

**RE: COMPLIANCE MATTERS OF
WING LEE GROUP (HOLDINGS) LIMITED (THE "COMPANY" OR "WLG")
AND ITS SUBSIDIARIES (THE "GROUP")**

OPINION

INSTRUCTIONS AND BACKGROUND

1. I received instructions from Messrs. Kwok, Yih & Chan, solicitors, to give legal opinion to the Company, the Sponsor and the Overall Coordinator (for itself and on behalf of the Underwriters) as to Hong Kong law in respect of the compliance of the Group in Hong Kong and other affairs of the Group under Hong Kong law :-
 - (a) Corporation matters;
 - (b) Matters in relation to relevant licence(s), permit(s), approval(s), consent(s), certificate(s) and registration(s);
 - (c) Matters in relation to Money Lenders Ordinance (Cap.163) ("**MLO**");
 - (d) Compliance matters in relation to the Factories and Industrial Undertakings Ordinance (Cap.59) ("**FIUO**");
 - (e) Compliance matters in relation to the Construction Workers Registration Ordinance (Cap.583) ("**CWRO**");
 - (f) Compliance matters in relation to the predecessor Companies Ordinance (Cap.32) ("**Old CO**") and the current Companies Ordinance (Cap.622) ("**New CO**");
 - (g) Compliance matters in relation to the Stamp Duty Ordinance (Cap.117) ("**SDO**");
 - (h) Compliance matters in relation to the Mandatory Provident Fund Schemes Ordinance (Cap.485) ("**MPFSO**");
 - (i) Compliance matters in relation to the Employment Ordinance (Cap.57) ("**EO**"), the Minimum Wage Ordinance (Cap.608) ("**MWO**"), the Immigration Ordinance (Cap.115) ("**IO**") and the Occupational Safety and Health Ordinance (Cap.509) ("**OSHO**");
 - (j) Compliance matters in relation to the Employees' Compensation Ordinance (Cap.282) ("**ECO**");

- (k) Compliance matters in relation to the Air Pollution Control Ordinance (Cap.311) (“**APCO**”), the Noise Control Ordinance (Cap.400) (“**NCO**”), the Waste Disposal Ordinance (Cap.354) (“**WDO**”), the Environmental Impact Assessment Ordinance (Cap.499) (“**EIAO**”), the Public Health and Municipal Services Ordinance (Cap.132) (“**PHMSO**”) and/ or safety control;
 - (l) Compliance matters in relation to Construction Industry Council Ordinance (Cap.587) (“**CICO**”);
 - (m) Compliance matters in relation to Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap.360) (“**PMCO**”);
 - (n) Compliance matters in relation to the Inland Revenue Ordinance (Cap.112) (“**IRO**”);
 - (o) Compliance matters in relation to Electricity Ordinance (Cap.406);
 - (p) Compliance matters in relation to the Competition Ordinance (Cap.619);
 - (q) Ongoing legal proceedings and claims against the Group;
 - (r) Regulatory overview and disclosure;
 - (s) Matters in relation to insurance policies during the three years ended 31st March 2024 (the “**TRP**”);
 - (t) Matters in relation to trademark registration and the Trade Marks Ordinance (Cap.559) (“**TMO**”);
 - (u) Matters in relation to written or verbal enquiry, complaint, warning, investigation and/or concerns in relation to non-compliances or breaches of any applicable laws or regulations under the supervision of government authorities or statutory bodies: (i) Buildings Department, (ii) Construction Industry Council, (iii) Development Bureau, (iv) Environmental Protection Department, (v) Labour Department, (vi) Immigration Department, (vii) Mandatory Provident Fund Schemes Authority, (viii) Food and Environmental Hygiene Department, (ix) Electrical and Mechanical Services Department, (x) Inland Revenue Department, (xi) Fire Services Department, (xii) Civil Engineering and Development Department, (xiii) Competition Commission, (xiv) Companies Registry and (xv) Intellectual Property Department.
2. I am instructed that the Company is a limited company incorporated under the laws of Hong Kong which the Group engages in the business of civil and electrical cable engineering and solar photovoltaic system works in Hong Kong.
3. I am instructed that the Company has the following 6 wholly owned subsidiaries (“**HK Subsidiaries**”):-
- (a) Wing Lee Construction Limited (榮利建築有限公司) (“**WLC**”);
 - (b) Wing Lee Development (International) Limited (榮利發展(國際)有限公司) (“**WLD**”);
 - (c) Tai Shan Engineering & Construction Company Limited (泰山建築工程有限公司) (“**TSE**”);

- (d) Wing Lee New Energy Limited (榮利新能源有限公司) (formerly known as Sum Hing Construction Limited (森興建築工程有限公司)) (“SHC”);
 - (e) Sum Hing Trading Limited (formerly known as Sum Hing Engineering Limited) (森興貿易有限公司(前稱森興工程有限公司)) (“SHT”); and
 - (f) Kaiser Construction Engineering Company Limited (基碩建築工程有限公司) (“KCE”).
4. The Company is in the process of preparing its application for listing of its shares on the Main Board of The Stock Exchange of Hong Kong Limited and thus seeks legal opinion on the abovementioned matters.

DOCUMENTS PROVIDED

5. I have been provided with documents from those instructing me for the purpose of preparing this legal opinion.

LAWS AND REGULATIONS

UNDER THE MLO

6. No person shall carry on business as a money lender without a licence at any place other than the premises specified in such licence or otherwise than in accordance with the conditions of a licence. (MLO s.7)
7. Money lender means every person whose business (whether or not he carries on any other business) is that of making loans or who advertises or announces himself or holds himself out in any way as carrying on that business, but does not include (a) a person specified in Part 1 of Schedule 1, or (b) as respects a loan specified in Part 2 of Schedule 1, any person who makes such loan. (MLO s.2)
8. Loans made by a company or a firm or individual whose ordinary business does not primarily or mainly involve the lending of money, in the ordinary course of that business are exempted. (MLO Sched.1 Pt.2)

UNDER THE CWRO

9. A person shall not personally carry out on a construction site construction work unless the person is a registered construction worker. A person must not personally carry out a construction site construction work that involves any skills of a designated trade division unless the person is a registered skilled or semi-skilled worker for that trade division. (CWRO s.3)
10. No person shall employ another person to personally carry out on a construction site construction work in contravention of section 3(1) or (2). (CWRO s.5)

11. A person who contravenes section 3(1) or (2) is liable on conviction to a maximum fine of \$10,000. A person who contravenes section 5 is liable on conviction to a maximum fine of \$50,000. (CWRO s.6)
12. A principal contractor for a construction site shall provide on the site such device that enables the data stored in a registration card in electronic form to be retrieved. (CWRO s.58(1)) A controller of a construction site shall establish and maintain a daily record, and furnish the Registrar of Construction Workers with a copy of the record. (CWRO s.58) A person who without reasonable excuse contravene the record requirement commits an offence and is liable on conviction to a maximum fine of \$10,000.

UNDER THE OLD CO AND THE NEW CO

Statutory Provisions in relation to Limitation Period of Prosecution for Non-Compliance with the Old CO and the New CO

13. Any offence under the Companies Ordinance may only be tried within 3 years after the commission of the offence and within 12 months after sufficient evidence in the opinion of the Secretary for Justice to justify the proceedings. (Old CO s.351A, New CO s.900)

Statutory Provisions in relation to Filing Specified Form with the Registrar of Companies

14. A company is under the statutory duty to notify the Registrar of Companies in a specified form within 15 days for :-
 - (a) Change of address of registered office (Form NR1) (New CO s.658)
 - (b) Change of particulars of directors or secretary (Form ND2B) (New CO ss.645 & 652)
15. A company is under the statutory duty to notify the Registrar of Companies in a specified form within one month for :-
 - (a) Return of Allotment (Form NSC1) (New CO s.142)
16. A company is under the statutory duty to notify the Registrar of Companies in a specified form within 42 days for :-
 - (b) Annual Return (Form NAR1) (New CO ss.662 & 664)

17. A company and its officers shall be liable to a fine of various levels for failure to comply with the provisions in paragraphs 14 to 16 hereinabove:-

- (a) For contravention of New CO s.142, a maximum fine of \$25,000 and a daily fine of \$700 for continuing offence;
- (b) For contravention of New CO s.645, a maximum fine of \$25,000 and a daily fine of \$700 for continuing offence;
- (c) For contravention of New CO s.652, a maximum fine of \$25,000 and a daily fine of \$700 for continuing offence;
- (d) For contravention of New CO s.658, a maximum fine of \$50,000 and a daily fine of \$1,000 for continuing offence;
- (e) For contravention of New CO s.662, a maximum fine of \$50,000 and a daily fine of \$1,000 for continuing offence.

Statutory Provisions in relation to Company with one Member under the New CO

18. A company is not required to hold an AGM if, *inter alia*, the company has only one member. (New CO s.612)

19. The sole member must provide a written record of the decision that may be taken at a general meeting and has effect as if agreed by the company at a general meeting to the company within 7 days. A person who contravenes the requirement is liable to a maximum fine of \$50,000. (New CO s.617)

Statutory Provisions in relation to Meetings and Proceedings

20. Every company shall in each year hold a general meeting as Annual General Meeting (“AGM”) and hold its first AGM within 18 months of its incorporation. The company need not hold another AGM in the following year. The time period between any two subsequent meetings shall not be more than 15 months. The company and every officer in default shall be liable to a fine, and a daily default fine for continued default. (Old CO s.111) (c.f. New CO s.610)

Statutory Provisions and Case Precedents in relation to Laying Accounts

21. Laying accounts was governed by section 122 of the Old CO and is governed by section 429 of the New CO when it came into operation on 3rd March 2014. The two ordinances provide similar statutory regime with minor differences.

22. The directors shall lay before the company a profit and loss account or income and expenditure account at its AGM. (Old CO s.122(1), New CO s.429(1)) For private companies, the accounts shall be made up to a date not more than 9 months before the date of meeting. (Old CO s.122(1A), New CO s.431(1)) The court may substitute the statutory requirements and extend the accounting reference period for the provision of such accounts. (Old CO s.122(1B), New CO s.431(4))

23. If the director of a company fails to take reasonable steps to provide the profit and loss account, such person is liable for a fine, and imprisonment if breached wilfully. (Old CO s.122(3), New CO ss.429(3)&(4)) The only case that the Honourable Justice Harris (*Prime Sunlight Ltd v Asiatic Century Ltd* (unrep., 28th October 2013, HCMP 1445/2013, [2013] HKEC 1708)) was aware of a prosecution for contravention of section 122 of the Old CO was *R v Lo Hon Henry* [1985] 1 HKC 183, in which all parties were acquitted either upon trial or magistrate's appeal.
24. It is a statutory defence if a director of a company had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty to comply the requirements to lay account and was in a position to discharge that duty. (New CO s.429(5))
25. The court will normally grant orders to rectify the non-compliance of section 122 if it is satisfied that:- (i) an inadvertent identifiable mistake has been made, (ii) it has not caused any prejudice to the shareholders of the company which they were aware of the financial position of the company, and (iii) the company would comply with such requirements in the future. (*Prime Sunlight Ltd*) However, if the breaches are benign in nature that there is no realistic prospect of the company or its director being prosecuted, then the court would not grant the order for academic and artificial applications. (*Liang Ronald & Ors v LWK & Partners (HK) Ltd* (unrep., 26th February 2014, HCMP 1742/2013) (*Pang Siu Hin v Tai Wo Tong Pharmaceutical (Hong Kong) Company Ltd* [2014] 3 HKLRD 218)
26. In *Ng Wing Hong v Modern Automobile Company Limited* (unrep., 7th March 2014, HCMP 3378/2013), the court ruled that it is clear there is no realistic prospect of the prospective listing of a company on the Main Board of the Stock Exchange being jeopardised by breaches of section 122 of the Old CO.

Statutory Provisions in relation to Minutes of General Meetings and Directors' Meeting

27. A company shall cause minutes of all proceedings at general meetings and directors' meeting be entered in books (Old CO s.119(1), New CO s.481(1)) and those records must be kept for at least 10 years from the date of the meeting (New CO s.481(2)). If the company fails to comply with such requirement, the company and every officer of the company in default shall be liable to a fine and also a daily default fine for continued default (Old CO s.119(4)). Under the New CO, the maximum fine is \$50,000 and a further fine of \$1,000 for each day during which the defence continues (New CO s.481(3)).

Statutory Provisions in relation to Keeping of a Register of Significant Controller

28. A company is under the statutory duty to keep a register of its significant controllers within 7 days of confirmation. (New CO ss.653H(1) & 653J) If the company fails to comply with such requirement, the company and every officer of the company in default shall be liable to a maximum fine of \$25,000 and also a daily default fine of \$700 for continued default (New CO s.653H(4))

Statutory Provisions in relation to Keeping of a Register of Charges

29. A company is under the statutory duty to keep a register of charges. (New CO s.352(1)) If the company fails to comply with such requirement, the company and every officer of the company in default shall be liable to a maximum fine of \$25,000 and also a daily default fine of \$700 for continued default (New CO s.653H(4)) An officer of the company knowingly and willfully authorizes or permits the omission of an entry required to be made is liable to a maximum fine of \$50,000.

Statutory Provisions in relation to Keeping of a Register of Transfer

30. A company is under the statutory duty to keep a register of transfer within 2 months after the transfer is lodged. (New CO s.151(2)) If the company fails to comply with such requirement, the company and every officer of the company in default shall be liable to a maximum fine of \$25,000 and also a daily default fine of \$700 for continued default (New CO s.151(5)).

