

*[This sample Deed of Undertaking sets out the format to be used by sub-contractor/member of the joint venture. All words in square brackets are guidance notes and shall not be included in the Deed of Undertaking submitted by the sub-contractor/member of the joint venture.]*

**LABOUR IMPORTATION SCHEME FOR THE CONSTRUCTION SECTOR**  
**DEED OF UNDERTAKING BY SUB-CONSTRUCTOR/MEMBER OF THE JOINT VENTURE**

To: ..... (hereinafter called ‘the Principal Contractor’) in relation to Works Contract .....  
dated ..... (hereinafter called ‘the Works Contract’ )

THIS DEED is made.....of ..... 20

*WHEREAS*

A .....is a company incorporated in and in accordance with the laws of ..... and whose registered office/principal place of business is situated at .. ..... (hereinafter called ‘the subcontractor’/‘member of the joint venture’)

B. The subcontractor/member of the joint venture has entered into the Works Contract with the Principal Contractor.

*NOW THIS DEED WITNESSES AS FOLLOWS:*

1. In this Deed :
  - (a) ‘applicant’ means the principal contractor who submits or has submitted quota application under the Labour Importation Scheme for the Construction Sector of the Government of the Hong Kong Special Administrative Region (the Construction Sector Scheme) in relation to the Works Contract;
  - (b) ‘employer’ means any person who enters or has entered into a contract of employment to employ an employee recruited from outside Hong Kong Special Administrative Region under the importation quota allocated to the applicant, and ‘employee’ shall be construed accordingly;
  - (c) ‘agent’ means any person engaged by the applicant/employer to be responsible for (i) the recruitment and personnel management of employee (hereinafter called “personnel management”); and (ii) arranging accommodation and other support services (such as meals, transportation, etc.,) for the employee.
2. The sub-contractor/member of the joint venture covenants and agrees that it will enter into a contract in the form and terms required by the Construction Sector Scheme as the employer of the employee should the applicant be allocated a quota under the Construction Sector Scheme.
3. The sub-contractor/member of the joint venture further covenants and agrees that it shall:
  - (a) comply with all the employer’s obligations under the terms and conditions of the employment contract between the employer and the employee;
  - (b) pay to the employee all remuneration, expenses, allowances, damages, compensation and other payments under the Employment Ordinance (Cap. 57), the Employees’ Compensation Ordinance (Cap. 282) and any other payment the employer is or becomes liable to the employee pursuant to any laws and/or regulations of Hong Kong Special Administrative Region;
  - (c) comply with the requirements for personnel management of and provision of accommodation and other support services for the employee as set out in paragraphs 6.26 and 6.27 of the “Guidance Notes for Application for Labour Importation Quota” (the Guidance Notes) of the Construction Sector Scheme. Details are summarised below:

- (i) comply with the requirements of the Employment Ordinance as well as other legislations related to the employment of labour and labour protection, and the relevant quota approval conditions of the Construction Sector Scheme;
  - (ii) coordinate with the applicant and/or agent to properly arrange the personnel management of as well as accommodation and other support services for the employee such as arranging the agent or together with the agent to report the above arrangements to the applicant regularly;
  - (iii) take measures to ensure that the personnel management of the employee as well as the accommodation and other support services arranged for the employee by the applicant, employer and/or agent comply with the requirements of the Employment Ordinance and other statutory provisions related to the employment of labour and labour protection, and the approval conditions of the Construction Sector Scheme. Measures include (but not limited to) (i) ensuring that employees of the applicant and the employer as well as the agent engaged understand and comply with the above requirements and conditions when performing their duties; (ii) stating the above requirements and conditions in the service contract(s); and (iii) requiring each agent to sign a deed of undertaking confirming compliance with the above requirements and conditions;
  - (iv) have full knowledge of all the fees charged to the imported labour by the agent. The service contract should clearly state that the agent should obtain the written consent of the applicant and employer in advance on matters such as the scope of services as well as the setting, variation and collection of the fees chargeable to the employee;
  - (v) ensure that no individual agent is concurrently responsible for handling the recruitment and personnel management of the employee as well as arranging the accommodation and other fee-charging support services (such as meals and transportation) for the employee. This seeks to avoid putting pressure on the employee to pay unreasonable fees;
  - (vi) the employee should be informed of the cost of accommodation and other support services to be paid by him/her (irrespective of whether such services are arranged by the applicant, employer or agent) in advance before his/her employment in an open and transparent manner. The fees charged should be at reasonable levels. Employee should also have the right to choose not to accept the support services arranged (such as the unreasonable charges for meal services). If the employer will not provide the accommodation for the employee free of charge, the employer may deduct the accommodation fee from the wages payable to the employee in accordance with the requirements under the Construction Sector Scheme;
  - (vii) ensure that the agent shall not subcontract the services listed in the service contract signed with the applicant and employer without their prior agreements. If the service contract is subcontracted, the applicant or employer should require the agent to take reasonable measures to ensure that the sub-contractor of the service contract engaged by the agent understands and complies with the requirements of the Employment Ordinance and other legislations related to the employment of labour and labour protection as well as the quota approval conditions of the Construction Sector Scheme when delivering the obligations under the service contract; and
- (d) comply with the legislations and requirements set out in the Appendix.

