

Construction Industry Council

Committee on Subcontracting

Meeting No. 003/12 of the Committee on Subcontracting for 2012 was held on 3 July 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
Hau-wai CHEUNG (HWC)
Paul CHONG (PC)
Luen-kiu CHOW (LKC)
Bay WONG (ByW)
Wai-wai YU (WWY)
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
WONG Sing-lam (SLW) Contractor's Authorised Signatory Association
Chau-fat CHAN (CFC) Development Bureau

In Attendance: 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)
Eddy CHAN Mandatory Provident Fund Schemes Authority
Timothy FU Mandatory Provident Fund Schemes Authority
Saxon WENG Mandatory Provident Fund Schemes Authority
Ivan WONG (IW) Senior Manager - Council Services
Shirley LEE (SyL) Manager - Council Services

Apologies: Teresa CHENG (TC)
Lawrence NG (LN)
Conrad WONG (CW)
Anthony CHAN (AnCN) Hong Kong General Building

Bernard HUI	(BH)	Contractors Association The Hong Kong Institute of Architects
Alex CHOW	(KPC)	Building Department
TSO Sing-Hin	(SHT)	Labour Department

PROGRESS REPORT

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3.1 Confirmation of the Progress Report of the 2nd Meeting for 2012

Members referred to Paper CIC/SBC/R/002/12.

With no further comments, Members confirmed the progress report of the previous meeting held on Wednesday, 25 April 2012 at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

3.2 Matters Arising from the Last Meeting

Reported by the Secretariat, the nomination of Co-opted Members was approved at the 3rd Council Meeting held on 22 June 2012. In addition to three Task Force Chairmen, Mr. Anthony Chan, Mr. Chan Sam-choi, Mr. Tommy Leung, Mr. Wong Sing-lam, Mr. Nelson Chan and Mr. Chan Chau-fat had been appointed as Co-opted Members from 25 June 2012 – 31 January 2014.

Other matters arising from the last committee meeting were covered at the later part of the meeting.

3.3 Consultation on Proposed Amendments to Simplify the Contribution Calculation Methods for Casual Employees Joining Industry Schemes

Members referred to the PowerPoint prepared by the Mandatory Provident Fund Schemes Authority (MPFA) and received a brief introduction on the proposed amendments.

Members generally supported the proposed amendments. It was believed that the proposal could simplify the calculation methods and reduce conflicts and disputes between employers and employees.

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With different views from employers' perspective, a number of Members opined that many employers were already familiar with the current calculation method for regular employees (i.e. 5% x Relevant Income), it would be more simple and straightforward to apply the current calculation method to casual workers. To simplify the administrative process, a Member further suggested rounding off the contribution amounts to the nearest dollar.

A Member shared his opinion that under the current 5% calculation method, employees earning less than HK\$6,500 were not required to make contribution. In contrast, daily contribution would be compulsory if the proposed contribution scale based on daily income was implemented.

To reduce the contributions of employees with income fell within the lower end of the income band "More than \$650 to \$830", a Member proposed to split it into two income bands, namely "\$650 to \$750" and "750 to \$830".

MPFA was advised that more thought and consideration should be given to adequately address different circumstances such as time off, rest days, etc that might potentially create disputes between employers and employees in the calculation of salary. This concern was raised in light of the controversies arose during the introduction of statutory minimum wage in Hong Kong in relation to the deduction of the payments related to rest days and meal breaks which were not regarded as working hours.

In order to minimise the disputes and to simplify the administrative procedures, a Member put forward that a long-term strategy should be formulated to modify the MPF scheme to be solely paid by employers. The implementation of which was proposed to be carried out in phases to increase employers' share of contribution progressively from 5% to 10% or even higher, whilst the contributions from employees would be gradually reduced to 0% when it was fully implemented. A pilot scheme could be conducted in construction industry for a trial period to assess the effectiveness before full implementation. With support from vast majority of Members, MPFA representatives would convey such recommendation to the Industry Schemes Committee for review and deliberation.