Statutory Provisions in relation to Liability of Officer of a Company

31. "Officer who is in default" means any officer of the company, or any shadow director of the company, who knowingly and willfully authorizes or permits the default, refusal or contravention mentioned in such provision. (Old CO s.351(2))
32. The Court may relieve the company officer or a person employed by a company as an auditor (New CO s.902), if it appears to the Court that the person is or may be liable for the negligence, default, breach of duty or breach of trust (New CO s.902) has acted honestly and reasonably, and ought fairly to be excused for the misconduct having regard to all the circumstances of the case, from wholly or partly from the liabilities. (New CO s.903)

Statutory Provisions in relation to Allotment and Issuance of Shares

33. The directors of a company may exercise a power to allot shares in the company if the company gives approval in advance by resolution of the company (New CO s.141(1)) subject to expiry of the approval. (New CO ss.141(3)&(5)) A director commits an offence if knowingly contravenes or authorizes or permits a contravention of the requirement and liable to a maximum fine of HK\$50,000 and to imprisonment for 6 months. (New CO ss.140(4)&(5))
34. Within one month after an allotment of shares, a limited company must deliver to the Registrar of Companies for registration a return of the allotment. (New CO s.142(1)) A company must also register an allotment of shares within 2 months after the date of allotment by entering in the register of its members. (New CO s.143(1)) Within 2 months after an allotment of shares, a company must complete the certificates for the shares and have the certificates ready for delivery. (New CO s.144(1))
35. The court may make an order to validate the issue or allotment if (a) the issue or allotment is or may be invalid for any reason; or (b) the terms of the issue or allotment are inconsistent with or not authorized by law or the company's articles, in circumstances it is just and equitable to do to (New CO s.146) (c.f. Old CO s.57C)

UNDER THE SDO

36. Every instrument specified in the SDO shall not be stamped except upon the payment of stamp duty specified therein. (SDO s.4) Any person who effects the sale or purchase of Hong Kong stock as principal or agent shall cause the note to be stamped within 2 days thereafter if the sale or purchase is effected in Hong Kong, or within 30 days if effected elsewhere. (SDO s.19(1))
37. The amount chargeable shall be 0.1% of the amount of the consideration or of its value at the date of the contract note. (SDO sched.1 Head 2) A penalty up to 10 times of the amount of the stamp duty shall apply for late stamping depends on the time of delay. The Collector of Stamp Revenue may remit the whole or any part of the penalty. (SDO s.9)

UNDER THE MPFSO

38. Every employer must take all practicable steps to ensure its employees become members of registered provident fund scheme within the permitted period (10 days for casual employees and 60 days for relevant employees) from the beginning date of employment. (MPFSO s.7) (Mandatory Provident Fund Schemes (Specification of Permitted Periods) Notice (Cap.485F) s.1)

39. Any relevant employee (who are aged 18 but under 65 years), other than casual employee, whose employment ceases before the 60th day of the commencement of employment and not under a continuous contract is exempted from the registration requirement. (MPFSO sched.1) Continuous employment means an employee under a contract of employment for 4 or more weeks working 18 hours or more in that week. (EO sched.1)
40. The registration requirement does not apply to an employment for less than 60 days except for casual employees. (MPFSO s.7B) Casual employees are still subject to sections 7, 7A and 7AA of the MPFSO.
41. Casual employees means (i) a relevant employee engaged in an industry for which a provident fund scheme is registered as an industry scheme, and (ii) employed in that industry on a day-to-day basis or for a fixed period of less than 60 days. (MPFSO s.2(2)) An industry scheme means a provident fund scheme registered under section 21A of the MPFSO. Industry scheme covers the construction industry and the catering industry only. For the purpose of the industry scheme, the construction industry covers the following eight major categories:-
- (a) Foundation and associated works;
 - (b) Civil engineering and associated works;
 - (c) Demolition and structural alteration works;
 - (d) Refurbishment and maintenance works;
 - (e) General building construction works;
 - (f) Fire services, mechanical, electrical and associated works;
 - (g) Gas, plumbing, drainage and associated works; and
 - (h) Interior fitting-out works.
42. An employer who enters into a contract of employment with a relevant employee after the commencement of the MPFSO must for each contribution period (for casual employee it means each period for which the employer pays or should pay relevant income to the employee (MPFSO s.7A(10)(c))) (a) from the employer's own funds, contribute to the relevant registered scheme by reference to a scale specified in an order made in accordance with relevant subsection(6); and (b) deduct from the employee's relevant for that period as a contribution by the employee to the scheme the amount by reference to a scale specified in an order made in accordance with relevant subsection(6). (MPFSO s.7A)
43. The prescribed percentage of contribution for relevant employee (other than casual employee) is 5% of the relevant income if more than the minimal level (MPFSO s.7A(5)). A relevant employee whose relevant income is less than the minimum level of relevant income (monthly income of \$7,100 or daily income of \$280 after 1st November 2013) is not required to contribute to a registered scheme but he may, if he so wishes, by notice in writing to his employer elect to do so. (MPFSO s.9 & sched.2)

44. Since 1st November 2013, the scale charge for each daily salary of casual employees is calculated as follows (Mandatory Provident Fund Schemes (Contributions for Casual Employees) Order (Cap. 485E)):-
- (a) \$10 for employer, \$0 for employee (salary<\$280)
 - (b) \$15 for employer, 15 for employee (\$280≤salary<\$350)
 - (c) \$20 for employer, \$20 for employee (\$350≤salary<\$450)
 - (d) \$25 for employer, \$25 for employee (\$450≤salary<\$550)
 - (e) \$30 for employer, \$30 for employee (\$550≤salary<\$650)
 - (f) \$35 for employer, \$35 for employee (\$650≤salary<\$750)
 - (g) \$40 for employer, \$40 for employee (\$750≤salary<\$850)
 - (h) \$45 for employer, \$45 for employee (\$850≤salary<\$950)
 - (i) \$50 for employer, \$50 for employee (\$950≤salary)
45. An employer who, without reasonable excuse, fails to comply with the registration requirement is liable on conviction to a maximum fine of \$350,000 and to imprisonment for 3 years. (MPFSO s.43B(1)) An employer who, reasonable excuse, fails to comply with the contribution requirement is liable on conviction to: (i) for first occasion a maximum fine of \$100,000 and to imprisonment for 6 months, and (ii) for each subsequent occasion a maximum fine of \$200,000 and to imprisonment for 12 months. (MPFSO s.43B(1B)) Proceedings in respect of an offence (other than an indictable offence) of the MPFSO or its subsidiary legislation may be brought within 3 years after the commission of the offence unless otherwise specified. (MPFSO s.47D) Proceedings may be instituted for an offence against this section within 6 months after the offence is discovered by or comes to the notice of the Mandatory Provident Fund Schemes Authority. (MPFSO s.43B(4))
46. Where an offence under the MPFSO is committed by a company and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any officer, or other person concerned in the management of the company, or any person who was purporting to act in that capacity, the officer or person as well as the company commits the offence and is liable to be proceeded against and punished accordingly. (MPFSO s.44(1))
47. For any mandatory contribution not paid on or before the day as required under the MPFSO, there is a liability to pay a contribution surcharge an amount determined by multiplying the arrears by the prescribed percentage rate. (MPFSO s.18) The contribution surcharge is an amount equal to 5% of the amount of the arrears. (Mandatory Provident Fund Schemes (General) Regulation (Cap.485A) s.207) The Mandatory Provident Fund Schemes Authority may also serve a notice for financial penalty for non-compliance with the MPFSO (MPFSO s.45) in such amount as prescribed in Schedule 4 of the Mandatory Provident Fund Schemes (General) Regulation (Cap.485A).

48. The Mandatory Provident Fund Schemes Authority may serve a notice requiring payment of financial penalty to a person if it reasonably believes that the person has failed to perform a duty or to comply with a requirement or standard specified in a prescribed provision, or to pay on time an amount of money payable under any provision. (MPFSO s.45B) A person may not be charged with an offence arising out of a contravention of a provision of the MPFSO if proceedings for the recovery of a financial penalty have been brought for the same contravention. (MPFSO s.45E)
49. It was held by the Court of Final Appeal in *Poon Chau Nam v Yim Siu Cheung* [2007] 1 HKLRD 951 that the EO includes within the definition of “employee” casual employment under a contract of service, provided such casual employment was for the purposes of the employer’s trade or business.

UNDER THE FIUO

50. Every proprietor in relation to any industrial undertaking or notifiable workplace has the duty to ensure, so far as is reasonably practicable, the health and safety at work of all persons employed by him at the industrial undertaking. (FIUO s.6A(1)) Any proprietor who contravenes the duty is liable to a maximum fine of \$3,000,000 on summary conviction and \$10,000,000 on conviction on indictment. Any proprietor who willfully and without reasonable excuse contravenes the duty is liable to a maximum fine of \$3,000,000 and to imprisonment for 6 months on summary conviction, and a maximum fine of \$10,000,000 and to imprisonment for 2 years on conviction on indictment. (FIUO s.6A(4))
51. The Commissioner for Labour may, *inter alia*, impose duties on proprietors and require proprietors to develop, implement and maintain any management system that relate to the safety of personnel in their industrial undertakings, (FIUO s.7) and issue codes of practice in respect of the requirements under the FIUO. (FIUO s.7A)
52. The person having the management or control of a notifiable workplace shall, before the first occasion on which any industrial process is commenced, notify the Commissioner for Labour in the prescribed form of the particulars of the workplace (FIUO s.9(1)), and liable to a maximum fine of \$100,000 for contravention. (FIUO s.10(1))
53. The Commissioner for Labour may issue a prohibition notice in respect of any notifiable workplace stating the reasons for issuance and specifying a date by which it is to be complied with. (FIUO ss.9A(1)&(2)) Any proprietor aggrieved by the prohibition notice may within 28 days of issuance appeal to the Administrative Appeals Board. (FIUO s.9A(4)) A proprietary who fails to comply with the terms of a prohibition notice is liable to a maximum fine of \$400,000 and to imprisonment for 6 months. (FIUO s.10(1A))

54. Any person guilty of an offence under the FIUO shall be liable to a daily fine of \$10,000 which such offence is knowingly and willfully continued. (FIUO s.12)
55. For any offence under the FIUO, save and except *inter alia* the offence under section 9(1) of the FIUO (FIUO Sched.5), such complaint shall be made or such information laid within 6 months from the time when the matter of such complaint or information respectively arose. (Magistrates Ordinance (Cap.227) s.26) The six-month time limit does not include the day of the offence. (*HKSAR v Maxim's Caterers Ltd* [2009] 4 HKLRD 723)

UNDER THE EO

56. A principal contractor and of a principal contractor and superior sub-contractor or superior sub-contractors are jointly and severally liable to pay the wages of an employee who is employed by a sub-contractor which the wages are not paid. (EO s.43C(1)) Such liability shall be limited to the wages of an employee whose employment relates wholly to the work which the principal contractor has contracted to perform and whose place of employment is wholly on the site of the building works and to the wages due to such an employee for 2 months without any deductions. (EO s.43C(2))
57. An employee who is employed by a sub-contractor are not paid by his employer within the specified period shall serve on the principal contractor within 60 days or such other additional period not exceeding 90 days as the Commissioner for Labour may permit, after the date on which the wages become due, a notice in writing stating the required particulars. (EO s.43D(1)) A principal contractor and superior sub-contractor shall not be liable to pay such unpaid wages if that employee fails to serve such notice. (EO s.43D(3))
58. A principal contract who receives such notice shall within 14 days after the receipt serve a copy of the notice on every superior sub-contractor to that sub-contractor of whom he is aware. (EO s.43D(2)) A principal contractor who without reasonable excuse fails to comply is liable to a maximum fine of \$50,000. (EO s.43D(4))
59. Any wages paid by a principal contractor or superior sub-contractor to an employee under section 43C shall be a debt due by the employer of that employee to the principal contractor or superior sub-contractor, as the case may be. (EO s.43F(1)) Any principal contractor or superior sub-contractor who pays such wages under section 43C may either (a) claim contribution from every superior sub-contractor to the employee's employer or from the principal contractor and every other such superior sub-contractor as the case may be, or (b) deduct by way of set-off the amount paid by him from any sum due or which may become due to any sub-contractor to whom he has sub-contracted all or any part of work that he contracted to perform being work upon which the employee was employed and in respect of the work that he has sub-contracted. (EO s.43F(2))

UNDER THE MWO

60. An employee is entitled to be paid wages in respect of any wage period not less than the minimum wage. (MWO s.8) The wage period of an employee is the period of which wages are payable to the employee for work done or to be done under his or her contract of employment. (MWO s.5(1)) Contract of employment has the same meaning as in the EO. (MWO s.2) The prescribed minimum hourly wage rates are set out in Schedule 3 of the MWO.
61. Any provision in a contract of employment to undermine the entitlement to at least minimum wage shall be invalid. (MWO s.10(1)) Failure to pay minimum wage is subject to the EO. (MWO s.10(3)) Any employer who wilfully and without reasonable excuse fails to pay wages in time is liable to a maximum fine of \$350,000 and to imprisonment for 3 years. (EO s.63C)

