



CONSTRUCTION
INDUSTRY COUNCIL
建造業議會



REFERENCE MATERIALS

STANDARD FORM OF ON-DEMAND PERFORMANCE BOND WITH CONDITIONS

Disclaimer

Whilst reasonable efforts have been made to ensure the accuracy of the information contained in this publication, the CIC nevertheless would encourage readers to seek appropriate independent advice from their professional advisers where possible and readers should not treat or rely on this publication as a substitute for such professional advice for taking any relevant actions.

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Preface

The Construction Industry Council (CIC) is committed to seeking continuous improvement in all aspects of the construction industry in Hong Kong. To achieve this aim, the CIC forms Committees, Task Forces and other forums to review specific areas of work with the intention of producing Alerts, Reference Materials, Guidelines and Codes of Conduct to assist participants in the industry to strive for excellence. The CIC appreciates that some improvements and practices can be implemented immediately whilst others may take more time to adjust. It is for this reason that four separate categories of publication have been adopted, the purposes of which are as follows:

Alerts

Reminders in the form of brief leaflets produced quickly to draw the immediate attention of relevant stakeholders the need to follow some good practices or to implement some preventative measures in relation to the industry.

Reference Materials

Reference Materials for adopting standards or methodologies in such ways that are generally regarded by the industry as good practices. The CIC recommends the adoption of these Reference Materials by industry stakeholders where appropriate.

Guidelines

The CIC expects all industry participants to adopt the commendations set out in such Guidelines and to adhere to such standards or procedures therein at all times. Industry participants are expected to be able to justify any course of action that deviates from those recommendations.

Codes of Conduct

Under the Construction Industry Council Ordinance (Cap 587), the CIC is tasked to formulate codes of conduct and enforce such codes. The Codes of Conduct issued by the CIC set out the principles that all relevant industry participants should follow. The CIC may take necessary actions to ensure compliance with the Codes.

If you have attempted to follow this publication, we do encourage you to share your feedback with us. Please take a moment to fill out the Feedback Form attached to this publication in order that we can further enhance it for the benefit of all concerned. With our joint efforts, we believe our construction industry will develop further and will continue to prosper for years to come.

FOREWORD

Performance Bonds

Performance Bonds are one of the means of protection against the non-performance of the contractor in construction contracts. They are an undertaking by a bondsman or surety to make a payment to the employer in the event of non-performance of the contractor. The cost of the bond is usually borne by the contractor, therefore it is likely to be reflected in the contractor's tender price. It may also deter some otherwise competent contractors from tendering for projects, particularly in a booming construction market.

With on-demand performance bonds, the bondsman pays an amount of money set out in the bond immediately on demand by the employer with little obligation on the employer to substantiate the contractor's non-performance. The onus is on the employer to act in a responsible manner when requiring on-demand bonds in construction contracts.

Apart from the requirement of bonds, employers should, whether by themselves or through the engagement of professional consultants, exercise diligence in their procurement process and project supervision to ensure an acceptable level of performance from the contractor and the satisfactory delivery of the construction project.

The CIC published "Procurement Alert No. 001/14 - Use of On-Demand Performance Bonds in Construction Contracts" in September 2014, it contains recommendations on the considerations for adopting on-demand bonds for construction contracts and good practices on their responsible use.

Background

Concerns were raised that stringent terms against contractors were becoming increasingly common in construction contracts; amongst which was the requirement on contractors to provide on-demand performance bonds or other cash equivalent securities. The issue was carefully examined by the Special Group on On-Demand Performance Bonds established under the previous Committee on Procurement and Subcontracting of the Construction Industry Council. Though the use of On-Demand Performance Bonds is not encouraged, it was recommended that a "Standard Form of On-demand Performance Bond with Conditions" ("Standard Form") could be produced as a fair and reasonable option to pursue on-demand bonds in construction contracts if this type of bond is decided to be adopted.

FOREWORD

If after due consideration it is decided to adopt an on-demand performance bond in the construction contract, it is recommended that the Standard Form contained herewith should be used whenever possible to ensure the bond is pursued in a fair and equitable manner, without undue allocation of risks to the contractor.

