

## **REGULATORY OVERVIEW**

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### **A. LAWS AND REGULATIONS IN RELATION TO THE BUILDING WORKS**

Under the Buildings Ordinance, there are three contractors' registers being kept by the Building Authority. They are: (i) the general building contractors' register; (ii) the specialist contractors' register and; (iii) the minor works contractors' register.

Under section 14 of the Building Ordinance, approval and consent is required from the Building Authority for the commencement of building works.

Under section 9(1) of the Buildings Ordinance, a person is required to appoint a registered general building contractor to carry out general building works and street works which do not include any specialised works designated for registered specialist contractors and minor works. Under section 9(2) of the Buildings Ordinance, a person is required to appoint a registered specialist contractor to carry out specialised works (including sub-registers of demolition works, foundation works, site formation works, ventilation works and ground investigation works) in their corresponding categories which they have been registered.

Building works have a wide definition. Under section 41(3) of the Buildings Ordinance, works in a building are exempted if they do not involve the structure of a building. So there will be no need to engage a registered general/specialist contractor for such building works.

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

#### **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 (which is defined to include construction work). The Factories and Industrial Undertakings Ordinance prescribes a duty on 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;

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- (d) providing and maintaining safe access to and egress from the workplaces; and
- (e) providing and maintaining a safe and healthy working environment.

It is a criminal offence for a proprietor who contravenes any of these duties and the maximum penalty is a fine of HK\$500,000. Further for contraventions of these requirements by the proprietor wilfully and without reasonable excuse the maximum penalty is a fine of HK\$500,000 and to imprisonment for 6 months.

Subsidiary regulations of the Factories and Industrial Undertakings Ordinance, include, among others, the Construction Sites (Safety) Regulations (Chapter 59I of the Laws of Hong Kong), Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear Regulations (Chapter 59J of the Laws of Hong Kong), Factories and Industrial Undertakings (Protection of Eyes) Regulations (Chapter 59S of the Laws of Hong Kong).

The Construction Sites (Safety) Regulations provide for (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 constitutes 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. The Construction Sites (Safety) Regulation is applicable to all construction work, all construction sites and all machine, plant and materials which construction work is carried on.

### **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, covering both industrial and non-industrial workplaces.

Under the Occupational Safety and Health Ordinance, 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;
- (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

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- (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;
- (e) provision and maintenance of a working environment that is safe and without risks to health; and
- (f) provision and maintenance of means of access to and egress from the workplace that are safe and without any such risks.

Non-compliance with any of the above provisions is a criminal offence and the maximum penalty of the employer is a maximum fine of HK\$200,000. For intentional, knowing or reckless contraventions, the maximum penalty is a fine of HK\$200,000 and to imprisonment for 6 months.

The Commission for Labour has power to 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 and the maximum penalty is 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)**

There is a no-fault and non-contributory employee compensation system for work injuries established under the Employees' Compensation Ordinance. Further this Ordinance also set out 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 generally liable to pay compensation even if the employee might have at faults or negligent 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.

As prescribed under section 15 of the Employees' Compensation Ordinance, an employer must notify the Commissioner for Labour of any work accident by submitting Form 2 (within 14 days for general work accidents and within 7 days for fatal accidents), irrespective of whether the accident gives rise to any liability to pay compensation. If the employer did not know the happening of such accident or did not otherwise come to his knowledge within such periods of 7 or 14 days (as the case may be) then such notice shall

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be given not later than 7 days or, as may be appropriate, 14 days after the happening of the accident is first brought to the notice of the employer or otherwise came to his knowledge.

According to Section 24 of the Employees' Compensation Ordinance, the 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.

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 respect of all their employees (including full-time and part-time employees) in accordance with section 40 of the Employees' Compensation Ordinance. For compliance with such obligation, 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 in compliance 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 maximum fine at level 6 (currently at HK\$100,000) and imprisonment for 2 years.

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

The Employment Ordinance sets out and regulates the rights and duties between the employer and employee. Under the Employment Ordinance, the employees are entitled to some statutory rights such as rest days, sick leave, etc.

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

Employers are required to enrol their regular employees (except for certain exempt persons) aged 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.

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

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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.

It is not requirement under the Mandatory Provident Fund Schemes Ordinance 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.

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

The Occupiers Liability Ordinance sets out 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.

There is a common duty of care under this Ordinance 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.

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

Under section 38A of the Immigration Ordinance, there is a duty on 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) to 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 is liable to a maximum fine of HK\$350,000.

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

The Construction Workers Registration Ordinance provides, among others, for registration and regulation of construction workers. The principal objective of the Construction Workers Registration Ordinance is to set up a system of registration of construction workers and to regulate construction workers who personally carry out construction work on construction sites.