UNDER THE IO

62. An employer of an employee who is not lawfully employable commits an offence and liable on conviction on indictment a maximum fine of \$350,000 and to imprisonment for 3 years for non-prohibited employee; and a maximum fine of \$500,000 and to imprisonment for 10 years for prohibited employee. (IO s.17I)
63. Where it is proved that a person landed in Hong Kong without permission or authority was on a construction site, the construction site controller of that construction site commits an offence and is liable to a maximum fine of \$350,000. (IO s.38A(2)) Where it is proved that a person not lawfully employable has committed an offence by taking employment on a construction site, the construction site controller of that construction site commits an offence and is liable to a maximum fine of \$350,000. (IO s.38A(4))

UNDER THE OSHO

64. Every employer must, so far as reasonably practicable, ensure the safety and health at work of all the employer's employees. (OSHO s.6(1)) Any employer who fails to comply commits an offence and is liable on conviction to a maximum fine of \$10,000,000 on conviction on indictment. (OSHO s.6(3)) An employer who fails to comply intentionally, knowingly or recklessly commits an offence and is liable on conviction to a maximum fine of \$10,000,000 and to imprisonment for 2 years. (OSHO s.6(4))

65. The Commissioner for Labour may serve an improvement notice on an employer or an occupier of premises where a workplace is located if of the opinion that the employer is in contravention of the OSHO or the FIUO. (OSHO s.9(1)) An employer who without reasonable excuse fails to comply with a requirement of an improvement notice commits an offence and is liable on conviction to a maximum fine of \$400,000 and to imprisonment for 12 months. (OSHO s.9(5))
66. The Commissioner for Labour may serve a suspension notice on an employer who is responsible for, or an occupier of, premises where a workplace is located if of the opinion that the activity undertaken on or the condition of the premises would pose an imminent risk of death or serious bodily injury. (OSHO s.10(1)) An employer who without reasonable excuse fails to comply with a requirement of an improvement notice is liable to a maximum fine of \$1,000,000 and to imprisonment for 12 months, and to a further fine of \$100,000 for each day or part of a day during which the offender knowingly and intentionally continues the contravention. (OSHO s.10(6)(a))
67. In any case of an offence, other than an indictable offence, where no time is limited by any enactment for making any complaint or laying any information in respect of such offence, such complaint shall be made or such information laid within 6 months from the time when the matter of such complaint or information respectively arose. (Magistrates Ordinance (Cap.227) s.26) The six-month time limit does not include the day of the offence. (*HKSAR v Maxim's Caterers Ltd* [2009] 4 HKLRD 723)

UNDER THE ECO

68. It is a statutory requirement that an employer shall only employ any employee if a policy of insurance is issued by an insurer for an amount not less than the requisite amount is in force. (ECO s.40(1)) An employer in contravention of the requirement is liable on conviction upon indictment to a maximum fine of \$100,000 and 2 years of imprisonment, or on summary conviction to a maximum fine of \$100,000 and 1 year of imprisonment. (ECO s.40(6))
69. The minimum insurance cover under ECO s.40(1) is \$100 million where the number of employees is 200 or below, and \$200 million where the number exceeds 200. (ECO sched.4)
70. The amount required under ECO s.40(1) is ascertained by reference to the number of employees in relation to whom the policy is in force and in accordance with the fourth schedule. (ECO s.40(1E))

71. Where the employee suffers temporary incapacity, the employer shall make monthly periodic payment equal to 4/5 of the difference between the monthly earnings which the employee was earning at the time of the accident and the monthly earnings which he is earning during the period after the accident payable on the same days as wages would have been payable. (ECO ss.10(1)&(3)) An employer who without reasonable excuse fails to pay within 7 days after the date falls due is liable to a maximum fine of \$100,000. (ECO s.10(10)) Upon final determination of injury claims which the compensation payable is assessed by the Commissioner for Labour, the employer shall pay to the employee within a period of 21 days after the date of issue of the certificate of assessment. (ECO s.16A(9)) An employer who fails to comply without reasonable excuse shall pay to the employee a surcharge specified therein in addition to the amount of compensation payable. (ECO s.16A(10)) An employer who without reasonable excuse fails to pay within 21 days after the date of issue of the certificate of assessment, or the notice of surcharge is liable to a maximum fine of \$100,000. (ECO s.16A(12))
72. The employer shall give the Commissioner for Labour notice of any accident: (i) within 3 days after the accident resulting death, (ii) within 14 days after the accident resulting total or partial incapacity for a period exceeding 3 days. (ECO ss.15(1)&(1A)) If the happening of such accident was not brought to the notice of the employer or otherwise come to his knowledge, notice to the Commissioner for Labour shall be given not later than 7 days upon such notice or knowledge of the employer. (ECO s.15(1B)) An employer who without reasonable excuse fails to give such notice is liable to a maximum fine of \$50,000. (ECO s.15(6))
73. In any case of an offence, other than an indictable offence, where no time is limited by any enactment for making any complaint or laying any information in respect of such offence, such complaint shall be made or such information laid within 6 months from the time when the matter of such complaint or information respectively arose. (Magistrates Ordinance (Cap.227) s.26) The six-month time limit does not include the day of the offence. (*HKSAR v Maxim's Caterers Ltd* [2009] 4 HKLRD 723)
74. Where any principal contractor in the course of or for the purposes of his trade or business, contracts with a sub-contractor for the execution by or under the sub-contractor of the whole or part of any work undertaken by the principal contractor, the principal contractor shall be liable to pay to any employee employed by that sub-contractor or by any other sub-contractor in the execution of the work any compensation under the ECO, and in the application of the ECO, references to the principal contractor shall be substituted for references to the employer. (ECO s.24(1)) An employee employed by a sub-contractor may issue a written request to the sub-contractor to supply the name and address of the principal contractor within 7 days of the written request. (ECO ss.24(3)&(4)) A sub-contractor who without reasonable excuse fails to comply with subsection (4) is liable to a maximum fine of \$50,000. The

employee is entitled to recover compensation from a subcontractor instead of the principal contractor. (ECO s.24(8))

UNDER THE APCO

75. The Secretary for Environment and Ecology may by regulations provide for air pollution control. (ACPO s.43) Under the Air Pollution Control (Construction Dust) Regulation (Cap.311R) ("APCCDR"), the contractor for a construction site where any notifiable work is proposed to be carried out shall give notice to the Authority of the proposal to carry out the work. (APCCDR s.3(1)) Any person who contravenes the notification requirement commits an offence and is liable to a maximum fine of \$25,000 on conviction for a first offence and to a maximum fine of \$50,000 on conviction for a second or subsequent offence. (APCCDR s.3(5))
76. A contractor responsible for a construction site where a notifiable work is being carried out who fails to ensure that the work is carried out in accordance with the Schedule of the APCCDR commits an offence and is liable to a maximum fine of \$50,000 on conviction for a first offence, and to a maximum fine of \$100,000 and to imprisonment for 3 months on conviction for a second or subsequent offence, and in addition, if the offence is a continuing offence, to a fine of \$10,000 for each day during the whole or part of which the offence continues.

UNDER THE NCO

77. The Noise Control Authority may issue construction noise permits and may impose in relation to any construction noise permit any condition he thinks fit. (NCO s.8(1))
78. Any person who (at any place or any place within a designated area) between the hours of 7 p.m. and 7 a.m., or at any time on a general holiday, uses, or causes or permits to be used, any powered mechanical equipment for the purpose of carrying out any construction work (a) in respect of which a construction noise permit is not in force; or (b) otherwise than in accordance with the conditions of a construction noise permit in force in respect thereof, commits an offence. (NCO ss.6(1)&6(2)) Other provisions concerns percussive piling between the hours of 7 a.m. and 7 p.m., and between 7 p.m. and 7 a.m.. (NCO ss.6(3)&(4)) Any person in contravention of this section commits an offence and shall be liable on first conviction to a maximum fine of \$100,000; on second or subsequent conviction to a maximum fine of \$200,000, and in any case to a fine of \$20,000 for each day during which the offence continues.

UNDER THE WDO

79. The Governor in Council may by regulations provide for waste disposal control. (WDO s.33(1)) Under the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap.354N) (WDCDCWR), construction waste may only be disposed at designated waste disposal facility subject to the conditions set out in the regulation. (WDCDCWR s.3(1))
80. A main contractor who undertakes construction work with value \$1,000,000 or above under a contract shall within 21 days after being awarded the contract make an application to the Director of Environmental Protection to establish a billing account solely in respect of that contract. (WDCDCWR s.9(1))
81. 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 Environmental Protection. (WPO s.16) A person who commits an offence under, *inter alia*, section 16 is liable for the first offence, to a maximum fine of \$200,000 and to imprisonment for 6 months; for a second or subsequent offence, to a fine of \$500,000 and to imprisonment for 6 months; and if the offence is a continuing offence to a fine of \$10,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

UNDER THE EIAO

82. The EIAO provides for assessing the impact on the environment of certain projects and proposals, for protecting the environment and for incidental matters. (EIAO Long Title) A person who wishes to have constructed, construct or operate project designated in Schedule 2 of the EIAO shall apply to the Director of Environmental Protection for an environmental permit, and refer or submit an environmental impact assessment report. (EIAO s.10(1))
83. A person construct or operate a designated project without an environmental permit for the project or contrary to the conditions set out in the permit commits an offence and is liable on a first conviction on indictment to a maximum fine of \$2,000,000 and to imprisonment for 6 months; on a second or subsequent conviction on indictment to a maximum fine of \$5,000,000 and to imprisonment for 2 years; on a first summary conviction to a maximum fine of \$100,000 and to imprisonment for 6 months; on a second or subsequent summary conviction to a fine of \$1,000,000 and to imprisonment for 1 year. (EIAO s.26)

UNDER THE CICO

84. Construction Industry Levy ("CIL") is payable by registered contractors appointed under section 9 of the Buildings Ordinance (Cap. 123) or any persons who carry out construction operations in Hong Kong to the Construction Industry Council ("CIC"). (CICO s.32) "Construction operation" is exhaustively defined under Schedule 1 of the CICO.
85. After 2012, the CIL chargeable is 0.5% of the total value of the construction operations concerned (0.4% before 2012). (CICO Sched.5) No CIL is chargeable for any construction operations not exceeding HK\$1,000,000. (CICO s.32) The "total value of the construction operations" is defined under section 53 of the CICO.
86. Contractor and authorized person each are required to inform the CIC 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 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. (CICO s.34)
87. A contractor is required to give a Notice of Payment ("NOP") in a specified form (Form 2) to the CIC 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 NOP and liable to a fine at level 3, which is fixed at HK\$10,000. (CICO s.35)
88. A contractor is required to give a Notice of Completion ("NOC") in a specified form (Form 3) to the CIC within 14 days after the completion of the construction operation. It is an offence if a person without reasonable excuse fails to give the NOC and liable to a fine at level 3, which is fixed at HK\$10,000. (CICO s.36)
89. The CIC shall assess the CIL payable upon receiving the NOP or NOC and give a Notice of Assessment ("NOA") in writing specifying the amount of CIL. The CIC can also make the assessment notwithstanding no NOP or NOC has been given. (CICO s.40) If a contractor fails to give the NOP or NOC, a surcharge not exceeding twice the amount of the CIL payable may be imposed and a Notice of Surcharge ("NOS") in writing shall be given by the CIC. (CICO s.41)
90. If the contractor fails to pay in full the amount of levy or surcharge within 28 days after the NOA or NOS 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. (CICO s.46)

91. CIL, surcharge, penalty or further penalty is recoverable by the CIC as civil debt under the jurisdiction of the District Court. (CICO s.47)
92. The time limits for the CIC to make the assessment or imposing the surcharge under sections 42 to 45 of the CICO are, whichever is the last of the following periods :-
- (a) 2 years after the completion of all construction operations 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;
 - (c) one year after evidence, sufficient in the opinion of the CIC to justify the making of the assessment, comes to its knowledge.

UNDER THE PMCO

93. The statutory regime of Pneumoconiosis Compensation Fund Levy (“PCFL”) is similar to that of CIL. The requirement differences are underlined herein below.
94. The Company engaging in construction operations under the CICO is liable to pay PCFL. PCFL is rated at 0.15% of the value of the construction operations (0.25% before 2012) and not chargeable if the total value do not exceed HK\$1,000,000. (PMCO s.35) “Total value” is defined under section 39D of PMCO. PMCO does not apply to construction operations for domestic unit, or for the sole and principal purpose of renovation. (PMCO s.39A)
95. The contractor is liable to make a payment of PCFL only if the Pneumoconiosis Compensation Fund Board (“PCFB”) serves a NOA. (PMCO s.35(5))
96. PCFL, surcharge, penalty or further penalty is recoverable by the PCFB as civil debt under the jurisdiction of the District Court. (PMCO s.38) Fraudulent evasion of the payment of PCFL is liable for a fine of HK\$10,000 or 20 times the amount of PCFL, whichever is greater. (PMCO s.39)
97. Contractors are required to:-
- (a) Inform the PCFB the commencement of construction operations within 14 days thereafter by a notice of commencement (Form 1). Failure to comply without reasonable excuse is liable for a fine at Level 2, which is fixed at HK\$5,000. (PMCALR reg.4)
 - (b) Inform the PCFB within 14 days after the contractor receives a payment in respect of the construction operation by a NOP (Form 2). Failure to comply without reasonable excuse is liable for a fine at Level 2, which is fixed at HK\$5,000. (PMCALR reg.5)

- (c) Inform the PCFB the completion of the construction operations within 14 days by a NOC (Form 3). Failure to comply without reasonable excuse is liable for a fine at Level 2, which is fixed at HK\$5,000. (PMCALR reg.5A)
98. The PCFB shall assess the PCFL payable upon receiving the NOP or NOC and give a NOA in writing specifying the amount of PCFL. (PMCALR reg.6) The PCFB can make the assessment notwithstanding no NOP or NOC has been given. (PMCALR reg.6C) If a contractor fails to give the NOP or NOC, a surcharge not exceeding twice the amount of the PCFL payable may be imposed and a Notice of Surcharge ("NOS") in writing shall be given by the PCFB. (PMCALR reg.6D)
99. If the contractor fails to pay in full the amount of levy or surcharge within 28 days after the NOA or NOS 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 or HK\$1,000 whichever is greater shall be imposed. (PMCO s.37)
100. The time limits for the PMFB to make the assessment or imposing the surcharge under regulations 6E to 6H of the PMCALR are, whichever is the last of the following periods :-
- (d) 2 years after the completion of all construction operations under the contract, or without term contract 2 years after the completion of the construction operations;
 - (e) 2 years after the expiry of the period within which the contract stipulates that all such construction operations have to be completed;
 - (f) one year after evidence, sufficient in the opinion of the PMFB to justify the making of the assessment, comes to its knowledge.

