

Construction Industry Council

Committee on Subcontracting

Meeting No. 004/12 of the Committee on Subcontracting for 2012 was held on 16 August 2012 (Thursday) at 2:30pm at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

Present: Mike WONG (MW) Chairman
Teresa CHENG (TC)
Hau-wai CHEUNG (HWC)
Paul CHONG (PC)
Luen-kiu CHOW (LKC)
Lawrence NG (LN)
Anthony CHAN (AnCN) Hong Kong General Building Contractors Association
Sam-choi CHAN (SCC) Construction Site Workers General Union
Tommy LEUNG (TLg) Airport Authority Hong Kong
Ki-cheung TANG (KCT) The Hong Kong Institute of Surveyors
Chun-yuen TSE (CYT) Hong Kong Construction Subcontractors Association

In Attendance: Ringo MOK Development Bureau (Representing Chau-fat CHAN)
Sonia YUNG (SY) Housing Department (Representing Ada FUNG)
CHENG Kei-chung Water Supplies Department (Representing Roger LAM)
Ricky LAI Independent Commission Against Corruption (Representing Nelson CHAN)
Christopher TO (CT) Executive Director
Ivan WONG (IW) Senior Manager - Council Services
Shirley LEE (SyL) Manager - Council Services

Apologies: Bay WONG (ByW)
Conrad WONG (CW)
Wai-wai YU (WWY)
Bernard HUI (BH) The Hong Kong Institute of Architects
WONG Sing-lam (SLW) Contractor's Authorised Signatory Association
Alex CHOW (KPC) Building Department
TSO Sing-Hin (SHT) Labour Department

PROGRESS REPORT

Action

4.1 **Confirmation of the Progress Report of the 3rd Meeting for 2012**

Members referred to Paper CIC/SBC/R/003/12.

With no further comments, Members confirmed the progress report of the previous meeting held on Tuesday, 3 July 2012 at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

4.2 **Matters Arising from the Last Meeting**

3.4 Wage Payment Alert No. 001/12 on Secure your Wages and Legitimate Rights

The posters in English and Chinese were tabled for Members' information.

The Secretariat reported that the content of the poster had been revised in response to comments by respective Members at the last meeting.

To grab the attention of frontline construction workers, Members agreed that the title of the poster would be revised a bit to make it more punchy and eye-catching, for example "Know your Wages and Legitimate Rights". However, the main content of the poster would not be changed to avoid further delay in the production.

[PMN: Proposed by a Member by email dated 17 August 2012, the wording in Chinese of the poster could be modified to make it more reader-friendly for the frontline construction workforce to raise their attention to secure wages and legitimate rights. Your comments and suggestions would be greatly appreciated.]

All to note

工資權益你要知

書面合約至穩陣 僱員僱主各一份
工資算法要釐清 簽約最好有見證

Action

留意工會發公告 工資莫人爲低報
收取現金工資時 收據紀錄要堅持

The English version would be revised in accordance with the above Chinese version and is proposed as follows:

Secure Your Wages and Legitimate Rights

- *Employment contract in writing; the copies retained by both parties.*
- *Employment contract with clear wage calculation specified, and signed under witness of third party.*
- *Note the latest wage rates announced by labour unions; don't sign an employment contract at a wage rate lower than the actual one.*
- *Wage payment in cash must come with a written record which should be properly retained.]*

Raised by LKC at the last meeting, the Secretariat reported that the proposition concerning variable remuneration calculated on the basis of the quantity of work done to be included in the specimen employment contract as an option available for selection where appropriate was currently under review and would be brought up for discussion at the next committee meeting.

4.3 Task Force on Security of Payment Legislation

Members referred to Papers CIC/SBC/P/024/12 and CIC/SBC/P/025/12.

Members took note of the “Report on Security of Payment Legislation to Improve Payment Practices in the Construction Industry” submitted by the Task Force (Task Force Report).

A Member referred to Annex C “Quantum of Outstanding Payments by Types of Operators” of the Task Force Report and enquired about the average outstanding payment per annum for main contractors (8%), which appeared to be significantly lower-than-expected outstanding payment in real-world situation in construction industry.

In response, DevB clarified that a snapshot approach was adopted

Action

by the survey within the two-year reference period, and the total amount of business receipts in each of the reference year was taken as the denominator to work out the percentage of average outstanding payments for main contractors (i.e. an average of 8 % was recorded over the reference period).

