

REGULATORY OVERVIEW

THE LAWS AND REGULATIONS OF HONG KONG

This section summarises the principal laws and regulations of Hong Kong which are relevant to our business. As this is a summary, it does not contain detailed analysis of the Hong Kong laws which are relevant to our business.

A. Laws and Regulations in relation to Construction Labour, Health and Safety

Construction Workers Registration Ordinance (Chapter 583 of the Laws of Hong Kong)

The Construction Workers Registration Ordinance provides for the registration of construction worker and related matters.

According to Section 3 of the Construction Workers Registration Ordinance, a person shall not personally carry out on a construction site construction work unless the person is a registered construction worker. Further, Section 5 of the Construction Workers Registration Ordinance provides that no person shall employ unregistered construction workers to carry out on construction sites construction work.

If (i) there is a contravention of Section 3 of the Construction Workers Registration Ordinance and the person who commits the contravention is employed by a principal contractor for the construction site concerned, or a sub-contractor of such a principal contractor; or (ii) there is a contravention of Section 5, and the person who commits the contravention is a sub-contractor of a principal contractor for the construction site concerned, that principal contractor also commits an offence and is liable on conviction to a fine at level 5 (currently at HK\$50,000).

In addition, according to Section 58 of the Construction Workers Registration Ordinance, a principal contractor/controller of a construction site is required to:

- (a) establish and maintain a daily record in the specified form that contains information of registered construction workers employed by him and, in the case of a controller being the principal contractor, by a sub-contractor of the controller; and
- (b) furnish the Registrar of Construction Workers in such manner as directed by the Registrar of Construction Workers with a copy of record:
 - (i) for the period of seven days after any construction work begins on the site; and
 - (ii) for each successive period of seven days,

within two business days following the last day of the period concerned.

A person who, without reasonable excuse, contravenes Section 58 of the Construction Workers Registration Ordinance commits an offence and is liable on conviction to a fine at level 3 (currently at HK\$10,000).

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Factories and Industrial Undertakings Ordinance (Chapter 59 of the Laws of Hong Kong)

The Factories and Industrial Undertakings Ordinance provides for the safety and health protection to workers in an industrial undertaking. Under the Factories and Industrial Undertakings Ordinance, it is the duty of a proprietor (including person for the time being having the management or control of the business carried on in such industrial undertaking and also the occupier of any industrial undertaking) of an industrial undertaking to take care of, 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 extend to include:

- (a) providing and maintaining plant and work systems that do not endanger safety or health;
- (b) making arrangements for ensuring safety and health in connection with the use, handling, storage and transport of articles and substances;
- (c) providing all necessary information, instructions, training and supervision for ensuring safety and health;
- (d) providing and maintaining safe access to and egress from the workplaces; and
- (e) providing and maintaining a safe and healthy working environment.

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 wilfully 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 maintenance and operation of hoists; (iii) the duty to ensure safety of places of work; (iv) prevention of falls; (v) safety of excavations; (vi) the duty to comply with miscellaneous safety requirements; and (vii) 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 guilty of the relevant offence could be liable to a fine up to HK\$200,000 and imprisonment up to 12 months.

Occupational Safety and Health Ordinance (Chapter 509 of the Laws of Hong Kong)

The Occupational Safety and Health Ordinance provides for the safety and health protection to employees in workplaces, both industrial and non-industrial.

Employers must as far as reasonably practicable ensure the safety and health in their workplaces by:

- (a) provision and maintenance of plant and systems of work that are safe and without risks to health;
- (b) making arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage or transport of plant or substances;

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- (c) as regards any workplace under the employer's control:
 - (i) maintenance of the workplace in a condition that is safe and without risks to health; and
 - (ii) provision and maintenance of means of access to and egress from the workplace that are safe and without any such risks;
- (d) providing all necessary information, instructions, training and supervision for ensuring safety and health; and
- (e) provision and maintenance of a working environment that is safe and without risks to health.

Failure to comply with any of 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 6 months.

The Commission for Labour may also issue an improvement notice against non-compliance of this Ordinance or the Factories and Industrial Undertakings Ordinance or suspension notice against activity or condition of workplace which may create imminent risk of death or serious bodily injury. 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.

Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong)

The Employees' Compensation Ordinance 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 arising from an occupational disease is entitled to receive the same compensation as that payable to employees injured in occupational accidents.

According to Section 15(1A) of the Employees' Compensation Ordinance, employer shall report work injuries of its employee to the Commissioner of Labour not later than 14 days after the accident.

According to Section 24 of the Employees' Compensation Ordinance, a main contractor shall be liable to pay compensation to subcontractors' employees who are injured in the course of their employment to the subcontractor. The main contractor is, nonetheless, entitled to be indemnified by the subcontractor who would have been liable to pay compensation to the injured employee independently of this section. The employees in question are required to serve a notice in writing on the main contractor before making any claim or application against such main contractor.

Pursuant to Section 40 of the Employees' Compensation Ordinance, all employers (including 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

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respect of all their employees (including full-time and part-time employees). Under Section 40(1B) of the Employees' Compensation Ordinance, where a main 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 its subcontractor(s) under the Employees' Compensation Ordinance and at common law. Where a main contractor has taken out a policy of insurance under Section 40(1B) of the Employees' Compensation Ordinance, the main contractor and a subcontractor insured under the policy shall be regarded as having complied with Section 40(1) of the Employees' Compensation Ordinance.

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 imprisonment for 2 years.

Employment Ordinance (Chapter 57 of the Laws of Hong Kong)

A main contractor shall be subject to the provisions on subcontractor's employees' wages in the Employment Ordinance. According to Section 43C of the Employment Ordinance, a main contractor, or a main contractor and every superior subcontractor jointly and severally is/are 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 main contractor and superior subcontractor (where applicable) shall be limited (a) to the wages of an employee whose employment relates wholly to the work which the main contractor has contracted to perform and whose place of employment is wholly on the site of the building works; and (b) to the wages due to such an employee for 2 months (such months shall be the first 2 months of the period in respect of which the wages are due).

An employee who has outstanding wage payments from subcontractor must serve a notice in writing on the main contractor within 60 days after the wage due date. A main contractor and superior subcontractor (where applicable) shall not be liable to pay any wages to the employee of the subcontractor if that employee fails to serve a notice on the main contractor.

Upon receipt of such notice from the relevant employee, a main contractor shall, within 14 days after receipt of the notice, serve a copy of the notice on every superior subcontractor to that subcontractor (where applicable) of whom he is aware. A main contractor who without reasonable excuse fails to serve 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 main 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 main contractor or superior subcontractor, as the case may be. The main contractor or superior subcontractor may either (1) claim contribution from every superior subcontractor to the employee's employer or from the main contractor and every other such superior subcontractor as the case may be, or (2) deduct by way of set off the amount paid by him from any sum due or may become due to the subcontractor in respect of the work that he has subcontracted.

Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong)

Employers are required to enroll their regular employees (except for certain exempt persons) aged between at least 18 but under 65 years of age and employed for 60 days or more in a Mandatory Provident Fund ("MPF") scheme within the first 60 days of employment.

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For both employees and employers, it is mandatory to make regular contributions into a MPF scheme. For an employee, subject to the maximum and minimum levels of income (HK\$25,000 and HK\$7,100 per month, respectively before 1 June 2014 or HK\$30,000 and HK\$7,100 per month, respectively on or after 1 June 2014), an employer will deduct 5% of the relevant income on behalf of an employee as mandatory contributions to a registered MPF scheme with a ceiling of HK\$1,250 before 1 June 2014 or HK\$1,500 on or after 1 June 2014. Employer will also be required to contribute an amount equivalent to 5% of an employee's relevant income to the MPF scheme, subject only to the maximum level of income (HK\$25,000 per month before 1 June 2014 or HK\$30,000 on or after 1 June 2014).

Industry Scheme

Industry Schemes were established under the MPF system for employers in the construction and catering industries in view of the high labour mobility in these two industries, and the fact that most employees in these industries are "casual employees" whose employment is on a day-to-day basis or for a fixed period of less than 60 days.

For the purpose of the Industry Schemes, the construction industry covers the following eight major categories:

- (1) foundation and associated works;
- (2) civil engineering and associated works;
- (3) demolition and structural alteration works;
- (4) refurbishment and maintenance works;
- (5) general building construction works;
- (6) fire services, mechanical, electrical and associated works;
- (7) gas, plumbing, drainage and associated works; and
- (8) interior fitting-out works.

