

Construction Industry Council

Committee on Subcontracting

Meeting No. 005/12 of the Committee on Subcontracting for 2012 was held on 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.

Present:	Mike WONG	(MW)	Chairman
	Teresa CHENG	(TC)	
	Hau-wai CHEUNG	(HWC)	
	Paul CHONG	(PC)	
	Luen-kiu CHOW	(LKC)	
	Lawrence NG	(LN)	
	Bay WONG	(ByW)	
	Conrad WONG	(CW)	
	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
Chau-fat CHAN	(CFC)	Development Bureau	
In Attendance:	Sonia YUNG	(SY)	Housing Authority (Representing Ada FUNG)
	LI Chi-leung	(CLL)	Labour Department
	CHENG Kei-chung	(KCC)	Water Supplies Department (Representing Roger LAM)
	Ricky LAI	(WKLi)	Independent Commission Against Corruption (Representing Nelson CHAN)
	Christopher TO	(CT)	Executive Director
	LAI Chi-wai	(CWL)	Manager – Council Services
Shirley LEE	(SyL)	Manager - Council Services	
Apologies:	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	

PROGRESS REPORT

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5.1 Confirmation of the Progress Report of the 4th Meeting for 2012

Members referred to Paper CIC/SBC/R/004/12.

With no further comments, Members confirmed the progress report of the previous meeting held on Thursday, 16 August 2012 at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

5.2 Matters Arising from the Last Meeting

Item 4.2 Wage Payment Alert No. 001/12 on Protect your Payment Rights

Subsequent to the last committee meeting, the Secretariat received further comments from Members to improve the content of the poster. The content was finally confirmed and the production was now under way. The electronic version of the posters in English and Chinese had been uploaded to CIC web site under the section “Information Centre” and the print copies would be dispatched to local construction companies in due course. Suggested by a Member, the companies would be encouraged to put up the poster at common areas such as on-site construction offices, meeting rooms or training centres which could easily grab the attention of frontline workers.

Item 4.3 Report of Security of Payment Legislation to Improve Payment Practices in the Construction Industry

Upon approval of the report at the council meeting on 31 August 2012, the Secretariat reported that the report was submitted to the Secretary for Development on 14 September 2012. Updated by DevB, a working group had been established to take forward the preparatory work for the introduction of the security of payment legislation. The first meeting would be held on 31 October 2012.

Item 3.3 of MPF Contribution Meeting 003/12

In response to a Member's comment at the 3rd meeting suggesting to formulate a long-term strategy to modify the MPF scheme to be solely paid by the employers and a pilot scheme to be conducted to assess the effectiveness before full implementation. MPFA followed up with the Secretariat subsequently and indicated that the proposed pilot scheme might not be practicable under the current legislation since both the employee and the employer were required to fully comply with the provisions of the MPF Schemes Ordinance by making contributions. Requested by MPFA, the Secretariat relayed this message to Members.

A Member commented that MPFA, as an organisation executing the MPF scheme had no authority to take forward this major change. The proposal for modification of MPF scheme must be escalated to a higher level in the government (ie, Chief Executive). In response, CIC would help to relay this recommendation to the government through the regular meeting with DevB.

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5.3 Revised Categorisation of the CIC Publications

Reported by the Secretariat, Members referred to Paper CIC/SBC/P/027/12 and took note of the new categorisation of the CIC publications, including Alerts, Reference Materials, Guidelines and Codes of Conduct, as approved at the Council Meeting on 31 August 2012.

5.4 Task Force on Dispute Resolution Documentation

Members took note of Papers CIC/SBC/P/028/12 and CIC/SBC/P/029/12.

5.4.1 Guidelines on Application of Dispute Resolution on Construction Contracts

Members referred to Paper CIC/SBC/P/030/12 and received a briefing by TC on the proposed draft

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guidelines. In addition, Annex I, which had been updated on 3 October 2012 with incorporation of comments from HKIA was tabled for Members' reference.

In reply to a Member's query, CFC advised that there were over 60 qualified DRAs on the list for public works contracts and each DRA could handle four construction contracts simultaneously. Currently, a number of DRAs had no jobs in hand. Thus, it was observed that the supply of DRAs was sufficient to meet the industry demand at present. CFC welcomed deliberation at Com-SBC the feasibility and practicability of extending the dispute avoidance measure to domestic subcontract level.

Echoed by HA, DRA was highly engaged in capital works projects of Housing Authority. The DRA was required to attend monthly site meetings. After the adoption of DRA, the number of disputes had been significantly reduced. For this reason, the system was considered effective.

Both DevB and HA opined that the feasibility and practicability of extending the dispute avoidance measure to domestic subcontract level would need to be critically reviewed and deliberated.

In response to a Member's question, TC explained that the proposed rules and procedures of five dispute resolution methods could be essentially applied to different types of construction contracts whereas the conditions of contract would need to be altered and modified as appropriate before incorporating in the contracts.

Concerning the name of the document, Members generally agreed that the document should be issued in the form of reference material owing to the following reasons:

- DevB and HA might not adopt the dispute resolution mechanisms proposed in the document. It would therefore consider inappropriate to issue the document as guidelines in which all industry practitioners

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were expected to adopt.

- The definition of guidelines in previous categorisation was equivalent to reference material in accordance with the new categorisation of the CIC publications. By the same token, the document should be issued in the form of reference material. It could be further reviewed after the document had been issued for some time.

