

Memorandum for the Hong Kong Housing Authority
Labour Dispute of the Cleansing Service Contractor
in Hoi Lai Estate

PURPOSE

Arising from the recent media reports on the labour dispute in Hoi Lai Estate (HLE), this paper provides Members with the relevant information and the latest development on the case.

BACKGROUND

2. The original cleansing service contractor of HLE was Man Shun Hong Kong & Kln. Cleaning Company Limited (Man Shun). Its six-year contract was expired on 31 October 2017. In accordance with the established tendering mechanism, the Housing Authority (HA) awarded a cleansing service contract of HLE to Hong Kong Commercial Cleaning Services Limited (HK Commercial) for providing service with effect from 1 November 2017. Some cleansing workers of Man Shun turned to work for HK Commercial and continued to work in HLE.

3. On 27 December 2017, some 30 outsourced cleansing workers of HLE staged a strike as Man Shun did not pay severance payment to them after they had turned to work for HK Commercial. Also, they were dissatisfied that HK Commercial offered a wage increase of only \$11 monthly. Subsequently, there were media reports on shared office premises by Man Shun and HK Commercial, suspecting that they are related. The media further reported that the cleansing workers and the Cleaning Service Industry Workers Union (Industry Union) had approached the Competition Commission (CC) to complain against the anti-competitive behaviour. The Housing Department (HD) had contacted CC and would co-operate with their follow-up actions. On 2 January 2018, the workers and the Industry Union attended a mediation meeting at the Labour Department (LD). HD's representative also joined the meeting, but no compromise could be reached after negotiation. The workers

continued to go on strike. Afterwards, Man Shun, HK Commercial and the workers held a closed-door discussion. According to media reports on 5 January 2018, the negotiation was successful and the labour strike ended, but the three parties did not disclose any contents of their agreement.

REQUESTS OF THE WORKERS

4. The Industry Union put forward the requests of the cleansing workers of HLE to the Transport and Housing Bureau and the Labour and Welfare Bureau (LWB) separately, including –

- (a) Man Shun to settle the severance payment to the cleansing workers of HLE formally;
- (b) HK Commercial to admit the years of service of HLE cleansing workers when they worked under Man Shun, including arrangement of annual leave, statutory holidays and paid sick leave, etc.; and
- (c) HK Commercial to increase reasonably the wages of the workers in HLE.

5. The Industry Union also appealed to the Financial Services and the Treasury Bureau (FSTB) and asked –

- (a) to ensure outsourced companies to pay workers compensations according to their years of service (such as severance payment) when there is changeover of outsourcing service, or to ensure the workers' years of service would not be suspended due to changeover of outsourcing service which in turn affecting their rights and interests;
- (b) to raise the proportion of workers' wages in the tender score substantially in order to prevent the tendering mechanism becoming a game of contract award to the lowest price bid; and
- (c) to introduce the industry median wage as the minimum wage so that the salaries of the government outsourced workers will not be less than that of the market.

6. In addition, individual parties also furnished various views, which include –

- (a) ceasing unnecessary outsourcing, and resuming appointment of civil servants for posts with long-term need;
- (b) requiring contractors to pay gratuities to outsourced workers, so as to avoid the contractors evading their liability for severance payment through various means;
- (c) setting a “sustainable living wage” for outsourced workers of the Government, the level of which should be sufficient for the workers and their families to maintain a basic livelihood; and
- (d) requiring the incoming contractors to admit the outsourced workers’ years of service in the outgoing contract in order to ensure that outsourced workers serving the same post for years may enjoy their deserved statutory rights and benefits.

EMPLOYMENT LEGISLATION

7. Regarding the severance payment mentioned by the employees, Employment Ordinance stipulates that if employees are employed under a continuous contract of not less than 24 months, they can be given severance payment upon the expiry of the fixed-term employment contract when the contract is not renewed due to dismissal. If in not less than 7 days before the date of contract termination or contract expiry, the employer has offered an employee in writing to renew the contract of employment or re-engage an employee under a new contract and the contract terms are the same as or not worse than the former contract ones, but the employee has unreasonably refused the offer, the employee is not eligible for the severance payment. In general, if there is a dispute between employers and employees, LD will provide mediation service to both parties. If both parties cannot reach an agreement at the end, LD will refer the case to relevant court to handle on the Plaintiff’s request. Relevant extracts from “A Concise Guide to the Employment Ordinance” were at **Annex A**.

8. To safeguard the statutory rights and interests of the workers, HA has stipulated in the contract terms that, apart from compliance with Hong Kong laws and regulations (including the Employment Ordinance), contractors are required to enter into employment contracts with their workers (including relievers, part-time workers and temporary workers) who have worked for more than 7 days. If that worker is a non-skilled employee (including cleansing

worker), the contractor is further required to enter into employment contract with the employee by using the Government's "Standard Employment Contract" (SEC) so as to provide further rights and interests for that kind of employees.