Features of the Standard Form of On-Demand Performance Bond with Conditions

The Standard Form was drafted with features incorporating suggestions and feedback from industry stakeholders as well as the banking and insurance sectors, which represented an equitable alternative to other performance bonds seen in the market.

- The bond will be released at contract completion (as defined in the contract)
- Allow for reduction of bond amount in stages (e.g. milestone or sectional completion)
- A “long-stop” expiry of the bond (one year after practical completion is suggested) to avoid the bond being effective indefinitely
- The bond may only be called when the contract certifier has certified in writing that the contractor is in breach of the contract
- The amount demanded is limited to the amount certified to be due and payable by the contractor for its breach

Note on the Use of the Standard Form of On-Demand Performance Bond with Conditions

The Standard Form is a legally binding document. Those intending to use the Standard Form should fully understand its contents and the obligations placed on the contracting parties when executed. Professional advice is strongly recommended when deciding to adopt the Standard Form.

Key stakeholders, including industry bodies from the banking and insurance sector were consulted during the drafting of the Standard Form; the content of which has been reviewed and found acceptable from the perspective of the bondsman. Amendments or modifications to the Standard Form are strongly discouraged to avoid any complications and uncertainties.

FOREWORD

Membership of the Special Group on On-Demand Bonds

Airport Authority Hong Kong

Development Bureau

Hogan Lovells

Hong Kong Construction Association

Hong Kong Construction Sub-Contractors Association

Hong Kong Housing Authority

Langdon & Seah Hong Kong Limited

MTR Corporation Limited

Rider Levett Bucknall Limited

The Hong Kong Institute of Surveyors

The Real Estate Developers Association of Hong Kong

List of Consulted Organisations

Employer

Airport Authority Hong Kong

MTR Corporation Limited

The Real Estate Developers Association of Hong Kong

Consultants and Professionals

Association of Architectural Practices

Association of Consultant Quantity Surveyors

Association of Consulting Engineers of Hong Kong

Hong Kong Institute of Architects

Hong Kong Institute of Construction Managers

Hong Kong Institute of Surveyors

Hong Kong Institution of Engineers

Contractors and Subcontractors

Hong Kong Construction Association

Hong Kong Construction Sub-contractors Association

Hong Kong Federation of Electrical and Mechanical Contractors

Hong Kong General Building Contractors Association

Hong Kong Registered Contractors Association

Banking and Insurance Sectors

Hong Kong Association of Banks

Hong Kong Confederation of Insurance Brokers

Hong Kong Institute of Bankers

ON-DEMAND PERFORMANCE BOND

On-demand Performance Bond

Dated

.....
(as the issuer of this On-demand Performance Bond, the "**Bondsman**")

.....
(as the beneficiary under this On-demand Performance Bond, the "**Principal**")

.....
(as the Principal's bank under this On-demand Performance Bond, the "**Principal's Bank**")

.....
(as the applicant of this On-demand Performance Bond, the "**Contractor**")

Standard Form of On-demand Performance Bond for the Construction Industry

Construction Industry Council
38/F, COS Centre,
56 Tsun Yip Street,
Kwun Tong, Kowloon



Details

Bondsman	Name	.....
	
	Address	.....
	
	Email	.....
	Attention	.....

Principal	Name	.....
	
	Address	.....
	
	Email	.....
	Attention	.....

Principal's Bank	Name	.....
	
	Address	.....
	
	Email	.....
	Attention	.....

Contractor	Name	.....
	
	Address	.....
	
	Email	.....
	Attention	.....

Description of Contract between Principal and Contractor	.....
[NOTE 1]	(the "Reference Contract")

General terms

1 On-demand Performance Bond

- (a) With effect from the date hereof, the Bondsman irrevocably and unconditionally agrees to pay on demand from the Principal, any and all amounts due and payable under the Reference Contract up to an amount not exceeding

.....
.....
..... [amount in words and currency]

in total (the “**Maximum Amount**”) on the terms set out in this On-demand Performance Bond.

- (b) This On-demand Performance Bond forms a separate and independent contract between the Bondsman and the Principal. Accordingly, the Bondsman is in no way concerned with or bound by, and is under no duty to investigate, the relationship between the Principal and the Contractor under the Reference Contract.

