

HPLB/BAB Paper/11/03

**Bills Committee on
Buildings (Amendment) Bill 2003**

Minor Works Control Regime (Part II)

Purpose

This paper sets out the Administration's response to the comments and views raised at the meeting of the Bills Committee on 23 September 2003 on the proposed minor works control regime.

Control Regime

Need

2. Some Members have asked the Administration to consider whether it is necessary to control works such as the erection of metal supporting frames for air-conditioning units.

3. At present, under the Buildings Ordinance (BO), building works on the external walls of a building, including the erection of metal supporting frames for air-conditioning units and drying racks, have to comply with all the relevant provisions of the Ordinance. These provisions include the prior approval of plans by the Building Authority (BA), the appointment of an authorized person (AP) and/or a registered structural engineer (RSE) to design and supervise the works and a registered general building contractor (RGBC) or a registered specialist contractor (RSC) to carry out the works.

4. We recognize that the degree of control on different building works should be commensurate with the nature, scale, complexity and degree of risk of the works, and that the current requirements are overly stringent for relatively simple and small-scale works. This recognition underlies our proposal to introduce a minor works control regime. The regime seeks to provide a simple, legal and safe channel for carrying

out minor works. While prior approval of plans by the BA is not required, the minor works should still be supervised and carried out by competent and qualified persons. In addition to the existing RGBCs or RSCs, two new categories of contractors, i.e., Class A and Class B registered minor works contractors (RMWCs), will be introduced. The registration requirements seek to ensure that the contractors will be able to carry out works in accordance with their competence.

5. Some Members have asked whether certain “household” building works such as the installation of air-conditioners are exempted works under section 41(3) of the BO¹. Given that they are not works carried out in a building, these works are not exempted works. Indeed, as weight-bearing external projections, supporting frames for air-conditioning units and drying racks do have an impact on public safety.

6. We appreciate and share the wish to minimize inconvenience to owners. At the same time, it is necessary to strike a balance between user-friendliness and control for safety. To provide for increased flexibility, the Bill already proposes to empower the BA to specify exempted works under the new section 41(3AA) (Clause 40)². We are examining the feasibility of specifying metal supporting frames for small-sized air-conditioning units as exempted works under this new section without compromising public safety. We will report to the Bills Committee of the results when the review is completed.

7. Some Members have asked if the submission of as-built plans and certificates of completion to the BA on completion of Category III minor works is necessary.

8. The submission of as-built plans and certificates of completion is an integral part of the minor works control regime. It will allow the BA to keep proper records of the minor works and to conduct audit checks to verify if the works have been carried out in compliance with the BO and are structurally safe. In the event that any problems arise in relation to

¹ Section 41(3) of the BO reads – “Building works other than drainage works, ground investigation in the scheduled areas or site formation works not involving the structure of any building may be carried out in any building without application to or approval from the Building Authority.”

² Please also see paragraphs 25 and 26 below.

the completed minor works, including Category III minor works, the BA may require rectification works to be carried out. With the provision of as-built plans and certificates of completion, the registered contractor (RC) responsible for the works can also be identified and, if necessary, disciplinary action and/or prosecution may be instigated against him. Moreover, owners and prospective purchasers may check the records in the Buildings Department (BD) regarding the existence or otherwise of any unauthorized building works in the premises in question. This will protect their interests.

Feasibility

9. Some Members have asked whether it is feasible to implement the minor works control regime because some contractors may not be able to provide as-built plans.

10. As explained in paragraph 4 above, the minor works control regime seeks to provide a simple, legal and safe channel for carrying out minor works. The contractors should, therefore, attain a minimum standard of competence. For the purpose of minor works, this standard should be either the possession of academic qualifications of an ordinary certificate level or completion of a relevant top-up course if there are no prescribed academic qualifications but possession of adequate working experience. This should provide a channel for existing contractors in the industry to register as RMWCs and be recognized by the public as competent to carry out minor works in compliance with the BO. For those who are not able to or do not wish to undertake the top-up course, they may engage in minor works under the management and supervision of RCs.

11. We do not envisage the requirement of as-built plans to present a major problem to competent contractors. Two samples of as-built plans for the erection of supporting frames for air-conditioning units are at Annexes I and II. They are not difficult to prepare. We believe that contractors who possess the prescribed academic qualifications or have completed the top-up courses should be able to produce the necessary as-built plans for minor works.

