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LOWER ALBERT ROAD HONG KONG

OUR REF.:
YOUR REF.:

18 September 1998

Mr Jimmy Tse
President
Hong Kong Construction Association Ltd
3/F, 180-182 Hennessy Road
Wanchai
Hong Kong

Dear Mr Tse,

Illegal Workers on Construction Sites

Thank you for passing to us a copy of the draft code of practice on preventing illegal workers working on construction sites. We had a very useful discussion on the subject yesterday morning when the Secretary for Security met with you and your colleagues from the Hong Kong Construction Association, together with the Hon. Ron Acrulli.

We welcome the Association's initiative to prepare the code to assist its members in complying with the proposed new legislation. This is a good start, but as you know, it is not possible to draw up an exhaustive list of steps that should be taken, and compliance with the code will not by itself constitute a defence in court. What "all practicable steps" involve in each case is ultimately a matter for the courts to decide, having regard to all the relevant circumstances of the particular case.

The attached case of R.v. Shun Shing Construction and Engineering Company provides useful reference to the term "all practicable steps". According to the judgment, the term means steps that are "feasible and capable of being carried out within known means or resources". It does not impose an absolute duty. The term "all practicable steps" has been used not only in the Immigration Ordinance but also in a number of other Ordinances. A list of the relevant provisions is attached for reference.

/Our specific

Our specific comments on the guidance notes and the code are as follows:-

Guidance Note

General

You may wish to explain to your members that under the existing section 38A of Immigration Ordinance, “construction site controller” means a principal or main contractor and includes a subcontractor, occupier or other person who has control over or is in charge of a construction site. This definition will continue to be adopted in the new legislation.

References to “not legally employable” should be amended to “not lawfully employable” to be in line with the Immigration Ordinance.

Paragraph 1

The paragraph should be amended to read “The Government proposes to amend section 38A of the Immigration Ordinance to hold construction site controllers liable if persons who are not lawfully employable breach their conditions of stay by taking employment on construction sites. This will extend the scope of prohibition from illegal immigrants present on the sites to persons not lawfully employable (e.g. Two-way Permit holders) who have taken employment on the sites.”

Code of Practice

Paragraph 4.2 (about establishing contact with the Police)

We agree that construction site controllers should take initiatives to establish effective contact with the Police.

Paragraph 4.3 (about discussion on security arrangements)

The issue of security arrangements should be more properly handled and co-ordinated by the Crime Prevention Bureau of the Police instead of the local police station.

/Paragraph 4.4

Paragraph 4.4 (about setting up a Police hot-line for contractors to report suspected situations)

We have reservations about setting up a Police hot-line. Site contractors should be encouraged to call the local police station for routine matters and “999” for emergencies.

You may rest assured that the primary targets of enforcement remain those responsible for the employment of illegal workers. The current and proposed legislation will enable the Government to prosecute sub-contractors and other persons hiring persons not lawfully employable.

As discussed at our meeting, the Crime Prevention Bureau of the Police stands ready to offer advice on the necessary security measures for preventing illegal entry into construction sites and the steps that may be taken to prevent illegal employment.

Yours sincerely,

(K S SO)
for Secretary for Security

Encl

c.c. The Hon. Ronald Arculli

b.c.c. D of Imm (Attn : Mr K Y Mak)
CP (Attn : Mr Tsang Kwong-ming)

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Search Results . . .**13 section(s) found**

	Version Date
(1) Cap 486 SCHED 1	30/06/97
(2) Cap 324 SECT 8 Liability of company, directors, etc.	30/06/97
(3) Cap 115 SECT 17I Offence to be employer of a person who is not lawfully employable	30/06/97
(4) Cap 115 SECT 38A Site controller commits offence if illegal immigrant on construction site	30/06/97
(5) Cap 109 SECT 46A Liability for acts of servants	30/06/97
(6) Cap 502 SECT 8A Effect of prohibition order	01/06/98
(7) Cap 134 SECT 11 Requirements to be complied with in relation to import of dangerous drug	30/06/97
(8) Cap 134 SECT 14 Dangerous drug in transit	30/06/97
(9) Cap 59 SECT 18 Onus of proving limits of what is practicable, etc.	30/06/97
(10) Cap 502 SECT 8 Effect of use restriction order	01/06/98
(11) Cap 485.1 SECT 7 Employer to arrange for employees to become scheme members	
(12) Cap 486 SECT 23 Compliance with data correction request	30/06/97
(13) Cap 486 SECT 22 Data correction request	30/06/97

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1998 年 9 月 17 日

The Queen

Respondent

AND

Shun Shing Construction & Engineering Co. Ltd.