2 Demand by Principal

2.1 Presentation and form of demand

- (a) Any demand by the Principal under this On-demand Performance Bond must:

(i) be made by way of a written notice substantially in the form of the Schedule of this On-demand Performance Bond, and signed by, or on behalf of, the Principal (each such notice being a “**Notice of Demand**”);

(ii) be accompanied by a notice in writing from

..... **[NOTE 2]**
or such other person specified by the Principal by notice in writing delivered to the Bondsman by the Principal’s Bank on behalf of the Principal (“**Certifier**”) certifying:

(A) that the Contractor is in breach of its obligations under the Reference Contract;

(B) that the Contractor:

(aa) has not taken steps which the Certifier considers adequate to remedy the breach despite being given

- more than 14 calendar days' notice by the Certifier to remedy the breach; or
- (ab) has committed a breach that gives rise to an immediate right by the Principal to terminate the Reference Contract; and
 - (C) the amount due and payable by the Contractor to the Principal under the Reference Contract as a result of the breach;
- (iii) state the amount demanded, which shall not exceed the lesser of:
- (A) the amount certified by the Certifier as being due and payable by the Contractor to the Principal under the Reference Contract in the notice referred to in clause 2.1(a)(ii); and
 - (B) the Maximum Amount less the aggregate of:
 - (aa) any amounts previously paid under this On-demand Performance Bond; and
 - (ab) the amount of any reduction in the amount payable under this On-demand Performance Bond;
 - (iv) be delivered to the Bondsman by the Principal's Bank on behalf of the Principal in accordance with the provisions of clause 7; and
 - (v) be received by the Bondsman on or before the Expiry Date (as defined in clause 5).
- (b) Each Notice of Demand appearing to the Bondsman to be duly executed, when delivered together with a Certifier's notice in writing appearing to the Bondsman to comply with clause 2.1(a)(ii), shall be deemed to be a complying demand, and shall be conclusive evidence of the quantum of the demand, the existence of a breach under the Reference Contract, and for all other purposes under this On-demand Performance Bond.

2.2 Partial demand

A demand may be made for less than the Maximum Amount.

2.3 Multiple demands

Multiple demands may be made on this On-demand Performance Bond provided that the total amount of all demands does not exceed the Maximum Amount.

3 Payment by Bondsman

- (a) When the Bondsman receives a complying demand from the Principal in accordance with clause 2, the Bondsman must pay the Principal the amount demanded within

..... Business Days after receiving the demand. In this On-demand Performance Bond, "**Business Day**" means a day (other

than a Saturday, Sunday or public holiday) on which commercial banks are open for general business in Hong Kong.

- (b) Payment by the Bondsman to the Principal must be made:
 - (i) in the currency specified in clause 1(a); and
 - (ii) to an account maintained by the Principal's Bank specified in the Notice of Demand.

- (c) All payments by the Bondsman under this On-demand Performance Bond shall be made without any deduction on account of tax, set-off or otherwise. In the event that any deduction or withholding is required, the Bondsman shall pay such additional amounts as will result in receipt by the Principal of such amounts as would have been received by it had no such deduction or withholding been required, provided that any such additional amount will not cause the amount payable under this On-demand Performance Bond to exceed the Maximum Amount less the aggregate of:
 - (i) any amounts previously paid under this On-demand Performance Bond; and
 - (ii) the amount of any reduction in the amount payable under this On-demand Performance Bond.

Such additional amount paid under this On-demand Performance Bond shall reduce the Maximum Amount.

4 Reduction

The amount payable under this On-demand Performance Bond shall be reduced by:

- (a) any amount paid under this On-demand Performance Bond; and
- (b) the amount specified in the table below upon presentation by the Contractor to the Bondsman of the document specified in the table:
[NOTE 3]

Document	Reduction amount

The Bondsman is not required to verify the content of any document presented to it under clause 4(b).

5 Termination

(a) The right of the Principal to make a demand under this On-demand Performance Bond shall cease on the earliest of:

(i) [time] on [date]; **[NOTE 4]**

(ii) the date when no amount remains payable under it;

(iii) on delivery by the Principal's Bank to the Bondsman of

.....
.....

issued under the Reference Contract, along with the original of this On-demand Performance Bond; or **[NOTE 5]**

(iv) on delivery by the Principal's Bank to the Bondsman of the Principal's signed release from liability under the On-demand Performance Bond, along with the original of this On-demand Performance Bond

(such date being the "**Expiry Date**").