12. Some Members have asked whether it is practicable for the BA to keep and manage the as-built plans submitted for Category III minor works.

13. BD handles a total of about 15,000 building plan submissions for new developments and alterations and additions proposals each year. These submissions involve approximately one million A1 size (equivalent to 4 million A3 size) sheets of drawings. Unlike plans for new developments and major alterations and additions, as-built plans for minor works will be much simpler and will number far fewer in each case, particularly for Category III minor works. We estimate an average of two A3 size sheets of record drawings and photos for each minor works case. Assuming 20,000 minor works cases each year, this would involve about 40,000 A3 size sheets, i.e., only a fraction of the total volume of submissions. It should, therefore, not pose any practical problems for BD to keep and manage these record drawings. Moreover, BD has implemented a pilot Building Records Management System (BRMS) for the electronic storage and retrieval of building records and is making arrangement to extend the system to cover building records in the whole territory. Many of the paper records may eventually be disposed of. The record drawings of minor works will also be kept in electronic format in the BRMS to facilitate viewing by the public.

14. We have also examined the feasibility of requiring owners to keep the record drawings of minor works without submitting them to the BA. However, we consider that this arrangement will pose an unnecessary burden on owners to safekeep the records which may be easily lost or misplaced especially when the property changes hands. Coupled with the reasons set out in paragraph 8, we consider that it is appropriate to require the submission of as-built plans to BD.

Impact

15. Some Members have expressed concern at the possible impact of the minor works control regime on existing contractors and how these contractors should be consulted.

16. As explained in paragraphs 4 and 10, to ensure public safety, it is necessary for building works to be carried out by competent persons. We believe that the introduction of RMWC on top of RGBC and RSC, the correspondingly lower registration requirements for RMWCs and the availability of the top-up courses should cater to the need to ensure a minimum standard whilst accommodating as many contractors as possible.

17. During the formulation of the proposed minor works control regime, we have consulted the industry, including the Hong Kong Construction Association and other contractors' associations. In addition, BD organized two targeted seminars for the trade unions of construction workers and associations of small contractors as well as two open seminars for the public in October 2003 to explain the proposed minor works control regime, including the procedural requirements, the different categories of minor works and the registration requirements of minor works contractors. The attendance list of these seminars is at Annex III.

18. A number of small contractors, including those working in the air-conditioner installation field, attended the recent seminars. Questions raised by the attendees were similar to those raised by Members of the Bills Committee and the submissions to the Bills Committee. For example, the small contractors were mostly interested in the registration requirements and what types of minor works would have to be carried out by an RMWC.

19. Some Members have asked for details of the top-up courses. The tentative arrangement for these courses is set out at Annex IV.

20. Some Members have asked how members of the public may be informed of the minor works control regime.

21. We fully agree that proper public education and publicity is important. Before the commencement of the minor works control regime, BD will launch a series of publicity programmes to introduce the new system to the public, including distributing publicity pamphlets (by the Post Office to all letter boxes) to all building owners, issuing posters

for display in building lobbies and other public places, holding media briefings, organizing seminars for owners' corporations and building management companies etc. The relevant information will also be uploaded onto BD's website. An enquiry service will be set up so that the public may consult BD staff in case they have any questions on the new system. In addition, seminars will be held for building professionals and RCs to familiarize them with the new system.

Liability

22. Some Members have asked about the liability of owners for appointing unregistered contractors.

23. Under the BO, it is the duty of owners to appoint registered building professionals and contractors to supervise and carry out building works. With the implementation of the minor works control regime, if an owner intends to carry out certain building works, he may make reference to the information in the publicity pamphlets and/or enquire with BD to ascertain what type of registered contractor he should appoint. He may also search BD's website or visit BD's office to view the registers of all RCs. Moreover, an RC has the duty to inform the owner whether he is registered for the type of building works that the owner intends to carry out. If a contractor engages in a type of minor works that he is not registered for, he should also be liable. On closer examination, the Bill as now drafted may not be able to cater for this purpose. We are therefore considering the necessary amendments to make this clear. If an owner fails to appoint a registered contractor who is qualified to carry out the works, he is liable to an offence under the new section 40(1AA)(Clause 39). The prosecution will look into the circumstances and evidence of each case to determine who should be held liable. Although the new section 40(1AA) is a strict liability offence, the common law provides an avenue of redress. If the owner had no knowledge that his contractor was not registered for the type of minor works, he may raise a defence that he believed for good and sufficient reason that the contractor was registered as specified in the relevant provision or that he had exercised due diligence. The prosecution bears the legal burden to disprove the defence.