Under section 3(1) and section 5 of the Construction Workers Registration Ordinance, unless the person is a registered construction worker of the Register of Construction Workers, that person shall not personally carry on a construction site construction work. In the premises, the principal contractors, subcontractors, employers, and/or controllers of construction sites should only employ registered construction workers to personally carry out construction works on construction sites.

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Under section 58 of the Construction Workers Registration Ordinance, a main contractor for a construction site is required to provide device(s) that enables the data stored in a registration card in electronic form to be retrieved, and the main contractor may apply for exemption of the above requirement from the Construction Industry Council. Section 58 of the Construction Workers Registration Ordinance further requires a controller of a construction site to:

- (a) establish and maintain a daily record in the specified form that contains information of the registered construction workers who are employed by the controller or a subcontractor of the controller and personally carrying out on the site construction work; and
- (b) furnish the Registrar of Construction Workers in such manner as directed by the Registrar of Construction Workers with a copy of the 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, which is currently fixed at HK\$10,000.

Under the Construction Workers Registration Ordinance, “construction work” means, *inter alia*, any building operation involved in preparing for any operation such as laying of foundations, excavation of earth and rock before laying of foundations, site clearance, site investigation, site restoration, earthmoving, tunnelling, boring, scaffolding and provision of access. “Construction site” means (subject to certain exceptions) a place where construction works is, or is to be, carried out.

### C. 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.

The Air Pollution Control Ordinance requires that the owner of any premises, which includes a contractor who has possession of a site for the purpose of construction work, used for conduct of any process specified in the Air Pollution Control Ordinance shall use best practicable means for preventing the emission of noxious or offensive emissions from such premises.



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A contractor shall observe and comply with the Air Pollution Control Ordinance and its subsidiary regulations, including without limitation the Air Pollution Control (Smoke) Regulations (Chapter 311C of the Laws of Hong Kong), the Air Pollution Control (Open Burning) Regulation (Chapter 311O of the Laws of Hong Kong) and the Air Pollution Control (Construction Dust) Regulation (Chapter 311R 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.

### **Air Pollution Control (Construction Dust) Regulation (Chapter 311R of the Laws of Hong Kong)**

Under section 3 of the Air Pollution Control (Construction Dust) Regulation, the contractor responsible for a construction site where any notifiable work is proposed to be carried out shall give notice to the public officer appointed under the Air Pollution Control Ordinance of the proposal to carry out the work. Such "notifiable work" include site formation, reclamation, demolition of a building, work carried out in any part of a tunnel that is within 100m of any exit to the open air, construction of the foundation of a building, construction of the superstructure of building or road construction work.

Under section 4(1) of the Air Pollution Control (Construction Dust) Regulation, the contractor responsible for the construction site where a notifiable work is being carried out shall ensure that the work is carried out in accordance with the Schedule of the Air Pollution Control (Construction Dust) Regulation. Any person who contravenes with section 4(1) of the Air Pollution Control (Construction Dust) Regulation commits an offence and is liable to a fine at level 5 (which is currently fixed at HK\$50,000) on conviction of a first offence and to a fine at level 6 (which is currently fixed at HK\$100,000) and to imprisonment for 3 months on conviction of a second or subsequent offence, and in addition, if the offence is a continuing offence, to a fine of HK\$10,000 for each day during the whole or any part of which the offence continues.

### **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.



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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 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 licencing 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 licenced 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.

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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, labelled and stored properly before disposal. Only a licenced waste collector can transport the waste to a licenced 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 2 years for a second or subsequent offence.

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

The Public Health and Municipal Services Ordinance regulates, amongst other things, activities that are carried out in Hong Kong that may be considered a nuisance or injurious or dangerous to health, including construction works.

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 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.

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Any person by reason of whose act, default or sufferance the nuisance arose or continues, or, if that person cannot be found, the occupier or owner of the premises on which the nuisance exists, who does not observe and comply with the nuisance notice could be held liable, where the premises is found to be in such a state so as to be a nuisance and injurious to health, or where the emission of dust from any building under construction or demolition is found to be in such a manner so as to be a nuisance, to a fine of up to HK\$10,000 and a daily fine of HK\$200.

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

Further, pursuant to section 27 of the Public Health and Municipal Services Ordinance, it provides that if any larvae or pupae of mosquitoes are found on any premises consisting of a building site of which there is the appointed contractor, the appointed contractor of the site shall be guilty of an offence. The appointed contractor in relation to the site means the person who is the registered contractor appointed in respect of the site in accordance with the Buildings Ordinance (Chapter 123 of the Laws of Hong Kong) or where the site is owned by the Government, the person who has been appointed the contractor in respect of the site, if he has entered on the site at the relevant time. Pursuant to section 150 and the Ninth Schedule of the Public Health and Municipal Services Ordinance, any person who is guilty of an offence shall be liable on summary conviction to the level 4 penalty (currently fixed at HK\$25,000) and where the offence is a continuing offence, the person shall be liable, in addition, to a fine of HK\$450 for each day during which it is proved to the satisfaction of the court that the offence has continued.