----- The prevailing Government's SEC is at **Annex B**.

9. In addition, the contracts between HA and cleansing service contractors specify that contractors are required to pay their non-skilled workers a monthly wage of not less than the monthly wage they priced in their respective contracts (i.e. the Committed Wage), to commit the maximum daily working hours of the workers and to pay wages by auto-pay. In case of non-compliance, HA will issue one default notice and allot one demerit point to the contractor under the Demerit Point System. If three demerit points have been deducted within a 36-month rolling period, HA will terminate the contract.

10, LD has all along been paying close attention to and following up on the development of the HLE incident and the requests of the affected cleansing workers, and conducted mediation for the employers and employees after the incident was made known to them. Up to date, LD has not received any complaints that someone has breached the Employment Ordinance in the HLE incident.

11. On 9 January 2018, LWB said that they had decided to set up an inter-bureau/departmental Working Group in end August 2017 with members from LWB, FSTB and those major departments procuring outsourced service (such as the Food and Environmental Hygiene Department, Leisure and Cultural Services Department, HD, etc.), to explore ways on how to improve the tendering system in outsourcing government contracts and strengthen the protection of the employees employed for the service on reasonable remuneration as well as rights and interests. On 11 January 2018, the Chief Executive in the Question and Answer session of the Legislative Council mentioned about the interdepartmental Working Group led by LWB that it had worked for some time and would complete the work as soon as possible.

12. HD will continue to participate in the discussions. If the Government promulgates new measures (such as a new SEC or new tendering arrangement), we will consider including it in HA's system as in the past. As for problems of contract bid-rigging and tender monitoring, or for issues relating to open competition, they would be handled by individual responsible departments or followed up according to relevant legislations.

COMPETITION ORDINANCE

13. Some individuals concerned whether the incident involved anti-competitive behaviour and whether HA's procurement system can effectively prevent such anti-competitive behaviour.

14. Competition Ordinance (CO) was in full implementation in December 2015, identifying various kinds of anti-competitive behaviour. The website of CC states that price fixing would lead to an increase in the price of goods and a decrease in its quality which is a serious anti-competitive behaviour under CO. For information about anti-competitive behaviour, the relevant parts of the "Guideline - The First Conduct Rule" in response to the CO issued by the CC are at **Annex C**. Regarding the HLE incident, CC mentioned that they had received a related complaint and would look into it. HA will render full assistance to CC's follow-up actions.

15. HA's contracts with contractor specify that contractors must comply with the laws of Hong Kong. Some areas in HA's procurement system are also related to the prevention of anti-competitive behaviour (see paragraph 16(a) below). HA will cooperate with CC on their follow up actions of the incident. Moreover, HA will consider any suggestions on procurement system if put forward by CC.

HOUSING AUTHORITY'S PROCUREMENT SYSTEM

16. Regarding the concerns arising from this incident, relevant areas in HA's system include –

- (a) HA contracts have stipulated that contractors have to comply with the laws of Hong Kong, including the laws relating to labour and competition. If contractors are confirmed to have breached the contract, depending on the actual circumstances and seriousness of the case, HA will take appropriate regulatory actions, including removal from the List of Cleansing Service Contractors (the List), restriction or suspension from tendering, and contract termination, etc.
- (b) In contracts signed by HA and contractors, it has stipulated that contractors must use the Government's SEC at **Annex B**, which covers clear terms of employment, as the employment contract with their non-skilled employees. If the contractors are confirmed to have breached the contract requirements (such as failure to sign SEC with non-skilled workers or to fulfill the contract terms),

HA may take regulatory actions as mentioned in paragraph 16(a) above, depending on the actual circumstances and seriousness of the case.

- (c) HA has set up the List, through which the performance of contractors will be monitored continuously in every aspect, including the performance and records mentioned in paragraphs 16(a) and 16(b) above.
- (d) HA strives to enhance tendering competition through list management. Corresponding measures include setting up workload capping limits for different bands of contractors. Hence, HA introduces measures to mitigate companies with actual relationship to make use of their legal entity to circumvent the restriction on workload capping limits. Companies are deemed to be related if their relationship falls within the meaning of “related parties” as defined in the Hong Kong Institute of Certified Public Accountants – Hong Kong Accounting Standard (HKAS 24) on Related Party Disclosures. Related companies if admitted onto and retained on the List shall each give an undertaking that only one company will submit a tender for a particular contract. Failure to observe the undertaking will render their tenders submitted null and void.