(b) For the avoidance of doubt, the obligation of the Bondsman to make payment under a complying demand presented on or before the Expiry Date in accordance with clause 2.1 shall not be reduced, discharged or otherwise affected by the passing of the Expiry Date.

6 Liability of Bondsman

The liability of the Bondsman under this On-demand Performance Bond is not subject to claims or defences arising under the Reference Contract, and will not be affected or discharged in any way other than as provided for in this On-demand Performance Bond, and the Bondsman hereby waives notice of:

(a) any suspension, variation or amendment of the Reference Contract or the works under the Reference Contract (including any extensions of time for performance or adjustment to the amount payable to the Contractor under the Reference Contract);

(b) termination of the Reference Contract or the employment of the Contractor under the Reference Contract;

(c) any forbearance or waiver of any right of action or remedy the Principal may have against the Contractor, or negligence by the Principal in enforcing any such right of action or remedy;

(d) any other bond, security or guarantee held or obtained by the Principal for any of the obligations of the Contractor under the Reference Contract or any release or waiver thereof;

- (e) any act or omission of the Contractor pursuant to any other arrangement with the Bondsman;
- (f) any breach of the Reference Contract or other default by the Principal; and
- (g) any provision of the Reference Contract being or becoming illegal, invalid, void, voidable or unenforceable.

7 Notices

7.1 Notices from Principal

Unless otherwise specified in this On-demand Performance Bond, any notice, demand, consent, approval or communication under this On-demand Performance Bond from the Principal to the Bondsman must be:

- (a) in writing and signed by a person appearing to the Bondsman to be duly authorised by the Principal; and
- (b) hand delivered to the Bondsman by the Principal's Bank on behalf of the Principal to the address specified in the Details.

7.2 Notices from Contractor

Unless otherwise specified in this On-demand Performance Bond, any notice, demand, consent, approval or communication under this On-demand Performance Bond from the Contractor to the Bondsman must be:

- (a) in writing and signed by a person appearing to the Bondsman to be duly authorised by the Contractor; and
- (b) either:
 - (i) hand delivered to the address specified in the Details; or
 - (ii) sent by prepaid or registered post to the address specified in the Details.

7.3 Notices from Bondsman

Unless otherwise specified in this On-demand Performance Bond, any notice, demand, consent, approval or communication under this On-demand Performance Bond from the Bondsman must be:

- (a) in writing and signed by a person duly authorised by the Bondsman; and
- (b) either:
 - (i) hand delivered to the address specified in the Details; or
 - (ii) sent by prepaid or registered post to the address specified in the Details.

8 Transfer and assignment

- (a) The Principal must not transfer or assign this On-demand Performance Bond without the prior written consent of the Bondsman.
- (b) The Bondsman must not transfer or assign this On-demand Performance Bond without the prior written consent of the Principal.
- (c) For the avoidance of doubt and subject to the provisions of applicable law:
 - (i) the Principal may assign any proceeds to which it may be or may become entitled under this On-demand Performance Bond;
 - (ii) however, the Bondsman shall not be obliged to pay an assignee of these proceeds unless the Bondsman has agreed to do so.

9 Contracts (Rights of Third Parties) Ordinance

Save for permitted assignees or transferees pursuant to clause 8 (Transfer and Assignment), a person who is not a party to this On-demand Performance Bond has no right under the Contracts (Rights of Third Parties) Ordinance or any equivalent legislation in any other jurisdiction to enforce or to enjoy the benefit of any term of this On-demand Performance Bond. **[NOTE 6]**

10 Governing law

This On-demand Performance Bond is governed by the law in force in the Hong Kong Special Administrative Region of the People's Republic of China.

11 Jurisdiction

The courts of the Hong Kong Special Administrative Region of the People's Republic of China have

- exclusive
- non-exclusive

[select one]

jurisdiction to settle any dispute between the Bondsman and the Principal relating to this On-demand Performance Bond.

Schedule

Notice of Demand from Principal to Bondsman
(the “Notice of Demand”)

To:

.....

.....

.....