UNDER THE IRO

101. An assessor may give notice in writing to any person requiring him within a reasonable time stated in such notice to furnish any return which may be specified by the Board of Inland Revenue for property tax, salaries tax and/or profits tax under Parts 2, 3, 4, 10A, 10B and 10C of the IRO. (IRO s.51(1)) Every person chargeable to tax for any year of assessment shall inform the Commissioner of Inland Revenue in writing that he is so chargeable not later than 4 months after the end of the basis period for that year of assessment unless he has already been required to furnish a return under the provisions of subsection (1). (IRO s.51(2))

102. Any person who without reasonable excuse fails to comply with the requirements of a notice given to him under section 51(1) commits an offence and is liable on conviction to a maximum fine of \$10,000 and a further fine of treble the undercharged amount. (IRO ss.80(2)(d)&(e)) The court may order the person convicted to comply with the requirements of the notice given to him within such time as may be specified in the order. (IRO s.80(2A))
103. "Person" includes a corporation, partnership, trustee, whether incorporated or unincorporated, or body of persons. (IRO s.2)
104. Under section 52(2) of the IRO, an employer shall, when required to do so by notice in writing given by an assessor, furnish within a reasonable time stated in such notice a return containing the names and places of residence and the full amount of the remuneration, whether in cash or otherwise, for the period specified in the notice of (a) all persons employed by him in receipt of remuneration in excess of a minimum figure to be fixed by the assessor; and (b) any other person employed by him named by the assessor.
105. Under section 52(4) of the IRO, an employer who commences to employ in Hong Kong an individual who is or is likely to be chargeable to salary tax shall give notice in writing to the Commissioner of Inland Revenue not later than 3 months after the date of commencement of such employment, stating the full name and address of the individual, the date of commencement and terms of employment.
106. Under section 52(5) of the IRO, an employer who ceases or is about to cease to employ in Hong Kong an individual who is or is likely to be chargeable to salary tax shall give notice in writing to the Commissioner of Inland Revenue not later than 1 month before such individual ceases to be employed in Hong Kong, stating the name and address of the individual and the expected date of cessation.
107. Every person chargeable to tax for any year of assessment shall inform the Commissioner of Inland Revenue in writing that he is so chargeable not later than 4 months after the end of the basis period for that year of assessment unless he has already been required to furnish a return by a notice in writing by an assessor. (IRO s.51(2))
108. Under section 80(1) of the IRO, any person who without reasonable excuse failed to comply with sections 52(2), 52(4) and 52(5) commits an offence and is liable on conviction a maximum fine of HK\$10,000 and the court may order the person convicted within a specified time to do the act which he has failed to do. Under section 80(2)(e), any person without reasonable excuse failed to comply with section 51(2) commits an offence and liable on conviction a maximum fine of HK\$10,000 and a further fine of treble (triple) the undercharged amount, and the court may order the person convicted within a specified time to do the act which he has failed to do. (IRO s.80(2A)) Under

sections 82A, any person may also be liable to additional tax not exceeding treble the undercharged amount if no prosecution under section 80(2) of the IRO has been instituted in respect of the same facts.

109. "Person" as defined under section 2 of the IRO includes a corporation, partnership, trustee or bodies of persons. If the offence was committed with the consent or connivance of a director or other officer concerned in the management of the corporation, the director or officer of that person also commits the offence is liable on conviction to the penalty provided for that offence. (IRO s.80E)
110. While section 80 of the IRO is silent on *mens rea*, "if there is evidence capable of raising a reasonable doubt that the defendant may have acted or omitted to act in the honest and reasonable belief that the circumstances or likely consequences of his conduct were such that, if true, liability would not attach, he must be acquitted unless the prosecution proves beyond reasonable doubt the absence of such exculpatory belief or that there were no reasonable grounds for such belief". (*Kulemesin Yuriv v HKSAR* (2013) 16 HKCFAR 195)
111. No person shall be liable to any penalty under section 80 of the IRO unless the complaint concerning such offence was made in the year of assessment in respect of during which the offence was committed or within 6 years after the expiration thereof. (IRO s.80(3))

UNDER THE COMPETITION ORDINANCE

112. The Competition Ordinance prohibits conduct that prevents, restricts or distorts competition in Hong Kong; to prohibit mergers that substantially lessen competition in Hong Kong; to establish a Competition Commission and a Competition Tribunal; and to provide for incidental and connected matters. (Competition Ordinance Long Title)
113. Competition rule means the first conduct rule, the second conduct rule or the merger rule. (Competition Ordinance s.2) The First Conduct Rule prohibits anti-competitive agreements, concerted practices and decisions if the object or effect is to prevent, restrict or distort competition. (Competition Ordinance s.6) The Second Conduct Rule prohibits an undertaking that has a substantial degree of market power in a market to abuse that power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong. (Competition Ordinance s.21) The First Conduct Rule and Second Conduct Rule are subject to the general exclusions listed in Schedule 1. The Merger Rule applies to carrier licence within the meaning of the Telecommunications Ordinance. (Competition Ordinance Sched.7)

114. Upon the application by the Competition Commission, if the Competition Tribunal is satisfied that a person has contravened or been involved in a contravention of a competition rule, it may order pecuniary penalty (Competition Ordinance s.93), other orders listed in Schedule 3. (Competition Ordinance s.94) and disqualification order. (Competition Ordinance s.101)
115. The amount of a pecuniary penalty imposed in relation to conduct that constitutes a single contravention may not exceed in total (a) 10% of the turnover of the undertaking concerned for each year in which the contravention occurred; or (b) if the contravention occurred in more than 3 years, 10% of the turnover of the undertaking concerned for the 3 years in which the contravention occurred that saw the highest, second highest and third highest turnover. (Competition Ordinance s.93(3))

UNDER THE ELECTRICITY ORDINANCE

116. The Chief Executive in Council may make regulations for the general purpose of the Electricity Ordinance and impose penalty on non-compliances. (Electricity Ordinance s.59)
117. Under sections 10(1)(a) and 17(3) of the Electricity Supply Lines (Protection) Regulation (Cap.406H), a person shall not carry out or cause or permit another to carry out in the vicinity of an underground electricity cable any works which are below ground level unless before the works are begun all reasonable steps have been taken to ascertain the existence within the proposed works site and its vicinity of any such underground electricity cable and its alignment and depth or of any such overhead electricity line and its alignment, distance from the ground and voltage, as the case may be. A person in contravention commits an offence and liable to a maximum fine at \$25,000 and to imprisonment for 6 months.

UNDER THE TMO

118. An application for registration of a trade mark shall be filed with the Trade Mark Registry in the Intellectual Property Department in the prescribed manner. (TMO s.38) Goods and services shall be classified for the purpose of the registration of trade marks according to a prescribed system of classification. (TMO s.40)
119. A duly filed application for the registration of a trade mark in respect of the same goods or services shall enjoy a right of priority for a period of 6 months after the date of filing of the first of any such application. (TMO s.41)
120. The Registrar for Trade Marks shall examine whether the application satisfies the requirements for registration and shall carry out a search of earlier trade marks. If it appears to the Registrar that the requirements for registration are not met, the Registrar shall by notice in writing inform the applicant of the

Registrar's opinion and inform the applicant that he may make representations to establish that the requirements for registration are met or that he may amend the application so as to meet those requirements within the prescribed period. If it appears to the Registrar that the requirements for registration are met, he shall accept the application (TMO s.42) and publish the particulars of the application in the official journal (Hong Kong Intellectual Property Journal). (TMO s.43)

121. Any person may, within the prescribed period of 3 months, file a notice of opposition to the registration of a trade mark, including a statement of the grounds of opposition. (TMO s.44) The applicant shall within 3 months after the date of receipt of the copy of the notice of opposition, file a counter-statement. (Trade Marks Rules (Cap.559A) ("TMR") r.17) After completion of the filing of evidence, the Registrar shall fix a date, time and place for the hearing and shall notify the parties in writing accordingly. (TMR r.21)
122. Any person can also make an application to the Registrar or to the court for revocation of registration (TMO s.52) or for a declaration of invalidity of registration (TMO s.53) any time thereafter.
123. In general, the opposition application/proceedings shall determine on the absolute grounds for refusal of registration (TMO s.11) or relative grounds for refusal of registration (TMO s.12).

OPINION

OPINION IN RELATION TO CORPORATE MATTERS

124. Upon perusal of the company records, I opine that the Hong Kong entities within the Group are duly incorporated and validly subsisting.
125. Upon perusal of the share transfer(s), share issue(s) and allotment(s) of the Hong Kong entities within the group since their incorporation, I am instructed that there were a number of defects in relation to share allotments and transfers:-

WLG

- (a) For the allotment of shares on 10th April 2017, one of the directors purportedly did not sign the resolution in relation to the share allotments. That director was appointed on the same day of 10th April 2017. Return of Allotment has been filed with the Companies Registry on 8th May 2017. Before the allotment, Mr. Yiu Wang Lee was the sole shareholder of WLG.

SHC

- (a) For the share transfer on 30th June 2016, one of the directors did not sign the resolution in relation to the share transfer. That director was the transferor of the shares. Instrument of Transfer and Bought & Sold Notes were duly stamped (albeit late) and the transfer was duly registered in the Register of Members.

SHT

- (a) For the allotment of shares on 22nd July 2008, member's resolution, board resolution and the one letter of application for allotment cannot be located. Return of Allotment has been filed with the Companies Registry on 12th August 2008 and the allotment was duly registered in the Register of Members.
- (b) For the share transfer on 27th October 2010, stamped instrument of transfer and bought and sold note cannot be located. One of the directors did not sign the resolution in relation to the share transfer. That director was one of the transferees of the transfer. The transfer was duly registered in the Register of Members.
- (c) For the share transfer on 30th March 2015, stamped instrument of transfer, bought and sold note cannot be located. One of the directors did not sign the resolution in relation to the share transfer. That director was one of the transferor of the transfer. The transfer was duly registered in the Register of Members.

KCE

- (a) For the allotment of shares on 25th January 2016, board resolution or minute cannot be located. The Return of Allotment has been filed with the Companies Registry on 18th February 2016. The allotment was duly registered in the Register of Members.
- (b) For the share transfer on 26th April 2017, board minute was incomplete. The transfer was duly registered in the Register of Members.

- (c) For the share transfer on 6th July 2017, board resolution, stamped instrument of transfer, bought and sold notes cannot be located. The transfer was duly registered in the Register of Members.
- (d) For the share transfer on 10th September 2018, board resolution, stamped instrument of transfer, bought and sold notes cannot be located. Annual Return form in 2019 duly reflected the transfer. The transfer was duly registered in the Register of Members.

TSE

- (a) For share transfer on 27th September 2016, one of the directors did not sign the resolution in relation to the share transfer. That director was one of the transferors of the share transfer. The transfer was duly registered in the Register of Members.
- (b) For share transfer on 30th November 2016, one of the directors did not sign the resolution in relation to the share transfer. The transfer was duly registered in the Register of Members.

WLD

- (a) For share transfer on 11th August 2017, there was discrepancy between the date on the instrument of transfer and the bought and sold note. The transfer was duly registered in the Register of Members.

126. I am instructed that the transferees of the share transfers and allottees of allotments were entered and registered in the respective companies' Register of Members. Return of Allotment forms were delivered to the Registrar of Companies ("**Registrar**") for registration. Annual Return forms reflecting the change of shareholdings have also been delivered to the Registrar.
127. For the defects in allotment of WLG and SHT, I opine that under section 140(6) of the New CO, they would not affect the validity of the allotment. In case the allotments are inconsistent with the New CO, application to court for validation is possible under section 146 of the New CO. By reason that no party is prejudiced by the defects and the allottees were entered onto the Register of Members with sufficient cause, I opine that no rectification action is required and the inconsistency is not material and not systemic.

128. For the defects in share transfers of SHC, SHT, KCE, TSE and WLD, the transferees were entered onto the Register of Members. Under 635 of the New CO, the register of members is proof of any matters in the ordinance in the absence of contrary evidence. Under section 102 of the Old CO and *Re Universal Horizon Investment Ltd* [2000] 3 HKC 627, as *prima facie* evidence with 30-year limitation period, no time limit for the New CO under section 627 except for cessation. Under 137 of the New CO, a share certificate is proof of a member's title to the shares in the absence of contrary evidence. I opine that the risk of adverse claims against those share transfers are remote.
129. Upon perusal of the available documents and instructions given, I opine that there is no contrary evidence to challenge the validity of the Register of Members and thus opine that the share transfers, issuance and allotments were legally completed.