17. We are preparing to give a brief report at the Tender Committee scheduled for 18 January 2018 and solicit Members’ views.

INFORMATION

18. This paper is issued for Members’ information.

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File Ref. : HD 3-8/ES/1-55/5
(Estate Management Division)

Date of Issue : 15 January 2018

c.c. Members of the Subsidised Housing Committee
Members of the Tender Committee

A Concise Guide to the Employment Ordinance

Extracted from: <http://www.labour.gov.hk/eng/public/ConciseGuide.htm>
 (Labour Department > Publications > A Concise Guide to the Employment Ordinance > Chapter 11: Severance Payment and Long Service Payment)

Chapter 11: Severance Payment and Long Service Payment

Eligibility for Severance Payment and Long Service Payment

An employee is eligible for severance payment or long service payment subject to the following conditions:

Entitlement	Severance Payment	Long Service Payment
Qualifying period of employment	not less than 24 months under a continuous contract	not less than 5 years under a continuous contract
Conditions/ Requirements	The employee is dismissed by reason of redundancy*	The employee is dismissed but : <ul style="list-style-type: none"> • he is not summarily dismissed due to his serious misconduct • his dismissal is not by reason of redundancy
	Employment contract of a fixed term expires without being renewed by reason of redundancy*	Employment contract of a fixed term expires without being renewed*
	The employee is laid off	
The employee resigns on ground of ill health		
The employee, aged 65 or above, resigns on ground of old age		

* If not less than 7 days before the date of dismissal/ expiry of the fixed term contract in case of severance payment, and not less than 7 days before the expiry of the fixed term contract in case of long service payment, the employer has offered in writing to renew the contract of employment or re-engage him under a new contract but the employee has unreasonably refused the offer, the employee is not eligible for the entitlements.

NOTE : An employee will not be simultaneously entitled to both long service payment and severance payment.

Meaning of Redundancy

An employee is taken to be dismissed by reason of redundancy if the dismissal is due to the fact that:

- the employer closes or intends to close his business;
- the employer has ceased, or intends to cease, the business in the place where the employee was employed; or
- the requirement of the business for employees to carry out work of a particular kind, or for the employee to carry out work of a particular kind in the place where the employee was employed, ceases or diminishes or is expected to cease or diminish.

Meaning of Lay-off

If an employee is employed on such terms and conditions that his remuneration depends on his being provided by the employer with work of the kind he is employed to do, he shall be taken to be laid off if the total number of days on which no work is provided or no wages is paid exceeds:

- half of the total number of normal working days in any four consecutive weeks; or
- one-third of the total number of normal working days in any 26 consecutive weeks.

The days of lock-out, rest days, annual leave and statutory holidays should not be counted as normal working days during the above periods.

Amount of Severance Payment/ Long Service Payment

The following formula applies to the calculation of both severance payment and long service payment:

Monthly-paid employee	(last month wages* X 2/3) [#] X	reckonable years of service
Daily-rated/piece-rated employee	(any 18 days' wages* chosen by the employee out of his last 30 normal working days) [#] X	reckonable years of service

Service of an incomplete year should be calculated on a pro rata basis.

* An employee may also elect to use his average wages in the last 12 months for the calculation.

[#] The sum should not exceed 2/3 of \$22,500 (i.e. \$15,000).

- **Reckonable Years of Service**

For all manual employees and non-manual employees whose average monthly wages did not exceed \$15,000 for the 12 months preceding 8 June 1990, if the relevant date of termination of employment occurs on or after 1 October 2004, the years of service should be reckoned in full.

For non-manual employees whose average monthly wages exceeded \$15,000 for the 12 months preceding 8 June 1990, their years of service can be reckoned up to 1980.

- **Maximum Amount**

If the relevant date of termination of employment occurs on or after 1 October 2003, the maximum amount of severance payment or long service payment is \$390,000.

Payment of Severance Payment

An employee who wishes to claim for severance payment should serve a

written notice to his employer within three months after the dismissal/ lay off takes effect. The deadline for serving such notice may be extended if approved by the Commissioner for Labour.

The employer shall make the severance payment to the employee not later than two months from the receipt of such a notice.

Offences and Penalties

An employer who without reasonable excuse fails to pay severance payment to an employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

Payment of Long Service Payment

Long service payment should be paid to an employee within seven days after the date of termination of employment contract.

Offences and Penalties

An employer who wilfully and without reasonable excuse fails to pay long service payment to an employee is liable to prosecution and, upon conviction, to a fine of \$350,000 and to imprisonment for three years.

