

Construction Industry Security of Payment Ordinance

(Cap. 652 of the Laws of Hong Kong)



Construction Industry Security of Payment Ordinance - Purpose

1. To improve the **delay payment** problems in the construction industry
2. To help reduce occurrence of **wage arrears of workers**
3. It is expected that the project **procurement cost** could be **reduced over time as price premiums for risk** in association with payment problems will gradually **decline** following improved security of payment.

Main Provisions of the Ordinance

◆ Improvement of Contract Payment Terms

- ◆ prohibits **unfair payment terms** (such as “**pay when paid**”)
- ◆ **impose time limits** for the paying party to **give response and make payment** after a valid payment claim is made

◆ Adjudication Mechanism

- ◆ When payment dispute arises, claiming party has a **discretion** to initiate adjudication
- ◆ To provide a platform for contract parties to resolve payment disputes through an **independent adjudicator**
- ◆ **Shorter timeframe, lower cost and binding** on two parties
- ◆ Mechanism to **prevent abuse**

◆ Suspend or Reduce the Rate of Progress

- ◆ In case of non-payment of **admitted amount or adjudicated amount**, claiming party is entitled to suspend or reduce the rate of progress for carrying out work or supply.

Overall Structure of the Ordinance

Part 1 – Preliminary

Part 2 – Payments

Part 3 – Adjudication of Payment Disputes

Part 4 – Right to Delay Work or Supply

Part 5 – Miscellaneous Matters

Part 6 – Related Amendments

Overall Structure of the Ordinance

Schedule 1 – Premises Excluded from Definition of *Residential Unit* in Section 2(1)

Schedule 2 – Specified *Structures*

Schedule 3 – Bodies Specified for Definition of *Specified Entity* in Section 4(3)

Schedule 4 – **Contract Value** of Public Contracts or Main Private Contracts for Purposes of Section 7(1)(a)(ii) or 8(1)(a)(ii)

Part 1 – Preliminary
(including Scope of Application)

Part 1 – Preliminary (Application)

