

Construction Industry Council

Committee on Subcontracting

Meeting No. 002/12 of the Committee on Subcontracting for 2012 was held on 25 April 2012 (Wednesday) 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
	Bay WONG	(ByW)	
	Conrad WONG	(CW)	
	Lawrence NG	(LN)	Hong Kong Marble and Granite Merchants Association
	Paul CHONG	(PC)	The Hong Kong Federation of Electrical and Mechanical Contractors
	Ki-cheung TANG	(KCT)	The Hong Kong Institute of Surveyors
	Chau-fat CHAN	(CFC)	Development Bureau
In Attendance:	TSO Sing-Hin	(SHT)	Labour Department
	Sonia YUNG	(SY)	Housing Department (Representing Ada FUNG)
	Roger LAM	(MPL)	Water Supplies Department
	Nelson CHAN	(NC)	Independent Commission Against Corruption
	Ivan WONG	(IW)	Senior Manager - Council Services
Apologies:	Shirley LEE	(SyL)	Manager - Council Services
	Teresa CHENG	(TC)	
	Hau-wai CHEUNG	(HWC)	
	Luen-kiu CHOW	(LKC)	
	Wai-wai YU	(WWY)	
	Chun-yuen TSE	(CYT)	Hong Kong Construction Subcontractors Association
	Bernard HUI	(BH)	The Hong Kong Institute of Architects
Alex CHOW	(KPC)	Building Department	

PROGRESS REPORT

Action

2.1 Confirmation of the Progress Report of the 5th Meeting for 2011

Members took note of Paper CIC/SBC/R/001/12.

Point ii) on page C8 – To revise as “whether a sub-contractor who wilfully and without reasonable excuse fails to pay wages to an employee when they become due and is liable to prosecution.....”

With no further comments, Members confirmed the progress report of the previous meeting held on Friday, 13 January 2012 at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

2.2 Matters Arising from the Last Meeting

1.7 Any Other Business
(Page C9)

Members took note of Paper CIC/SBC/P/006/12.

Subsequent to the last Committee Meeting, an informal meeting was organised on 16 February 2012 with key stakeholder groups, including HKCA, HKCSA, HKFEMC, labour unions and DevB to discuss the issue relating to employment contracts with understated wages (commonly known as 大細糧). After an in-depth discussion, Members proposed to issue a reminder to encourage workers to sign the employment contracts specifying the actual wages to protect their statutory rights and/or compensation. Members concurred that the reminder should be issued in poster form with cartoon images to attract the attention of frontline workers. However, the possible legal liabilities of entering into employment contract with salary understated, such as violation of regulations or committing fraud related offence, as set out in the paper should be omitted to avoid or minimise any negative effects or resentment caused by the sensitive issues. To this end, only soft approach should be taken as a guide for workers to prevent pay cuts and reduction in compensation. The

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Secretariat would proceed with the design of the poster and submit to Com-SBC for comment before seeking approval from the Council.

2.3 Proposed Nomination of Co-opted Members from Feb 2012 to Jan 2014

Members took note of the Paper CIC/SBC/P/007/12 and endorsed the re-appointment of three Task Force Chairmen as well as the representatives from DevB and ICAC. The proposed nominations from four organisations, namely Contractor's Authorised Signatory Association, Hong Kong General Building Contractors Association, Construction Site Workers General Union and Airport Authority were also endorsed.

2.4 Update on Proposed New Membership of Management Committee of VSRS

Members referred to the Paper CIC/SBC/P/008/12 and endorsed the new membership of Management Committee of VSRS and the effective date of the new management committee.

Relating to the recommendation concerning the inclusion of labour union representatives in the Management Committee, Chairman clarified that fairly extensive discussion had also been made among members of Com-ANF and the Council. This issue would not be reviewed for the time being since the new composition of the Management Committee had already been approved by the Council.

2.5 Task Force on Dispute Resolution Documentation

Members referred to the Paper CIC/SBC/P/009/12.

Subsequent to the task force meeting held on 17 February 2012, the Secretariat reported that two more meetings were convened on 13 April and 23 April respectively. Invited by HKFEMC, the chairman of the Task Force briefed on the dispute resolution mechanism at the seminar organised by HKFEMC on 14 April to collect initial views and comments from industry stakeholders. Some general comments such as how well these dispute resolution mechanisms could function in public and private sectors and the opinions towards security of payment legislation were briefly

shared and discussed at the meeting.

