

Candidate Number:
Seat No.:

Section II

Essay Questions

The HKIA/ARB Professional Assessment 2017

Paper 2

Building Contracts & Professional Practice, Professional Conduct & Conditions of Agreement

21 November 2017

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

Venue

Rotunda 3, 6/F

Kowloonbay International Trade & Exhibition Centre (KITEC)

Kowloon Bay

Section II (45 marks):

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 recommended for this section: 1 hour 45 minutes

Notes :

1. The answer scripts will only be collected at the end of the whole Paper. Please place them at the **top right-hand corner** of your desk for collection.
2. Three answer books are provided. You should use a **blue/black** ink pen, a felt pen or a ball pen to write your answers.
3. Please use a **separate** answer book for each question and mark the relevant question number on the cover of the answer book.
4. Remember to write your **candidate number and room/seat number** on the answer books, the question paper, and all the appendices forming parts of your answers.

DO NOT write your name on the answer books.

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

PART A: Question 1

1a. (5 marks)

After the approval of Section 16 Town Planning Application, the client decides to revise the building height, and a re-submission is required.

- (i) What basis is most suitable on which Architect X may charge the client for the Section 16 Town Planning Application re-submission? (1 mark)

The fee for re-submission quoted by Architect X is too high and the Client would like to engage Architect Y for the re-submission. Explain the right of the Architect X and the Client on the following:

- (ii) Copyright. (3 marks)
(iii) Termination and fee entitled. (1 mark)

1b. (5 marks)

You are offering professional services but have been asked by the Client to revise a fee quotation to take account of the fee quoted by another Architect for the same service.

As a HKIA member, how would you react?

1c. (5 marks)

Frank and Louis are cousins. Frank is an Architect of a consultancy firm responsible for overseeing renovation projects in Hong Kong and mainland China; whereas Louis is a director of Greater China region of a construction company.

Recently, Louis' company became a Contractor of a renovation project in Shanghai under Frank's supervision. However, Louis accidentally found out that the building materials bought for the renovation project was sub-standard. To avoid delay in the project and incurring additional cost for taking remedial measures, Louis asked Frank to turn a blind eye to the problems when inspecting the works. He also assured Frank that as the renovation project was in China, Hong Kong anti-corruption laws would not apply. Frank agreed and certified that all materials inspected by him had met the specifications. As a token of thanks, Louis renovated Frank's Hong Kong apartment at half price as a wedding gift to Frank.

- (i) Do you agree with Louis that the anti-corruption laws in Hong Kong would not apply to the above scenario? (1 mark)

- (ii) If Frank and Louis breached the Prevention of Bribery Ordinance in the above scenario, what offences did they commit? Please explain your answer by elaborating the major elements of each offence under the Prevention of Bribery Ordinance. (3 marks)

- (iii) Please list the four major factors that Frank should consider when making an ethical decision in the above situation and briefly illustrate your points. (1 mark)

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

PART B: Question 2 (15 marks)

The Architect instructed the Contractor to accept an Audio and Visual Company as his Nominated Sub-contractor for supply and installation of audio and visual equipment for a Renovation project.

The Contractor objected to accept the nomination because of a special condition included in the tender submission from the Audio and Visual Company. It capped the amount of liquidated and ascertained damages to the Contractor for failure to complete the Sub-Contract works to 10% of its Sub-contract sum, amounting to HK\$150,000.

The rate of Liquidated and Ascertained Damages included in the Contract (or Main Contract) is HK\$50,000 per day.

- (i) Please advise if the Contractor has the right to object the nomination? (3 marks)
- (ii) What are the possible solutions in practice? (3 marks)

One day after the expiry of the Defects Liability Period, some external wall tiles debonded and fell off. The Contractor argued that he was not obliged to rectify the said defects because:

- a. The Defects Liability Period is expired;
 - b. The deboned external wall tiles were not included in the schedule of defects issued by the Architect; and
 - c. All the defects previously identified had been properly tested and accepted by the Architect.
- (iii) Please advise on the validity of the Contractor's argument. (6 marks)
 - (iv) What would be the action to be taken if you were the Architect? (3 marks)

PART B: Question 3 (15 marks)

You are the Architect of an International School Extension Project for the construction of a new Annex Block with boarding units and associated supporting facilities. The Main Contract is awarded to *XYZ Ltd.* For the superstructure works, the contract commencement date is 1 February 2017 and the contract completion date is 30 June 2018.

On 5 September 2017, the Main Contractor submitted a Notice of Delay No. 2 with 35 calendar day claim due to inclement weather as recorded in Summer 2017. After your assessment, it is found that the Extension of Time application is valid.

After receiving a copy of certificate the Extension of Time granted, the House Master was concerned that any delay to its completion would jeopardize the intake programme of the 2018 school year.

- (i) Please explain to him the rationale in granting of Extension of Time, and due to "neutral delays" attributable to neither the Employer nor the Contractor under the Conditions of Contract. (7 marks)

As observed by the House Master, out of the 15 calendar days as claimed, 1 day was a Sunday and 5 other days there were no activities on site. He requested you to critically review the Extension of Time to be granted.

- (ii) Please explain your subsequent action. (4 marks)

On 1 June 2017, *ABC Ltd.* was nominated as the lift Nominated sub-contractor. The Main Contractor submitted a Notice of Delay with 30 days delay claim because the submission of application of use permit to EMSD for the lift was not in accordance with the approved Master Programme.

- (iii) Please explain your rationale in assessment of the potential Extension of Time application. (4 marks)

PART B: Question 4 (15 marks)

You are the Architect appointed for a low-rise residential project. One month before application for Occupation Permit, the Electrical Nominated Sub-contractor reported that the fixed window opening for the air conditioning hood is only 400mm high, which is 410mm short of what is required for the installation of window type air conditioner.

The Electrical Nominated sub-contractor could not find a smaller size window type air conditioner, while the Window sub-contractor appears to have used larger aluminium window sections than you have thought.

- (i) Write a letter to your Client explaining the circumstances and advise as what might have gone wrong. Making reference to the design, shop drawing, fabrication and installation work-flow, discuss the duties and responsibility of the Architect, Main Contractor, Window sub-contractor, and the Electrical Nominated sub-contractor in relation to the technical, contractual, and aspects in tort. (10 marks)
- (ii) Suggest a practical way forward and explain your reasons. (5 marks)

END OF PAPER