The Mandatory Provident Fund Schemes Ordinance does not stipulate that employers in these two industries must join the Industry Schemes. The Industry Schemes provide convenience to the employers and employees in the construction and catering industries. Casual employees do not have to switch schemes when they change jobs within the same industry, so long as their previous and new employers are registered with the same Industry Scheme. This is convenient for scheme members and saves administrative costs.

Occupiers Liability Ordinance (Chapter 314 of the Laws of Hong Kong)

The Occupiers Liability Ordinance 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 visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

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Immigration Ordinance (Chapter 115 of the Laws of Hong Kong)

According to Section 38A of the Immigration Ordinance, a construction site controller (i.e. 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) shall take all practicable steps to (i) prevent having illegal immigrants from being on site or (ii) prevent illegal workers who are not lawfully employable from taking employment on site.

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

Minimum Wage Ordinance (Chapter 608 of the Laws of Hong Kong)

The Minimum Wage Ordinance 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 (Chapter 57 of the Laws of Hong Kong). Any provision of the employment contract which purports to extinguish or reduce the right, benefit or protection conferred on the employee by the Minimum Wage Ordinance is void.

B. Laws and Regulations in relation to Environmental Protection

Air Pollution Control Ordinance (Chapter 311 of the Laws of Hong Kong)

The Air Pollution Control Ordinance 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 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 carry 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 (Chapter 400 of the Laws of Hong Kong)

The Noise Control Ordinance controls, among others, the noise from construction, industrial and commercial activities. A contractor shall comply with the Noise Control Ordinance and its subsidiary regulations in carrying out construction works. For construction activities that are to be carried out during the restricted hours and for percussive piling during the daytime, not being a general holiday, construction noise permits are required from the Director of the Environmental Protection Department in advance.

Under the Noise Control Ordinance, construction works that produce noises and the use of powered mechanical equipment (other than percussive piling) in populated areas are not allowed between 7:00 p.m. and 7:00 a.m. or at any time on general holidays, unless prior approval has

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been granted by the Director of the Environmental Protection Department through the construction noise permit system. The use of certain equipment is also subject to restrictions. Hand-held percussive breakers and air compressors must comply with noise emissions standards and be issued with a noise emission label from the Director of the Environmental Protection Department.

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 subsequent convictions 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.

Water Pollution Control Ordinance (Chapter 358 of the Laws of Hong Kong)

The Water Pollution Control Ordinance controls the effluent discharged from all types of industrial, manufacturing, commercial, institutional and construction activities into public sewers, rainwater drains, river courses or water bodies. For any industry/trade generating wastewater discharge (except domestic sewage that is discharged into communal foul sewers or unpolluted water to storm drains), they are subject to licensing control by the Director of the Environmental Protection Department.

All discharges, other than domestic sewage to a communal foul sewer or unpolluted water to a storm drain, must be covered by an effluent discharge licence. The licence specifies the permitted physical, chemical and microbial quality of the effluent. The general guidelines are that the effluent does not damage sewers or pollute inland or inshore marine waters.

According to the Water Pollution Control Ordinance, unless being licensed under the Water Pollution Control Ordinance, a person who discharges any waste or polluting matter into the waters of Hong Kong in a water control zone or discharges any matter, other than domestic sewage and unpolluted water, into a communal sewer or communal drain in a water control zone commits an offence and is liable to imprisonment for 6 months and (a) for a first offence, a fine of HK\$200,000; (b) for a second or subsequent offence, a fine of HK\$400,000 and (c) in addition, if the offence is a continuing offence, 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.

Waste Disposal Ordinance (Chapter 354 of the Laws of Hong Kong)

The Waste Disposal Ordinance controls the production, storage, collection, treatment, reprocessing, recycling and disposal of wastes. 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 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 can only be disposed at designated prescribed facilities and a main contractor who undertakes construction work with a value of HK\$1 million or above will be required, within 21 days after being awarded the contract, to establish a billing account in respect of that particular contract with the Director of the Environmental Protection Department to pay any disposal charges for the construction waste generated from the construction work under that contract.

