

Candidate Number:
Seat Number:

Section II

Essay Questions

The HKIA/ARB Professional Assessment 2018

Paper 2

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

20 November 2018

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 *three* questions are to be answered.

Question 1 is compulsory (15 marks).

Answer *two* out of Questions 2, 3 and 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, including all the appendices forming parts of your answers, and also on the question paper.

DO NOT write your name on the answer books.

PAPER 2 SECTION II – ESSAY QUESTIONS

PART A : Question 1 (Compulsory Question – 15 marks)

Question 1a (5 marks)

A client just acquires a piece of Land “A” and wants to develop it into a residential tower. He intends to employ you as the Architect to carry out a feasibility study and prepare trial General Building Plans (GBP) submission to the Building Authority for approval, before deciding further on the implementation of the project. Town planning application and lease modification are not required. He asks you to submit a fee proposal for providing architectural services.

- (i) Explain briefly how you will charge the client for the feasibility study and works relevant to the GBP submission. (2 marks)
- (ii) Will you advise the client to employ other consultants for the above works? Explain your role in this aspect. (1 mark)
- (iii) After engaging to work on Land “A”, your GBP has now been approved but the client decides not to implement the project. Subsequently, he employs another architect and intends to ask him to use your approved design for Land “A” in another newly acquired Land “B”, for which the context is similar to that of Land “A”. Explain your right and how you should advise your client. (2 marks)

Question 1b (5 marks)

“Principle 4” of the *HKIA Code of Professional Conduct* encourages members “to participate in local and international affairs concerning the environment.” Name one particular area you are interested in, and describe, in about 100 words, the way through which you intend to participate. (5 marks)

Question 1c (5 marks)

Keith is the Chief Architect of a consultancy firm and his duty is to ensure that the construction work of a school project is smoothly conducted. Tied down by paperwork, Keith relies very much on his subordinate, Jayden, to carry out regular on-site supervision for him. During a surprise check, Keith found that Jayden might have endorsed a few falsified materials testing reports submitted by the Contractor. Shortly afterwards, Keith also discovered that Jayden went to Macau frequently with the Contractor, who paid for Jayden's hotel accommodation, travelling expenses and even casino tokens.

- (i) Is there any breach of Prevention of Bribery Ordinance (POBO) in the above scenario by Jayden and the Contractor? What offences did they commit? Please explain your answer by elaborating the four major elements of a **bribery offence** with reference to the scenario. (2 marks)

- (ii) Close association with contractors often causes ethical dilemmas at work. Please list the four major factors that Jayden should consider when handling his relationship with the Contractor? (2 marks)

- (iii) What should Keith do in the above scenario? (1 mark)

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

Question 2 (15 marks)

- (i) What is the difference between “liquidated and ascertained damages” and “a penalty”? (4 marks)
- (ii) What is the consequence if the liquidated and ascertained damages are held to be a penalty? (3 marks)
- (iii) If the Employer suffers no loss as a result of the Contractor’s delay to completion, is he or she still entitled to deduct liquidated and ascertained damages? (3 marks)
- (iv) The Employer inserted a lump sum of HK\$1,000,000 in the appendix of the contract conditions, to be payable by the Contractor if the works could not be completed on time. This was due to the Employer’s liability to pay the same amount to others if the works would be delayed. No other damages were included in the contract conditions. The Contractor willingly signed the contract containing this condition. (5 marks)

The Works were not completed on time but it transpired that the Employer did not have to pay any damages as originally anticipated. The Employer still held that he was entitled to recover the HK\$1,000,000 as the Contractor did not complete on time. However, the Contractor considered himself no longer liable because the Employer did not have to pay the damages.

Will the lump-sum liquidated and ascertained damages be enforceable? Are there any alternative actions that the Employer may take?

Question 3 (15 marks)

You are the Architect for an Alterations and Additions (A&A) project for the setting up of an Innovation Hub in the University to promote and support education and training on campus. The tentative handover date of the premises to the Contractor is late August 2016. The A&A works will be carried out under the Minor Works Control System for necessary statutory submissions. During the preparation of the fit-out tender documents, the Employer requested you to delete the clause under the Conditions of Contract related to “Extension of Time” (EOT) due to inclement weather, since there was no external work involved.

- (i) Explain the rationale of the EOT clauses under the Conditions of Contract to the Employer. (5 marks)
- (ii) Explain the implication(s) if the clause under the Conditions of Contract related to “Extension of Time” (EOT) due to inclement weather is deleted. (4 marks)

The contract was awarded earlier than expected to *XYZ Ltd.* on 1 April 2016 with a contract period of 140 calendar days. Immediately after site possession (8 April 2016) but before site mobilisation, the Contractor reported that some of the contract works were outside the ambit of the Minor Works Control System. After consultation with your Authorized Person and Registered Structural Engineer, it was confirmed that those works require A&A statutory submission to the Buildings Department for approval and consent. It would take an extra 90 calendar days in obtaining approval and consent before works can be commenced. The Employer was not satisfied with your performance since any potential EOT might induce claim for loss and expense from the Contractor.

- (iii) The Contractor submitted Notice of Delay Nos. 1 & 2 on 1 and 31 July 2016 respectively. After your assessment, it was found that their claim for 90 calendar days was valid. Please draft a letter of EOT award to *XYZ Ltd.* (4 marks)
- (iv) What could have been your advice to the Employer, at the time of site possession, in dealing with the potential EOT claim? (2 marks)

Question 4 (15 marks)

You are the Architect for a HK\$300,000,000 sub-vented school project. The MVAC works are carried out by a Nominated Sub-Contractor. The chillers are on one side of the roof while the plant rooms are on the upper roof. As such there will be platform and catwalks for maintenance access.

The MVAC NSC has refused to build the platform and catwalks as they have no building expertise. The Main Contractor is requesting you to issue an Architect's Instruction to cover these platform/catwalk works since these are not shown on the main contract architectural drawings or in the BQ. The cost of these platform / catwalks works is about HK\$900,000. The Client is upset about this issue.

- (i) Write a **letter** to the Client explaining the circumstances, duties and responsibilities of the parties, the contractual provisions in the MC and NSC. Argue and justify your conclusion as why you need or need not to issue an Architect's Instruction and why the Client should or should not pay HK\$900,000 for these works. (10 marks)
- (ii) Your subordinate informed you that BD submission would be required. However, your structural sub-consultant has refused to prepare for the BD submission and further advised that this is outside their scope. Identify and discuss the issues. Suggest a practical way-forward. (5 marks)

END OF PAPER