4. The sub-contractor/member of the joint venture\*, being the employer, understands that it will be subject to administrative sanctions if it fails to comply with the legislation and requirements set out in the Appendix, or fails to comply with/ensure that the agent engaged complies with the requirements for personnel management of and provision of accommodation and other support services for the employee under the Construction Sector Scheme.
5. The sub-contractor/member of the joint venture\*, being the employer, further confirms that all documents and information submitted under the Construction Sector Scheme are true, complete and accurate, and agrees that the Development Bureau (DEVB) may use the information in accordance with the Guidance Notes of the Construction Sector Scheme, including to forward such information to relevant government bureaux, departments and other law enforcement agencies for the purpose of enforcing the provisions of the Construction Sector Scheme or ensuring compliance by the applicant and/or employer with the laws. If there is any change to the relevant information, the sub-contractor/member of the joint venture\* should inform the DEVB as soon as possible.
6. If there is any conflict, ambiguity or inconsistency between the English and Chinese versions of this Deed, the English version shall prevail.
7. This Deed shall be governed by and construed according to the laws for the time being in force in Hong Kong Special Administrative Region. All disputes arising out of this Deed shall be subject to the exclusive jurisdiction of the courts of Hong Kong Special Administrative Region.

*IN WITNESS WHEREOF* the sub-contractor/member of the joint venture\* has executed this Deed the day and year first hereinbefore written.

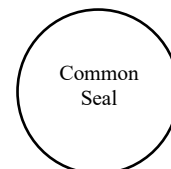
*[Sample attestation clause for use by company incorporated in Hong Kong Special Administrative Region]*

Alternative A (with Common Seal)

Executed and delivered )  
 as a deed and the COMMON SEAL )  
 of [name of the sub-contractor/member of the joint venture] )  
 was affixed in the presence of )  
 [ ] its [director(s) or )  
 director and secretary or person(s) authorized to )  
 sign the contract by its board of directors] )  
 in the presence of a witness: )  
 )  
 )

[Name] )  
 [Occupation] )  
 [Address] )

) *[Signature of the director(s) etc]*



Or

Alternative B (without a Common Seal)

Executed and delivered as a deed )  
by [name of the sub-contractor/member of the joint venture] )  
acting through )  
[ ] (its sole director) ) or )  
[ ] and [ ] (its directors) ) *[Signature of the director(s) etc]*  
[ ] (its director) and )  
[ ] (its company secretary) )  
in the presence of a witness: )  
 )  
..... )  
[Name] )  
[Occupation] )  
[Address] )

Or

*[Sample attestation clause for use by an attorney]*

SIGNED, SEALED and DELIVERED by )  
[insert the name of the sub-contractor/ )  
member of the joint venture\*] by )  
[ ] )  
his/her/its attorney under power of attorney )  
dated [ ] ) *[Signature of the attorney]*  
In the presence of )  
..... )  
[Name] )  
[Occupation] )  
[Address] )

*\*please delete as appropriate*

### List of Dos and Don'ts for Employers

#### (1) In relation to the Immigration Ordinance

##### Don'ts ✖

- ✖ Employ persons not lawfully employable in Hong Kong Special Administrative Region.
- ✖ Cause imported labour to work in violation of the Standard Employment Contract (SEC) or condition of stay.
- ✖ Aid and abet others in breach of condition of stay.
- ✖ Aid and abet others to make false statements/documents.

#### (2) In relation to labour laws

##### Dos ✓

- ✓ Pay wages to imported labour according to relevant provisions of the Employment Ordinance.
- ✓ Grant rest day / pay rest day pay to imported labour.
- ✓ Grant statutory holiday / pay statutory holiday pay to imported labour.
- ✓ Grant annual leave / pay annual leave pay to imported labour.
- ✓ Grant maternity leave / pay maternity leave pay to imported labour.
- ✓ Grant paternity leave / pay paternity leave pay to imported labour.
- ✓ Pay sickness allowance to imported labour.
- ✓ Make payment to imported labour on completion or termination of employment contract according to relevant provisions of the Employment Ordinance.
- ✓ Make payment to imported labour pursuant to awards of the Labour Tribunal or the Minor Employment Claims Adjudication Board.
- ✓ Keep wage and employment records of imported labour.
- ✓ Take out valid employees' compensation insurance policy for imported labour.
- ✓ Display a notice of insurance (LD 375) in such form as specified in relevant provisions of the Employees' Compensation Ordinance.
- ✓ Pay periodical payment and employees' compensation to imported labour who sustained injuries at work.
- ✓ Comply with occupational safety and health legislation.
- ✓ Comply with the Mandatory Provident Fund Schemes Ordinance.