Appellant

(Court of Appeal)

(Magistracy Criminal Appeal No. 174 of 1992)

Silke, V.-P., Penlington and Macdougall, JJ.A.

3rd and 11th September 1992.

Criminal law and procedure--Immigration Ordinance (*Cap.* 115) s. 38A--construction site controller--meaning of requirement to take "all practicable steps to prevent" unlawful entrants from being on the site--measures to be taken.

The appellant company appealed its conviction before a magistrate under s. 38A(2) of the Immigration Ordinance upon which it was fined \$15,000. The appellant accepted it was a construction site controller and that a person who had landed in Hong Kong without the permission of an Immigration officer and who was accordingly an unlawful entrant within s.38A(1) of the Ordinance was found on that construction site.

At its trial the appellant company had relied on s.38A(3) of the Ordinance which provides a defence if the person charged can prove he took all practicable steps to prevent the unlawful entrant from being on the construction site. Evidence was led that the unlawful entrant, having swum to Hong Kong, went to the construction site, met an employee and asked for a job. That request was refused and he was told to leave. The unlawful entrant did not do so but hid himself on the site, took off his clothes to dry them and went to sleep. He was discovered during a police operation later that day. He was the only unlawful entrant on the site which consisted of two almost completed 34 storey blocks.

During a reconnaissance the previous day, plainclothes police officers had entered the construction site, were unquestioned after a period there, had seen no security guards and had then left. On the day the unlawful entrant was discovered work on the site had almost been completed. Hoardings which had been erected around the site, which was 25,000 square metres in area, had been partially demolished. It was impossible to maintain hoardings all around the site because of the nature of the finishing works being carried out. A low wall upon which was to be placed a wire mesh fence was being built. The company required persons on the site to wear identification badges and had also engaged a security firm which supplied two security guards, each of whom worked a 12-hour shift. The security guards were to prevent the unauthorised removal of site material and to prevent unauthorised persons or vehicles entering the site.

The issue on the appeal was the meaning of "all practicable steps to prevent persons" in s. 38A(3). Whilst accepting that every step had been taken to ensure unlawful entrants were not employed, the Crown contended the phrase "all practicable steps" in s. 38A(3) imported a high obligation and the provision of only one security guard in each shift did not satisfy the requirements of s. 38A(3).

Held:

1. The phrase "all practicable steps to prevent" requires the taking of steps which are feasible and capable of being carried out within known means or resources. The concern is whether the steps taken were possible and practicable. The duty is not absolute, but it is higher than all reasonable steps or measures. The emphasis of s.38A is upon prevention and it is that at which a construction company must aim. *Knight v. Demolition and Construction Co. Ltd.* [1953] 1 WLR 981 applied. (See p.74, lines 34-43.)
2. Whilst all other preventative steps had been taken, the provision of a single security guard on duty by himself on a site of the nature of this construction site was not sufficient to enable the appellant to say it had taken "all practicable steps". (See p.74, lines 44-46.)

Per Curiam

"We would emphasise that each case depends very much on its own facts. It is not possible for the court to give guidance on what actual steps would, generally, erect the defence contained in s. 38A(3) - other than to set out the test as we think it to be." (See p.75, lines 1-3.)

Appeal against conviction dismissed.

P. Graham, instructed by Kwok & Chu, for the appellant.

H. Macleod, Senior Assistant Crown Prosecutor, for the respondent.

Cases cited in the judgment:

Adsett v. K & L Steelfounders and Engineers Ltd. [1953] 1 WLR 7738 137,
[1953] 2 All ER 320 & 97n (C.A.)