Under the Waste Disposal (Chemical Waste) (General) Regulation, a person who produces chemical waste or causes it to be produced has to register as a chemical waste producer. Any chemical waste produced must be packaged, labeled and stored properly before disposal. Only a

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licensed waste collector can transport the waste to a licensed chemical waste disposal site for disposal. Chemical waste producers also need to keep records of their chemical waste disposal for inspection by 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 the Environmental Protection Department. A person who except under and in accordance with a permit or authorisation, does, causes or allows another person to do anything for which such a permit or authorisation is required commits an offence and is liable to a fine of HK\$200,000 and to imprisonment for 6 months for the first offence, and to a fine of HK\$500,000 and to imprisonment for months for a second or subsequent offence.

Dumping at Sea Ordinance (Chapter 466 of the Laws of Hong Kong)

Under the Dumping at Sea Ordinance, any waste producer involved in marine dumping and related loading operations are required to obtain permits from the Director of the Environmental Protection.

Under the Dumping at Sea Ordinance, a person who except under and in accordance with a permit, does anything or causes or allows another person to do anything for which a permit is needed commits an offence and is liable on conviction to a fine of HK\$200,000 and to imprisonment for 6 months on a first conviction; and to a fine of HK\$500,000 and to imprisonment for 2 years on a second or subsequent conviction; and in addition, to a further fine of HK\$10,000 for each day if the court is satisfied that the operation has continued.

Environmental Impact Assessment Ordinance (Chapter 499 of the Laws of Hong Kong)

The Environmental Impact Assessment Ordinance 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 by the persons who is planning such designated project prior to their construction and operation (and decommissioning, if applicable), unless otherwise exempted.

According to the Environmental Impact Assessment Ordinance, a person commits an offence if he constructs or operates a designated project as 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.) or decommissions a designated project listed in Part II of Schedule 2 of the Environmental Impact Assessment Ordinance without an environmental permit for the project; or contrary to the conditions, if any, set out in the permit. The offender is liable (a) on a first conviction on indictment to a fine of HK\$2,000,000 and to imprisonment for 6 months; (b) on a second or subsequent conviction on indictment to a fine of HK\$5,000,000 and to imprisonment for 2 years; (c) on a first summary conviction to a fine at level 6 and to imprisonment for 6 months; (d) on a second or subsequent summary conviction to a fine of HK\$1,000,000 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.

Public Health and Municipal Services Ordinance (Chapter 132 of the Laws of Hong Kong)

Pursuant to Section 127 of the Public Health and Municipal Services Ordinance, where a nuisance notice is served on the person by reason of whose act, default or sufferance the nuisance arose or continues, or of that person cannot be found, on the occupier or owner of the premises or

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vessel on which the nuisance exists, then if either the nuisance to which the notice relates arose by reason of the wilful act or default of that person; or that person fails to comply with any of the requirements of the notice within the period specified therein, that person shall be guilty of an offence.

Emission of dust from any building under construction or demolition in such manner as to be a nuisance is actionable under the Public Health and Municipal Services Ordinance. Maximum penalty is HK\$10,000 (level 3) upon conviction with a daily fine of HK\$200.

Discharge of muddy water etc. from a construction site is actionable under the Public Health and Municipal Services Ordinance. Maximum fine is HK\$5,000 upon conviction.

Any accumulation of water on any premises found to contain mosquito larvae or pupae is actionable under the Public Health and Municipal Services Ordinance. Maximum penalty is HK\$25,000 (level 4) upon conviction and a daily fine of HK\$450.

Any accumulation of refuse which is a nuisance or injurious to health is actionable under the Public Health and Municipal Services Ordinance. Maximum penalty is HK\$10,000 (level 3) upon conviction and a daily fine of HK\$200.

Any premises in such a state as to be a nuisance or injurious to health is actionable under the Public Health and Municipal Services Ordinance. Maximum penalty is HK\$10,000 (level 3) upon conviction and a daily fine of HK\$200.

C. Law and Regulations in relation to Contractor Licensing

General Building Contractor/Specialist Contractor

Under the current contractors registration system in Hong Kong, the Building Authority shall keep a register of general building contractors who are qualified to perform the duties of a general building contractor and a register of specialist contractors who are qualified to carry out specialised works (such as foundation works) specified in the category in the sub-register in which they are entered. Registered general building contractors may carry out general building works and street works which do not include any specialised works designated for registered specialist contractors.