##### Don'ts ✖

- ✖ Deduct the wages of imported labour unlawfully.
- ✖ Terminate the employment contract of imported labour whilst they are on paid sick leave.
- ✖ Terminate the employment contract of imported labour who sustained injuries at work, in breach of the Employees' Compensation Ordinance.
- ✖ Terminate the employment contract of imported labour during their pregnancy unlawfully.
- ✖ Terminate the employment contract of imported labour for trade union membership and activities.
- ✖ Terminate the employment contract of imported labour by reason of giving evidence or information in any proceedings or inquiry in connection with the enforcement of the Employment Ordinance, work accidents or breach of work safety legislation.

#### Part 2: List of Dos and Don'ts for Employers

#### (3) In relation to requirements of SEC and the Construction Sector Scheme

##### Dos ✓

- ✓ Recruit imported labour through Chinese Mainland labour service enterprises\* if the prospective imported labour are Chinese Mainland residents  
\*enterprises approved by the Ministry of Commerce of the People's Republic of China and granted the permission to operate business on labour service cooperation with the Hong Kong Special Administrative Region. The list of enterprises can be found at the website of the Ministry of Commerce of the People's Republic of China:  
[http://zsmcorp.mofcom.gov.cn/zsmbgacommon/zsmbga\\_innerCorp\\_hk\\_list](http://zsmcorp.mofcom.gov.cn/zsmbgacommon/zsmbga_innerCorp_hk_list).
- ✓ Make payment of overtime pay to imported labour at a rate as stipulated in SEC.

✓	Effect payment of wages to imported labour through autopay.
✓	Grant imported labour (whether they are new recruits or have their employment contracts renewed) paid leave and arrange them, on the basis of each SEC signed, to attend a briefing organised under the Construction Sector Scheme within 8 weeks upon their arrival in Hong Kong Special Administrative Region.
✓	Provide imported labour with accommodation in accordance with the standard as stipulated in the Schedule to SEC (if applicable).
✓	Provide imported labour with free medical treatment if they are ill or suffer personal injuries during the period of employment specified in SEC
✓	Provide, pay or reimburse passage expenses, medical examination expenses before arriving Hong Kong Special Administrative Region, visa/entry permit fees and subsequent extension fees to imported labour.
✓	Pay the cost of transporting imported labour's remains and personal property to their place of origin in the event of death.
✓	Give imported labour a copy of the signed employment contract free of charge.
✓	Provide each imported labour, on a monthly basis, with a detailed breakdown of his/her earnings.
✓	Prepare an acknowledgment list of wage information of imported labour.
✓	Prepare and send to the Development Bureau, within 2 weeks upon their arrival in Hong Kong Special Administrative Region, an acknowledgment record of employment contracts of imported labour.
<b><u>Don'ts *</u></b>	
✘	Displace local worker(s) in employ by imported labour
✘	Make any agreement with imported labour requiring them to surrender all or part of the wages or any sum to which they are entitled under SEC, or demanding or receiving any such rebate from them
✘	Make deductions from the wages of imported labour for the purpose of paying any dues or fees charged on the labour by authorities or agents in the labour's country of origin, or of offsetting the Employees Retraining Levy required to be paid by the employer
✘	Make deductions from the wages of imported labour for provision of accommodation at a rate which is over the contractual rate
✘	Cause imported labour to work exceeding the ceiling of the working hours as specified in SEC
✘	Withhold Hong Kong Special Administrative Region Identity Card(s) / passport(s) / Exit-entry Permit(s) for Travelling to and from Hong Kong and Macao / bank book(s) / automatic teller machine card(s) of imported labour
✘	Charge imported labour meal cost for the meal provided
✘	Refuse the entry and inspection by officers of the Development Bureau and/ or its appointed personnel or Labour Department to imported labours' accommodation
Note:	The importation quota granted to a principal contractor-applicant may be withdrawn if the principal contractor-applicant or the subcontractor-employer(s) has/have breached Laws of Hong Kong Special Administrative Region and/or regulations. The principal contractor-applicant will also be debarred from participation in the <b>Construction Sector Scheme</b> within a specified period of time.