Farquhar, Re [1943] 2 All ER 783

Gregson v. Hick Hargeaves & Co. Ltd. [1955] 1 WLR 1252, [1955] 2 All ER
860 & 3 All ER 507

Knight v. Demolition and Construction Co. Ltd. [1952] 1 WLR 981, [1953] 2
All ER 508, [1954] 1 WLR 563, [1954] 1 All ER 171n (C.A.)

Lee v. Nursery Furnishing Limited [1945] 1 All ER 387

London County Council v. Great Eastern Railway Company [1906] 2 KB 312

Silke, V.-P.:

This is the judgment of the court.

Shun Shing Construction & Engineering Co. Ltd. appeared before C.R. Mackintosh, Esq., a magistrate sitting in the Magistrates Court at Kwun Tong, to face a summons which alleged that they did, on 11th April 1991, being the construction site controller of a construction site known as King Lam Estate, Junk Bay Area 23, Phase 4, New Territories on which was found an unlawful entrant, Lo Wing-san, commit an offence contrary to s. 38A(2) of the Immigration Ordinance (*Cap.* 115).

Section 38A - introduced into the laws by Ordinance 75 of 1990 - in its sub-s. (2) reads:

"Where it is proved that a person to whom s. 38(1) applies was on a construction site, the construction site controller of that construction site commits an offence and is liable to a fine of \$250,000."

Sub-section (3) of the section provides a defence and it reads:

"It is a defence in proceedings for an offence under this section for the person charged to prove that he took *all practicable steps to prevent* persons to whom s. 38(1) applies from being on the construction site." (Emphasis supplied)

It is accepted that Shun Shing Construction & Engineering Co. Ltd. - the appellant - was a construction site controller; it is accepted that King Lam Estate was a construction site; it is accepted that Lo was a person to whom s. 38(1) applied, being a person who had landed in Hong Kong without the permission of an Immigration Officer or Immigration Assistant. He had been convicted of that offence.

The appellant seeks to upset the conviction. It was fined the sum of \$15,000. The Attorney General, with leave, seeks to review, under the provisions of section 81A of the Criminal Procedure Ordinance, the propriety of that sentence.

The appeal against conviction was transferred to this court by order, made on 7th April 1992, by the Chief Justice under the provisions of s. 118(1)(d) of the Magistrates Ordinance.

The issue is what is meant by "all practicable steps to prevent persons ...".

The facts are basically simple. At about 11:15 a.m. on 11th April 1991 Lo Wing-san came out of the sea at Junk Bay having swum from the Mainland to Hong Kong, went to the construction site, met an employee and asked for a job. This request was refused. He was told to leave. He did not, but instead hid himself on the 30th floor of a 34-storey block - there were two almost completed 34-storey blocks on the site - took off his clothes to dry them and went to sleep. At about 4:45 on that afternoon, the police in the course of a series of raids which they had been making upon construction sites in the area, known as "Operation Champion", went on to the site and discovered Lo. He was the only unauthorised entrant there.

The police had carried out what might be termed a surveillance reconnaissance on the previous day - this being in the course of their attempts to enforce the provisions of the Ordinance. Police officers in plain clothes had gone on to the site, were unquestioned after a period there and departed. They had not seen any security guards.

The condition of the site on the day of the offence is relevant. The building works were completed and the finishing touches to the site were proceeding. There had been hoardings completely around the site, which was 25,000 square meters in area, but these had been partially demolished. A low wall upon which was to be placed a wire mesh fence was in the course of being built. The wire mesh fence itself was being put in place with a gap below it to allow for the wall. A trench had been dug to facilitate this work and to prevent vehicles coming on to the site except at certain definite points. Some of the hoardings were still in place but there were gaps.