Offsetting of Severance Payment/ Long Service Payment against Mandatory Provident Fund Scheme benefit, Occupational Retirement Scheme benefit or Gratuity based on length of service

If an employee becomes entitled to severance payment or long service payment and:

- gratuities based on length of service or occupational retirement scheme benefits (excluding any part attributable to employee's contributions) have been paid to the employee; or
- accrued benefit (excluding any part attributable to employee's contributions) is being held in a mandatory provident fund scheme in respect of the employee, or has been paid to the employee,

the severance payment / long service payment is to be offset against the aforementioned amount of gratuities and benefits to the extent that they relate to the employee's years of service for which the severance payment/ long service payment is payable.

(For enquiries on application for payment of an amount from the occupational retirement scheme benefits or accrued benefit in the mandatory provident fund scheme due to severance payment / long service payment paid / payable to an employee, please contact the trustees concerned for details.)

Claiming Long Service Payment on the ground of Ill Health

An employee claiming for long service payment on ground of ill health should forward to the employer a certificate in the form specified by the Commissioner for Labour and issued by a registered medical practitioner or a registered Chinese medicine practitioner, certifying that he is permanently unfit for his present job.

Regardless of whether the certificate produced by the employee was issued by a registered medical practitioner or registered Chinese medicine practitioner, an employer may, within 14 days after receiving such certificate, at the employer's own expense, arrange for the employee to attend another medical examination conducted by a registered medical practitioner or registered Chinese medicine practitioner named by the employer to obtain a second opinion as to the employee's permanent unfitness to undertake the work at issue. The employer should notify the employee in writing details of the appointment not later than 48 hours before the examination is to take place.

Claiming Long Service Payment in the event of the Death of an Employee

Priority in claiming long service payment

- 1st the spouse of the deceased employee
- 2nd children of the deceased employee (if two or more persons apply, the long service payment should be divided equally between them)
- 3rd parents of the deceased employee (if two or more persons apply, the long service payment should be divided equally between them)
- 4th the personal representative of the deceased employee

Application Procedures

The person who wishes to claim for long service payment must serve an application in a specified form to the employer within 30 days after the death of the employee. Where necessary, the Commissioner for Labour may extend the deadline. The form is available at any branch office of the Labour Relations Division.

The employer shall make the payment of Long Service Payment to :

the spouse of the employee	within 7 days after receiving the application
other applicants	within 7 days after the application period expires

Offences and Penalties

An employer who without reasonable excuse fails to pay long service payment to the beneficiaries of a deceased employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

Standard Employment Contract
for Employees of Contractors of Government Service Contract (Note 1)
Government Service Contract No.: _____ (Note 2)

This employment contract is made between _____
 (“the Employer”) at the address of _____
 _____ and Mr/Ms* _____
 (Hong Kong Identity Card No. _____) (“the Employee”) at the address
 of _____. The Employer and the Employee
 understand and agree to observe the terms of employment set out below. Both parties understand that
 this employment contract is governed by the laws of Hong Kong, in particular, the Employment
 Ordinance, Chapter 57, the Employees’ Compensation Ordinance, Chapter 282 and the Minimum Wage
 Ordinance, Chapter 608. Both parties acknowledge that they have read the attached Guidance Notes on
 Signing of Standard Employment Contract (“the Guidance Notes”).

1. This employment contract shall commence on _____ (day/month/year).
2. The Employee shall be employed by the Employer as _____ (post title).
 The place of work is _____ (as
 specified in government service contract no.: _____ (Note 2)).
 If necessary, the Employer shall be allowed to deploy the Employee to work
 within _____ region (Note 3) under an urgent
 situation or on an ad hoc and limited basis in the course of this employment contract. (Note 4)
3. (a) The Employee shall work _____ days a week, and his/her daily working hours shall
 be: (Note 5)
 - _____ a.m./p.m.* to _____ a.m./p.m.* and _____ a.m./p.m.* to
 _____ a.m./p.m.*
 - on
 shift _____ a.m./p.m.* to _____ a.m./p.m.* and _____ a.m./p.m.* to _____ a.m./p.m.*;
 _____ a.m./p.m.* to _____ a.m./p.m.* and _____ a.m./p.m.* to _____ a.m./p.m.*; or
 _____ a.m./p.m.* to _____ a.m./p.m.* and _____ a.m./p.m.* to _____ a.m./p.m.*
- (b) The meal time of the Employee shall be from _____ a.m./p.m.* to _____
 a.m./p.m.* / _____ hour(s)/minutes* per day and is:
 - counted as hours worked and its pay has been included in the monthly wages payable
 under Clause 6(a); (Note 6)
 - not counted as hours worked and shall be paid at the rate of HK\$ _____ per day on
 top of the monthly wages payable under Clause 6(a);
 - not counted as hours worked and no payment will be made in this respect.