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

Members referred to Paper CIC/SBC/P/018/12.

Presented by the Secretariat, Members were invited to select a design out of two options, namely option A and option B for the poster on “Secure Your Wages and Legitimate Rights.

In addition to the basic salary, the Secretariat was requested to review whether the variable remuneration to be determined and calculated on monthly basis/on the basis of the quantity of work done could be included in the specimen employment contract as an option available for selection where appropriate. This issue would be brought up again for further discussion at the next committee meeting.

**CIC
Secretariat**

In parallel, the poster would be produced as a guide to remind workers to state actual salaries in their contracts to protect their legitimate rights and/or compensation.

After a long discussion, option B was chosen because the design and messages were apparently simpler and more straightforward. In response to Members’ comments, the poster had been revised as shown in Annex A. To avoid further delay, the Secretariat was requested to proceed with the production after amendments were made.

3.5 **Task Force on Dispute Resolution Documentation**

Members referred to Papers CIC/SBC/P/019/12, CIC/SBC/P/020/12 and CIC/SBC/P/021/12.

Reported by the Secretariat, the Task Force on Dispute Resolution Documentation proposed a set of rules and procedures for the five recommended dispute resolution methods to be adopted to encourage early resolution of disputes in the construction industry. A consultation meeting would be organised on 5 July 2012 at 6pm – 8pm to seek comments and collect views from 30 major stakeholder groups on the draft rules and procedures of the proposed dispute resolution methods. To facilitate the discussion at the meeting, a brief outline of the report and a full set of proposed rules and procedures had been sent to all registered participants. Each organisation could nominate a maximum of five

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representatives. Additional seating would be offered upon request. The meeting would be conducted in English supplemented by Chinese in the Q&A session. After the formal consultation, the task force would finalise the report and would be submitted to the Committee on Subcontracting for deliberation and subsequently to the Council for approval.

Advised by the Secretariat, the Government and Housing Authority would consider introducing the proposed new dispute resolution methods in public works contracts and public housing programme. Supplemented by DevB, the government had expressed reservations and concerns over some of the proposed rules and procedures. However, the concerns could be addressed while considering the enactment of security of payment legislation.

Apart from the main contract level, the task force was urged to give further consideration on how the proposed new dispute resolution mechanisms could be extended effectively to domestic subcontract level as well.

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

Members referred to Paper CIC/SBC/P/022/12.

The following issues were highlighted for discussion:

- Clause 10.2(k) – From a legal perspective, the task force was concerned about the potential legal liability or troubles that might result following the regulatory actions taken by the Management Committee based upon solid proof of such late payment of wages and/or MPF contributions before or without court conviction.

To address various aspects of the malpractice in the industry, a Member strongly recommended including this situation in the Rules and Procedures to create a strong deterrent effect against those registered subcontractors who failed to comply with the Codes of Conduct.

Commented by a Member, the term “solid proof” must be well defined to avoid any legal risks, uncertainties and the potential for conflicts or disputes that might arise subsequently between the Management Committee and registered subcontractors.

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Where the defendant had not yet been convicted of an offence, the Management Committee was strongly advised to take the following rationales into consideration when determining the level of regulatory action to be taken:

- i. The defendant must be given the benefit of the doubt;
- ii. Genuine reasons for late payment of workers' wages and/or late payment of MPF contribution should be considered. For example, the subcontractor fails to pay wages to employees due to inadequate payment by the client-contractor when it is due; and
- iii. The terms of reference and the amount of work expected from the Management Committee.

Members could rest assured that the proposed regulatory actions would be taken by the Management Committee in a step-by-step, incremental way. Observed from past experience, only warning letters were issued in most cases.

Taking the above into consideration, Members agreed to include Clause 10.2(k) in the mechanism for regulatory actions. Nonetheless, the mechanism should be reviewed and fine-tuned after it had put into effect for some period of time.