### **D. LAWS AND REGULATIONS IN RELATION TO LEVY**

#### **Construction Industry Council Ordinance (Chapter 587 of the Laws of Hong Kong)**

According to section 32 of the Construction Industry Council Ordinance, 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. "Construction operation" is exhaustively defined under Schedule 1 of the Construction Industry Council Ordinance, which include building works and street works as defined in section 2(1) of the Building Ordinance.

The CIL chargeable is 0.5% of the total value of the construction operation (as defined under section 53 of the Construction Industry Council Ordinance). Pursuant to section 32 and Schedule 5 of the Construction Industry Council Ordinance, no CIL is chargeable for any construction operation not exceeding HK\$1,000,000.

According to section 34 of the Construction Industry Council Ordinance, the contractor and authorised person each are required to inform the Construction Industry

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Council 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 currently 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.

Pursuant to section 35 of the Construction Industry Council Ordinance, a contractor is required to give a notice of payment in a specified form (Form 2) to the Construction Industry Council 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 notice of payment and liable to a fine at level 3, which is currently fixed at HK\$10,000.

Pursuant to section 36 of the Construction Industry Council Ordinance, a contractor is required to give a notice of completion in a specified form (Form 3) to the Construction Industry Council within 14 days after the completion of the construction operation. It is an offence if a person without reasonable excuse fails to give the notice of completion and liable to a fine at level 3, which is currently fixed at HK\$10,000.

The Construction Industry Council shall assess the CIL payable upon receiving the notice of payment or notice of completion and give a notice of assessment in writing specifying the amount of CIL. The Construction Industry Council can also make the assessment notwithstanding no notice of payment or notice of completion has been given. According to section 41 of Construction Industry Council Ordinance, if a contractor fails to give notice of payment or notice of completion without a reasonable excuse, a surcharge not exceeding twice the amount of the CIL payable may be imposed and a notice of surcharge in writing shall be given by the Construction Industry Council.

According to section 46 of the Construction Industry Council Ordinance, if the contractor fails to pay in full the amount of levy or surcharge within 28 days after the notice of assessment or notice of surcharge 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 Construction Industry Council as civil debt under the jurisdiction of the District Court. The time limits for the Construction Industry Council to make the assessment or imposing the surcharge under sections 42 to 45 of the Construction Industry Council Ordinance are, whichever is the last of the following periods:

- (a) 2 years after the completion of all construction operation 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

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- (c) one year after evidence, sufficient in the opinion of the Construction Industry Council to justify the making of the assessment, comes to its knowledge.

### **E. PROPOSED LEGISLATION ON SECURITY OF PAYMENT FOR THE CONSTRUCTION INDUSTRY**

#### **Security of Payment Legislation for the Construction Industry (the “SOPL”)**

The Government has consulted the public on the proposed introduction of the SOPL to address unfair payment terms, payment delays and disputes. The rationale behind the new legislation is to improve payment practice and enable rapid dispute resolution in the construction industry.

Based on the consultation document of the SOPL, when it comes into force, the SOPL will apply to all written and oral contracts where construction works or plant and materials are being supplied for works in Hong Kong. All public sector construction contracts will be caught by the legislation, whereas only construction and supply contracts for a “new building” (as defined in the Buildings Ordinance) which has an original value in excess of HK\$5 million (or HK\$0.5 million for professional services and supply only contracts) will be caught in the private sector contracts. However, where the SOPL applies to the main contract, it will automatically apply to all subcontracts in the contractual chain.

Based on the consultation document of the SOPL, the SOPL will include the following key obligations, rights and limits:

- (a) The SOPL will prohibit “pay when paid” and similar clauses in contracts. Payers will not be able to rely on such clauses in dispute resolution forums.
- (b) The SOPL will prohibit payment periods of more than 60 calendar days for interim payments or 120 calendar days for final payments.
- (c) The SOPL will provide a party who is entitled to a claim under a contract with a right to claim the payment by means of a statutory payment claim, upon receipt of which the payer has 30 calendar days to serve a payment response, and either party has a statutory right to refer the matter to adjudication which is a process for decision in 55 working days from the date of appointment of an adjudicator.
- (d) The SOPL will give parties who have not been paid amounts admitted as due the right to suspend or reduce the rate of progress of work until payment is made.