The appellant company had introduced a system on site to ensure that no unlawful entrants were employed. They required all their workers and all sub-contractors' workers to carry some form of identification. Identification badges graded in various colours were supposed to be worn by the workers. Finding it difficult to obtain full compliance with this requirement, they introduced a system of fining the sub-contractors: first a fine of \$100 and then a fine of \$500 per day per man for those workers who did not bear identification badges. Notices instructing persons on the site to wear identity cards were posted in a number of places. No person was employed as a worker unless he had an Hong Kong identity card.

The company had also engaged a security firm. This firm was required to provide two security guards who worked a 24-shift, one from 8:00 a.m. to 8:00 p.m. and the other from 8:00 p.m. to 8:00 a.m. The cost of this was a total of \$9,000 per month. The number of security guards had been specified by the appellant and the security manager for the firm never himself visited the site.

It was the evidence of one of those security guards that, while he normally worked at 12-hour shift, there were occasions when he was required to cover the full 24 hours. There was a security room at the site of the main gate, at the Po Lam Road side of the site, from which he patrolled the construction site once in every one and a half to two hours. That would of course leave the security room unmanned. The site itself was triangular in shape being bounded by King Lau House, Po Lam Road and reclaimed land.

The patrol upon which the guard went would take approximately 40 minutes and he would go up to the 34th floor of each of the blocks during the course of it.

The security guard wore uniform and it was part of his duties to prevent construction site material being taken away; to prevent burglary; and to prevent unauthorised vehicles or persons entering the construction site. The single guard was responsible for all security. He described the gaps in the hoarding as doors through which workers came and went and which would be closed during the night. He would attempt to check those who failed to display their working identity cards. Some of the workers wore them while some of them put them into their pockets. If the card was not being displayed he would then instruct that particular worker to put it on.

Lo, the unlawful entrant, gave evidence to the effect that he had entered the construction site from, he thought, a road and by walking through an entrance, though he was somewhat vague as to what form that entrance took. He said it was at a point where there was a flight of stairs and he went up those stairs as he wanted to find a job. He then was told he would not be employed. The person who spoke to him asked him to leave. He saw no security guard.

He had, prior to his entrance upon the site, crossed the border on the Chinese side evading the guards and negotiating a barbed wire fence. He then swam towards the Hong Kong side and, after landing, climbed a mountain crossing the Hong Kong patrolled border.

The defence - Mr. Graham appeared for the appellant both here and below - called one witness, Mrs. Sally Yeung Sai-hee. She was the project manager of the buildings on the construction site and was responsible for the progress of building works and site management. There were, at the time of the incident, some 170 workers employed on this almost finished project. She said that the hoarding that remained had gaps in it for vehicle access. This was the remains of the original hoarding which had surrounded the whole site and which had but one entrance for vehicles. When the hoarding was pulled down, on the Po Lam Road side, a trench had been dug to stop vehicles coming across the area. There was a gate in the fencing which was being put up. It was impossible to maintain the full hoarding given the nature of the finishing works being carried out because workers had to have access to the trench, materials had to be delivered and concrete trucks had to pull up close by.

It is clear, and it is not contested, that during the construction works on this site, the company had taken every step to ensure that they did not *employ* unlawful entrants. In this they were 100% successful. It cannot be a requirement, and we entirely accept Mr. Graham's submission on this, that a construction site is required to become an enclosed armed camp to provide the defence as set out in s. 38A(3). What a company is required to do is to take "all practicable steps" to prevent the encroachment of unlawful entrants onto the site. It is the case for the Crown that the provision of but one security guard in each shift did not meet that requirement.

Mrs. Yeung was asked in the examination-in-chief:

"Q. Do you consider having enough security guards was a realistic proposal?.

A. Even if you employ so many guards, no way upon (*sic*) can stop because sneak in when not watching - lots of construction on the site and many passers by."

"Q. We have already heard evidence of scheme of identity card.

A. Not possible to devise a system, to stop them (illegal immigrant) coming into site."

We agree that the prohibition on the employment of illegal immigrants would have been practicable step to prevent persons to whom s. 38(1) applies from being on the site and that the appellant took this step.