Set out below are the requirements to register as a general building contractor, specialist contractor in foundation works under the Buildings Department.

Under Section 8B(2) of the Buildings Ordinance, an applicant for registration as a registered general building contractor or registered specialist contractor must satisfy the Director of Buildings ("Building Authority") on the following aspects:

- (a) if it is a corporation, the adequacy of its management structure;
- (b) the appropriate experience and qualifications of its personnel;
- (c) its ability to have access to plants and resources; and
- (d) the ability of the person appointed 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.

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

- (a) minimum of one person appointed by the applicant to act for the applicant for the purposes of the Buildings Ordinance, hereinafter referred to as an 'Authorised Signatory';
- (b) for a corporation — a minimum of one director from the board of directors of the applicant, hereinafter referred to as a 'Technical Director' who is authorised by the board to:
 - (i) have access to plant and resources;
 - (ii) provide technical and financial support for the execution of building works and street works; and
 - (iii) 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
- (c) for a corporation which appoints a director who does not possess the required qualification or experience as Technical Director to manage the carrying out of building works and street works — an 'Other Officer' authorised by the board of directors to assist the Technical Director.

Registered contractors intending to add a new authorised signatory/technical director/other officer should submit their applications in a specified form together with the following documents and fees, as the case may be, to the Buildings Department for consideration:

- (a) supporting documents on the qualifications and experience of the proposed authorised signatory/technical director/other officer;
- (b) for a corporation, a statement on:
 - (i) the management structure and organisation chart of the company and its decision making mechanism for technical and financial matters; and
 - (ii) a resolution from the board of directors regarding the appointment of the authorised signatory/technical director/other officer of the company.
- (c) declarations in the Buildings Department stand forms which cover exhaustively the conviction, disciplinary and suspension records of the proposed authorised signatory/technical director/other officer;
- (d) documents relating to business registration; and
- (e) the prescribed fee (for authorised signatory only) in accordance with the Building (Administration) Regulation.

Unless the new authorised signatory/technical director/other officer has been previously accepted by the Buildings Department, the new authorised signatory and, when necessary, the new technical director/other officer will be required to attend a full-scope interview and will be assessed mainly on the following aspects:

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- (a) the documents submitted by the applicant;
- (b) the adequacy of the management structure in respect of the role and duties of the authorised signatory/technical director/other officer;
- (c) the appropriate experience, qualifications and competence of the authorised signatory/technical director/other officer; and
- (d) the ability of the new authorised signatory to apply knowledge in the following aspects:
 - (i) the statutory role, function and duties of a registered general building contractor or a registered specialist contractor as the case may be in relation to the role and responsibilities of the Buildings Department in respect of private building developments in Hong Kong;
 - (ii) the objectives of the Buildings Ordinance and relevant regulations and the mechanism of control in respect of the execution and supervision of building works;
 - (iii) a general awareness of local conditions sufficient to enable him to practice in Hong Kong efficiently and effectively without having to make frequent enquiries on matters of common local knowledge;
 - (iv) a working knowledge and principles of the Buildings Ordinance and relevant regulations, relevant code of practice, practice notes, circular letters and other advisory information, the relevant requirements under other laws and regulations and the requirements of other authorities which exercise control over the carrying out of building works;
 - (v) the fundamental procedures that a registered contractor must follow in order to meeting local statutory requirements; and
 - (vi) adequate technical knowledge and practical experience in building construction to enable him to discharge his duties as a registered general building contractor or registered specialist contractor.

Prior notification to the Buildings Department is required if any of the accepted authorized signatory/technical director/other officer intend to resign from his duties or will cease to be appointed by the contractor. Retrospective notification to the Buildings Department will not be accepted. The registered contractor is required to suspend all the building works immediately if there is no authorised signatory appointed to act for the contractor for the purposes of the Buildings Ordinance or if there is no technical director acting for the contractor and an acceptable replacement is not appointed within a reasonable period of time.

