

Candidate Number:
Seat No.:

<h2>Section II</h2> <p>Short Essay Questions</p>
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The HKIA/ARB Professional Assessment 2014

Paper 2

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

19 November 2014

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 (45 marks):

Short Essay Questions (pages 1 – 5)

A total of 3 questions are to be answered.

Part A Compulsory Question, answer Question 1 (15 marks).

Part B Answer 2 questions out of 3 (Questions 2, 3 & 4) (15 marks each).

Time allowed: 1 hour 45 minutes

Notes:

1. 3 answer books are provided for you.
2. Please attempt each question on a **separate** answer book and mark the question numbers you attempt on the cover of 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.

Paper 2 Section II – Short Essay Questions (Compulsory Question – 15 marks)

PART A: Question 1

1a. CONDITIONS OF ENGAGEMENT

Architect “Y” is the project architect of a 32-storey office building, with total construction cost about HK\$1.5 Billion including HK\$0.3 Billion sub-structure. Its foundation and basement works were just completed. The superstructure work is going to commence in two weeks time. A purchaser “P” wants to buy out the whole office building in a turn-key basis. An Architect “X” was approached by “P” to carry out a due diligence exercise for the document / drawings of office building before “P” decided on whether it is worthwhile to buy it.

Architect “Y” is the original project Architect of the office building, but later “P” wants to engage Architect “X” to take care of the remaining works.

- a. Advise how Architect X can charge for this due diligence exercise (2 marks) and why.
- b. What does purchaser “P” need to observe and act if he is going to engage Architect “X” for the remaining works? (3 marks)

1b. CODE OF PROFESSIONAL CONDUCT

Developer A, a public listed company, invites quotations for architectural services for a comprehensive development project in the New Territories. Architect B is one of the three consulting firms invited to tender. The tender document states that Developer A reserves the right to disclose any submitted tender sum to a third party but undertakes to keep the identity of the tendering firm confidential.

Architect B expresses interest and is invited to tender. Shortly before the tender closing date, its managing director receives a telephone call from a senior executive of Developer A, also a Registered Architect. In the conversation he requests the managing director of Architect B to submit a lump-sum fee that exceeds a reasonable amount and hints that if Architect B does not win the contract this time, it will be favourably considered for the next project.

The managing director of Architect B realises that if he does not comply with the request, he will probably not be approached by Developer A again for any future work. Reluctantly, he accedes to the request and submits a tender that is highly uncompetitive.

Comment on the following queries:

- a. Which principle(s) of the HKIA Code of Professional Conduct has Architect B breached and in what ways? (3 marks)
- b. How would you have handled the case if you were the managing director of Architect B? (2 marks)

1c. CORRUPTION PREVENTION

1. Sam, an architect of a consultancy firm, is responsible for selecting a contractor for a construction project. Sam's brother, Kelvin, is a foundation works contractor. Kelvin is interested in bidding for the contract of the foundation works. He asks if Sam could reveal to him the bidding prices of other contractors so that he could submit a lower price to win the contract.
2. Kelvin is well aware that it might go against the law if he offers a commission to Sam for the latter's help. He instead offers Sam and his newly-wed wife a free trip to Europe in order to express his gratitude. Sam accepted the free trip.
 - a. What problem/ situation is Sam facing as described in **paragraph 1**? (2 marks)
Apart from legal requirements, name three other factors that he should consider when evaluating the consequences of acceding to Kelvin's request.
 - b. Referring to **paragraphs 1 and 2**, briefly point out who will breach (3 marks) the Prevention of Bribery Ordinance. Explain your answer by applying the four major elements of corruption to support your answer.

Part B: Select TWO questions out of THREE (Questions 2, 3 & 4) – 30 marks

PART B: Question 2 CONTRACT ADMINISTRATION

- a. For a project under construction, a Quantity Surveyor was appointed. During site meeting, the Client reported that he received the original of invoice from the Gas Company requesting payment for heaters delivered and installed on site. The Gas Company is a direct contractor.