[Name and Address of the Bondsman]

Date of Notice of Demand:

1 We refer to the On-demand Performance Bond described below, a copy of which is enclosed with this Notice of Demand (the “On-demand Performance Bond”):

Date of On-demand Performance Bond:

.....

Bondsman:

.....

.....

Principal:

.....

.....

Principal's Bank:

.....

.....

Contractor:

.....

.....

- 2 Terms defined in the On-demand Performance Bond shall have the same meaning as used in this Notice of Demand.
- 3 We enclose a notice in writing from the Certifier certifying:
- (a) that the Contractor is in breach of its obligations under the Reference Contract;
 - (b) that the Contractor:
 - (i) has not taken steps which the Certifier considers adequate to remedy the breach despite being given more than 14 calendar days' notice by the Certifier to remedy the breach; or
 - (ii) has committed a breach that gives rise to an immediate right by the Principal to terminate the Reference Contract; and
 - (c) the amount due and payable by the Contractor to the Principal under the Reference Contract as a result of the breach.

- 4 We hereby demand that you to pay us an amount of:

.....
.....

[*amount in words*], being an amount that does not exceed the lesser of:

- (a) the amount certified by the Certifier as being due and payable by the Contractor to the Principal under the Reference Contract in the notice referred to paragraph 3 above; and
 - (b) the Maximum Amount less the aggregate of:
 - (i) any amounts previously paid under the On-demand Performance Bond; and
 - (ii) the amount of any reduction in the amount payable under this On-demand Performance Bond.
- 5 We hereby request that you pay the amount stated in paragraph 4 above by no later than the day falling

..... Business Days after the date of receipt by you of this Notice of Demand, by remittance of such amount to the following account maintained by the Principal's Bank:

Account Number:

Account Name:

SWIFT Code:

Payment Reference:

This Notice of Demand is signed by the following persons who are authorised by the Principal to act for and on its behalf.

Signature:

Name:

Position:

Signature:

Name:

Position:

Attached:

- (1) Copy of the On-demand Performance Bond.**
- (2) Copy of notice from the Certifier.**

OR

EXECUTED AS A DEED by)

.....)

.....)

.....(name of Bondsman))

In accordance with section 127(3) of the)
Companies Ordinance (Cap. 622 of the)
Laws of Hong Kong) by authority of:)

)

)

.....)

Signature of director)

)

)

.....)

Name of director)

)

)

.....)

Signature of director/company secretary)
(*strike out as applicable*))

)

)

.....)

Name of director/company secretary)
(*strike out as applicable*))

OR

EXECUTED AS A DEED on behalf of)

.....)

.....)

.....(name of Bondsman))

by)

.....(name of attorney))

under a power of attorney dated)

.....)

in the presence of:)

.....

Signature of attorney

By executing this document the attorney states that the attorney has received no notice of revocation of the power of attorney

.....)

Signature of witness)

.....)

.....)

.....)

Name of witness)

.....)

.....)

.....)

.....)

Address of witness)

Notes for preparation of On-demand Performance Bond

These notes are prepared in order to assist in the preparation of the On-demand Performance Bond and cross-refer to the note references contained in the standard form On-demand Performance Bond. The note references must be deleted from the final version of the On-demand Performance Bond.

NOTE 1

The description of the contract between the Principal and Contractor should include, as applicable, the title, number and date of the contract.

NOTE 2

The Reference Contract should contain a clause specifying the entity that is to issue the relevant notice of certification. The full legal name of the entity must be inserted here.

NOTE 3

The Reference Contract may contain a clause stating that the amount payable under the On-demand Performance Bond shall be reduced upon the issue of a specified document or documents. If the Reference Contract contains such a clause, a description of the document(s) and the amount of reduction should be inserted here. If the Reference Contract does not contain such a clause, then this subparagraph should be deleted.

NOTE 4

The Reference Contract should contain a clause stating that the Principal's entitlement to payment under the On-demand Performance Bond will cease upon a specified date. The date referred to in the Reference Contract must be inserted here.

NOTE 5

The Reference Contract should contain a clause stating that the Principal's entitlement to payment under the On-demand Performance Bond will cease upon the issue of a specified document under the Reference Contract. A description of the specified document must be inserted here.