Under exceptional circumstances and at the request of the relevant procuring department, the Employer may make appropriate adjustment to the above working hours, provided that such adjustment should be on an ad hoc basis and it should not affect the original number of working hours in a day of the Employee.

4. The Employee is entitled to 1 paid rest day in every period of 7 days. The paid rest day for the Employee shall be on every _____ / granted on an irregular basis* (in which case the Employer must inform the Employee in writing of the appointed paid rest days, or exhibit the Employee's roster of paid rest days in a conspicuous place in the place of employment, before the beginning of each month). The rest day pay of the Employee shall be a sum equivalent to the pay for the Employee's work on a normal working day (excluding overtime pay).
5. Contractual day-off other than paid rest days as specified in Clause 4 shall be (if applicable):
- paid at the rate of HK\$ _____ per day/a sum equivalent to the pay for the Employee's work on a normal working day* on top of the monthly wages payable under Clause 6(a).
 - unpaid.
6. If the Employee works in accordance with the working hours as specified in Clause 3(a) of this employment contract, he/she shall receive:
- (a) monthly wages (excluding any overtime pay) of HK\$ _____, which shall include wages for hours worked by the Employee on his/her normal working days and rest day pay as specified in Clause 4. (Note 6)
- Irrespective of the number of days in a particular month, the Employee shall be paid monthly wages equivalent to the wages specified in this employment contract. The Employee's deductions for absence from work shall be calculated on the basis of the number of normal working days plus paid rest days in a particular month.
- wages for working in each workplace calculated pro rata according to the monthly wages specified in the Tables under Clause 2 of the Schedule if he/she is employed to work for the Employer under different government service contracts undertaken by the Employer in the same region. (The Schedule to this employment contract must also be completed.)
- Any allowance shall be paid on top of the above wages.
- (b) the overtime pay and pay for work on rest day/contractual day-off shall be _____% (the entered figure must not be less than 100) of the wage rate for the Employee's work on his/her normal working days if the Employee is required to work beyond the working hours as specified in Clause 3(a) of this employment contract or on a rest day/contractual day-off. (Note 7)
- (c) the pay for meal time if the periods of meal time as specified in Clause 3(b) are not counted as hours worked and are payable.
- (d) the pay for contractual day-off, if any, as specified in Clause 5.
- (e) additional remuneration, if any, in accordance with the Minimum Wage Ordinance. (Note 8)
- (f) any other sum payable to the Employee under the provisions of this employment contract or the laws of Hong Kong.

7. The wage period shall be one month. Wages (including overtime pay and other sum payable under Clause 6, if any) shall be paid in any case not later than 7 days after the expiry of the wage period. Similarly, wages and any sum due to the Employee (including any other sums due in respect of this employment contract, if any) must be paid not later than 7 days after the termination of the employment contract.
8. The Employer and the Employee agree that all wages (including overtime pay and other sum payable under Clause 6 but excluding any sum payable upon termination of this employment contract) shall be paid directly by way of automatic payment into a bank account in the Employee's name with a bank licensed under the Banking Ordinance, Chapter 155. The Employer shall also provide a wage record (pay slip) setting out the breakdown of wages for each wage period to the Employee for reference. If the Employee agrees, the Employer may pay the sum payable upon termination of this employment contract (including wages) by cheque not later than 7 days after the termination of the contract.
9. No deductions shall be made by the Employer from the wages of the Employee other than permitted deductions made in accordance with the Employment Ordinance and the Employee's contribution in accordance with the Mandatory Provident Fund Schemes Ordinance, Chapter 485, and the sum to be deducted shall not exceed the limit stipulated therein. Subject to the provisions of the law, any operating and/or administrative costs due to wear and tear of fixed assets and equipment including expenses on uniforms (clothing, shoes, socks, etc.), training fees, administrative costs, cleaning fees, tool charges, travelling expenses, deposits, etc, and any sum and/or deductions imposed on the Employer by the procuring department pursuant to the terms of the relevant government service contract shall be borne by the Employer and not be charged to the Employee or recovered by deductions from the Employee's wages.
10. The Employee shall be entitled to statutory rights and benefits and the relevant protection such as rest days, statutory holidays, paid annual leave, maternity leave, paternity leave and sickness allowance in accordance with the Employment Ordinance.
11. The Employer shall arrange the Employee to take rest days, statutory holidays and paid annual leave on separate dates in accordance with the Employment Ordinance. These holidays must not be substituted by each other.
12. The Employer shall comply with the provisions of the Employees' Compensation Ordinance. The Employee shall be entitled to the rights, benefits and protection provided under the Employees' Compensation Ordinance.
13. The Employee is/is not* required to obtain a security personnel permit according to the requirements of the Security and Guarding Services Ordinance, Chapter 460. (Note 9)
14. The Employer shall arrange the Employee to enrol as a member of a mandatory provident fund scheme and pay the contribution to the relevant registered scheme each month in accordance with the Mandatory Provident Fund Schemes Ordinance. The Employer shall issue to the Employee a record of mandatory provident fund contribution within 7 working days after each monthly contribution.