Exempted Works

24. Some Members have asked for a list of exempted works.

25. The new section 41(3AA)(a) (Clause 40) sets out the criteria for building works which are exempted from the requirement of approval of plans and the appointment of AP, RSE and/or RCs. These exempted works should satisfy the following criteria -

- (a) the works are to be carried out inside an existing building;
- (b) the works do not alter the structural elements of any building;
and
- (c) the works do not bear any load other than that due to their own weight.

26. In general, most interior decoration works are exempted works. Other examples are the erection of internal lightweight partitions or the formation of door openings in non-structural walls. Apart from the above, some building works, though not fully satisfying the above criteria, are of such a minor nature that they are unlikely to pose much safety concern. We consider that it is not necessary to require the approval of plans and the appointment of AP/RSE/RCs to carry out such works. The new section 41(3AA)(b) therefore provides that the BA may specify some building works as “specified exempted works”. Examples of specified exempted works are the erection of small-sized signboards, a glass façade not more than 3m high at ground level, a supporting structure not more than 600mm high at ground level for an air-conditioning plant or a water cooling tower and the construction of fence walls not more than 1.1m high.

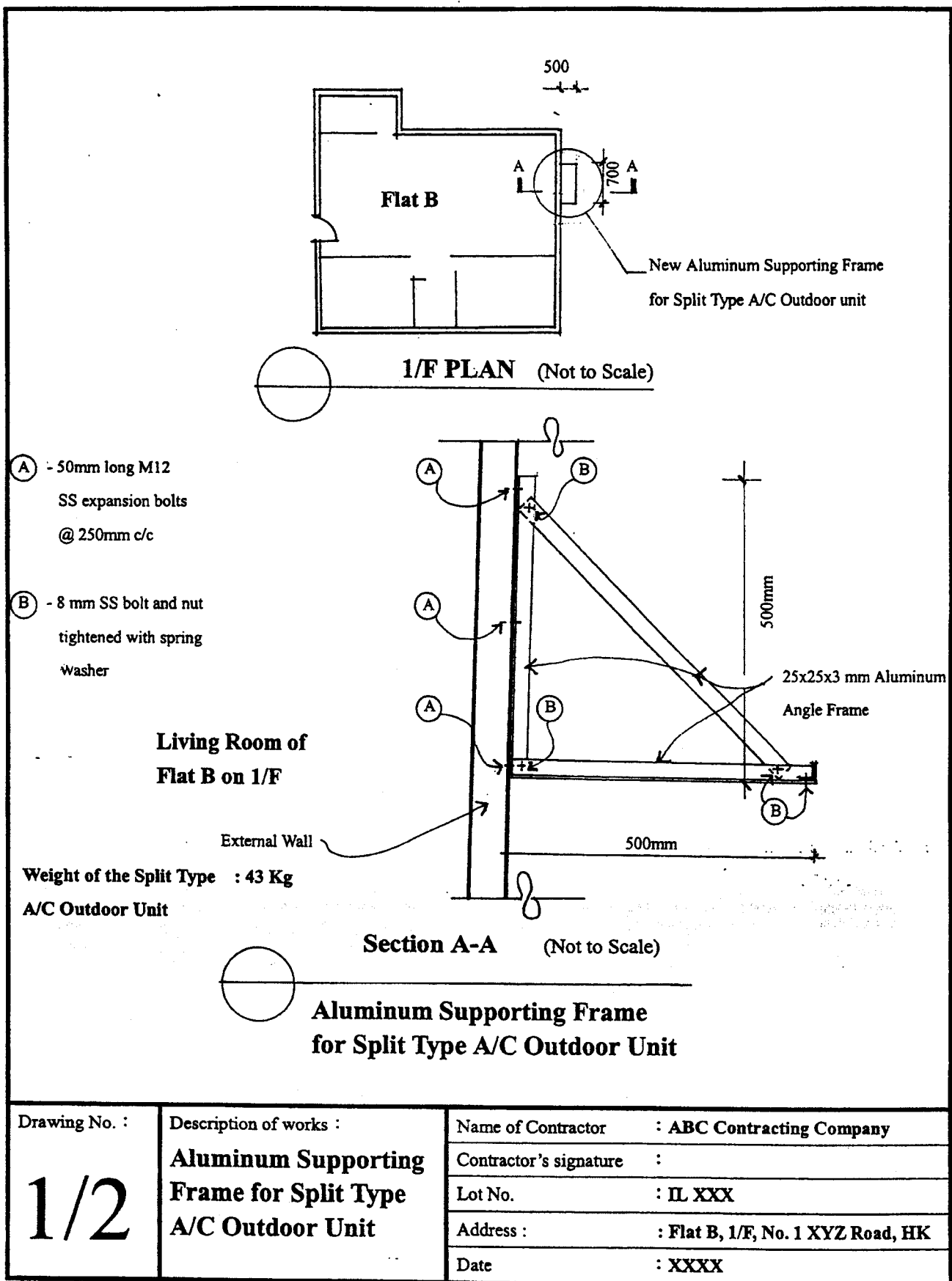
Offence under section 40(2AA)