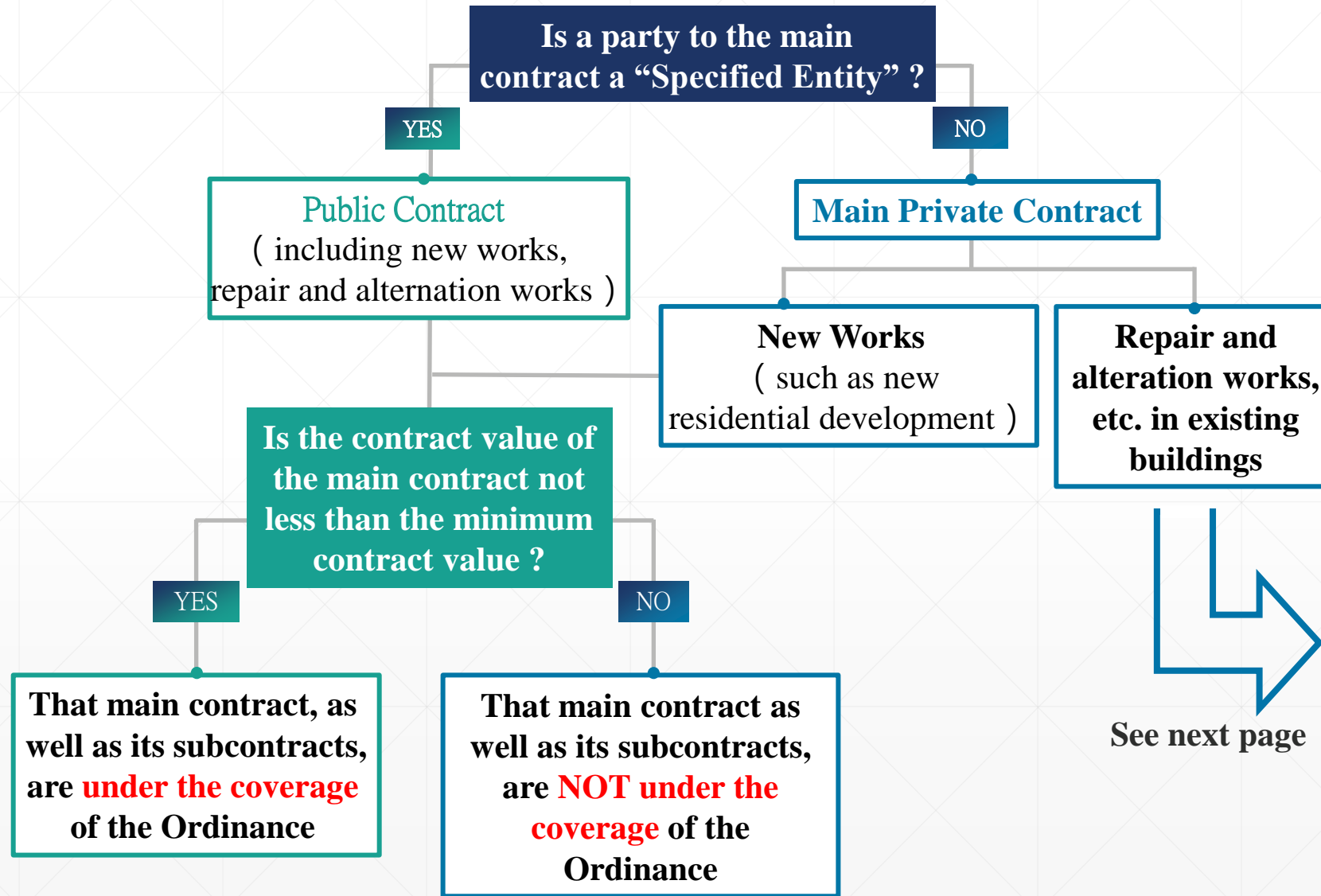
Contracts for carrying out construction works and **contracts for supply** of goods (e.g. materials and plant) and services related to construction works, and their sub-contracts at all tiers, with the contract values of **main contracts** not less than the **minimum contract values** (*HK\$5 million for main works contracts and HK\$0.5 million for main service/supply contracts*)

- Public (including government and specified bodies*)
Construction Contracts
 - Private Construction Contracts
 - Construction contracts for new works
 - Construction contracts for existing buildings/facilities, but not including
 - Construction contracts for occupied residential buildings
 - Construction contracts for non-residential buildings
- NOT requiring BA approval

If the main contract is covered, subcontracts along the same supply chain, regardless the amount, are also governed by the Ordinance.

“Specified Entity” means the Government, a body specified in Schedule 3 of the Ordinance (such as Airport Authority, Hong Kong Housing Authority, MTR Corporation Limited, electricity or gas supply companies etc.) or its subsidiary undertaking.