Under Section 8C(2)(c) of the Buildings Ordinance, a registered contractor should apply to the Buildings Department for renewal of registration not earlier than 4 months and not later than 28 days prior to the date of expiry of the registration. Application for renewal of registration received by the Buildings Department outside the specified time limit under Section 8C(2)(c) will not be accepted. The application should comprise:

- (a) a duly completed specified form;

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- (b) declarations in Buildings Department standard forms covering exhaustively the conviction/disciplinary/suspension records of the applicant and its key personnel i.e. the authorised signatory(ies), the technical director(s) and the other officer(s) in certain aspects;
- (c) a job reference on a minimum of one relevant building project;
- (d) certain documents relating to business registration; and
- (e) the prescribed fee in accordance with the Building (Administration) Regulation.

Generally, an application for renewal of registration would not be referred to the Contractors Registration Committees, independent bodies appointed by the Buildings Department under Section 8 of the Buildings Ordinance for interview and assessment, except in the following circumstances:

- (a) the contractor has been inactive in relevant building works in the past registration period (i.e. without a job reference on a minimum of one relevant building project); or
- (b) there have been new incidents or circumstances that require further consideration on the sustainability of the contractor's registration. New incidents or circumstances include, but not limited to, the contractor's conviction/disciplinary/suspension records and subject to the following approach adopted by the Buildings Department in relation to labour safety, public health and environmental offences and records of suspension from tendering by the Development Bureau, the Housing Authority or their related departments in determining if a contractor is required to attend an interview:
 - (i) a contractor who has been convicted or disciplined under the Buildings Ordinance is required to attend an interview;
 - (ii) a contractor who has been convicted of a serious labour safety offence (such as an offence which involves a fatal incident or amputation of limb), is required to attend an interview;
 - (iii) a contractor who has been convicted of 7 or more labour safety offences committed within a rolling 6 months is required to attend an interview;
 - (iv) a contractor who has been convicted of 4 or more offences under Section 27(3) of the Public Health and Municipal Services Ordinance committed on the same site within a rolling 3 months is required to attend an interview;
 - (v) a contractor who has been convicted of 4 or more environmental offence on the same site within a rolling 3 months will be required to attend an interview; and
 - (vi) for a contractor who has been suspended from tendering by the Development Bureau, the Housing Authority or their related departments, the Building Department will consider the reasons of suspension. Generally, only factors which infer deficiencies of the contractors in technical competence or management ability, and factors related to standard of works, misconduct and site safety will be taken into consideration.

The registration of a contractor will continue to be in force if he makes an application for renewal within the time limit and pays the renewal fee until his application for renewal is finalized by the Building Department.

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According to Section 8C of the Buildings Ordinance, the Building Department may refuse an application for renewal of registration and remove the name of the applicant from the register if:

- (a) he is satisfied that the applicant is no longer suitable (for any reason) for registration on the relevant register; or
- (b) the applicant fails to provide relevant information and documentary proof required by the Building Department including, but not limited to, updated information on matters supplied on previous applications for registration or renewal of registration.

Buildings Ordinance (Chapter 123 of the Laws of Hong Kong)

Under the Section 14(1) of the Buildings Ordinance, no person shall commence or carry out any building works, including alteration, addition and every kind of building operation, without having obtained approval and consent from the Building Authority. Any person who intends to carry out alteration or addition building works in existing premises is required to appoint an authorised person, and where necessary a registered structural engineer, to prepare and submit plans for the approval of Building Authority under the Buildings Ordinance. He is also required to appoint a registered contractor to carry out the building works. The Building Authority may require that all such building works carried out in such a way that the building will comply with the standards of the Buildings Ordinance.

Under the Section 4(1) of the Buildings Ordinance, every person for whom building works or street works are to be carried out shall appoint:

- (a) an authorised person as the co-ordinator of such building works or street works;
- (b) a registered structural engineer for the structural elements of such building works or street works if so required under this Buildings Ordinance; and
- (c) a registered geotechnical engineer for the geotechnical elements of such building works or street works if so required under this Buildings Ordinance.

Private sector foundation works projects

Private sector foundation works projects cover projects launched by private developers as well as any other entities not being Hong Kong government departments and statutory bodies, including but not limited to utility companies, charity organisations, and private educational institutions.

In order to undertake private sector foundation works as main contractor, a contractor must be registered with the Buildings Department as a registered specialist contractor under the categories of foundation works, unless the main contractor subcontracts those works to a registered specialist contractor as described below.