In cross-examination it was put to Mrs. Yeung:

"Q. Possible to request security company to increase provision of man power to 3/4 security guards during day so that one security guard would be responsible to guard against unauthorised entry while another patrolled perimeter a 3rd on patrol in building A.

A. Even with 3 - effect would be same as one. Because even if patrol once cannot prevent entry on other side. And building is 34 storeys, 3 rooms in each flat - would take whole day to check and patrol. Meaningless even to employ 10 or 20 - same as if you employ one."

Mr. Graham lays great emphasis upon this answer. His *cri de coeur* on behalf of the appellant is: what are we to do?; we have asked for but been refused guidelines by Security

Branch; we were informed that they would use discretion in mounting prosecutions, but that was all. Even if we did put up notices telling unlawful entrants not to enter upon the site this would be most unlikely to have any effect upon persons who had embarked on a hazardous journey such as that undertaken by Lo. It is, he says, impossible to make the site totally secure. He asks rhetorically: if we had employed 3 or 4 or 10 or more security guards would it then be said we should have employed 20 or more security guards and thus still be liable?

We have considerable sympathy with this company. They were obviously conscientious on the employment issue. They had taken steps to prevent unauthorised persons coming onto the site. The magistrate held - and it must be remembered that this court will be very reluctant to overturn conclusions justifiably drawn from proven primary facts - that the provision of more security guards was both practicable and would have made a significant difference. He said in his Statement of Findings (p.137 of the record):

"The provision even of two more guards on day shift would have enabled one to stay at the main gate with the others patrolling the vulnerable areas of the perimeter. It may not have made it impossible for an illegal immigrant to be on the site, but the sub-section does not require that. It would certainly have made the discovery of unauthorised persons trying to enter much more likely and would therefore have gone a long way to prevent illegal immigrants from being on the site."

He was aware that the steps which the company had taken could well have provided a complete defence to a charge, brought under s. 171 of the Immigration Ordinance, of employing an illegal immigrant. But the severe provisions of s. 38A(2) were clearly enacted in order, because of the multifarious sub and sub-sub-contractors who work on construction sites in Hong Kong, to make one main body liable: the construction site controller.

It is the case for the Crown that the use of the phrase "all practicable steps" imports a high obligation. We have been referred to various authorities in the English jurisdiction construing similar phrases in various Acts of Parliament such as: "as far as practicable" in *London County Council v. Great Eastern Railway Company* [1906] 2 KB 312; "as the court considers practicable" in *Re Farquhar* [1943] 2 All ER 781; "as low as practicable" in *Lee v. Nursery Furnishing Limited* [1945] 1 All ER 387; "practicable measures" in *Adsett v. K & L Steelfounders and Engineers Limited* [1953] 1 WLR 773; and "all practicable measures" in *Gregson v. Hick Hargeaves & Co. Ltd.* [1955] 1 WLR 1252.

Giving to each word of the phrase "all practicable steps to prevent" its full meaning, we distill from these cases the principle that the steps must be feasible steps. This does not imply that which is capable of being achieved regardless of expense, but means steps which are capable of being carried out within known means or resources: we are not concerned with "reasonably practicable" but whether the steps taken were "possible and practicable" (c.f. *Parker, J.* (as he then was) in *Knight v. Demolition and Construction Co. Ltd.* [1953] 1 WLR 981 at 986). The duty is not an absolute one, but it is higher than all reasonable steps or measures. The emphasis of the whole section is on prevention and it is that at which a construction company must aim. Mrs. Yeung's suggestion that even 10 to 20 guards would have not been enough clearly goes to absolute prevention, which is not required.

Accepting that all other preventative steps had been taken by the appellant, the provision of a single security guard on duty by himself on a site of this nature is not, in our judgment, sufficient to enable it to say that it had taken "all practicable steps."

We would emphasise that each case depends very much on its own facts. It is not possible for the court to give guidance on what actual steps would, generally, erect the defence contained in s.38A(3) - other than to set out the test as we think it to be.

Despite Mr. Graham's able arguments, and the strong sense of grievance which we are informed this company nurtures in its corporate breast, we are not persuaded that, in all of the circumstances here, the findings of the magistrate should be interfered with.