15. When typhoon signal no. 8 or above is hoisted,
- the Employee is not required to work and no wages shall be deducted. The Employee is required to resume duty if typhoon signal no. 8 is lowered not less than _____ hours before close of working hours.
 - the Employee is required to work and is entitled to reimbursement of extra travelling expenses.
 - the Employee is required to work and is entitled to a typhoon allowance of HK\$_____.
16. When black rainstorm warning is hoisted,
- the Employee is not required to work and no wages shall be deducted. The Employee is required to resume duty if the black rainstorm warning is lowered not less than _____ hours before close of working hours.
 - the Employee is required to work and is entitled to reimbursement of extra travelling expenses.
 - the Employee is required to work and is entitled to a rainstorm allowance of HK\$_____.
- 17*. The probation period of the Employee shall be _____ day(s)/month(s) *.
18. Either party may terminate this employment contract under the following circumstances:
- During the first month of the probation period, both parties are not required to give notice or payment in lieu of notice. During the rest of the probation period, a notice period of _____ day(s)/month(s) * or payment in lieu of notice is required.
After the probation period, a notice period of _____ day(s)/month(s) * or payment in lieu of notice is required.
 - There is no probation period, a notice period of _____ day(s)/month(s) * or payment in lieu of notice is required.
19. Should there be any legislative amendment to the relevant legislation subsequent to the signing of this employment contract which in effect confers more favourable terms on the Employee than what he/she is entitled to under this employment contract, the provision of the legislation shall prevail and the employment contract shall be taken to be varied accordingly. Should the rights and benefits conferred on the Employee after the legislative amendment be still less favourable than the terms of this employment contract, the terms of this employment contract shall prevail.
20. The Employer shall provide a copy of this employment contract signed by both parties (including the Schedule to this employment contract, if any, and the attached Guidance Notes on Signing of Standard Employment Contract) to the Employee for his/her retention.
21. Any variation, amendment, cancellation or addition to any terms of this employment contract (including the Schedule) must not extinguish or reduce any right, benefit or protection conferred upon the Employee by this employment contract, and must be duly signed by both parties, otherwise it shall be void. The Employer shall provide a copy of the amendments duly signed by both parties to the Employee for retention.

22. The Employee consents to the Employer providing his/her wage records, attendance records and other relevant information to _____ [name(s) of procuring department(s)] (Note 10) for the purpose of monitoring the Employer’s fulfillment of employment-related obligations under the government service contract(s).
23. The Employee consents to the Employer providing copies of this signed employment contract together with the amendments, if any, to _____ [name(s) of procuring department(s)](Note 10) for record and for the purpose of monitoring the Employer’s compliance with the government service contract(s). The Employee also consents to the procuring department(s) providing copies of this signed employment contract together with any amendments, and any other relevant information to other government departments and enforcement agencies for the purpose of monitoring the Employer’s compliance with the relevant legislation.

Employee’s signature

Signature of Employer or Employer’s representative

Name: _____
HK Identity Card No.: _____
Date: _____

Name: _____
Post: _____
Date: _____

Company Chop

- * Delete whichever is inapplicable
 Please mark a “✓” at the appropriate box

Notes:

- Note 1: In accordance with the relevant mandatory requirements specified in government service contracts, government service contractors are required to enter into this Standard Employment Contract with each and every employee who is employed to work under government service contracts for more than 7 days in posts which signing of Standard Employment Contract is specified in the relevant government service contracts.
- Note 2: If the Employee is employed by the Employer to work under more than one government service contract undertaken by the Employer in the same region, the parties must also complete the Schedule but are not required to fill in the government service contract no., Clause 2, Clause 3 and Clause 6(b) of this employment contract.
- Note 3: “Region” refers to an area delineated under the Declaration of Geographical Constituencies (Legislative Council) Order 2011, with the exception of Islands District which is separated from New Territories West. As such, there are 6 relevant regions, namely, Hong Kong Island,

Kowloon West, Kowloon East, New Territories West, New Territories East and Islands District. The parties shall state one region only in accordance with the area of the place of work specified in Clause 2.

