

Candidate Number:

Seat No.:

Section II

Short Essay Questions

The HKIA/ARB Professional Assessment 2011

Paper 2

Building Contracts & Professional Practice, Professional Conduct & Conditions of Agreement and Scale of Charges

23 November 2011

9:00 am – 1:00 pm (4 hours, whole paper)

11:15 am – 1:00 pm (Section II only)

Venue

Rotunda 3, 6/F

Kowloonbay International Trade & Exhibition Centre (KITEC)

Kowloon Bay

Section II (50 marks):

Short Essay Questions (pages 1 – 5)

Part A Answer **ONE** of the TWO questions (Total 20 marks)

Part B Answer **TWO** of the FOUR questions (15 marks each, total 30 marks)

Time allowed: 1 hours 45 minutes

Notes:

1. 3 answer books are provided for you.
2. Please attempt each question on a separate answer book and mark the section and question numbers you attempt on the answer book.
3. Remember to write your candidate number and room/seat number on the answer book and question paper. DO NOT write your name on the question paper and answer books.
4. *In all cases, the term "Building Contract" shall mean the "Agreement and Schedule of Conditions of Building Contract (With Quantities) (2005 edition) and (Without Quantities) (2006 edition)" and "Standard Form of Building Contract" unless stated otherwise. The characters and circumstances in each question are independent of and should not be correlated to those in other questions.*

All answer scripts, question papers, drafts and loose sheets **must not** be taken out of the assessment venue.

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Section II (Part A)

Answer **ONE** question from Question A1 and Question A2. (Total 20 marks)

Question A1 (20 marks)

The owner of a war game centre had invited a group of architectural graduates, who are war game experts to propose a new international standard indoor real-bullet shooting range to be built on his land. The owner had paid them HK\$200,000 as the design fee and accepted the outline schematic design.

As the architectural graduates are not yet qualified, they introduced you as the Registered Architect / Authorized Person to the owner to proceed with the project. The owner requested the group of architectural graduates to remain as specialist for the shooting systems for the project.

1. As the invited Registered Architect / Authorized Person Architect, **write a letter** to the owner accepting the design commission with a discussion on the options to put together a team of consultants, including Building Service Engineers, Structural Engineers, and Quantity Surveyors. Please elaborate your liabilities and duties under different options. **(8 marks)**
2. As the Registered Architect / Authorized Person, **write another letter** to the owner explaining the best arrangement regarding the employment of the architectural graduates as specialist. Please elaborate the reasons for your suggested arrangement. **(6 marks)**
3. After accepting the commission and having reviewed the outline schematic design as accepted by the owner, you had identified some non-compliance to the Building Regulations. What are the appropriate actions to be taken by the Registered Architect / Authorized Person to rectify the situation? **(6 marks)**

Question A2 (20 marks)

Architect A is a HKIA member, a Registered Architect and an Authorized Person, and has good experience in designing houses. Her father is a good friend of Mr Client who intends to build a new house in Hong Kong for his own residence. Mr Client already engaged Architect B as Architect and Authorized Person but is not happy with Architect B's design proposals. Architect A's father therefore introduced her to Mr. Client. Architect A is fully aware of the principles under HKIA Code of Professional Conduct.

1. If Mr Client requests Architect A to comment on Architect B's design, **what would be the course of action** by Architect A? **(5 marks)**
2. If Mr Client requests Architect A to prepare an alternative design, **what would be the course of action** by Architect A? What else can Architect A do in such circumstances? **(5 marks)**
3. Now, Mr Client invites Architect A to replace Architect B for his house project. **What would be the course of action including** any statutory requirements by Architect A? **(5 marks)**
4. Architect A's father requested Architect A not to charge Mr Client a fee because Mr Client is a good friend. Can Architect A charge less and **what would be the course of action** by Architect A? **(5 marks)**

Section II (Part B)

Answer **TWO** questions from Question B1, Question B2, Question B3 and Question B4. (15 marks each, total 30 marks)

Question B1 (15 marks)

A few months before application for an Occupation Permit for a high-rise residential building, the Contractor reported that all the floor tiles for the typical floor lobby have arrived and will start installation. The Employer is considering upgrading and changing the floor tiles to stone, and verbally requested the Contractor not to start laying floor tiles during the site meeting. This verbal instruction is subsequently recorded in the “minutes of meeting” issued by the Architect within 7 days after the meeting.

Three weeks later, the Architect has issued a written instruction confirming to change the floor finish from tiles to stone. But the works will be carried out by a Nominated Sub-Contractor.

1. **Explain implication and validity** of the Employer’s verbal instruction. **(5 marks)**
2. **Explain the contractual risk to the Employer** in changing the floor finish from tiles to stone under such circumstances. **(10 marks)**

Question B2 (15 marks)

The Contractor made a complaint to the Client that you, the Architect, have under certified the payment and put him in financial difficulty. He had spent much more than he received. He threatened to withdraw some of the plant and labour on site and delay the progress of the work if this situation continues for another month. If this situation further continues for another month, he will stop work.

You immediately double checked the recent payment certifications and found that they are in accordance with the contract.

1. Please first **list out** what should be included in the payment valuation, **(6 marks)**
2. then **list out** the possible causes of this apparent “under certification”. **(7 marks)**
3. Please also **advise** the Client whether the Contractor is entitled to delay and / or stop work as stated by him and the relevant contract provisions. **(2 marks)**

Question B3 (15 marks)

You are the Architect of a 150,000 m² mixed use development project comprising one block of service apartment and one block of office on top of a retail podium. The project has completed the project design stage, and ready to proceed to contract documentation stage. The project will have extensive and sophisticated building services Installation, curtain wall system and interior fitting out works.

The Employer asked for your advice whether the contracting works for those building services installation, curtain walling, interior fitting out works to be awarded as the nominated sub-contracts to the Main Contract, **or** they shall all be direct contracts with the Employer.

1. Please **advise** the Employer on the **advantages and disadvantages** of the two types of arrangement. **(10 marks)**
2. Subsequently, the Employer decided to use the Main Contract and nominated sub-contract system. After tendering for the curtain walling sub-contract, the Employer chose one of the curtain wall sub-contractors and nominated him to the Main Contractor. The Main Contractor objected to such nomination based on the reason that he has a very bad relationship with this curtain walling sub-contractor in a project before and did not want to see him again. Please **advise** the Employer whether the Main Contractor is entitled to do so and the relevant provisions in the contract. **(5 marks)**

Question B4 (15 marks)

The Employer has entered a contract for the construction of a 20-storey apartment block using the 2005 Standard Form of Building Contract. The original contract period was 22 months.

The Contractor has claimed an extension of time of 120 days for three variations instructed by the Architect (which variations were approved by the Employer). The Architect has granted an EOT of 60 days. The Contractor argues that the EOT is inadequate and disputes the Architect's award of only 60 days.

It is clear that the extended completion date will not be met and both the Architect and Employer are of the view that the Contractor is in serious delay for at least 9 months based on the Contractor's performance because of the progress and the delay, the number of workmen attending site and concerns over the Contractor's financial status.

The Employer now seeks Architect's advice with regard to the determination of the Contractor's employment. The Employer wishes to engage a replacement contractor to complete the works as soon as possible and considers that this is the only way to avoid massive losses on the project.

As Architect, you would respond to the Employer's demand with reference to the following 3 major aspects:-

1. Which ground might exist for the employment of the Contractor to be determined and issues to be considered by the Architect? **(5 marks)**
2. What are the provisions under the contract to initiate the determination? **(5 marks)**
3. What risk do the Architect and Employer face in such circumstances? **(5 marks)**

END OF PAPER