OPINION IN RELATION TO THE OLD CO AND NEW CO

Non-Compliance with the New CO beyond 3 years from the date of breaches

130. By reasons of paragraph 13 hereinabove, no offences under both the Old CO and the New CO shall be tried beyond 3 years from the date of breaches. Therefore, I opine that there is no risk of liability for the Company or its officers on any non-compliance of both Companies Ordinances beyond 3 years. No rectification actions are advisable for these breaches which are non-material.
131. I am instructed that Mr. Yiu Fai, who was formerly a director of various subsidiaries of the Group (WLG, WLC, WLD, TSE, SHC, SHT) resigned and left our Group as a director of various subsidiaries of the Group in or around November 2020 even though the filings with the Companies Registry of Hong Kong indicated that he resigned in or around March 2022 and were dated March 2022 and in the case of SHT, in August 2022, due to a delay in such filings. Under the New CO, a company and its responsible persons, such as directors, are liable to a fine for delay in filing at level 4 (being HK\$25,000) and in the case of a continuing offence, a further fine of HK\$700 for each day during which the offence continues. However, as no offences under the New CO shall be tried beyond three years from the date of breaches, I opined that that there is no risk of liability for the Group or its officers on the above breaches which occurred more than three years ago. In any event, as at the Latest Practicable Date, no penalty had been imposed on the Group or its Directors.

Non-Compliance with the New CO within 3 years from the date of breaches in relation to Late Filings with the Companies Registry

132. Upon perusal of the documents provided to me, I am instructed that the following companies of the Group had committed the following breaches under the New CO:-

WLG

- (a) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 24th March 2022, not within 15 days after the date of resignation of two directors on 8th March 2022
- (b) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 24th March 2022, not within 15 days after the date of change of company secretary on 8th March 2022
- (c) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 25th May 2022, not within 15 days after the date of appoint of director on 8th March 2022

WLC

- (a) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 28th April 2022, not within 15 days after the date of resignation of director on 8th March 2022
- (b) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 28th April 2022, not within 15 days after the date of change of company secretary on 8th March 2022
- (c) Late filing of Annual Return (NAR1) on 17th November 2023, not within 42 days after the made-up date on 5th August 2023

WLD

- (a) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 28th April 2022, not within 15 days after the date of resignation of director on 8th March 2022
- (b) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 28th April 2022, not within 15 days after the date of change of company secretary on 8th March 2022

TSE

- (a) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 28th April 2022, not within 15 days after the date of resignation of director on 8th March 2022
- (b) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 28th April 2022, not within 15 days after the date of change of company secretary on 8th March 2022

- (c) Late filing of Annual Return (NAR1) on 14th March 2024, not within 42 days after the made-up date on 16th January 2024

SHC

- (a) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 24th March 2022, not within 15 days after the date of resignation of two directors on 8th March 2022
- (b) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 24th March 2022, not within 15 days after the date of change of company secretary on 25th February 2022
- (c) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 25th March 2022, not within 15 days after the date of appointment of director on 8th March 2022
- (d) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 4th January 2023, not within 15 days after the date of resignation and appointment of director on 15th December 2022

SHT

- (a) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 3rd August 2022, not within 15 days after the date of change of company secretary on 8th March 2022
- (b) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 2nd September 2022, not within 15 days after the date of resignation of director on 2nd August 2022

KCE

- (a) Late filing of Return of Allotment (NSC1) on 28th July 2021, not within one month from the date of allotment of shares on 17th May 2021
- (b) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 3rd August 2021, not within 15 days after the date of change of company secretary on 16th July 2021
- (c) Late filing of Notice of Change of Company Secretary and Director (Appointment/Cessation) (ND2A) on 27th July 2022, not within 15 days after the date of change of company secretary on 8th March 2022

133. The maximum fine for such breaches against (1) section 645 (on duty to notify Registrar of appointment and change of directors), (2) section 652 (on duty to

notify Registrar of appointment and change of company secretary), (3) section 662 (on delivery of annual return), and (4) section 142 (on return of allotment) of the New CO is \$25,000 and in case of a continuing offence, to a further fine of \$700 for each day during which the offence continues (in the case of such breaches against section 645, section 652, or section 142) and \$50,000 and in case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues (in the case of such breaches against section 662), is liable to the company and its responsible persons such as directors. I am instructed that the breaches were not wilful and were due to (a) inadvertent oversight on the part of the management of Group, and (b) change of company secretary at the material time. Premised on the above and the directors and/or the officers of Group are now aware of the requirements under New CO, I opine that the likelihood of prosecution is remote and the imposition of a maximum fine on Group and their respective directors and officers is unlikely, given (a) clear record of the companies, and (b) no party has been prejudiced. I opine that these breaches, which were minor in nature and had been rectified, are not material and not systemic.

Non-Compliance with the New CO within 3 years from the date of breaches in relation to Failure to Lay Audited Accounts for the Relevant Reporting Period

134. Upon perusal of the documents provided to me, I am instructed that the Group had committed the following breaches under the New CO:-

WLG

- (a) Auditors' report of the audited accounts for the year ended 31st March 2021 (which were adopted in the written resolutions of the members of the company made in lieu of annual general meeting dated 31st December 2021) had not been signed by the auditors.

WLC

- (a) Auditors' report of the audited accounts for the year ended 31st March 2022 (which were adopted in the written resolutions of the sole member of the company made in lieu of annual general meeting dated 30 December 2022) had not been signed by the auditors.

TSE

- (a) Auditors' report of the audited accounts for the year ended 31st March 2021 (which were adopted in the written resolutions of the sole member of the company made in lieu of annual general meeting dated 15 November 2021) had not been signed by the auditors.

KCE

- (a) Audited accounts for the period from 1st January 2020 to 31st March 2021 had been prepared. However, the written resolutions of members or minutes in lieu of 2021 annual general meeting cannot be located. As such, it cannot be concluded whether the said accounts had been adopted by the members and whether the 2021 annual general meeting had been held.
135. In relation to the breaches in the previous paragraph, I am instructed that they were due to the directors' inadvertent oversight, limited knowledge of the compliance requirements under the New CO especially section 612 of the New CO and their reliance on the company secretaries to handle all corporate secretarial and statutory compliance matters. There were no willful defaults on part of the director(s) and they have reasonable grounds to believe and did believe that the Company's company secretaries would comply with the duty on company matters can amount to an arguable statutory defence under the New CO. By reason of paragraph 23 hereinabove, the criminalising provision is rarely invoked or at all under the Old CO which is largely applicable to the similar regime under the New CO. I opine that the risk of prosecution is remote, and the imposition of imprisonment is highly improbable. I am instructed that WLC and TSE companies has only 1 member at the material time while WLG and KCE has more than 1 member. As all members has signed written resolutions (for KCE, the subject audited account has been prepared), I opine that no shareholder(s) was prejudiced by those breaches. Applications under section 431(4) of the New CO as a rectification action is possible as the 3 requirements under paragraph 24 are *prima facie* established.
136. In any event, by reason of paragraph 25 hereinabove, there is no realistic prospect that such breaches under section 122 of the Old CO would prejudice the prospective listing of the Company. Such analogy can be drawn in relation to sections 429 of the New CO. Save for KCE, as the accounts for the relevant years had already been laid, I opine that no rectification actions are advisable. I also opine that these non-compliances are not material and not systemic. For KCE, accounts subsequent to 2021 has been laid, I also opine that no rectification actions are advisable, and the non-compliance is not material and not systemic.

OPINION IN RELATION TO THE CWRO

137. I am instructed that KCE had failed to furnish the Registrar of Construction Workers a copy of record to store data of registration cards for such periods within 2 business days as directed, in contravention of CWRO s.58(7)(b) and 58(8). A Summons was issued (ESS 38482/2022) and KCE was fined \$1,500. The fine was settled on 3rd January 2023.

138. I am instructed that the single incident of failure to furnish record was an inadvertent mistake made. Given the level of fine imposed, I opine that the single incident of non-compliance is non-material.

OPINION IN RELATION TO LABOUR DEPARTMENT (FIUO, OSHO, ECO, EO, MWO)

FIUO AND OSHO

139. I opine that the improvement notices and suspension notices beyond 6 months from the date hereof are time barred from prosecution, in case such notices have not been duly complied.
140. Upon perusal of the Labour Department records, 3 improvement notices were issued against KCE in February 2023. (IN/2023/000306, IN/2023/000307, IN/2023/000308) Prosecutions pursuant to these 3 improvement notices were taken out (KCS 26973-26975/2023) but all has been dismissed on 18th March 2024 upon the prosecution offering no evidence.
141. As the prosecution pursuant to the alleged non-compliance of the 3 improvement notices have been dismissed, I opine that there was no sufficient evidence of any non-compliance.

ECO

142. Upon perusal of the Labour Department Records, I am instructed that a Summons (TWS 10529/2008) was taken out against SHE for failing to take out insurance policy for employees under section 40 of the ECO. The offence date was 1st April 2008 which SHE was convicted on 25th September 2008 and fined \$2,000, outside the TRP. Given the long lapse since the incident and the minor fine imposed, I opine that the single non-compliance is non-material.
143. Upon perusal of the insurance policies of the Group and the list of number of employees as instructed, I opine that the Group had procured sufficient insurance coverage in accordance with the ECO during the three years ended 31st March 2024 and as of the LPD.

OPINION IN RELATION TO THE MPFSO

144. Upon perusal of the Non-Compliant Employer and Officer Records of the Mandatory Provident Fund Schemes Authority and the payment records provided by the Group in respect of MPF contributions, the HK Subsidiaries (a) had made all MPF contributions for their employees and/or casual works in accordance with the MPFSO and the Occupational Retirement Schemes Ordinance (Cap. 426 of the Laws of Hong Kong), where applicable, and (b) there has not been any criminal conviction and civil award/judgment records for the Group.

OPINION IN RELATION TO FEHD

145. Upon perusal of the FEHD records, there were 4 incidents of littering from vehicles during the TRP, contrary to sections 6A(2) and 23(2) of the Cleansing and Prevention of Nuisances Regulation (Cap.123BK) as follows:-

WLC

- (a) Incident on 12th April 2023 and convicted on 1st December 2023, fined \$1,500 (FLS 9265/2023)
- (b) Incident on 21st February 2023 and convicted on 26th January 2024, fined \$1,500(FLS 6938/2023)
- (c) Incident on 5th February 2023 and convicted on 22nd September 2023, fined \$1,700 (FLS 6158/2023)

WLD

- (a) Incident on 17th June 2020 and convicted on 16th April 2021, fined \$1,500 (FLS 500456/2020)
146. These incidents were minor in nature and the fines have already been settled. I opine that non-compliance incidents are not material. As these 4 incidents involved the same goods vehicle, I opine that they are also not systemic.

OPINION IN RELATION TO THE IRO

147. The time limitation to prosecute any offence under the IRO is 6 years. Any non-compliance up to the year of assessment 2018/19 is time barred from prosecution.
148. I am instructed that during the TRP, there was one incident of late filing of Employer's Return:-

WLD

- (a) For the year of assessment 2020/21, late filing of Form 56B in breach of section 52(2) of the IRO that a penalty of \$2,400 was issued on 22nd July 2021
149. I am instructed that the failure to file Form 56B in a timely manner was due to the inadvertent oversight of an administrative staff and the limited access to employee details as a result of the outbreak of COVID-19.

150. I am instructed that upon a compliance enquiry with the IRD, it is revealed that there were 8 incidents of late filing of Profits Tax Return (Form BIR51) during the previous 6 years contrary to section 51 of the IRO:-

WLG

- (a) For the year of assessment 2020/21, a warning letter was issued on 19th July 2022

WLC

- (a) For the year of assessment 2018/19, a penalty in the sum of \$13,000 was issued on 29th December 2021
- (b) For the year of assessment 2019/20, a warning letter was issued on 19th April 2022

WLD

- (a) For the year of assessment 2018/19, a warning letter was issued on 23rd December 2021
- (b) For the year of assessment 2020/21, a penalty of \$3,000 was issued on 23rd June 2022

TSE

- (a) For the year of assessment 2018/19, a penalty of \$2,000 was imposed on 26th January 2022

SHT

- (a) For the year of assessment 2017/18, a penalty of \$3,000 was issued on 26th March 2019 and paid on 26th March 2019
- (b) For the year of assessment 2020/21, a penalty of \$3,000 was issued on 23rd March 2022 and paid on 28th March 2022

151. I am also instructed there was 1 incident of late payment of profit tax during the previous 6 years contrary to section 17 of the IRO:-

SHT

- (a) For the year of assessment 2018/19, a surcharge of 5% was imposed on 24th March 2021 and settled on 27th April 2021

152. I am instructed that these breaches were due to inadvertent oversight of administrative staff. The company has since designated personnel from the finance department to monitor matters on tax return filing and payment. As all the above cases have already been settled and/or the IRD has confirmed that no action would be taken against the relevant Group company on such occasion, I opine that these breaches with minor penalty are non-material, and their sporadic occurrences are not systemic.
153. I am instructed that SHC has received profits tax returns from the IRD on 13th May 2024 for the years of assessment of 2018/19, 2019/20, 2020/21, 2021/22 and 2023/24. I am also instructed that SHC has not received such forms previously and SHC only has assessable profits for the year of assessment of 2022/23. Under the practice of the IRD, annual submission of profit tax returns would not be called for where a business carried on does not give rise to assessable profits. In any event, SHC has not received any notice under section 51 of the IRO, I thus opine that there were no breaches for not filing profit tax returns for the years of assessment of 2018/19, 2019/20, 2020/21, 2021/22 and 2023/24.