As the Architect of the project, explain to Client the process in issuing payment to the Gas Company. (5 marks)

- b. The Client also reported that a copy of an invoice from the Supplier for waterclosets was received. The Main Contractor clarified that it was a Nominated Supplier.

As the Architect, explain to Client how to issue payment to Nominated Supplier. (5 marks)

- c. Three months later during meeting, the Client reported that a copy of letter by the same Nominated Supplier was received. The Supplier complained that no payment was received for the waterclosets already delivered to site. The Supplier requested the Client to pay them directly, otherwise they would not deliver the remaining waterclosets to site. The Client was worried this would delay the completion of project and asked the Architect for advice.

Explain what action the Architect can take under the Building Contract regarding direct payment to the Nominated Supplier. (5 marks)

PART B: Question 3 EXTENSION OF TIME (EoT)

The Original Completion Date has passed with the Employer and Contractor each alleging that the other should be responsible for the delay. The Architect's current view is that Completion will be 80 days later than the Original Completion Date and that both parties – mainly the Employer - have caused delay. The Contractor has served the First and Second Notices and provided detailed particulars of the cause and extent of delay. The Employer has written to the Architect privately (i.e. not copied to the Contractor) stating that some EoT is probably due to the Contractor but that the claim is exaggerated and instructing the Architect to grant EoT of no more than 25 days in order to reduce the Employer's exposure to financial claims.

- (1) Is the Employer entitled to instruct the Architect concerning the grant of EoT? Explain your answer. (2 marks)
- (2) What is your view concerning the Employer writing privately to the Architect concerning EoT? Would it be acceptable if the Contractor also wrote privately? (3 marks)
- (3) Explain the key matters the Architect has to take into consideration in determining any EoT and what he might disregard (if anything). (6 marks)
- (4) Assume that the Architect grants EoT but the Contractor is held responsible for some delay. The Employer then demands that liquidated damages are deducted from payments due to the Contractor.
 - (a) In principle, is it possible for a reduction or set-off to be made for liquidated damages against payments otherwise due to the Contractor? (1 mark)
 - (b) Can the Employer deduct liquidated damages as things currently stand? Explain your answer. (1 mark)
 - (c) Is it the Employer or Architect who decides whether liquidated damages should actually be deducted from the Contractor? (1 mark)
 - (d) What is the key test for determining whether the liquidated damages figure is lawful or an unlawful penalty? (1 mark)

PART B: Question 4 ARCHITECT'S INSTRUCTION

- a. You are a Project Architect responsible for a 400 rooms five star hotel. In order to minimize the amount of design changes that may occur, the client has agreed to spend some extra money on an off-site design mock up, and then an on-site quality control mock up.

During the construction of the on-site quality control mock up, there were a lot of non-conforming works especially on the interface between the various building services installations. The Building Services Engineer reported to you that he found out the Contractor's Building Services Coordinator was only a plumber with no knowledge on the other M&E installations. You issued an instruction to the Contractor for the replacement of such person. The Contractor refused saying that this was his internal matters and your instruction should be limited to ordering design changes and material changes.

List four types of Architect's instructions that are not related to design changes or material changes and then explain whether you are authorized under the contract for the removal of the Contractor's Building Services Coordinator and the provisions in the contract to handle this situation.

(7.5 marks)

- b. The off-site design mock up and the on-site quality control mock-up have been completed. After inspection by the Project Team and the Employer, approval has been given by the Architect to the Contractor to proceed with the fitting out works to the rest of the rooms.

One month later, when the materials have been ordered and some of the works have been carried out, the Employer suddenly changed his mind and requested the design team to change the scheme from contemporary style to luxurious style, and amended the design immediately. The revised design was issued to the Contractor as variation as soon as it was approved by the Employer.

Due to the substantial time and cost implication, the Contractor requested the Architect / Employer to confirm the extension of time and the additional cost that would be reimbursed to them before they carried out any works further.

Advise whether the Contractor is entitled to do so and what are the provisions in the contract to deal with this case.

(7.5 marks)

END OF PAPER