The appeal against conviction is therefore dismissed.

We shall now proceed to hear the Attorney General's application to Review the sentence.

A.R.U.

**Guidance Notes
for
The Code of Practice on Preventing Illegal Workers Working on
Construction Sites**

(I) Background

The Government is proposing an amendment to the Immigration Ordinance in order to prohibit the employment of any person who is "not legally-employable". This will extend the prohibition scope from illegal immigrants to people holding two-way permits.

This amendment will have far-reaching impact on Main Contractors and the industry as a whole.

Should the amendment be endorsed by the Legislative Council, Main Contractors will be liable to prosecution for employment of the "not legally-employable", regardless of whether they are employed with or without the knowledge of Main Contractors.

There is, therefore, a dire need for a Code of Practice to be put in place to alert all Main Contractors to the legal consequences of allowing the "not legally-employable" persons to enter their project sites, and to how to prevent this from happening.

The Hong Kong Construction Association (HKCA) is seeking the support of this Code of Practice by relevant Government departments, especially the Security Bureau, the Immigration Department and the Police. The HKCA will also solicit their cooperation to assist Main Contractors in effectively observing and enforcing the new regulation.

The HKCA urges that all Main Contractors observe and follow this Code of Practice and set up internal programmes to disseminate it to all levels of their site staff, workers and Sub-contractors.

(II) Key Principles of the Code of Practice

The Code of Practice, comprising five key essential areas, will provide Main Contractors a basic framework to follow systematically to cope with the changes in the legislation concerned.

1. Education

Education is always an effective tool in arousing the awareness and understanding of an issue among the people concerned. The HKCA strongly recommends all Main Contractors to spend sufficient resources in educating their staff, both in the management and the line functions, so that the problem of illegal employment on construction sites can be dealt with efficiently and effectively.

2. Security Management

The security work on a construction site is always an important management function for the Main Contractors, their site staff and the Sub-contractors.

Main Contractors should develop a security system with detailed planning and procedures which can be learned and followed properly. The system, in turn, will serve as a useful tool for Main Contractors in educating their site staff and Sub-contractors.

Main Contractors should ensure that all their site staff and workers as well as Sub-contractors regard site security as part of their management duties. The security plans should be well documented and promulgated to all.

3. Record

Keeping a good record of all the people working on a construction site enhances Main Contractors' ability to uphold site security.

One common mistake in site security is that Main Contractors do not keep proper record of their own workers, Sub-contractors' staff and workers, or those working for other smaller contractors of the Sub-contractors.

4. Cooperation

This is, perhaps, the most important and difficult task of Main Contractors because their effort in preventing illegal employees working on their sites will fail if they cannot get full and close cooperation from all the parties concerned.

For Sub-contractors' cooperation, it may be easier for Main Contractors to get it from long-time Sub-contractors than from new ones.

Police's cooperation is also an essential element for the success of site security work.

5. Execution

Action speaks louder than words. Main Contractors should develop detailed action plans based on the blue prints of the security plans. They should also deploy sufficient resources to implement the plans through out the project contract term.

The Hong Kong Construction Association
Code of Practice
on
Preventing Illegal Workers Working on Construction Sites

This Code of Practice is designed to provide Main Contractors with a basic framework within which they can issue detailed instructions to their staff and Sub-contractors for preventing illegal employment on construction sites.

This Code of Practice comprises five key areas as follows:

1. Education

- 1.1 The very first task for all Main Contractors is to familiarize themselves with the Immigration Ordinance, especially the provisions and penalties that concern employment of "not illegal-employable" persons on construction sites. Main Contractors and their site management staff are liable to prosecution if such persons are found and arrested on their sites by police or officers of the Immigration Department.
- 1.2 The second major task of the Main Contractors is to ensure that all their site management staff and workers know and understand the Immigration Ordinance and the legal responsibilities that they must observe at all time during work on site.
- 1.3 Educating Sub-contractors is the third important task for Main Contractors. Main Contractors should, by all means, ensure that their Sub-contractors have a thorough understanding of the issue and the negative consequences, legal or economical, if they do not enforce the law.
- 1.4 Sub-contractors should carry out the same dissemination work so that other smaller contractors down the construction process chain will also understand the key parts of the law and the penalties concerned.