#### **Possible impact on our Group**

During the Track Record Period, all of our Group’s revenue was derived from private sector projects. When the SOPL comes into force, it will apply to our private sector projects for new buildings which has an original value in excess of HK\$5 million and all

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related subcontracts in the contractual chain. For FY2017/18, our trade payables turnover days was approximately 37.6 days. Therefore, our Directors are of the view that the implementation of the SOPL will not have any significant impact on our business or cash flow management. Our Director will ensure that terms of our contracts and payment periods with our subcontractors comply with the legislation in this regard when the SOPL comes into force.

### **F. SUBCONTRACTOR REGISTRATION SCHEME**

Subcontractors undertaking building works in Hong Kong may make an application for registration under the Subcontractor Registration Scheme managed by the Construction Industry Council which is a body corporate established under the Construction Industry Council Ordinance (Chapter 587 of the Laws of Hong Kong) in February 2007.

Subcontractors may apply for registration on the Subcontractor Registration Scheme in one or more of 52 trades which further branch out into around 94 specialties.

The followings are the entry requirements for Applications for registration under the Primary Register of the Subcontractor Registration Scheme:

- (a) completion of at least one job within five years as a main contractor/subcontractor in the areas which it applies or to have acquired comparable experience by itself/its proprietors, partners or directors within the last five years;
- (b) listings on one or more government registration schemes operated by policy bureaus or departments of the Hong Kong Government relevant to the trades and specialties for which registration is sought;
- (c) the applicant or its proprietor, partner or director having been employed by a registered subcontractor for at least five years with experience in the trade/specialty applying for and having completed all the modules of the Project Management Training Series for Sub-contractors (or equivalent) conducted by the Construction Industry Council; or
- (d) the applicant or its proprietor, partner or director having registered as Registered Skilled Worker under the Construction Workers Registration Ordinance (Chapter 583 of the Laws of Hong Kong) for the relevant trade/specialty with at least five years' experience in the trade/specialty applying for and having completed the Senior Construction Workers Trade Management Course (or equivalent) conducted by the Construction Industry Council.

A registered subcontractor shall apply for renewal within three months before the expiry date of its registration by submitting an application to the Construction Industry Council in a specified format providing information and supporting documents as required to show compliance with the entry requirements. An application for renewal shall be subject to approval

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by the management committee which oversees the Subcontractor Registration Scheme (the "**Management Committee**"). If some of the entry requirements covered in an application can no longer be satisfied, the Management Committee of the Construction Industry Council may give approval for renewal based on those trades and specialties where the requirements are met. An approved renewal shall be valid for two years from the expiry of the current registration.

A registered subcontractor shall observe the Codes of Conduct for Registered Subcontractor (Schedule 8 of the Rules and Procedures for the Primary Register of the Subcontractor Registration Scheme) (the "**Codes of Conduct**"). Failing to comply with the Codes of Conduct may result in regulatory actions taken by the Management Committee. The circumstances pertaining to a registered subcontractor that may call for regulatory actions include, but are not limited to:

- (a) supply of false information when making an application for registration, renewal of registration or inclusion of additional trades;
- (b) failure to give timely notification of changes to the registration particulars;
- (c) serious violations of the registration rules and procedures;
- (d) convictions of senior management staff (including but not limited to proprietors, partners or directors) for bribery or corruption under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong);
- (e) convictions for failure to pay wages on time to workers in accordance with the relevant provisions contained in the Employment Ordinance;
- (f) wilful misconducts that may bring the Subcontractor Registration Scheme into serious disrepute;
- (g) civil awards/judgments in connection with the violation of or convictions under the relevant sections of the Mandatory Provident Fund Schemes Ordinance;
- (h) convictions under the Factories and Industrial Undertakings Ordinance or Occupational Safety and Health Ordinance in relation to serious construction site safety incidents resulting in one or more of the following consequence:
  - (i) loss of life; or
  - (ii) serious bodily injury resulting in loss or amputation of a limb or had caused or was likely to cause permanent total disability;
- (i) conviction of five or more offences under the Factories and Industrial Undertakings Ordinance and/or Occupational Safety and Health Ordinance each arising out of separate incidents in any six months period (according to the date of committing the



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offence but not the date of conviction), committed by the Registered Subcontractor at each of a construction site under a contract;

- (j) convictions for employment of illegal worker under the Immigration Ordinance; or
- (k) late payment of workers' wages and/or late payment of contribution under the Mandatory Provident Fund Schemes Ordinance over ten days with solid proof of such late payment of wages and/or contribution.

Regulatory actions includes:

- A. written strong direction and/or warning be given to a registered subcontractor;
- B. a registered subcontractor to submit an improvement plan with the contents as specified and within a specified period;
- C. a registered subcontractor be suspended from registration for a specified duration; or
- D. the registration of a registered subcontractor be revoked.