OPINION ON REPLY FROM FIRE SERVICE DEPARTMENT

154. Upon perusal of the Fire Service Department records, there were 2 incidents of non-compliance during the TRP, contrary to the Dangerous Goods Ordinance (Cap.295) as follows:-

WLC

- (a) Storing or conveying of S2 dangerous goods without complying with requirements for packing,, marking and labelling on 1st July 2022 contrary to sections 142(1) and 142(3) of the Dangerous Goods (Control) Regulation (Cap.295G), convicted on 5th January 2023, fined \$1,000 (WKS 16665/2022)
 - (b) Acting without dangerous goods licence contrary to sections 6(1) and 14(1) of the Dangerous Goods Ordinance (Cap.295) on 1st July 2022, convicted on 5th January 2023, fined \$2,000 (WKS 16666/2022)
155. These incidents were minor in nature and the fined has already been settled. I opine that non-compliance incidents are not material. As these 2 charges arise from a single incident, I opine that they are also not systemic.

OPINION IN RELATION TO ELECTRICITY ORDINANCE

156. Upon perusal of the reply from the Electrical and Mechanical Services Department, there was one prosecution record (TMS 5719/2017) against WLC for an offence contrary to sections 10(1)(a) and 17(3) of the Electricity Supply Lines (Protection) Regulation of an incident on or about 31st October 2016, outside the TRP.

157. The conviction was subsequently quashed by the High Court on 10th June 2019 and the fine of \$5,000 has been refunded. I thus opine that there was no non-compliance.

OPINION ON LEGAL PROCEEDINGS AND CLAIMS

158. Upon perusal of litigation searches and documents provided, the following companies were/are involved in litigation during the TRP:-

WLC

- (a) STP 4243/2018 (a fine of \$1,080 was settled)
- (b) DCPI 4448/2022 (ongoing)
- (c) DCEC 2396/2023 (settled with Notice of Discontinuance filed on 16th April 2024)
- (d) DCEC 1676/2023 (settled with Notice of Discontinuance filed on 28th November 2023)
- (e) DCEC 10/2021 (settled with Notice of Acceptance of Sanctioned Payment filed on 24th February 2023)
- (f) DCPI 1292/2020 (taken over and settled by QBE General Insurance (Hong Kong) Limited)

TSE

- (g) SCTC 49199/2018 outside the TRP. There was no further development of the case, i.e. enforcement of judgement or appeal. I opine that it is likely the claiming party has not complied with the tribunal's order in time. While the claim is not time-barred, I opine that it is likely that the proceedings is dormant and unlikely to be revived.

KCE

- (h) DCEC 1897/2015 and DCPI 775/2018 of the same incident (settled by Consent Order dated 3rd June 2020)
159. In relation to the DCPI 4448/2022 proceedings, the claim involved a traffic accident that the plaintiff claimed property damage in the sum of \$32,310. I am instructed that the insurer China Ping An Insurance (Hong Kong) Co. Ltd. has taken over the claim upon WLC's payment of \$7,500 being Third Party Property Damage in excess of the insurance policy. I am instructed that the case is ongoing and at the stage of exchanging witness statements and expert

medical evidence pursuant to the court order dated 19th June 2024 for further case management directions. The next checklist review hearing is scheduled on 12th February 2025. As the traffic personal injury claim is covered by the third party insurance, I opine that the claim will not have any financial, operational or legal impact on WLC.

160. Upon perusal of the Labour Department records, a number of claim forms have been filed under the ECO:-

WLC as Employer

Item	Case Reference	Name of Employee	Date of Injury	Received Date of form 2/2A/2B
1	17-2023-41272	XIAO SHUQING	16/12/2023	22/12/2023
2	17-2023-28814	YIP MAN	26/08/2023	11/09/2023
3	17-2023-26368 (DCEC 2396/2023)	YIM KA CHUN	23/07/2023	18/08/2023
4	17-2021-28628 (DCEC1676/23)	LAM KAN FAT	06/08/2021	03/09/2021
5	15-2019-07112	TSE SHUN YUEN	09/10/2019	15/10/2019
6	15-2019-00872 (DCEC10/21)	WU JINKUN	21/01/2019	28/01/2019
7	17-2016-03409	CHAN CHUN LING	11/10/2016	25/10/2016

TSE as Employer

Item	Case Reference	Name of Employee	Date of Injury	Received Date of form 2/2A/2B
8	01-2020-00106	YEUNG AH KEUNG	30/05/2020	16/06/2020

KCE as Principal Contractor

Item	Case Reference	Name of Employee	Date of Injury	Received Date of form 2/2A/2B
9	01-2020-00106	YEUNG AH KEUNG	30/05/2020	16/06/2020

KCE as Employer

Item	Case Reference	Name of Employee	Date of Injury	Received Date of form 2/2A/2B
10	17-2024-06703	CHEUNG NGAI	16/02/2024	27/02/2024
11	21-2015-02791	LAM YUK KWONG	11/06/2015	15/06/2015
12	21-2015-02248 (DCEC1897/15) (DCPI775/18)	CHAN CHOI CHUN	21/04/2015	21/05/2015
13	21-2012-05887	周振仁	08/10/2012	05/11/2012

Subcontractors of the Group

Item	Case Reference	Name of Employee	Date of Injury	Received Date of form 2/2A/2B
14	17-2021-28628	LAM KAN FAT	06/08/2021	03/09/2021
15	17-2023-41272	XIAO SHUQING	16/12/2023	22/12/2023
16	-	CHEUNG YAU GON	15/06/2024	-

161. Upon perusal of documents provided:-

- (a) Item 2 is settled by the insurer on 4th July 2024 and there are no further liabilities for the Group, The employee is barred from bring proceedings of the same incident against the Group.
- (b) Item 3 (DCEC 2396/2023) is settled pursuant to the Notice of Continuance filed on 16th April 2024. While discontinuance is not a defence of WLC to subsequent new action for the same cause of action (Order 21 rule 4, Rules of District Court (Cap.336H)), as compensation has been made, the employee involved is barred from brining a new action for double recovery of reliefs.
- (c) Item 4 & 14 (DCEC 1676/2023) concerning the same incident, is settled pursuant to the Notice of Discontinuance dated 28th November 2023. The person involved was not employed by WLC and upon perusal of the papers, the immediate employer Luen Yau Machinery Construction has paid the compensation. The person involved is barred from bringing a new action against WLC for double recovery.
- (d) Item 6 (DCEC 10/2021) is settled in court pursuant to the Notice of Acceptance of Sanctioned Payment filed on 24th February 2023
- (e) Item 8/9 (same fatal incident), the Labour Department adjudged on 4th August 2021 a sum of \$1,484,631.60 as compensation which should have been settled no later than 49 days thereafter
- (f) Item 12 (DCEC 1897/2015 & DCPI 775/2018) is settled pursuant to the Notice of Acceptance of Sanctioned Payment dated 20th July 2018 and Consent Order dated 3rd June 2020

162. Under section 14(1) of the ECO, court proceedings for recovery of compensation under the ordinance shall not be maintainable unless the application for compensation is made within 24 months from the occurrence of the accident causing the injury. I am instructed that no employees' compensation claims were brought by the employees in the preceding paragraph. Save for the items 1 (same incident as item 15), 10 and 16 happened in 2023 and 2024, the other employees are time-barred from bringing employees' compensation proceedings against the respective companies. Employees involved in Items 1, 10 and 16 are not timed barred under the ECO and the Limitation Ordinance (Cap.347) from bringing proceedings against the Group. (Employees of subcontractors may bring

actions against the principal contractor, i.e. the Group, under ECO s.24) I opine that it is premature to quantify the maximum liabilities of these cases at this stage.

163. I am also instructed that during the TRP, there had been a number of work related accidents whereby the Group and the relevant employees agreed to settle the matter without resorting or reporting to the Labour Department. Upon perusal of the settlement agreements signed by the parties, I opine that these accidents were fully settled and the relevant HK Subsidiaries would not incurred any further legal liabilities.
164. I am instructed that WLC, TSE and KCE has taken out requisite and adequate insurance policy, or would be able to claim under the insurance policies taken out by the relevant main contractors for where the Group acts as a subcontractor, to cover potential claims under the employees' compensation ordinance. I thus opine that these cases would not have any substantial financial, operational or legal impact on the respective companies.
165. Upon perusal of the litigations revealed in the background check reports of the Group, I opine that they would not have any adverse impact on (a) the directors' suitability to act as the directors of a listed company, and (b) the listing of the Company.

OPINION ON THE FATAL ACCIDENT (PARA.154 ITEM 8/9)

166. I am instructed that on 30 May 2020, an employee (the "**Employee**") of Tai Shan Engineering had a road traffic accident near Tuen Mun Road Tai Lam Tunnel (屯門公路大欖隧道) when he lost control of the vehicle he was driving during his course of employment and crashed onto a road curb due to slippery road surface caused by rainy weather conditions (the "**Road Traffic Accident**").
167. As far as the Company is aware, the Employee was sent to a hospital immediately after the Road Traffic Accident where he underwent surgery. He was discharged from the hospital after the surgery and went home. Approximately three days of resting and recovery after the said surgery, the Employee suffered from chest pain and numbness. He was admitted to another hospital.
168. According to the Form 2 (Notice by employer of the death of an employee or of an accident to an employee resulting in death or incapacity (for a period exceeding 3 days)) submitted by the Group, the Employee passed away on 14th June 2020, which was approximately two weeks after the Road Traffic Accident.
169. On 4 August 2021, the Labour Department issued Form 21 (Certificate of compensation assessment for fatal case) to KCE, as principal contractor (the "**LD Letter**") stating that KCE shall compensate a total amount of

HK\$1,484,631.60 to the family member(s) of the Employee (the “**Compensation**”). The LD Letter also acknowledged the two-week gap between the Road Traffic Accident and the death of the Employee.

170. Immediately upon receipt of the LD Letter, the Group enquired with Asia Insurance Company Limited (亞洲保險有限公司) (the “**Insurer**”), being the then insurer, in respect of the Compensation. After considering the circumstances of the Road Traffic Accident and the Employee’s death, the Group was verbally informed by the Insurer that the Group’s insurance claim would not be accepted on the basis that the death of the Employee did not arise immediately at the scene of the Road Traffic Accident as a result of the Road Traffic Accident.
171. However, on a compassionate basis, the Group paid the Compensation in full to the family member(s) of the Employee on 21st September 2021 (the “**Settlement**”) which is a full and final settlement, as no appeal to the Labour Department’s assessment of compensation has been lodged.
172. Following the Settlement, the Group did not receive any further notice or claims from either the Labour Department or the family member(s) of the Employee. As such, the Road Traffic Accident had been fully settled and notwithstanding the payment of the Compensation, the above incident occurred before the Track Record Period and there is no material adverse impact on the Group’s business operations and financial condition. In any event, 3 years has expired from the date on accrual of cause of action under section 27 of the Limitation Ordinance (Cap.347). I thus opine that the Group would not be subject to any further liability, including common law tort claim.

OPINION ON LAND AND PROPERTY MATTERS

173. I have been provided with the tenancy agreements and other documents in relation to 6 properties leased by the HK Subsidiaries:-
 - (a) Workshop B3, 8th Floor, TML Tower, No. 3 Hoi Shing Road, Tsuen Wan, New Territories, Hong Kong;
 - (b) Workshop B3, 15th Floor, TML Tower, No. 3 Hoi Shing Road, Tsuen Wan, New Territories, Hong Kong;
 - (c) Workshop A, 16th Floor, TML Tower, No. 3 Hoi Shing Road, Tsuen Wan, New Territories, Hong Kong;
 - (d) Remaining Portion of Lot No.1215, Lot Nos.40, 41 and 42, All in Demarcation District No.451 with warehouse, known as No. 50 Lo Wai, Tsuen Wan, New Territories, Hong Kong;
 - (e) 66,000 square feet Land in Ngau Tam Mei, Yuen Long, New Territories, Hong Kong erected on Lot Nos. 795, 796, 798, 799, the Remaining Portion of Lot No. 797, the Remaining Portion of Lot No. 800, the Remaining Portion of Lot No. 4179 and the Remaining Portion of Lot No.4187, All in Demarcation District No. 104; and

(f) Heavy Goods Vehicle Parking Space No. HGV6 & HGV7 on 1st Floor, TML Tower, No. 3, Hoi Shing Road, Tsuen Wan, New Territories, Hong Kong.

174. I am instructed that under the Occupation Permit of the properties in paragraphs 173(a) to (c) ("**TML Properties**"), the stipulated use is for industrial purpose only. I am further instructed that certain areas of the TML Properties were used as office space by the HK Subsidiaries.
175. I am instructed that under the government lease, the land use of the property in paragraph 173(d) ("**Lo Wai Property**") is restricted to agricultural or garden ground use. I am further instructed that the Lo Wai Property was used as warehouse by the HK Subsidiaries.
176. I am instructed that under the government lease, the land use of the property in paragraph 173(e) ("**Ngau Tam Mei Property**") is restricted to agricultural or garden ground use. I am further instructed that the Lo Wai Property was used as warehouse by the HK Subsidiaries.
177. I am instructed that under the government lease, the land use of the property in paragraph 173(f) ("**HGV Carpark**") is restricted to car parking space. I am further instructed that the HGV Carpark was used as car parking space by the HK Subsidiaries. Upon perusal of the documents provided, there was no breach of the government lease or the tenancy agreement.