NOTE 6

The Contracts (Rights of Third Parties) Ordinance provides that a third party may enforce a term of a contract if: (a) the contract expressly provides that the third party may do so; or (b) the term purports to confer a benefit on the third party. Clause 9 of the On-demand Performance Bond makes it clear that a person who is not a party to the On-demand Performance Bond has no right under the Contracts (Rights of Third Parties) Ordinance or any equivalent legislation in any other jurisdiction to enforce or to enjoy the benefit of any term of the On-demand Performance Bond.

NOTE 7

Only the Bondsman is required to execute the On-demand Performance Bond. Three sample execution clauses are provided, although an alternative execution clause should be used if appropriate. Sample execution clauses that are not used should be struck out.

Where the Bondsman is incorporated in Hong Kong, the On-demand Performance Bond must be executed either:

- (a) under the Bondsman's Company Seal in accordance with the provisions of its Articles of Association;
- (b) if the Bondsman has only one director, by having it signed by the director of the Bondsman on the Bondsman's behalf;
- (c) if the Bondsman has 2 or more directors, by having it signed on the Bondsman's behalf by:
 - (i) the 2 directors or any 2 of the directors; or
 - (ii) any of the directors and the company secretary of the company; or
- (d) by a person appointed by a valid and binding Power of Attorney given by the Bondsman in accordance with its Articles of Association or other constitutional documents and in accordance with applicable laws.

MODEL CLAUSE

Model Clause for Standard Form of On-demand Performance Bond for the Construction Industry

Standard Form of On-demand Performance Bond for the Construction Industry

Construction Industry Council
38/F, COS Centre,
56 Tsun Yip Street,
Kwun Tong, Kowloon



Model Clause [NOTE 1]

1 On-demand Performance Bond

1.1 Provision of On-demand Performance Bond

Within [14] calendar days after the date of the [*Letter of Acceptance*], [*the Contractor*] must provide to [*the Principal*] an On-demand Performance Bond:

- (a) in the form appearing in Appendix [No.]; [NOTE 2]
- (b) duly executed by a bank or insurance company approved in writing by [*the Principal*]; and
- (c) in the amount of [amount] (“**Maximum Amount**”). [NOTE 3]

1.2 Purpose

The purpose of the On-demand Performance Bond is to ensure the due and proper performance of the Contract by [*the Contractor*].

1.3 Failure to provide On-demand Performance Bond

If [*the Contractor*] fails to provide the On-demand Performance Bond pursuant to [clause 1.1], [*the Principal*] may withhold an amount not greater than the Maximum Amount until the On-demand Performance Bond is provided to [*the Principal*], at which time the amount withheld must be released [*at the time of issuance of the next Interim Certificate*] following the provision of the On-demand Performance Bond.

1.4 Demand by [the Principal]

- (a) [*The Principal*] may demand payment under and in accordance with the terms of the On-demand Performance Bond if [*the Certifier*] has certified by notice in writing:
 - (i) that [*the Contractor*] is in breach of its obligation under the Contract;
 - (ii) that [*the Contractor*]:
 - (A) has not taken steps which [*the Certifier*] considers adequate to remedy the breach despite being given more than 14 calendar days’ notice by [*the Certifier*] to remedy the breach; or
 - (B) has committed a breach that gives rise to an immediate right by [the Principal] to terminate the Contract; and
 - (iii) the amount due and payable by [*the Contractor*] to [*the Principal*] under the Contract as a result of the breach.

- (b) The amount demanded by [*the Principal*] under the On-demand Performance Bond must not exceed the lesser of:
 - (i) the amount certified in writing by [*the Certifier*] as being due and payable by [*the Contractor*] to [*the Principal*] under the Contract pursuant to [*clause 1.4(a)*]; and
 - (ii) the Maximum Amount less the aggregate of:
 - (A) any amounts previously paid under the On-demand Performance Bond; and
 - (B) the amount of any reduction in the amount payable under this On-demand Performance Bond.