In reply to a question about how the result (i.e. 15% of main contractors encountered progress payment withheld due to “pay if/when paid” payment terms) was generated in respect of private works contracts, DevB said that full explanation had been given in point 4.13 on page 68 of the final survey report where some main contractors might carry out construction works in the capacity of subcontractors in some contracts during the reference period, those main contractors also reported they had encountered payment-related problems due to “pay if/when paid” payment terms adopted by upper-tier parties.

In reply to a Member’s query, the quantum of outstanding payments was defined as the difference between the total amount of payments applied and the corresponding total amounts actually received by different types of operators during the survey period in 2009 and 2010.

After much deliberation, the Committee endorsed the Task Force Report on Security of Payment Legislation to Improve Payment Practices in the Construction Industry subject to the following enrichment to the report by including:

- four common elements in security of payment as set out in Section 4 of the Task Force Report, i.e.
 - rights to progress payments for work done;
 - prohibition of conditional payments (e.g. pay if/when paid);
 - mandatory adjudication; and
 - rights to suspend work in case of non-payment.
- Table 4.8 “Common Payment-related Problems Encountered with Upper-tier Parties by Types of Operators” on page 67 of the final survey report.

To introduce a fairer payment regime, following comments given by Members would be taken into consideration when identifying the intended scope of the security of payment legislation:

- The importance of independent professional advice from the engineer/architect/quantity surveyor without unduly

Action

- influence or pressure from employer;
- In some jurisdictions, it was required by law to stipulate the due date for payment in written contract. Each payment shall be due and payable under the conditions and for the period set forth in statute or regulation;
 - To introduce an efficient and effective dispute resolution mechanism, e.g. mandatory adjudication to resolve the payment disputes as quickly as possible during the construction period so as to give subcontractors and suppliers rights to ensure timely cash flows down the construction supply chain;
 - In respect of private works contracts, adjudication could particularly facilitate the receipt of progress payment withheld due to disputes and progress payment withheld due to delay in payment certification and settlement process as indicated in table 4.8 on page 67 of the final survey report;
 - To eliminate “pay if/when paid” clauses from construction contracts;
 - To improve rights for contractors to suspend their work in non-payment circumstances;
 - To stipulate a reasonable period for settling the final account/final payment;
 - Suggested by a Member, the legislative framework must take into account the common payment-related problems encountered with upper-tier parties by types of operators shown in table 4.8 on page 67 of the final survey report;
 - To be in line with existing Security of Payment Act in the other jurisdictions, the term “conditional payment” should be adopted instead of “pay if/when paid” payment term used in the survey; and
 - Considering the fact that oral contracts were also recognised in some overseas jurisdictions under the Security of Payment Act, the new task force to be set up by DevB would also take into account both written and oral contracts when developing the new legislation.

On behalf of the Committee, Chairman expressed his sincere appreciation to the Task Force on Security of Payment Legislation and acknowledged the contribution of time and effort for preparing the Task Force Report by the Task Force Chair, Mr. Bernard HUI as well as members of the Task Force.

Members also agreed that the Task Force on Security of Payment Legislation would be dissolved upon approval of the report at the

Council Meeting scheduled for 31 August 2012.

[PC left the meeting at this juncture.]

4.4 Task Force on Voluntary Subcontractor Registration Scheme (VSRS) Stage 2

Members referred to Paper CIC/SBC/P/026/12.

The Secretariat reported that the rules and procedures for the primary register of subcontractor registration scheme had been revised in response to comments from the last meeting.

In response to the concern on Clause 2.1(c) Requirement R3, Chairman and CYT further elaborated that instead of creating barriers to entry, the introduction of Requirement R3 aimed to relax the entry requirement by introducing a new alternative requirement for those not eligible for registration through Requirement R1 or R2. The management training course required under new R3 aimed to enhance the knowledge of potential registered subcontractors to keep abreast with good management and safety practices in today's construction sites and thus to facilitate them becoming subcontractors and operating their future companies.

4.5 Any Other Business

The letter "Announcement for Launching of the LECA Charity Fund on 1 August 2012" issued by The Lift & Escalator Contractors Association on 25 July 2012 was tabled for Members' reference.

The Secretariat briefly introduced the purpose, target beneficiaries, type of beneficial and effective date of the LECA Charity Fund.

4.6 Tentative Date of Next Meeting for 2012

9 October 2012 (Tuesday) at 2:30pm at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

All to note

There being no further business, the meeting was adjourned at 4:08pm.