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On the subject of whether the Guidelines on Dispute Resolution published in September 2010 would require to be renamed. CT proposed that a paper would be prepared and submitted to the Council to review the categorisation of all publications issued by the CIC over the past few years and provide recommendation for the categories of all previous publications.

With no further comments, Chairman concluded that the proposed draft document was endorsed subject to the following changes and amendments.

- It was agreed that the document was more appropriate to be published in the form of reference material.
- In addition to the membership of the task force, the terms of reference should be included in the document as well to define the objectives, scope and deliverables.
- To amend Clause 12 of Annex H to stipulate short form arbitration is regarded as a form of arbitration and correspondingly be regarded as a domestic arbitration to ensure both arbitration or short form arbitration can enjoy the automatic opt-in provisions referred to in Section 100 of the Arbitration Ordinance (Cap 609).

The revised Reference Material on Application of Dispute Resolution on Construction Contracts would be submitted to the Council for approval at the upcoming meeting scheduled for 26 October 2012. Upon approval of the document, Members agreed that the Task Force on Dispute Resolution Documentation

would be dissolved.

5.5 Variable Remuneration to be Included in the Specimen Employment Contract

Briefed by the Secretariat, Members referred to Paper CIC/SBC/P/031/12 as well as Annex A proposing the revised specimen employment contract to facilitate the specification of top-up wages.

A Member suggested using “Earnings (收入)” instead of “Top-up wages” because the word “earnings” could include time-based wages or piece-work payments. Another Member commented that the term “Top-up wages” itself was ambiguous in what it actually means.

To reflect the reality in the construction industry and to protect workers’ payment rights, LKC emphasised that the specimen employment contract should be revised by including a space for worker to specify where appropriate other income to be received on top of the basic wages.

After a long discussion, Chairman proposed and Members agreed that an informal working group would be formed to review this particular issue and how the variable remuneration could be properly specified in the specimen employment contract. Considering the significance of the issue, CW proposed to nominate a few HKCA's members to take part in the working group and LD was invited to participate as a member also.

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

Members referred to Paper CIC/SBC/P/032/12 and received a brief report from CYT.

Members took note of the proposed Applications Forms and Guidance for Submitting Application for the SRS in Annexes A & C of paper respectively. The following issues were particularly highlighted:

- To pave the way for further study on the possibility of developing a new grading system in the future, more information would be collected from both new and renewal applicants through the subcontractor registration scheme.

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- The promotion plan in Annex B on page C144 was introduced. The plan would be carried out accordingly in the coming quarter to prepare for the launching of the SRS on 1 January 2013.

In consideration of the fact that the proposal of SRS was approved by the Council on 31 August 2012, The Committee agreed that the Task Force on Voluntary Subcontractor Registration Scheme (VSRS) Stage 2 could be dissolved by end of this year saved for further refinements on related documents, if any to be identified by the Secretariat in accordance with the approved principles.

Raised by a Member, the Secretariat would study the feasibility of including a key message in SRS's rules and procedures to encourage registered subcontractors to sign written employment contract with their employees. Instead of setting up a new task force or working group, Chairman proposed that this recommendation could be discussed by the informal working group, which would be established to review the amendment of specimen employment contract mentioned in agenda item 5.5 above.

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5.7 Update on VSRS Operations

Members referred to Paper CIC/SBC/P/033/12.

The Secretariat updated Members on the latest VSRS operations as detailed in paragraphs 2 to 4 in the paper.

5.8 Strengths and Competitive Advantages of the Hong Kong Construction Industry

Members referred to Paper CIC/SBC/P/034/12.

Based on previous discussion at the 4th meeting of Com-SBC last year, Members supplemented more comparative strengths and competitive advantages of Hong Kong construction industry.

From industrial perspective:

- The subcontracting system in the construction industry optimizes resources planning, improves financial risk sharing and enhances quality of work. Subcontractors will also take initiative to improve the performance.

From the perspective of soft power:

- Hong Kong people are hardworking, productive and have always been known to have a “can-do” spirit;
- Started as a rookie at a very young age, many proprietors along the construction supply chain have solid and extensive experience in construction;
- Hong Kong construction industry has developed a high degree of trade specialisation/division of labour and entrepreneurial spirit, which significantly increases productivity, risk-taking capability and results.

From an improvement potential perspective, a Member indicated that there was still much room for improvement in the areas of construction life cycle assessment, asset management and services quality in maintenance works.

5.9 Tentative Work Plan for Year 2013

Members referred to Paper CIC/SBC/P/035/12 and received a brief report by the Secretariat.

In continuation of last year’s works, the Committee would continue carrying out and completing the tasks specified in the paper. A number of new tasks proposed to be commenced in 2013 were also reported.

5.10 Tentative Meeting Schedule for Year 2013

Members referred to Paper CIC/SBC/P/036/12.

Members were reminded to mark in their diaries four committee meetings tentatively scheduled for 2013.

All to note

5.11 Any Other Business

As a side issue, Members were advised that ByW was nominated as a member of the Special Group on Unfair Terms and Contracts established by the Committee on Procurement to review the concern raised by Hong Kong Construction Association over unjustifiable allocation of risk from developers under the main contract.

5.12 Tentative Date of the 1st Meeting for 2013

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8 January 2013 (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 4:25pm.