Where the main contractor engages a registered specialist contractor under the categories of foundation works to undertake foundation works as registered with the Building Department, irrespective of whether such foundation works form the whole or part of the contract works, the main contractor itself would not be required to be a registered specialist contractor under that category.

Subcontractors appointed to carry out foundation works are required to be registered specialist contractors under the categories of foundation works.

REGULATORY OVERVIEW

For any foundation works where an entity is involved as a subcontractor, if there is a registered specialist contractor who is registered with the Buildings Department under that category to supervise the works and liaise with the Buildings Authority, the entity itself is not required to be such registered specialist contractor or to obtain any requisite licenses, permits and approval for its operation and business except the business registration.

The registration requirements mentioned above are the basic requirements for undertaking private sector foundation works projects. Other additional requirements on the main contractors or subcontractors may be imposed by the developers, main contractors, or other entities, as the case may be.

Regulatory actions against contractors by the Development Bureau

The Development Bureau may take regulatory actions against contractors for failure to meet the financial criteria within prescribed time, unsatisfactory performance, misconduct or suspected misconduct, poor site safety record, and poor environmental performance, court convictions such as contravention of site safety legislation and the Employment Ordinance (Chapter 57 of the Laws of Hong Kong) and employment of illegal works etc.

For instance, if a qualified contractor is convicted of a series of safety or environmental offences within a short period of time in a project, or if a fatal construction accident occurs at a construction site for which the contractor is responsible, the government may take regulatory actions against the responsible contractor, which include the removal, suspension (which means a contractor is prohibited from tendering for works of the relevant category during the suspension period) and downgrading (which includes downgrading or demoting the contractor's qualification to a lower status or class in all or any specified category) of the contractor's licence, depending on the seriousness of the incident triggering the regulatory actions.

D. Law and Regulations in relation to levy

Construction Industry Council Ordinance (Chapter 587 of the Laws of Hong Kong) ("CICO")

According to section 32 of the CICO, construction industry levy ("CIL") is payable by registered contractors appointed under section 9 of the Buildings Ordinance (Chapter 123 of the Laws of Hong Kong) or any persons who carry out construction operations in Hong Kong to the Construction Industry Council ("CIC"). "Construction operation" is exhaustively defined under Schedule 1 of the CICO, which includes building works and street works as defined in section 2(1) of the Buildings Ordinance, construction, alteration, repair, maintenance, extension, demolition or dismantling, external or internal cleaning and painting or decorating any external or internal surfaces or parts of any buildings, or other temporary or permanent structures forming part of land.

After 2012, the CIL chargeable is 0.5% of the total value of the construction operations (as defined under section 53 of the CICO) concerned (0.4% before 2012). Pursuant to section 32 and Schedule 5 of the CICO, no CIL is chargeable for any construction operations not exceeding HK\$1,000,000.

According to section 34 of the CICO, the contractor and authorized person each are required to inform the CIC in a specified form (Form 1) in respect of the construction operations within 14 days after its commencement. It is an offence if a person without reasonable excuse failed to give such notice and liable to a fine at level 1, which is fixed at HK\$2,000. Notice is only required for term contract or if the reasonable estimation of the total value of construction operations exceeds HK\$1,000,000.

REGULATORY OVERVIEW

Pursuant to section 35 of the CICO, a contractor is required to give a Notice of Payment (“**NOP**”) in a specified form (Form 2) to the CIC within 14 days after the contractor receives a payment in respect of the construction operation. It is an offence if a person without reasonable excuse fails to give the NOP and liable to a fine at level 3, which is fixed at HK\$10,000.

Pursuant to section 36 of the CICO, a contractor is required to give a Notice of Completion (“**NOC**”) in a specified form (Form 3) to the CIC within 14 days after the completion of the construction operation. It is an offence if a person without reasonable excuse fails to give the NOC and liable to a fine at level 3, which is fixed at HK\$10,000.

The CIC shall assess the CIL payable upon receiving the NOP or NOC and give a Notice of Assessment (“**NOA**”) in writing specifying the amount of CIL. The CIC can also make the assessment notwithstanding no NOP or NOC has been given. According to section 41 of the CICO, if a contractor fails to give the NOP or NOC, a surcharge not exceeding twice the amount of the CIL payable may be imposed and a Notice of Surcharge (“**NOS**”) in writing shall be given by the CIC.