- Note 4: Clause 2 of this employment contract only provides for deployment of the Employee to work within the region specified in Clause 2 of this employment contract under an urgent situation or on an ad hoc and limited basis in the course of this employment contract and is not applicable to any redeployment of the Employee to other posts or work places as a result of the termination of this employment contract or expiry of the government service contract specified in Clause 2 of this employment contract, which shall be subject to the mutual agreement between the Employer and the Employee and relevant provisions of the Employment Ordinance.
- Note 5: The Employer has committed in the relevant government service contract that the Employee's maximum number of working hours in a day shall be _____ hours.
- Note 6: (i) The wage rate of the monthly wages specified in Clause 6(a) of this employment contract shall not be less than the wage rate of the monthly wages committed by the Employer in the relevant government service contract or with reference to paragraph 2 of the Guidance Notes any adjusted wage level brought about by future revisions of the prescribed minimum hourly wage rate under the Minimum Wage Ordinance, whichever is higher. Employees with disabilities are entitled to the same monthly wage rate committed by the employer in the relevant government service contract.
- (ii) The wage rate of the monthly wages specified in Clause 6(a) of this employment contract shall be calculated based on the maximum number of _____ normal working days plus paid rest days per month and the average number of _____ normal hours of work per day. If the period of meal time as specified in Clause 3(b) of this employment contract is counted as hours worked, such period shall be included in the above average number of normal hours of work per day for derivation of the monthly wages.
- (iii) The wage rate of the monthly wages of HK\$ _____ committed by the Employer in the relevant government service contract is calculated on the basis of 31 days (27 normal working days plus 4 paid rest days) per month and the average number of _____ normal hours of work per day. For the avoidance of doubt, the Employee is entitled to 1 paid rest day in every period of 7 days in accordance with Clause 4 of this employment contract.
- Note 7: The wage rates of overtime pay and pay for work on rest day/contractual day-off specified in Clause 6(b) of this employment contract shall not be less than 100% of the wage rates calculated using the monthly wages specified in Clause 6(a) of this employment contract and the number of normal working days plus paid rest days in the month and the average number of normal hours of work per day specified in Note 6(ii).
- Note 8: Under the Minimum Wage Ordinance, the minimum wage for an employee for a wage period is the amount derived by multiplying the total number of hours (including any part of an hour) worked by the employee in the wage period by the minimum hourly wage rate for the employee provided by the Ordinance. A payment made to an employee in any wage period for any time that is not hours worked by the employee must not be counted as part of the wages payable in respect of that or any other wage period. If the wages payable to an employee in respect of any wage period are less than the minimum wage for the employee for that period, the employee is entitled to additional remuneration in respect of that period of the amount derived by subtracting from that minimum wage the amount of wages that is payable in respect of that period.
- Note 9: All employees employed to perform security work are required to obtain a permit in accordance with the Security and Guarding Services Ordinance.
- Note 10: If the Employee is employed by the Employer to work under more than one government service contract, the names of all relevant procuring departments have to be filled in Clause 22 and Clause 23 of this employment contract.

Guideline - The First Conduct Rule**(27 July 2015)**

Extracted from:

https://www.compcomm.hk/en/legislation_guidance/guidance/first_conduct_rule/files/Guideline_The_First_Conduct_Rule_Eng.pdf

(Competition Commission website: Home >Legislation & Guidance > Guideline on the First Conduct Rule)

5 Serious Anti-competitive Conduct

- 5.1 Where the Commission has reasonable cause to believe that a contravention of the First Conduct Rule has occurred and the contravention does not involve Serious Anticompetitive Conduct, the Commission must, before bringing proceedings in the Tribunal against the undertaking whose conduct is alleged to constitute the contravention, issue a Warning Notice under section 82 of the Ordinance to the undertaking concerned. The Warning Notice procedure affords an undertaking an opportunity to cease or alter the investigated conduct within a specified warning period.
- 5.2 In cases of Serious Anti-competitive Conduct:
- (a) the Commission may institute proceedings before the Tribunal without following the Warning Notice procedure; and
 - (b) the general exclusion for agreements of lesser significance contained in section 5, Schedule 1 to the Ordinance does not apply.
- 5.3 Serious Anti-competitive Conduct is a defined term in the Ordinance. Section 2(1) of the Ordinance defines Serious Anti-competitive Conduct to mean:
- “any conduct that consists of any of the following or any combination of the following –
- (a) fixing, maintaining, increasing or controlling the price for the supply of goods or services;
 - (b) allocating sales, territories, customers or markets for the production or supply of goods or services;
 - (c) fixing, maintaining, controlling, preventing, limiting or eliminating the production or supply of goods or services;
 - (d) bid-rigging.”
- 5.4 The Commission takes the view that cartel arrangements between competitors (horizontal arrangements) that seek to fix prices, share markets, restrict output or rig bids are forms of Serious Anti-competitive Conduct.
- 5.5 Vertical arrangements are, as a general matter, unlikely to be considered Serious Anticompetitive Conduct although the definition of Serious Anti-competitive Conduct does not preclude the possibility (there is no reference in the definition to “competitors”).
- 5.6 The Commission considers, however, that vertical arrangements may amount to Serious Anti-competitive Conduct in certain cases. For example, in certain circumstances, resale price maintenance may be Serious Anti-competitive Conduct.
- 5.7 Whether conduct is considered Serious Anti-competitive Conduct is not part of the determination of whether the conduct contravenes the First Conduct Rule because it has the object or effect of harming competition. The issue of whether the conduct is considered Serious Anti-competitive Conduct only arises after the Commission forms the view that the