Proposed by the Task Force, an industry-wide consultation would be conducted on 5 July at 6pm – 8pm. An invitation letter together with the draft rules and procedures, the dispute resolution flowchart and a brief summary of the report would be sent to major stakeholder groups in early June. The Task Force members would meet again before the consultation session to finalise the outstanding issue such as default mechanism. A draft report would be revised after the consultation session for submitting to Com-SBC before seeking Council's approval. Whether there was a need to gauge the general public views towards the proposed dispute resolution mechanisms would be left to the Council for consideration.

In response to a Member's query, the Secretariat recapped the previous discussion that the adoption of DRA system in subcontract level was not recommended due to the following practical difficulties:

- i. Since a large number of domestic sub-contractors were appointed by the main contractor in a construction project, the DRA will easily be overwhelmed by the heavy workload, frequent meetings and day-to-day details;
- ii. There might be a concern of the employer and the main contractor to share a higher DRA fee for subcontracts.
- iii. Since the binding decision-making power is not conferred to the DRA, a speedy resolution of disputes for domestic sub-contractors will be more useful and practical than the use of DRA in sub-contracts.

2.6 Task Force on Security of Payment Legislation

Members took note of the Papers CIC/SBC/P/010/12 and CIC/SBC/P/011/12.

Reported by the Secretariat, a draft survey report was submitted by the DevB for discussion at the task force meeting. Written comments and opinions were received primarily from the contractor and subcontractor sector including Hong Kong Construction Association, Hong Kong Construction Sub-Contractors Association and The Hong Kong Federation of

Electrical and Mechanical Contractors Limited. DevB assured that the survey had adequately obtained all necessary information to assess quantitatively the magnitude of payment problems prevailing in the construction industry. Subject to the feedback and comments given by task force members, DevB would revise the draft survey report for endorsement by at the next task force meeting.

To obtain a balanced view from a broad range of stakeholders, the task force would also solicit the stance from major clients, including the government and private developers towards the introduction of security of payment legislation. A position paper, which covers the views of different stakeholder groups on practical measures to combat the problem of late payment, would be prepared for review and consideration by Com-SBC.

2.7 **Task Force on Standard Contract Provisions for Domestic Subcontracts**

Members referred to the Papers CIC/SBC/P/012/12, CIC/SBC/P/013/12 and CIC/SBC/P/014/12.

KCT reported that 22 meetings had been organised to complete the discussion of standard contract clauses in sections 1 – 11. The review of section 12 would be deferred to the next round of discussion by then the final report would make reference to the dispute resolution methods prepared by the Task Force on Dispute Resolution Documentation. A full set of revised draft standard contract provisions, which was now being prepared by the Chairman, would be circulated for review for a period of six weeks upon receiving the full document.

A number of controversial issues, which aroused heated debates amongst main contractors and subcontractors, would be brought up again for discussion in the next round of meetings.

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

Members referred to the Paper CIC/SBC/P/015/12.

The following issues were highlighted by the Secretariat:

- To allow sufficient time for promulgate the enhanced rules and procedures, the VSRS Stage 2 would be scheduled for

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launching on 1 January 2013.

- The “Voluntary Subcontractor Registration Scheme (VSRS)” would be renamed to “Subcontractor Registration Scheme (SRS) at the Stage 2. Nonetheless, the omission of the word “Voluntary” would not and could not change the scheme from voluntary basis to mandatory basis.
- To strengthen the regulatory actions by extending the coverage to include i) the whole section of FIUO and OSHO and counted by the numbers of convictions within a specified period; ii) violations under the Immigration Ordinance (Cap. 115) for employment of illegal immigrants/workers; and iii) Late payment of workers’ wages and/or MPF contributions over 10 days by solid proof (without conviction). However, Chairman emphasised that this provision was made for exceptional cases only where solid evidence could be provided such as solid data from Housing Department. More details about the enhanced regulatory actions could be found in Annex F of the paper.
- As more and more employers and main contractors would only engage VSRS registered subcontractors, new talents in construction industry might find it more difficult to attain the necessary working experience to qualify for registration. Hence, it was proposed to create a new requirement (R3) as set out at Annex H of the paper. Commented by a Member, the word “OR” would be added between Requirement R2 (2.1a) and Requirement R3 (2.1c).
- The rules and procedures of VSRS would be revised and updated before submitting to the Com-SBC for endorsement.