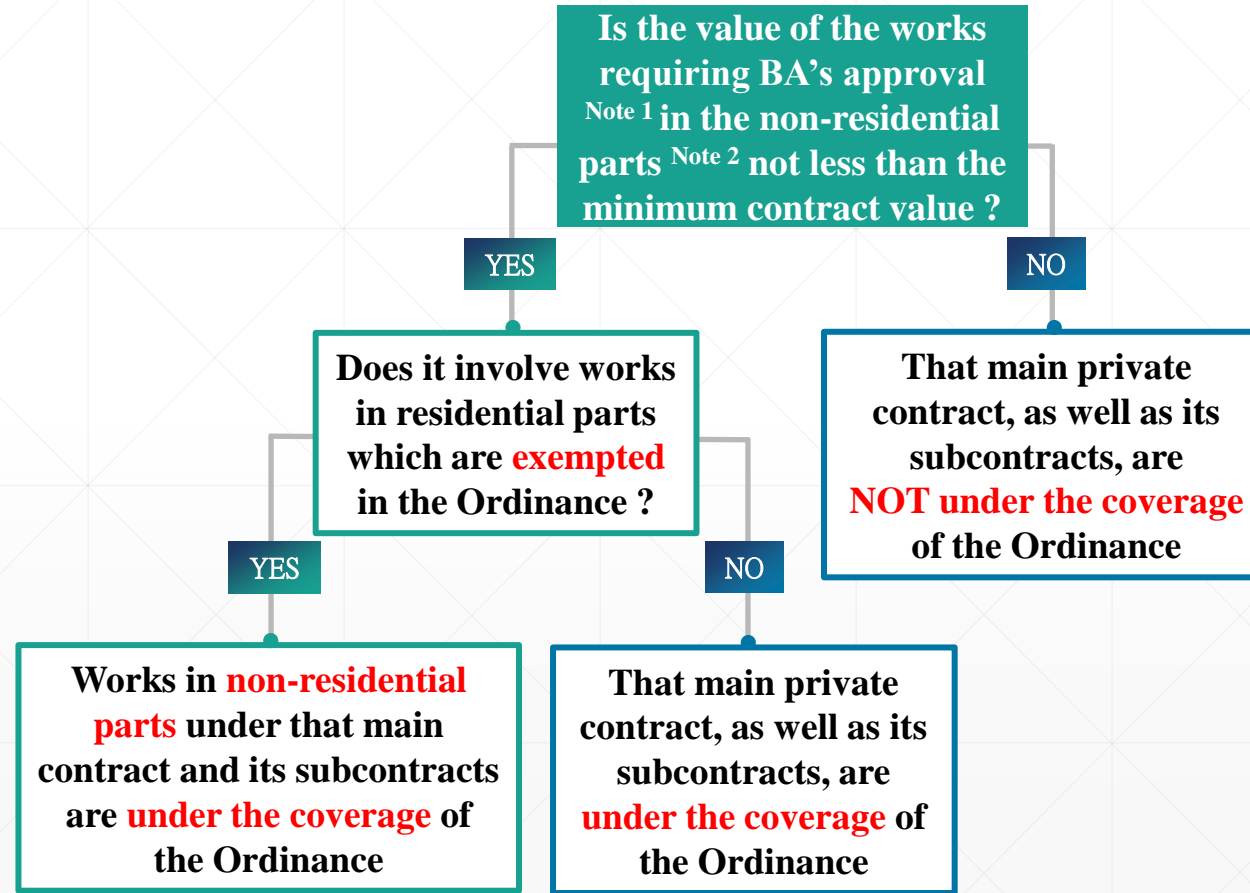
Part 1 – Preliminary (Application)



- *Applicable to construction contracts entered into on or after 28 August 2025 (referring to the date of signing the main contract)*
- *The Ordinance is applicable to both oral and written contracts*
- *The definition of "construction contract" under the Ordinance does not include development contract.*

Part 1 – Preliminary (Application)

Main private contract for repair and alteration works, etc. in existing buildings



Example - Repair and Alteration Works in a Private Composite Building

The **contract value** of the "main private contract" only include the value of the works **requiring BA's approval** in **non-residential parts** Note 2.

If the **contract value** is not less than HK\$ 5 million, the Ordinance applies to the works in **non-residential parts** under the main private contract and its subcontracts.

Notes:

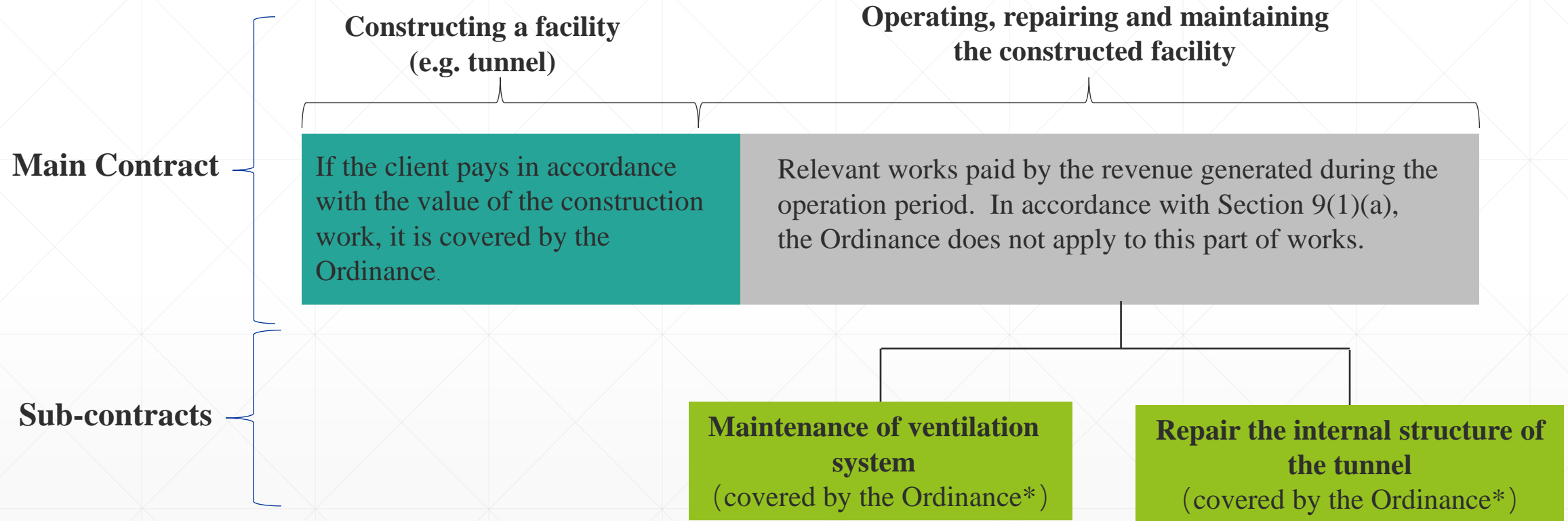
- (1) BA's approval means the approval and consent of the Building Authority (BA) under the Building Ordinance (Cap. 123) for works to commence or be carried out.
- (2) The non-residential parts include shops, offices, hotels, student hostels, staff quarters, etc.

Part 1 – Preliminary (Application)

- ◆ **This Ordinance is not applicable to**
 - 1) construction contract to the extent that the consideration payable is not to be calculated by reference to the value of work done / goods or services provided
 - 2) employment contract
 - 3) construction contract dealing with work carried outside Hong Kong and the supply of its related goods and services
 - 4) construction contract at a construction site that is an existing residential unit or the common areas of a building
- ◆ **No contracting out of the Ordinance**

Part 1 – Preliminary (Application)

For example: (Design-Build-Operate main contract)



** If the main contractor engages a subcontractor to carry out the repair and maintenance works during the operation period and the consideration payable to the subcontractor is based on the value of the repair and maintenance works, the contract between the main contractor and the subcontractor is a “subcontract” of the main contract pursuant to s.5 of the Ordinance. According to s.7(1)(b) or 8(1)(b) of the Ordinance, these subcontractors are covered by the Ordinance.*

Part 2 – Payment
(Improvement of contract
payment terms)
&
Part 3 Division 2 – Payment
Disputes

Part 2 & Part 3 Division 2 – Payment & Payment Disputes

- ❑ Party carried out work (or supply) under a construction contract is entitled to serve **payment claim**
- ❑ Contractual parties may **agree** on the number of payments, payment interval and the basis of valuation for the amount payable.



Serve of Payment Claim

- ① If the contract specifies a date to serve the payment claim, the claiming party should follow the **contractual date** to serve the payment claim;
- ② If a contractual date is not specified, the claiming party can serve the payment claim on the **last day of a calendar month**.

*[If the contract provides for a **claim handling procedure** for a claim for any additional payment (e.g. variation orders), the claim handling procedure must be completed before a payment claim for the additional payment is served. If the contract does not specify a period within which the claim handling procedure is to be completed, and the paying party does not complete it within a **reasonable time**, claiming party can serve a payment claim and initiate adjudication where appropriate, in accordance with the Ordinance.]*

Part 2 & Part 3 Division 2 – Payment & Payment Disputes



or an earlier day
as specified in
the contract

Payment Response Deadline

- ① If the contract specified a timeline for making the payment response (but not exceeding 30 days limit as provided in the Ordinance), paying party should follow the contractual timeline to serve the payment response.
- ② If a contractual timeline is not specified, the paying party should serve the payment response within 30 days from the date the payment claim is served.