According to section 46 of the CICO, if the contractor fails to pay in full the amount of levy or surcharge within 28 days after the NOA or NOS is given, a 5% penalty of the unpaid amount shall be imposed. If the contractor still fails to pay the unpaid amount within 3 months after the expiry of 28 days, a further 5% penalty of the unpaid amount shall be imposed.

CIL, surcharge, penalty or further penalty is recoverable by the CIC as civil debt under the jurisdiction of the District Court.

The time limits for the CIC to make the assessment or imposing the surcharge under sections 42 to 45 of the CICO are, whichever is the last of the following periods:

- (a) 2 years after the completion of all construction operations under the contract, or without term contract 2 years after the completion of the construction operations;
- (b) 2 years after the expiry of the period within which the contract stipulates that all such construction operations have to be completed; and
- (c) one year after evidence, sufficient in the opinion of the CIC to justify the making of the assessment, comes to its knowledge.

Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Chapter 360 of the Laws of Hong Kong) (“PMCO”) and Pneumoconiosis and Mesothelioma (Compensation) (Assessment of Levy) Regulations (Chapter 360A of the Laws of Hong Kong) (“PMCALR”)

According to section 35 of the PMCO, pneumoconiosis compensation fund levy (“**PCFL**”) is imposed in respect of construction operations carried out in Hong Kong. PCFL is rated at 0.15% of the value of the construction operations (0.25% before 2012) and not chargeable if the total value (as defined under section 39D of PMCO) do not exceed HK\$1,000,000. Pursuant to section 39A of the PMCO, PMCO does not apply to construction operations for domestic unit, or for the sole and principal purpose of renovation.

Pursuant to section 35(5) of the PMCO, the contractor is liable to make a payment of PCFL only if the Pneumoconiosis Compensation Fund Board (“**PCFB**”) serves a NOA. PCFL, surcharge, penalty or further penalty is recoverable by the PCFB as civil debt under the jurisdiction of the District Court. Fraudulent evasion of the payment of PCFL is liable for a fine of HK\$10,000 or 20 times the amount of PCFL, whichever is greater.

REGULATORY OVERVIEW

Contractors are required to:

- (a) inform the PCFB the commencement of construction operations within 14 days thereafter by a notice of commencement (Form 1). Failure to comply without reasonable excuse is liable for a fine at Level 2, which is fixed at HK\$5,000;
- (b) inform the PCFB within 14 days after the contractor receives a payment in respect of the construction operation by a NOP (Form 2). Failure to comply without reasonable excuse is liable for a fine at Level 2, which is fixed at HK\$5,000; and
- (c) inform the PCFB the completion of the construction operations within 14 days by a NOC (Form 3). Failure to comply without reasonable excuse is liable for a fine at Level 2, which is fixed at HK\$5,000.

According to regulation 6 of the PMCALR, the PCFB shall assess the PCFL payable upon receiving the NOP or NOC and give a NOA in writing specifying the amount of PCFL. The PCFB can make the assessment notwithstanding no NOP or NOC has been given. If a contractor fails to give the NOP or NOC, a surcharge not exceeding twice the amount of the PCFL payable may be imposed and a NOS in writing shall be given by the PCFB.

According to section 37 of the PMCO, if the contractor fails to pay in full the amount of levy or surcharge within 28 days after the NOA or NOS is given, a 5% penalty of the unpaid amount shall be imposed. If the contractor still fails to pay the unpaid amount within 3 months after the expiry of 28 days, a further 5% penalty of the unpaid amount or HK\$1,000 whichever is greater shall be imposed.

The time limits for the PMFB to make the assessment or imposing the surcharge under regulations 6E to 6H of the PMCALR are, whichever is the last of the following periods:

- (a) 2 years after the completion of all construction operations under the contract, or without term contract 2 years after the completion of the construction operations;
- (b) 2 years after the expiry of the period within which the contract stipulates that all such construction operations have to be completed; and
- (c) one year after evidence, sufficient in the opinion of the PMFB to justify the making of the assessment, comes to its knowledge.