ii) whether any disciplinary order has been made against the applicant or the individual.

In considering each application for registration, the Building Authority is to have regard to the qualification, experience and suitability of the following key personnel of the applicant:

- (i) a minimum of one person appointed by the applicant to act for the applicant for the purpose of the Buildings Ordinance as the authorised signatory (the "AS"); and
- (ii) for a corporation, a minimum of one director from the board of directors of the applicant as the technical director (the "TD"), who is authorised by the board to:
  - (a) have access to plants and resources;
  - (b) provide technical and financial support for the execution of minor works; and
  - (c) make decisions for the company and supervise the AS and other personnel.

For a corporate applicant, a suitable person appointed by the board of directors is eligible to act as the AS and a director of the board of directors is eligible to act as the TD.

Under section 14(2)(c) of the Building (Minor Works) Regulation, a registered minor works contractor must apply to the Building Authority for renewal of his registration not more than four months but not less than 28 days prior to the expiry of the registration.

## REGULATORY OVERVIEW

Under section 13 of the Buildings Ordinance, the Building Authority may bring to the notice of a disciplinary board appointed under the ordinance if a registered general building contractor, a registered specialist contractor or a registered minor works contractor has committed the following misconduct:

- (i) having been convicted by any court of an offence relating to building works or street works;
- (ii) having been negligent or misconducted in building works or street works;
- (iii) having deviated in a material manner from a supervision plan without reasonable cause;
- (iv) having drawn up or repeatedly drawn up a supervision plan that does not comply with the material requirements of the Buildings Ordinance;
- (v) having certified minor works commenced under the simplified requirements that have been carried out in contravention of the Buildings Ordinance;
- (vi) having supervised minor works commenced under the simplified requirements that have been carried out in such a manner that they have caused injury to a person (whether or not under such supervision);
- (vii) having carried out minor works commenced under the simplified requirements in such a manner that they have caused injury to a person;
- (viii) having carried out building works (other than minor works) under the simplified requirements as if it were minor works commenced under the simplified requirements;
- (ix) having certified building works (other than minor works) as if it were minor works commenced under simplified requirements; or
- (x) having failed to discharge the duties, or abide by the requirements, imposed on a registered minor works contractor under the Buildings Ordinance in respect of a prescribed inspection or prescribed repair.

The Building Authority may refer the names of the directors, officers or any person appointed to act for the registered contractor for the purposes of the Buildings Ordinance to the disciplinary board for its consideration and action.

Where, after due inquiry, the disciplinary board is satisfied that the registered contractor or the director or officer or the person appointed by the registered contractor to act on its behalf for the purposes of the Buildings Ordinance has been convicted or committed the misconduct, the disciplinary board may:

- (i) order that the name of the registered contractor or the name of the director, officer or person be removed from the relevant register, either permanently or for such period as the disciplinary board thinks fit;



## **REGULATORY OVERVIEW**

- (ii) order that the registered contractor or the director, officer or person be fined (in the case of building works (other than minor works, a sum not exceeding HK\$250,000 or the case of a prescribed inspection in respect of a window in a building or minor works, a sum not exceeding HK\$150,000);
- (iii) order that the registered contractor or the director, officer or person be reprimanded;
- (iv) prohibit a registered contractor who is a registered general building contractor or a registered specialist contractor from certifying or carrying out any minor works commenced under the simplified requirements, either permanently or for such period as the disciplinary board thinks fit; or
- (v) prohibit a registered contractor who is a registered general building contractor or registered minor works contractor from certifying any prescribed inspection, or certifying or supervising any prescribed repair, in respect of a window in a building, either permanently or for any period that the disciplinary board thinks fit.

### **Regulating actions against approved contractors by the Development Bureau**

The Secretary for Development reserves the right to remove any contractor from the List and/or the Specialist List or take other regulating action against a contractor such as suspension, or where applicable, downgrading to probationary status or demotion to a lower group, in respect of all or any of the works categories the contractor is in.

Circumstances which may lead to the taking of regulating actions include, but are not limited to unsatisfactory performance, failure to meet the financial criteria within the prescribed time, misconduct or suspected misconduct, poor site safety record, poor environmental performance, court convictions such as contravention of site safety legislation and Employment Ordinance and employment of illegal workers, etc.