Scenario (1): The paying party does not serve payment response

Scenario (2): The paying party serves payment response but the admitted amount is less than the claimed amount

Scenario (3): The paying party admits an amount payable in the payment response

Part 2 & Part 3 Division 2 – Payment & Payment Disputes

Scenario (1) and Scenario (2)



Scenario (3)



Claiming party can refer the payment dispute arising from Scenarios (1) and (2) to adjudication (within 28 days)

- *The occurrence of Scenarios (1) and (2) indicates arising of payment dispute only. You are not entitled to suspend or reduce the rate of progress.*
- *If the paying party fails to serve payment response before the deadline, he is not permitted to raise any set off (e.g. deduction of liquidated damages) in adjudication proceedings in relation to the payment claim.*



or an earlier day as specified in the contract

Paying party should make full payment of the amount admitted in the payment response by the payment deadline

**IF NOT
PAID IN
FULL**



Claiming party can refer the payment dispute arising from Scenario (3) to adjudication (within 28 days)

- *Claiming party is entitled to suspend or reduce the rate of progress for carrying out of work or supply*

Part 2 – Payment (Payment Claim and Payment Response)

Things to Note

Claiming Party

1. The payment claim must:
 - a) be in writing;
 - b) identify the construction work or related goods and services to which the payment relates; and
 - c) state the claimed amount and how it is calculated
2. Serve only 1 payment claim for a progress payment
3. Must not include in a payment claim any amount under adjudication or adjudicated amount (binding)

Paying Party

1. The payment response must:
 - a) be in writing;
 - b) identify the related payment claim, and
 - c) states the admitted amount, the difference between the admitted amount and the claimed amount and how the admitted amount is calculated.
2. May amend a payment response by the payment response deadline
3. A certificate or assessment issued under the contract that meets the requirements of the Ordinance is taken as a payment response.

Part 2 – Payment (Prohibiting “conditional payment” contract terms)

- ◆ “Conditional payment” terms include:
 - ◆ ”Pay when paid” / “pay if paid”;
 - ◆ Clauses which have same effect as “pay when paid”
- ◆ No exception to **nominated sub-contract** (NSC)
- ◆ No exception to **insolvency** higher up the chain

Part 3 – Adjudication of Payment Disputes

Part 3 – Adjudication of Payment Disputes

When payment dispute arises from Scenarios (1) to (3) on Slides 14 and 15, claiming party is entitled to refer the dispute to adjudication.

0th
working day

Claimant to serve an adjudication notice on the respondent and ANB

7th
working day

ANB to appoint an adjudicator

8th
working day

Claimant to serve adjudication submission on the adjudicator and the respondent

28th
working day

Respondent to serve adjudication response on the adjudicator and the claimant
(This deadline can be extended if agreed by the adjudicator)

30th
working day

Claimant to serve reply to adjudication response on the adjudicator and the respondent
(This deadline can be extended if agreed by the adjudicator)

62nd
working day

Adjudicator to make determination within 55 working days after the date of his/her appointment
(This deadline can be extended if agreed by both parties to adjudication)

- *The Development Bureau (DEVB) will establish a register of adjudicator nominating bodies (ANBs). The ANBs will be professional institutes familiar with the operation of the construction industry and organisation specialized on handling contract disputes.*
- *DEVB will also formulate the main content of the adjudication rules, code of practice and code of conduct for adjudicators, as well as a unified guideline on conflicts of interest to ensure the quality of adjudication.*
- *Adjudicators are qualified professionals with experience in handling contract disputes in the construction industry, such as engineers, architects, surveyors and lawyers.*
- *Adjudicator must declare conflicts of interest.*

Part 3 – Adjudication of Payment Disputes

Other Matters to Note in the Adjudication Proceedings

1. If the contract does not specify an ANB, or specifies more than one ANBs, the claimant must nominate 2 ANBs for the respondent to select from. This will take **an addition of 8 working days** (i.e. the adjudicator is to be appointed by the 15th working day at the least).
2. **Working day** for the adjudication proceedings mean a day that is not:
 - (a) a general holiday ;
 - (b) Saturday; or
 - (c) a black rainstorm warning day or gale warning day
3. Parties are **jointly and severally liable** to pay adjudication cost **in the proportion** as determined by the adjudicator.
4. The adjudication mechanism is not yet applicable to payment disputes involving **extension of time (EoT)** under main private contracts and their subcontracts.