27. Some Members have asked whether section 40(2AA) imposes a strict liability.

28. The offence under BO s40(2AA) is a strict liability in nature. However, statutory defences have been provided as an avenue of redress for the AP, RSE, registered geotechnical engineer (RGE) or RC who did not know, nor could reasonably have discovered, the contravention referred to in the charge. The AP/RSE/RGE/RC may also rely on other common law defences. In all cases, the prosecution bears the legal burden to disprove the defence.

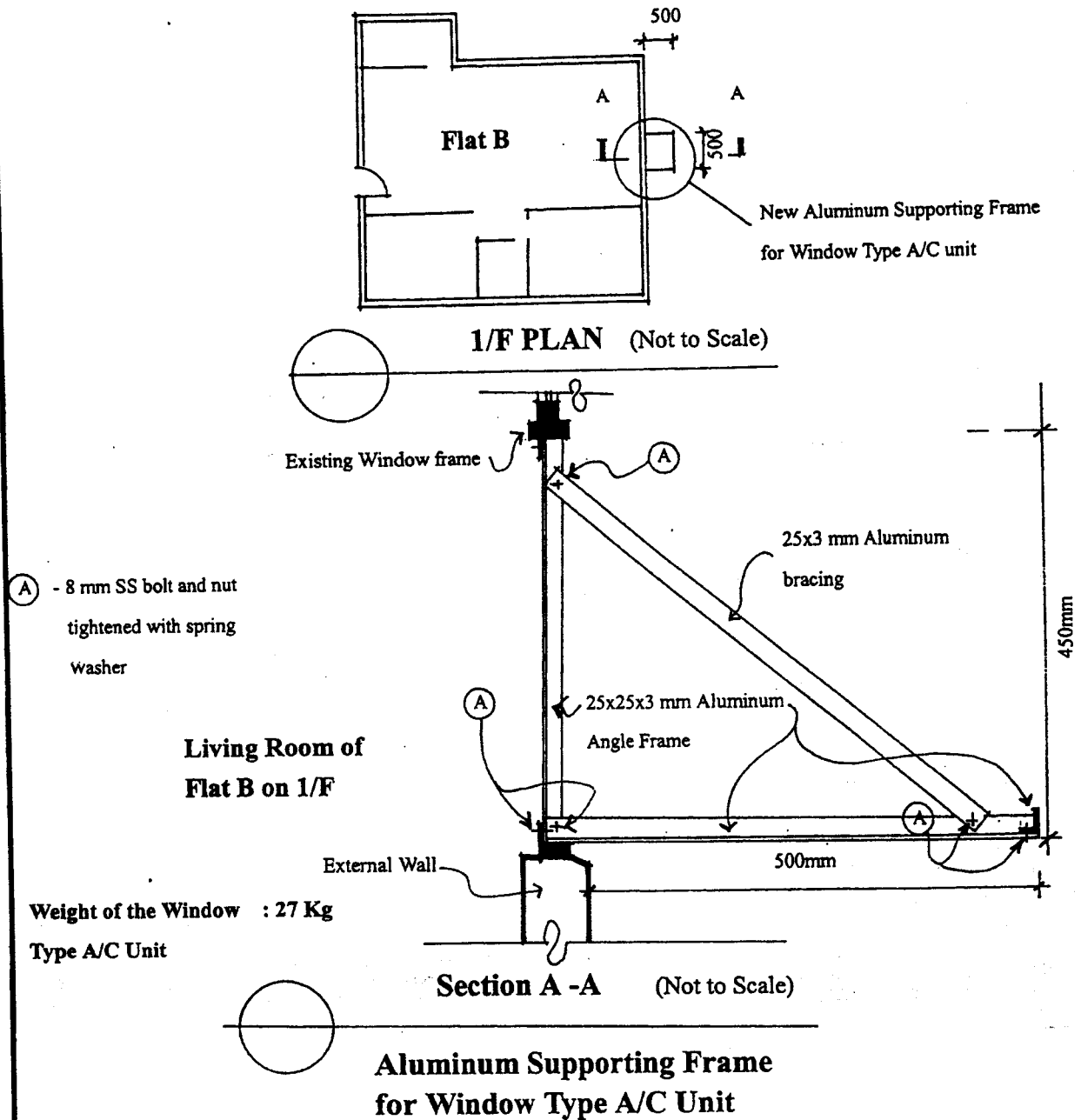
Housing, Planning and Lands Bureau
November 2003