conduct contravenes the First Conduct Rule. Conduct that is Serious Anti-competitive Conduct may contravene the First Conduct Rule where it has either the object or effect of harming competition.

Price Fixing

- 6.10 Agreements between competitors with the aim of fixing, maintaining, increasing or otherwise controlling prices (generally termed price fixing agreements) are examples of agreements with the object of harming competition.
- 6.11 Horizontal price fixing may take a number of forms. It may, for example, involve directly agreeing upon a specified price, the amount or percentage by which prices are to be increased or a price range. Price in this context includes any element of price and, in particular, includes any discount, rebate, allowance, price concession or other advantage in relation to the supply of products. An agreement with respect to an element of price amounts to price fixing.
- 6.12 Price fixing can be achieved by indirect means. This includes where, for example, undertakings agree not to quote a price without consulting competitors, or not to charge less than any other price in the market. Similarly, the exchange of information on future price intentions may be assessed as price fixing.
- 6.13 An agreement concerning price may still amount to price fixing even if it does not entirely the ability to grant discounts up to a certain agreed level on a published list price or notwithstanding that parties only fix one price component while competing on others.
- 6.14 Price fixing might arise through the activities of a trade association or professional body. For example, the association might issue a recommendation to members on prices and/or publish (possibly non-binding) fee scales for members. The non-binding price recommendations or fee scales of a trade association will likely be assessed as having the object of harming competition, as ultimately these arrangements may not differ in substance to a direct agreement or concerted practice between the members of the association.
- 6.15 The Commission considers that horizontal price fixing agreements are Serious Anticompetitive Conduct under the Ordinance.
- 6.16 The Commission notes that certain legitimate commercial arrangements may involve parties agreeing on pricing within the context of the relevant arrangements. For example, the parties to a production joint venture might agree that the joint venture will sell its jointly produced products at a particular price. In this respect, the Commission takes the view that the joint setting of the price of such products will not be considered as having the object of harming competition if, for example, the joint sales are necessary for the joint production to be implemented.

Bid-Rigging

- 6.26 Bid-rigging generally involves two or more undertakings agreeing that they will not compete with one another for particular projects. For example, they might agree among themselves which bidder will be the winner – the outcome of an ostensibly competitive process is “rigged” .
- 6.27 Bid-rigging is defined in section 2(2) of the Ordinance for the purposes of determining whether the conduct is Serious Anti-competitive Conduct in the form of bid-rigging. Bid-rigging which contravenes the First Conduct Rule is not, however, necessarily limited to the conduct defined in section 2(2). For example, as stated in section 2(2) of the Ordinance, if the bid-rigging is “made known to the person calling for or requesting bids at or before the time when a bid is submitted or withdrawn by a party ”, the conduct does not fall within the

definition of bid-rigging in section 2(2) and is, therefore, not Serious Anti-competitive Conduct in the form of bid-rigging. The bid-rigging conduct may, however, still contravene the First Conduct Rule if it has the object or effect of harming competition.

- 6.28 Bid-rigging can take a number of forms, including undertakings agreeing:
- (a) that certain parties will not submit a bid or will withdraw a bid submitted previously (“bid suppression”);
 - (b) to take turns at being the winning bidder (“bid rotation”);
 - (c) that certain bidders will submit higher bid prices or less attractive terms than the supplier “chosen” to win the tender (“cover bidding”); or
 - (d) to take other actions that reduce the competitive tension in the bidding process, such as by agreeing minimum bidding prices or agreeing that the winning bidder will reimburse other bidders’ bid costs.
- 6.29 Bid-rigging is inherently anti-competitive and has the object of harming competition in contravention of the First Conduct Rule.
- 6.30 Bid-rigging practices should be distinguished from legitimate forms of joint tendering. While bid-rigging will be considered as having the object of harming competition, joint tendering will generally be assessed by reference to its actual or likely effects on competition. Joint tendering is discussed further in paragraphs 6.101 to 6.106 of this Guideline.