Part 3 – Adjudication of Payment Disputes

Phase implementation of adjudication of payment disputes involving EoT

	Adjudication of Payment Dispute	
	Not involving dispute on EoT	Involving dispute on EoT
Public Contract and their subcontracts	To be implemented in Phase 1	
Private main contracts and their subcontracts	To be implemented in Phase 1	To be implemented in Phase 2*

** SDEV will specify an effective date for the phase 2 implementation of the adjudication of payment disputes in relation to the EoT for private main contracts and their subcontracts.*

Part 3 – Adjudication of Payment Disputes

Formulation of the following adjudication related documents, to ensure the quality of adjudication :

- ◆ **Adjudication rules**

To make rules for the conduct of adjudication proceedings

- ◆ **Practice notes**

To establish best practices/standard of adjudication proceedings

- ◆ **Code of conduct for adjudicators**

To establish the standard on the professional and ethical responsibility of adjudicators (for example, maintain independence and impartiality when adjudicating the payment disputes, avoid conflicts of interest, duty of good faith and competence, etc.)

- ◆ **Guideline on conflicts of interest**

Standard for assessing whether adjudicators have conflicts of interest

Part 3 – Adjudication of Payment Disputes

A determination is binding on the parties unless the payment dispute is settled by written agreement between the parties, or determined in arbitration or court.

Respondent

1. must pay the adjudicated amount by the deadline specified by the adjudicator
Note (1)
2. can apply to set aside the adjudication determination pursuant to Section 48 of the Ordinance Note (2)

Claimant

If not receiving the adjudicated amount in full by the deadline specified by the adjudicator,

1. can exercise the right to suspend or reduce the rate of progress for carrying out work or supply
2. can apply for enforcement of the adjudication pursuant to Section 49 of the Ordinance Note (2)

Notes:

(1) Payment deadline for adjudicated amount: (a) deadline specified by the adjudicator in the determination; or (b) if not specified by the adjudicator, within 30 days after the date on which the determination is served on the parties.

(2) Right to apply for set aside/enforcement of adjudication determination is available to both parties to adjudication proceedings.

Part 4 – Right to Delay Work or Supply

Part 4 – Right to Delay Work or Supply

Pursuant to the Ordinance, if fulfilling either of the following 2 specified circumstances:

- a) the paying party **admits an amount payable** but fails to pay the claiming party the admitted amount in full by the payment deadline;
- b) the adjudicator has made a determination on the payment dispute, but the respondent fails to pay the claimant the **adjudicated amount** in full by the deadline specified by the adjudicator,

The unpaid party has the right to suspend or reduce the rate of progress for carrying out work or supply.

Example :

If the notice of intention is served on the paying party / respondent by the claiming party / claimant on 8 September (Monday), the claiming party / claimant can suspend or reduce the rate of progress on 13 September (Saturday) at the earliest.

September 2025						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Claiming Party / Claimant to serve notice of intention on paying party / respondent and notify the owner

At least 5 working days before

Starting day to suspend or reduce the rate of progress

Claiming Party / Claimant receives the outstanding payment in full

Within 5 working days

Claiming Party / Claimant to resume works

Part 4 – Right to Delay Work or Supply

Other Matters to Note

1. A claiming party / claimant exercising right to delay work or supply under the Ordinance:
 - a) is not to be regarded as in breach of the contract;
 - b) is not liable for any loss or damage suffered by the paying party / respondent;
 - c) is entitled to an extension of time or complete the contract; and
 - d) is entitled to recover from the paying party / respondent any loss and expenses reasonably incurred.
2. Working day in Part 4 mean a day that is not:
 - (a) a general holiday;
 - (b) a black rainstorm warning day or gale warning day

THANK YOU