TML Property

178. Under the Hong Kong Planning Standards and Guidelines dated December 2018 ("**HKPSG**") published by the Planning Department, broadly defines the use of land in Hong Kong. Under the Industrial Land Use Types (HKPSG para.7), industrial land use can be grouped under the General Industrial Use (GIU) and Special Industrial Use (SIU). Under the GIU, it can be further divided into Industrial Use and Industrial/Office Use Category. Under HKPSG paragraph 7.2.3, office related to industrial use is always permitted.
179. Under the HKPSG, office related to industrial use is always permitted. As long as the TML Properties were used as office incidental to industrial use, the conditions of the Government Lease are not violated. In relation to the Occupation Permit, the utilization of the properties is non-domestic and workshops by the definition of the BO and thus the Occupation Permit is not violated.

Ngau Tam Mei Property

180. In *Attorney General v Melhado Investment Limited* [1983] HKLR 327, the Court of Appeal held that New Territories land could be used for any purpose not requiring a building and consequently the Government was unable to prohibit the use of rural land for the storage of containers.

181. In *Secretary for Justice v Cheung Tat Co Ltd* [1997] 4 HKC 210, Wong J held that as a broad general principle, the phrase “open storage of containers” referred to the placing and depositing of containers within New Territories Land and it would not be an unauthorized use of agricultural land in Yuen Long for the goods to be loaded and unloaded on the premises.
182. The Director of Planning can enforce and serve notice on the land owner, an occupier or responsible persons on land within a development permission area, in his opinion, there is or was unauthorized development that specify the relevant matters and a date by which requires the relevant matters to be discontinued, if they have not by then been discontinued. (s. 23(1) Town Planning Ordinance (Cap.131) (“TPO”)) Unauthorized development means carrying out building, engineering, mining or other operations in, on, over or under land or making a material change in the use of land or building (s. 1A TPO) outside the scope of existing use or permitted development under the plan of the development permission area. (s.21 TPO)
183. A person who is served with the notice in the previous paragraph that the relevant matters have not been discontinued as required by the notice, steps have not been taken as required by the notice, or land has not been reinstated as required by the notice (s.23(6) TPO) commits an offence and liable to a fine of \$500,000 for first conviction in addition to a fine of \$50,000 for each day of non-compliance after the notice was served; and a fine of \$1,000,000 for second or subsequent conviction in addition to a fine of \$100,000 for each day of non-compliance after the notice was served. (s.23(6) TPO)
184. In *R v Way Luck Industrial Ltd* [1995] 2 HKC 290, it was rule by Litton JA that the expression “development” under the TPO “has a two-pronged meaning: it comprises (a) ‘the carrying out of building, engineering, mining or other operations in, on, over or under land’, or (b) ‘the making of a material change in the use of land or buildings’. As a pure matter of language, it seems to me that ‘operations’ in this context must mean that something is done to the land. This is to be contrasted with ‘use’ where the physical character of the land would not normally be substantially changed: for instance, the depositing of goods or the stacking of containers on land.” The question of a change in the use of land was one of degree.”
185. I am instructed that in the Ngau Tam Mei Property, the landlord put up a simple structure with 3-side enclosure. I opine that such land use is unlikely to be regarded as “development” under the TPO. In addition, I am also instructed that the Ngau Tam Mei Property is used to store materials, tools and machinery consistent with the Group’s business.
186. To the best knowledge of the Directors, the Company is not aware that the Director of Planning has served any such notice on the landowner of the

Relevant Land. In any event, as the Relevant Land is not located within a development permission area, I opine that the Director of Planning will not serve such notice on the landowner of the Relevant Land in relation to the current use of the Relevant Land by the Group.

187. I opine that storage of such goods would not breach the tenancy agreement, relevant laws and regulations such as Dangerous Goods Ordinance, or other unpermitted use by the Fire Services Department, Food and Environmental Hygiene Department or other competent Government Authority. Upon perusal of the storage list, I opine that the Group's use constitutes open storage and there was no breach of (i) the tenancy agreement, (ii) the government lease, and (iii) any other laws and regulations. I opine that the title is unlikely to be affected and the risk of relocation is remote.

Lo Wai Property

188. Upon perusal of the tenancy agreement, it is expressly provided that use of the Lo Wai Property as warehouse and open storage is permitted. I am also instructed that the said warehouse (storage structure) was put up by the landlord of the Lo Wai Property prior to the terms of the tenancy agreement. I thus opine that there was no breach of the tenancy agreement.
189. To the best knowledge of the Directors, the Company is not aware that the Director of Planning has served any such notice on the landowner of the Relevant Land. In any event, as the Relevant Land is not located within a development permission area, I opine that the Director of Planning will not serve such notice on the landowner of the Relevant Land in relation to the current use of the Relevant Land by the Group.
190. I am instructed that the Lo Wai Property is used to store materials, tools and machinery consistent with the Group's business. Under Clause 2(K) of the tenancy agreement, it is expressly prohibited that the Lo Wai Property be used to store any "hazardous goods within the meaning of the Dangerous Goods Ordinance and the Regulations thereunder or any statutory modification or re-enactment thereof, and any goods of a type or description other than those permitted to be stored therein by the Fire Services Department, Food and Environmental Hygiene Department or other competent Government Authority. Upon perusal of the storage list, I opine that the Group's use constitutes open storage and there was no breach of (i) the tenancy agreement, (ii) the government lease, and (iii) any other laws and regulations. I also opine that the Group's use of the existing structure put up by the landlords and as open storage in the Relevant Land where the physical character of land has not been substantially changed is unlikely to be regarded as "development" under the TPO.

OPINION ON LOANS AND GRANTED FACILITIES

191. I have been provided with a number of facility letters and financial leases granted by a number of banks and financial organizations to the HK Subsidiaries, before the reorganization of the Group. I opine that upon reorganization of the Group, prior written consents are required from certain banks and financial organizations, by reason of change in shareholding structure or control under the respective terms and conditions.
192. I am instructed that prior to the implementation of the reorganization, the HK Subsidiaries have already asked for written consents from Bank of China (Hong Kong) Limited ("**BOC**"), Bank of Communications (Hong Kong) Limited ("**BOCOM**"), Orix Asia Limited ("**Orix**") and SG Equipment Finance Hong Kong Limited. Written consents have been obtained from BOC, BOCOM, and Orix and SG Equipment Finance Hong Kong Limited.
193. Upon issuance of those written consents, I opine that the terms of the facility letters and financial leases are complied with and thus there are no further legal or financial impacts on the respective HK Subsidiaries.

OPINION ON POTENTIAL BREACH OF CONTRACT

194. I am instructed that TSE as subcontractor entered into a contract dated 10th December 2020 with CLPe Solutions Limited ("**CLPeS**") as main contractor for distribution cable trenching and laying works ("**CLP Agreement**"). I am also instructed that WLC as subcontractor entered into a contract dated 1st December 2020 with Kum Shing (K.F.) Construction Company Limited ("**KS**") as main contractor for construction works of the same project. ("**KS Agreement**").
195. Under Clause 2.4 of the CLP Agreement, it is stipulated that TSE shall not assign nor sub-let the whole of the contract works without the previous written consent of CLPeS. I am instructed that TSE has appointed a third party to undertake its works without obtaining the prior written consent from CLPeS, which might potentially breached the CLP Agreement.
196. Under Clause 17 of the KS Agreement, it is stipulated that WLC cannot assign or subcontract the construction works to a sub-contractor without written consent from KS and CLP Power Hong Kong Limited ("**CLP**"). I am instructed that WLC has sub-contracted the construction works to a third-party subcontractor without consent in writing from KS and CLP at the material time, which might potentially breached the KS Agreement.
197. I am instructed that to the best knowledge of the executive Directors, both CLPe Solutions Limited and Kum Shing Construction are aware of the Group's occasional subcontracting arrangement. The executive Directors are of the view that the Group's occasional subcontracting arrangement does not constitute a material breach of the Master Agreement A (CLP Agreement) and Master Agreement B (KS Agreement) and that the Group's occasional

subcontracting arrangement has no material impact on the Group's operations, considering that:

- (a) The term of the Master Agreement A and Master Agreement B commenced back in December 2020 and the current term is due to expire in November 2024. Since the commencement date of the Master Agreement A and Master Agreement B and up to the Latest Practicable Date, each of CLPe Solutions Limited and Kum Shing Construction had not lodged any complaint or dispute and had not served any notice or initiated any litigation regarding the Group's occasional subcontracting arrangement. The Directors are of the view that if CLPe Solutions Limited or Kum Shing Construction have suffered any loss or damage from the Group's occasional subcontracting arrangement they would have already taken actions and not wait until towards the expiry of the Master Agreement A and Master Agreement B;
- (b) During the Track Record Period and up to the Latest Practicable Date, both CLPe Solutions Limited and Kum Shing had not refused to certify any works performed by the subcontractor(s), which again suggested that CLPe Solutions Limited and Kum Shing Construction did not suffer in terms of works quality and completion of works due to the Group's occasional subcontracting arrangement; and
- (c) The Group maintained a good working relationship with CLPe Solutions Limited and Kum Shing Construction. In particular, as of the Latest Practicable Date, the Group is currently negotiating with CLPe Solutions Limited and Kum Shing Construction on new fixed-term master agreements which shall commence in December 2024. The Directors confirm that that going forward the Group will only deploy its direct labour for the new fixed-term master agreements with CLPe Solutions Limited and Kum Shing Construction.

198. Based on the above, including the fact that neither CLPe Solutions Limited nor Kum Shing Construction had suffered any loss or damage arising from the above arrangements, I opine that the above arrangements amount to an acquiescence of the above subcontracting arrangements by CLPe Solutions Limited and Kum Shing Construction, and accordingly, the likelihood of civil action against the Group is remote and the potential legal and financial impact on the Group is minimal.

OPINION ON TRADE MARKS REGISTRATION

199. I am instructed the Group has filed the following 10 trade marks applications:-

Application No.:	Class(es)	Application Date
306569542	6, 7, 11, 17, 19, 35, 36, 37, 40, 42	01.06.2024
306569551	6, 7, 11, 17, 19, 35, 36, 37, 40, 42	01.06.2024
306594607	6, 7, 11, 17, 19, 35, 36, 37, 40, 42	26.06.2024
306594616	6, 7, 11, 17, 19, 35, 36, 37, 40, 42	26.06.2024
306594624	9	26.06.2024
306594634	9	26.06.2024
306596353	2, 6, 7, 17, 19, 37, 39, 40, 42	27.06.2024
306596344	2, 6, 7, 17, 19, 37, 39, 40, 42	27.06.2024
306596335	2, 6, 7, 17, 19, 37, 39, 40, 42	27.06.2024
306596326	2, 6, 7, 17, 19, 37, 39, 40, 42	27.06.2024

200. The Registrar may oppose the registration on the absolute grounds under section 11 of the TMO and only the first three relative grounds under section 12 of the TMO:-

- (a) Signs which do not satisfy the requirements of section 3(1) of the TMO (TMO s.11(1)(a))
- (b) Trade marks which are devoid of any distinctive character (TMO s.11(1)(b))
- (c) Trade marks which consist exclusively of signs which may serve to designate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or rendering of services, or other characteristics of goods or services (TMO s.11(1)(c))
- (d) Trade marks which consist exclusively of sign which has become customary in the current language or in the honest and established practices of the trade (TMO s.11(1)(d))
- (e) A sign if consists exclusively of shape that results from the nature of the goods, shape of goods that is necessary to obtain a technical result, or shape that gives substantial value to the goods (TMO s.11(3))
- (f) Contrary to accepted principles of morality or likely to deceive the public (TMO s.11(4))
- (g) Its use is prohibited in Hong Kong or by virtue of any law or made in bad faith (TMO s.11(5))
- (h) Consists or contains national flag, anthem, emblem or certain international organization (TMO s.11(6) and (7))
- (i) Which is identical to an earlier trade mark, and the goods or services for which the application for registration is made are identical to those for which the earlier trade mark is protected (TMO s.12(1))
- (j) Which is identical to an earlier trade mark, the goods or services for which the application for registration is made are similar to those for which the earlier trade mark is protected, and the use of the trade mark in relation to those goods or services is likely to cause confusion on the part of the public (TMO s.12(2))
- (k) Which is similar to an earlier trade mark, and the goods or services for which the application is made are identical or similar to those for which

the earlier trade mark is protected, and the use of the trade mark in relation to those goods or services is likely to cause confusion on the part of the public (TMO s.12(3))

201. Any opponent may oppose the registration on all the relative grounds under section 12 of the TMO:-

- (a) Which is identical to an earlier trade mark, and the goods or services for which the application for registration is made are identical to those for which the earlier trade mark is protected (TMO s.12(1))
- (b) Which is identical to an earlier trade mark, the goods or services for which the application for registration is made are similar to those for which the earlier trade mark is protected, and the use of the trade mark in relation to those goods or services is likely to cause confusion on the part of the public (TMO s.12(2))
- (c) Which is similar to an earlier trade mark, and the goods or services for which the application is made are identical or similar to those for which the earlier trade mark is protected, and the use of the trade mark in relation to those goods or services is likely to cause confusion on the part of the public (TMO s.12(3))
- (d) Which is identical or similar to an earlier trade mark, that the earlier trade mark is entitled to protection as a well-known trade mark, and the use of the later trade mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark (TMO s.12(4))
- (e) Its use in Hong Kong is liable to be prevented by virtue of any rule of law protecting an unregistered trade mark or other sign used in the course of trade or business; or any other earlier right conferred (TMO s.12(5))

202. Upon examination of the 10 trade marks, I opine that they do not fall within TMO s.11(1)(a), (b) and (c) of signs being registrable:-

- (a) They are not generic signs devoid of any distinctive character, which are capable of distinguishing the goods or services from other traders. The test applied has a very low threshold. (*AD2000 Trade Mark* [1997] RPC 168)
- (b) They can be depicted clearly and in sufficient detail for proper examination, and be a kind and quality that is suitable for reproduction and registration. (Trade Marks Rules (Cap.599A) r.8(1))
- (c) They are not purely descriptive in nature and there is no ordinary descriptiveness which is unfairly monopolistic. (*Procter & Gamble v OHIM ('BABY-DRY')* [2002] RPC 16)

203. Upon examination of the 10 trade marks, I opine that they do not fall within TMO s.11(1)(d) as they does not consist exclusively of customary signs, which have become customary in the current language or in the honest and

established practices of the trade. They do not involve generic terms or graphics.

