

28 August 2015

Works Policies 1 Section
Development Bureau
15/F, West Wing,
Central Government Office,
2 Tim Mei Avenue, Tamar,
Hong Kong

Our Ref: 0200023689

By fax and post

3167 2630

Dear Sir/Madam,

Response for Consultation on Security of Payment Legislation

HKCA is in support to legislate for Security of Payment and has in the past provided inputs. With regard to the details provided in the current consultation documents, we have the following observations and comments:

1. We propose the scope of the legislation to be extended cover RMAA projects undertaken by RGBC.
2. We consider the legislation should allow for Payment Claims to include all financial claims including damages, to allow employers/main contractors to claim against the main contractors / contractors down the line.
3. To avoid misinterpretation / misconception it may be desirable to provide, in an appropriate form, clear definitions on the timing of the interim payment entitlement and possibly the heads of claim.
4. Members are concerned that the proposed legislation will create problem in the current nominated sub-contracts arrangement because the sub-contractors' payment are not assessed by main-contractors, but consultants.
5. Members are concerned with the mode of service of Payment Claims and considered this should be spelt out in the proposed legislation.

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6. Members are concerned that the right to suspend under the proposed legislation may give leeway for unreasonable sub-contractors to ransom the main contractors for more payment (although it was clarified that this can only happen after non-payment of an admitted amount or an adjudicator's decision).
7. Members are concerned that if the adjudicators are not competent, this may pose a risk to the contractors over payment.
8. Members proposed that those existing recognized professional institutions in the construction industry should also be named as the nominating body of the adjudicator in the legislation.
9. Members also queried whether 55 working days was a practical time limit, for parties to go through the whole adjudication process. 55 days adjudication period is considered long for simple disputes whereas complicated disputes needed more time.
10. Our civil engineering contractor members considered multi-parties adjudication an essential part of the legislation involving matters concerning also the employers (despite it was explained this was not considered practical due to the nature of the process).
11. Regarding the coverage of foreign contractors, members are concerned that while these contractors can claim against contractors up the line, it would be difficult for contractors to claim against them down the line because of the difficulties to enforce an adjudication award in foreign jurisdictions. The legislation should provide coverage in this respect.
12. The judicial support in the enforcement of adjudication awards will be crucial.
13. Members queried whether wasted costs orders could be applied against legal professions / experts in the adjudication.

香港建造商會
Hong Kong Construction Association

Page Three

14. To ensure compliance, there will be an increase in administration resources and project expenditure throughout the industry.

Yours sincerely,



Thomas Tse

Secretary General

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