2. Security Management

- 2.1 With the assistance of their security managers, Main Contractors should investigate every site and develop a tailor-made security plan for that particular site, with reference to the framework of the general security system and its procedures.
- 2.2. The security plan should basically cover and determine the following procedures:
 - i) whether site hoarding or fencing is required, either by contract terms or for security

- ii) where security check-point should be set up and how many;
- iii) what records will be done and kept, and by whom;
- iv) who will take up the duty of spot-checking all working on the site;
- v) who will be the contact person on site if some help is needed by security guards or the persons carrying out spot-checking;
- vi) if all workers employed by Main Contractors and their Sub-Contractors will wear badges issued by Main Contractors;
- vii) who will contact the police or the Immigration Department when necessary;
- viii) how the Sub-contractors will get involved in the day-to-day execution of the plan and so on.

2.3 After the site security plan is developed, efforts must be made to ensure that it is executed and enforced constantly and persistently by all site staff and Sub-contractors who will also be made responsible, either by contract terms or some other means, in making the security plan work.

3. Record

- 3.1 Main Contractors should develop a record system for their own site staff and workers as well as for Sub-contractors and other smaller contractors working for them.
- 3.2 The record system will require Main Contractors and their Sub-contractors to keep a full list of monthly or daily-paid employees working on the site showing their names, identity card numbers, address, trades, date of employment, and other information that can evidence the workers legitimacy for working in Hong Kong.
- 3.3. The system should also require records with consistent information of persons appearing on the pay roll and on the daily time-keeping record.
- 3.4 All records kept by Sub-contractors MUST be the same as that done by the Main Contractors and MUST be readily available for inspection at all time during working hours.
- 3.5 Contractual method is recommended for securing Sub-contractors' participation in the record keeping work.

4. Cooperation

- 4.1 Main Contractors should do their best to seek cooperation of Sub-contractors, using various methods such as contractual mean, persuasion and so forth.
- 4.2 The cooperation of police is essential for the success of security management. Main Contractors should take initiatives, as soon as they take over the sites, to know and establish contact with the police officers in charge of the districts where their project sites

are located.

- 4.3 Main Contractors should discuss their site security plans with the police officers in charge, get their advice and input, review the plan with them regularly, and invite their participation in the education work for site staff and Sub-contractors.
- 4.4 A police hot-line should be set up for site management staff to keep close contact with the police officers and report promptly any suspected situation.
- 4.5 The HKCA will represent the Main Contractors on an industry-wide basis for contacts with the relevant authorities, including the Security Bureau and the Immigration Department on regulation and policy matters.

5. Execution

- 5.1 Proper and timely execution of the security plan is extremely crucial for its success. It is recommended that the execution work should cover the following aspects:
 - a) Launching the education on site and disseminating main features of the Immigration Ordinance and its implications to site workers.
 - b) Issuing badges to all staff workers for Main Contractors and Sub-contractors as well as workers of other smaller Sub-contractors.
 - c) Erecting hoarding or fencing on sites as soon as possible and as long as needed.
 - d) Setting up security checkpoints at entrances to the site to record the entrants.
 - e) Establishing a proper record system on site and getting the record information updated on daily or at least weekly basis.
 - f) Selecting a working team to do spot-checking of the workers employed on the site with the record.
 - g) Building close contacts with district police officers and seeking their cooperation in site education, reviewing and executing security plans, doing joint spot-checking on site from time to time and so on.

Conclusion:

Education, Security management, Record, Cooperation and Execution are the five key factors for the success of preventing illegal employment on project sites of the Main Contractors, which in turn will protect themselves from being penalized under the amended legislation.

The HKCA will give all its support and assistance to Main Contractors in their execution of this Code of Practice and will continue to act as a bridge between them and the Government in resolving problems arising from the amendment of the legislation concerned.