1.5 Reduction

The amount payable under the On-demand Performance Bond shall be reduced by:

- (a) any amount paid under the On-demand Performance Bond; and
- (b) the amount specified in the table below upon presentation by [*the Contractor*] to the Bondsman of the document specified in the table:
[NOTE 4]

Document	Reduction amount

1.6 Termination

The right of [*the Principal*] to make a demand under the On-demand Performance Bond shall cease on the earliest of:

- (a) [*Time*] on [*date*]; **[NOTE 5]**
 - (b) the date when no amount remains payable under it; and
 - (c) the date on which [*document*] is issued. **[NOTE 6]**
- (such date being the “**Expiry Date**”)

1.7 Replacement of [*the Certifier*]

- (a) If the person appointed to act as [*the Certifier*] ceases to act and a replacement (“**New [*Certifier*]**”) is appointed pursuant to [*clause ()*], [*the Principal*] must, within 14 calendar days after the New [*Certifier*] is appointed, notify the issuer of the On-demand Performance Bond that the New [*Certifier*] is to be the Certifier under the On-demand Performance Bond.

- (b) [*The Principal*] must not notify the issuer of the On-demand Performance Bond of any change of Certifier under the On-demand Performance Bond except:
 - (i) in accordance with [*clause 1.7(a)*]; or
 - (ii) as agreed in writing between [*the Contractor*] and [*the Principal*].

Notes for Model Clause

NOTE 1

When deciding whether to adopt an on-demand performance bond for a construction contract, it is recommended that the Principal should evaluate carefully the necessity of requiring an on-demand performance bond, taking into consideration the risk profile of the project and the suite of alternative risk management tools available. Alternatives include:

- (a) personal or parent company guarantees;
- (b) appropriate retention amount;
- (c) stringent financial checks on tenderers;
- (d) selection of a contractor / sub-contractor with a good reputation, a sound financial history and a realistic competitive price; and
- (e) a pro-active approach to promoting good performance through diligent management, equitable risk sharing and a realistic construction programme.

For more information, see the Construction Industry Council's Procurement Alert No. 001/14, *Use of On-Demand Performance Bonds in Construction Contracts*.

NOTE 2

Annex a copy of the Construction Industry Council's Standard Form of On-demand Performance Bond for the Construction Industry.

NOTE 3

Due consideration should be given to determining a bond amount that is proportionate to the complexity, size and value of the project and the level of risk involved, while providing adequate protection for the beneficiary.

NOTE 4

Due consideration should be given to reducing the bond amount upon issue of the Certificate of Practical Completion (or equivalent document). Where the Contract provides for sectional completion, consideration should also be given to reducing the bond amount on the completion of each section.

NOTE 5

The On-demand Performance Bond should specify a "long-stop" termination date to ensure that the bond is not open-ended (for example, in the event that the completion of the works is substantially delayed). It is recommended that the date should be not sooner than 1 year after the Date for Practical Completion (or equivalent) specified in the Contract.

NOTE 6

The On-demand Performance Bond should have an appropriate termination date linked to the issue of a particular document, such as the Certificate of Practical Completion, Defects Rectification Certificate or Occupation Permit. The document should be specified here. If the Certificate of Practical Completion is selected, consider whether clause 1.5(b) is necessary.

FEEDBACK FORM

Feedback Form

Standard Form of On-demand Performance Bond with Conditions

Thank you for reading this publication. To improve our future editions, we would be grateful to have your comments.

(Please put a "✓" in the appropriate box.)

1. As a whole, I feel that the publication is:	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Informative	<input type="checkbox"/>				
Comprehensive	<input type="checkbox"/>				
Useful	<input type="checkbox"/>				
Practical	<input type="checkbox"/>				
2. Does the publication enable you to understand more about On-demand Performance Bonds?	Yes	No	No Comment		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3. Have you made reference to the publication in your work?	Quite Often	Sometimes	Never		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4. To what extent have you incorporated the recommendations of the publication in your work?	Most	Some	None		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
5. Overall, how would you rate our publication?	Excellent	Very Good	Satisfactory	Fair	Poor
	<input type="checkbox"/>				
6. Other comments and suggestions, please specify (use separate sheets if necessary).					
Personal Particulars (optional):*					
Name: <u>Mr. / Mrs. / Ms. / Dr. / Prof. / Ir / Sr ^</u>					
Company: _____					
Tel: _____					
Address: _____					
E-mail: _____					

* The personal data in this form will be used only for this survey. Your data will be kept confidential and dealt with only by the Construction Industry Council.

^ Circle as appropriate.

Please return the feedback form to:

CIC Secretariat – Council Services

E-mail: enquiry@cic.hk

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