204. Upon examination of the 10 trade marks, I opine that they do not fall within TMO s.11(3) as they are registrable shapes, not being shapes that are available for use by the public at large, not being registered designs and do not give substantial value to the goods. (*Philips Electronics NV v Remington Consumer Products Ltd* [1999] RPC 809)
205. Upon examination of the 10 trade marks, I opine that they do not fall within TMO s.11(4), (5), (6) and (7) under obvious bystander standard.
206. As to TMO s.13(1) on “identical marks, identical goods or services”:-
- (a) As to “identical marks”, the criterion of identity must be interpreted strictly while the court was to allow for the “imperfect picture” of “the average consumer”. (*Reed Executive Plc v Reed Business Information Ltd* [2004] RPC 40)
 - (b) As to “identical goods”, the specification and the class of goods in respect of which an application was made should be considered; if the proposed mark is to be registered in a class different from that in which earlier mark has been registered, then the goods are unlikely to be identical. (*British Sugar Plc v James Robertson & Sons Ltd* [1996] RPC 281)
 - (c) As to “identical services”, the starting should also be the specification. (*Reed Executive Plc v Reed Business Information Ltd* [2004] RPC 40)
 - (d) Upon comparing trade marks search records of the Intellectual Property Department, there are no marks identical to the subject 10 trade marks and I opine that they do not fall within TMO s.13(1).
207. As to TMO s.13(2) on “identical marks, similar goods or services”:-
- (a) As to “similar goods or services”, the relevant factors are the respective uses of the respective goods or services; their respective users; the physical nature of the goods or acts of service; the respective trade channels through which the goods or services reach the market. (*British Sugar Plc v James Robertson & Sons Ltd* [1996] RPC 281)
 - (b) Upon comparing trade marks search records of the Intellectual Property Department, there are no marks identical to the subject 10 trade marks and I opine that they do not fall within TMO s.13(2).
208. As to TMO s.13(3) on “similar marks, identical or similar goods or services”:-
- (a) As to “similar marks”, test in *Pianotist Co’s Application* (1906) 23 RPC 774 is applied for word marks. Test for composite marks in *Diamond T Motor Co’s Application* (1921) 38 RPC 373 is applied. In essence, the

test is set as an imperfect recollection of the mark of a person who is or is not likely to be deceived or confused.

- (b) Upon comparing trade marks search records of the Intellectual Property Department, there are no marks similar to the subject 10 trade marks with identical or similar goods or services, and I opine that they do not fall within TMO s.13(3).
- (c) Moreover, as the companies providing identical or similar goods or services as the Group in Hong Kong does not have similar marks, I opine that the risk of any opponent to oppose on this ground is low.

209. As to TMO s.13(4) on “similar marks, dissimilar goods or services”:-

- (a) The earlier mark must have a reputation, that there must be evidence which shows that the earlier mark and the later mark are in the eyes of the relevant section of the public linked, and finally, that linkage will cause the possibility of unfair taking advantage or detriment. (*Creditmaster Trade Mark* [2005] RPC 21)
- (b) Upon comparing trade marks search records of the Intellectual Property Department, there are no marks similar to the subject 10 trade marks and I opine that they do not fall within TMO s.13(4).
- (c) Moreover, as the business and industry of the Group in Hong Kong is specific, the subject 10 trade marks would not cause confusion to the public for linkage to an earlier mark that has a reputation (if any).

210. As to TMO s.13(5) on law of passing off or by virtue of an earlier right:-

- (a) This sub-section concerns the tort of passing off or infringement of copyright or registered design.
- (b) I am instructed that there are no other companies in the business of the Group with names capable of passing off, given the scale and exposure of the Group in Hong Kong and the specific customer base. I thus opine that the risk of any opponent to oppose on this ground is low.

211. While the period of 3 months’ opposition in respect of most of the above trademarks has not expired, as mentioned above, given that the Group has taken steps to protect the above trademarks by submitting the above trademarks for registration and upon comparing with existing registered trade marks (especially on the trade mark “K” vis-vis application 306594607) of identical/similar/dissimilar goods or services, (i) there are no marks identical to the subject 10 trade marks, (ii) there are no marks similar to the subject 10 trade marks with identical or similar goods or services, (iii) the companies providing identical or similar goods or services as the Group in Hong Kong do not have similar marks, (iv) there are no other companies in the business of the Group with names capable of passing off, given the scale and exposure of the Group in Hong Kong and the specific customer base, I opine that the risk

of any opponent to oppose on this ground is low and hence, the likelihood of success of registration of the 10 trade marks is high.

OPINION ON JOINT VENTURE AGREEMENT

212. I am instructed that WLC and Sinohydro Bureau 16 Company Limited (“SB”) entered into a joint venture agreement dated 1st September 2021. Under the joint venture agreement, WLC and SB formed an unincorporated joint venture (“SBWL JV”) in the proportion of 49% and 51% respectively, for the purpose of the “3303 construction contract” with the Hong Kong International Airport. The parties thereafter entered into a deed of transfer dated 20th September 2021. Under the said deed, it is expressly provided that all interests and liabilities (profit and loss) of WLC’s 49% shares shall be transferred to SB.
213. Upon perusal of the deed of transfer, I opine that as all interests and liabilities of WLC pursuant to the SBWL JV transferred, WLC has no further legal liabilities thereof.

OPINION ON REGULATORY OVERVIEW AND DISCLOSURE

214. Upon perusal of the regulatory overview section in the prospectus, I opine that it is an accurate summary of material Hong Kong laws and regulations applicable to the business of the Group without material omission.
215. I also opine that save as those disclosed in the prospectus, the Group has obtained all requisite licences and approvals from the relevant government authorities for their business operations that such licences and approvals remain valid as at the Latest Practicable Date (“LPD”).
216. I opine that as of the LPD, there are no future changes in laws and regulations of Hong Kong that are expected to have a material impact on the Group’s businesses and operations in Hong Kong.

OPINION ON INSURANCE COVERAGE

217. Upon perusal of the insurance policies taken out by the Group under the ECO, I opine that the Group has sufficient coverage required under the relevant laws of Hong Kong.

OPINION ON LICENCES ET AL.

218. Upon perusal of the Group’s business activities disclosed in has duly obtained all the requisite licences and registrations required for its operations:-

Development Bureau

<u>Company</u>	<u>Licence</u>	<u>Category</u>	<u>Validity</u>
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KCE	List of Public Works Contractors	Roads and Drainage under Group A	Since 26.10.2000
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Construction Industry Council

<u>Company</u>	<u>Licence</u>	<u>Category</u>	<u>Validity</u>
WLC	Registered Specialist Trade Contractor	<ul style="list-style-type: none"> • Concreting • Concreting Formwork • Reinforcement Bar Fixing 	30.03.2023 – 29.03.2026
WLC	Registered Subcontractor	<ul style="list-style-type: none"> • General Civil Works • Electrical • Temporary Electricity Installation 	29.10.2019 – 28.10.2024
TSE	Registered Specialist Trade Contractor	<ul style="list-style-type: none"> • Interior Fitting-out • General Civil Works • Electrical • Temporary Electricity Installation 	19.22.2020 – 18.11.2025

Buildings Department

<u>Company</u>	<u>Licence</u>	<u>Category</u>	<u>Validity</u>
WLC	Registered Minor Works Contractor	Class I, II, III / Type A Class II, III / Type B, D, E, F, G	Until 26.11.2024
WLD	Registered Minor Works Contractor	Class II, III / Type A, B, C, D, E, F, G	Until 19.12.2024
TSE	Registered Minor Works Contractor	Class II, III / Type A, B, C, D, E, F, G	Until 19.12.2024

Electrical and Mechanical Services Department

<u>Company</u>	<u>Licence</u>	<u>Validity</u>
WLC	Registered Electrical Contractor	Until 13.03.2026
WLD	Registered Electrical Contractor	Until 30.05.2027

Environmental Protection Department

<u>Company</u>	<u>Licence</u>	<u>Validity</u>
WLD	Registration for Chemical Waste Producer	Since 08.03.2021

219. I also opine that the workers of the Group have duly obtained the requisite registrations under the Construction Workers Registration Ordinance (Cap.583) and the Electricity (Registration) Regulations (Cap.406D) for such activities:-

- (a) Trade Test Certificate for Plant and Equipment Operatr (Excavator);
- (b) Trade Test Certificate for Concretor;
- (c) Trade Test Certificate for Electrical Fitter;
- (d) Trade Test Certificate for Refrigerating, AC and Ventilation Control (Electrical Control);
- (e) Trade Test Certificate for Paving Block Layer (Concretor);
- (f) Trade Test Certificate for Tunnel Worker;
- (g) Trade Test Certificate for Tiler;
- (h) Trade Test Certificate for Plasterer;
- (i) Trade Test Certificate for Bricklayer;
- (j) Trade Test Certificate for Electric Wireman;
- (k) Trade Test Certificate for Control Panel Assembler;
- (l) Trade Test Certificate for Asphalter (Road Construction);
- (m) Trade Test Certificate for Plant and Equipment Operator (Truck Mounted Crane);
- (n) Trade Test Certificate for Trackworker;
- (o) Trade Test Certificate for Cable Joiner (Low Voltage);
- (p) Trade Test Certificate for Truck Driver (Articulated Vehicle);

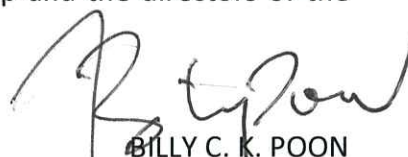
- (q) Trade Test Certificate for Cement Sand Mortar Worker;
 - (r) Trade Test Certificate for Leveller;
 - (s) Trade Test Certificate for Rigger/Mental Formwork Erector; and
 - (t) Grade A, B, H Certificate of Registration of Electrical Worker.
220. I am also instructed that the following certificates has been obtained by the Group:-
- (a) KCE - ISO 9001:2015 (Construction of Civil Engineering Works (Roads and Drainage) - Provision of Alteration & Addition Works);
 - (b) KCE - ISO 14001:2015 (Construction of Civil Engineering Works (Roads and Drainage) - Provision of Alteration & Addition Works);
 - (c) KCE - ISO 45001:2018 (Construction of Civil Engineering Works (Roads and Drainage) - Provision of Alteration & Addition Works);
 - (d) TSE – ISO 9001:2015 (Construction of Building, Building Renovation Works, Trenching and Cable Laying Works for Utility Services, Provision of Interior Decoration Works);
 - (e) WLC – ISO 9001:2015 (Construction of Building, Building Renovation Works, Trenching and Cable Laying Works for Utility Services);
 - (f) WLC – ISO 14001:2015 (Construction of Building, Building Renovation Works, Trenching and Cable Laying Works for Utility Services); and
 - (g) WLC – ISO 45001:2018 (Construction of Building, Building Renovation Works, Trenching and Cable Laying Works for Utility Services).
221. Upon perusal of the papers and instructions given, I opine that there are no legal impediments for application, maintenance and renewal of the licences and certificates.

OPINION ON ENQUIRIES WITH GOVERNMENT AUTHORITIES

222. I am instructed that the Group has made enquiries (the “Enquiries”) to the following government departments and statutory bodies in relation to non-compliance records of the Group and its subsidiaries:-
- (a) Buildings Department
 - (b) Construction Industrial Council
 - (c) Development Bureau
 - (d) Environmental Protection Department
 - (e) Labour Department
 - (f) Immigration Department
 - (g) Mandatory Provident Fund Schemes Authority
 - (h) Food and Environmental Hygiene Department

- (i) Electrical and Mechanical Services Department
- (j) Inland Revenue Department
- (k) Fire Services Department
- (l) Civil Engineering and Development Department
- (m) Competition Commission
- (n) Companies Registry
- (o) Intellectual Property Department

223. Save for the non-compliances as opined hereinabove on, there were no other previous records of non-compliance, complaint, warning, investigation, prosecution action, enforcement action, or disciplinary action as disclosed during the TRP. I opine that no other matters came to my knowledge may cause any material adverse impact on the Group to obtain or renew licences or permits of the Group's operations or the Group and the directors of the company's suitability for listing.



BILLY C. K. POON
BARRISTER-AT-LAW

27th September 2024

**RE: COMPLIANCE MATTERS OF
WING LEE GROUP (HOLDINGS) LIMITED
(THE "COMPANY")
AND
ITS SUBSIDIARIES (THE "GROUP")**

OPINION

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