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Suggested by a Member, the Task Force on VSRS Stage 2 could discuss how and to what extent more information on convicted cases and disciplinary actions taken against the registered subcontractors could be announced to raise awareness amongst subcontractors. For members’ information, the names of those subcontractors who had been revoked or suspended from the list of registered subcontractors were announced on VSRS website.

**Task Force
on VSRS
Stage 2**

Proposed by a Member, the task force could make reference to Estate Agents Authority where the matters concerned and disciplinary actions taken against the licensees were announced on the web site and a notice would be sent to all registered agents. More information could be obtained from <http://www.eaa.org.hk/DisciplinaryProceedings/Resultsofinquiryhearings/tabid/1>

20/language/zh-HK/Default.aspx

In response to another Member's question, a Member expressed that the task force had drawn up a strategic road map to raise the quality of services and improve the safety performance of subcontractors. To achieve this goal, the task force was considering to develop a new grading system (e.g. Grade A license, Grade B license, Grade C license) to be implemented in VSRS Stage 3. To prepare for the implementation, more relevant information and details would be collected from both new and renewal applicants to enhance the database of registered subcontractors after implementing the Stage 2.

2.9 Update on VSRS Operations

Members took note of the Paper CIC/SBC/P/016/12.

After the implementation of shorter turnaround time, the work efficiency was significantly enhanced to cope with the shorter processing time. The applicants were generally satisfied with the services and processing time for getting approval.

Members endorsed the general principles for determining the extent of regulatory actions against fatal cases with details provided in point 3.2 on page C77. One more principle was added in addition to points 3.2a, 3.2b and 3.2c – Except for the reason of fundamental problems with the company's operations such as late payment of wages, the register would be suspended or revoked for the specific trade or specialty causing the death of workers. The register of other trades or specialties under the VSRS would not be affected.

In response to a Member's suggestion, Chairman pointed out that in consideration of the time, expertise and resources as well as a large number of subcontractors in local market, it would be difficult to monitor or audit quality standards for a wide range of construction products and services provided by the registered subcontractors.

To raise the awareness of all subcontractors registered under VSRS on the regulatory actions taken by the Management Committee against convictions in relation to serious or fatal construction site accidents, Members were brought attention to the letter in Annex A of the paper. To convey a concise and clear message to

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subcontractors, a Member suggested that the letter should be fine-tuned to include the convictions for employment of illegal workers as well as late payment of workers' wages and/or late payment of MPF contributions.

Secretariat

[PMN: A revised letter is attached in Annex A for Members' reference.]

All to note

To gain more valuable insights on different perspectives pertaining to the future development of VSRS, Chairman invited new Members to approach the Task Force to share more thoughts and opinions.

2.10 Any Other Business

Nil.

2.11 Tentative Date of Next Meeting for 2012

Next meeting was scheduled for 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.

All to note

There being no further business, the meeting was adjourned at 4:10pm.



CONSTRUCTION
INDUSTRY COUNCIL
建造業議會

Our ref 本會檔號:
Your ref 來函檔號:

Annex A

7 May 2012

To All Registered Subcontractors,

Voluntary Subcontractor Registration Scheme (“VSRS”)
About Regulatory Actions

Under the Rules and Procedures for the VSRS (“Rules and Procedures”), Management Committee may call for regulatory actions against Registered Subcontractors under different circumstances including (but not limited to) convictions for failure to or late payment of workers’ wages under the Employment Ordinance, convictions for failure to make MPF contributions under the Mandatory Provident Fund Scheme Ordinance and convictions under the Factories and Industrial Undertakings Ordinance or Occupational Safety and Health Ordinance in relation to serious construction site safety (Please refer to Clause 10 of the Rules and Procedures for details).

To address the increasingly concern of the industry and the community at large on site safety, in addition to call for regulatory actions against Registered Subcontractors convicted of failure to or late payment of workers’ wages and failure to make MPF contributions, the Management Committee has already started taking regulatory actions empowered under the Rules and Procedures against Registered Subcontractors who violate the Factories and Industrial Undertakings Ordinance or Occupational Safety and Health Ordinance in relation to serious construction site safety and are subsequently convicted of such offences under the respective legislation(s). You are thus hereby reminded to take necessary safety precautions to prevent site accidents.

Should you have any questions in relation to this matter, please call our enquiry hotline at 2100-9400 for assistance.

Yours faithfully,

Mike WONG
Chairman of the Management Committee
Voluntary Subcontractor Registration Scheme