- Clause 10.6 – Members opined that the current practice, which was generally considered more lenient, should be maintained with the intention that the regulatory action taken against the subcontractor would not be published in the Scheme website prior to as well as during the appeal process. The outcome of the review would only be published after the appeal was proved to be unsuccessful or the registered subcontractor did not file a request for review within 14 days after the decision was made by the Management Committee. The Secretariat was requested to revise the paragraph along this line.
- Clause 10.8 – In response to a Member's concern, the Secretariat explained that Clause 10.8 was drafted to prevent any registered subcontractors who were being regulated, to apply for new registration through setting up a new company. Clause 10.8 should be revised along this line to avoid misunderstanding.
- Clause 2.1(c) Requirement R3 – Given the fact that it might not be necessary for some trades to take relevant trade tests in order to apply for registration as registered skilled workers, a Member suggested replacing the requirement for

**Task Force
on VSRS
Stage 2**

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passing the relevant trade tests for construction craftsman conducted by the CIC by being a registered skilled workers for designated trade.

- Advised by DevB, it was understood that the registered subcontractor whose registration has been revoked could still carry on the works under the current contract. However, this company shall not be eligible for bidding government works contracts for two years from the date of revocation. Such arrangement would be the same for public housing works under Housing Authority.
- Suggested by a Member, the Task Force on VSRS Stage 2 would consider the implementation of reward scheme as future strategy and direction.

3.7 Update on VSRS Operations

Members referred to Paper CIC/SBC/P/023/12 and Annex A - New Membership of the Management Committee.

Updated by the Secretariat, a briefing meeting would be organised for new members of the Management Committee of VSRS. The new Management Committee would take effect in mid July 2012.

[PMN: The induction briefing for new members of the Management Committee was held on 13 July 2012.]

3.8 Any Other Business

CFC updated Members that the Secretary for Development agreed in principle to introduce security of payment legislation for construction industry. The Government was prepared to set up a task force with industry stakeholders for developing an operating mechanism to take forward the legislation. The task force would also set out the essential elements to be introduced into the legislative framework to suit Hong Kong conditions which could include rights to progress payments for work done, prohibition of conditional payments, mandatory adjudication and rights to suspend work in case of non-payment. To ensure its practicality, the operating mechanism would be implemented as contractual requirements in some public works contracts and selected private sector contracts. In parallel, the preparatory work for the legislation process would be commenced based on experience gained from the performance of the operating mechanism used in the selected contracts.

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The Task Force on Security of Payment Legislation was urged to submit a position paper to the Committee on Subcontracting to present the task force's position or viewpoint in the legislation. A special committee meeting would be convened in mid August to discuss this particular issue before submitting it to the Council for deliberation at the 4th council meeting on 31 August 2012.

3.9 Tentative Date of Upcoming Meetings for 2012

The date of the special committee meeting (Meeting No. 004/12) would be advised by email in due course.

[PMN: The special meeting has been scheduled for 16 August 2012.] **All to note**

Meeting No. 005/12 was scheduled for 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 5pm.

Construction Industry Council

Committee on Subcontracting

Wage Payment – Production of Poster

SECURE YOUR WAGES AND LEGITIMATE RIGHTS

- Actual wage ~~calculation method~~rate method should be specified in an employment contract. Duplicated copies of the contract should be signed by both parties and retained respectively by the employer and the employee.
- Don't sign an employment contract at a wage rate lower than the actual one
- Note the latest reference wage rates announced by labour unions
- ~~Report to Labour Relations Officer if you sign a contract under duress.~~
Have the signing of employment contract witnessed by a third party as far as possible.
- Salary payment in cash must come with written record of actual payment from employer which should be properly retained

保障你的工資和合法權益

- 僱傭合約應訂明實際工資率計算方法，僱主和僱員雙方應當簽署一式兩份的合約，並雙方各持一份。
- 切勿簽訂低於你實際工資率的僱傭合約。
- 留意工會公佈的最新參考工資率。
- 若在威逼下簽署合約，可向勞資關係主任舉報盡可能在第三者見證下簽署僱傭合約。
- 以現金收取工資時，必須有僱主發出的書面實際發薪記錄，並妥善保存。