Sample



For Reference Only

Sample



Drawing No. :

1/2

Description of works :

**Aluminum Supporting
Frame for Window
Type A/C Unit**

Name of Contractor : ABC Contracting Company

Contractor's signature :

Lot No. : IL XXX

Address : Flat B, 1/F, No. 1 XYZ Road, HK

Date : XXXX

For Reference Only

Annex III

List of Trade Associations/Unions Attending the Seminars on Minor Works

Seminar on 14 October 2003	No. of attendees
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Contractors' Authorized Signatory Association Ltd.	6
Hong Kong Institute of Construction Manager	2
Hong Kong General Building Contractors Association Ltd.	5
Hong Kong Electrical & Mechanical Contractors' Association	1
Hong Kong Construction Sub-contractors Association	4
Hong Kong Construction Association Ltd.	2
Hong Kong Registered Ventilation Contractors Association Ltd.	4
Construction Site Workers General Union	3
Hong Kong Construction Industry Employees General Union	<u>3</u>
	30

Seminar on 16 October 2003

Sign Association of Hong Kong	9
Hong Kong Plumbing General Union	1
Hong Kong Plumbing and Sanitary Ware Trade Association Ltd.	4
The Concrete Producers Association of Hong Kong Ltd.	<u>1</u>
	15

<u>Open seminar on 22 October 2003</u>	114
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<u>Open seminar on 27 October 2003</u>	91
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Total :	250
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Annex IV

Tentative Arrangement of Top-up Course

Top-up course	Tentative teaching duration (hours)			Course duration (weeks)		Course fee		
	Common module	Specific module ²	Total	CITA ¹	VTC ¹	Common module	Specific module	Total
Top-up Course for Class A Applicants (<u>One</u> Type of Works Only)	50	7 ~ 15	57~ 65	7~8	11~14	\$3,000	\$420~\$900	\$3,420 ~ \$3,900
Top-up Course for Class B Applicants (<u>One</u> Type of Works Only)	35	3 ~ 7	38~ 42	6	7 ~ 9	\$2,100	\$180~\$420	\$2,280 ~ \$2,520

Note 1: The courses provided by the Construction Industry Training Authority (CITA) and Vocational Training Council (VTC) are basically the same. The difference in course duration is attributed to the difference in the schedule of the courses provided by the two bodies.

Note 2: For an applicant applying for a specific type of minor works, he is only required to attend the common module and the specific module for the relevant type of minor works of the relevant sub-register.

Detailed Course Arrangement

Estimated total number of applicants	3,000
Class size	40-80 persons, depending on the subjects.
Total number of classes to be offered concurrently	If there is a genuine demand and subject to the availability of teachers, a maximum of 12 classes may held concurrently by CITA and VTC.
Mode of attendance	In addition to part-time evening, part-time day release and Saturday courses, if there is a genuine demand, CITA and VTC may also arrange day-time courses to be held on Friday, Saturday and Sunday consecutively so as to shorten the time required to complete the top-up courses.
Estimated time for ALL applicants to complete the top-up courses	12 months