

Construction Industry Council

Committee on Subcontracting

Meeting No. 001/12 of the Committee on Subcontracting for 2012 was held on 13 January 2012 (Friday) at 2:30pm at Meeting Room 1a, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

Present:	Mike WONG	(MW)	Chairman
	Hau-wai CHEUNG	(HWC)	
	Luen-kiu CHOW	(LKC)	
	Peter Oi-ki LAM	(OKL)	
	Koon-sun WAN	(KSW)	
	Conrad WONG	(CW)	
	Sing-lam WONG	(SLW)	Contractor's Authorized Signatory Association
	Sam-choi CHAN	(SCC)	Construction Site Workers General Union
	David CHAN	(NSC)	Hong Kong Construction Association
	Chun-yuen TSE	(CYT)	Hong Kong Construction Subcontractors Association
	Anthony CHAN	(AnCN)	Hong Kong General Building Contractors Association
	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
Ada FUNG	(AF)	Permanent Secretary for Transport and Housing (Housing)	
TSO Sing-Hin	(SHT)	Labour Department	
In Attendance:	Kelvin POOLE	(KP)	Representing Stanley HUI
	SUEN Kwok-keung		Water Supplies Department (Representing Roger LAM)
	Ricky LAI		Independent Commission Against Corruption (Representing Nelson CHAN)
	Ivan WONG	(IW)	Senior Manager (Council Services)
Shirley LEE	(SyL)	Manager (Council Services)	

Apologies: Teresa CHENG (TC)
Stanley HUI (SH)
Kam-hung YU (KHY)
Wai-wai YU (WWY)
Bernard HUI (BH) The Hong Kong Institute of
Architects
Alex CHOW (KPC) Building Department

PROGRESS REPORT

Action

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

Members took note of Paper CIC/SBC/R/005/11.

To clarify the comment sent by email on 8 December 2011, PC emphasised that he had no adverse comments on the revised composition “3+3+3” of the Management Committee of VSRS. He explained that the Committee should avoid tabling materials that required endorsement as Members who were unable to attend the meeting could not review the issue before it was decided at the meeting.

Members confirmed the progress report of the previous meeting held on Tuesday, 22 November 2011 at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

1.2 Matters Arising from the Last Meeting

5.4 Task Force on Dispute Resolution Documentation

The Secretariat reported that the comment given by a Member on the proposed time frame, which was considered too short for nominating an expert from the expert list was relayed to the Task Force on Dispute Resolution Documentation. An email to consult HKIAC, HKIE, HKIA and HKIS had been sent to seek the initial view of the proposed panel for the expert.

5.6(2) Task Force on Standard Contract Provisions for Domestic Subcontracts

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The Secretariat reported that a meeting was arranged between the construction industry stakeholders, the Hong Kong Federation of Insurers as well as the DevB on 9 December 2011 to explore the possibility to extend the insurance coverage to self-employed persons and to propose the incorporation of cross-liability clause as a new standard provision in third party liability insurance. Details would be reported by Mr. KC Tang at later part of the meeting under agenda item 1.5.

- 5.6(3) To prevent main contractors from suppressing accident reporting to avoid negative impacts on company performance, The Secretariat reported that Com-CSS would review the current safety performance measurement system and explore the possibility of segregating the calculation of accident rate in accordance with the severity of accident.

5.7 Update on VSRS Operations

With reference to the mechanisms of regulatory action adopted by various government departments or public sector organisations, a list of regulatory actions relating to convictions of safety related offences would be proposed and submitted to the Management Committee of VSRS and Task Force on Stage 2 VSRS for comments.

1.3 **Task Force on Security of Payment Legislation**

The Secretariat reported that DevB, with the support from C&SD and MOV (the survey company) reported the major findings of the field survey on payment practice in the construction industry at the task force meeting held on 6 January 2012. To examine the results from a broader perspective, members of the task force preferred to review the draft survey report before giving comments on the findings of the analysis. The draft report would be provided by the DevB within two weeks after the task force meeting.

Meanwhile, the summary of the survey findings should not be dispatched, distributed or disseminated to any third party to avoid misleading stakeholders with selective information or ambiguous observations.

To refresh Members' memory, the objectives of the survey were:

- i) To assess the scope and size of payment problems prevailing in the construction industry; and
- ii) To seek views of industry stakeholders on practical measures, including legislation, to improve payment practice in the construction industry of Hong Kong.

1.4 **Task Force on Dispute Resolution Documentation**

Members took note of the Paper CIC/SBC/P/001/12.

The Secretariat reported that a set of new guidelines would be published subsequent to the publication of the "Guidelines on Dispute Resolution" in 2010 to present sample contract clauses for implementing dispute resolution mechanisms to facilitate the adoption of the five dispute resolution methods in the local construction contracts, including mediation, adjudication, independent expert certifier, expert determination and short form arbitration. The draft report of the task force was under preparation and task force members would be responsible for one or more sections of the report.

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

Members took note of the Papers CIC/SBC/P/002/12, CIC/SBC/P/003/12 and CIC/SBC/P/004/12.

KCT reported that Clauses 4.4 and 4.5 shown in ArchSD's CAR specimen policy were effectively default cross liability clauses in respect of third party liability. The usual further "Cross Liability Clause" endorsement would limit rather than extend the default clauses, and was therefore not essential.

Also, the Employee Compensation Insurance (ECI) was devised pursuant to the Employees' Compensation Ordinance, extension of the ECI to cover self-employed sub-contractors was considered not possible at the moment. In light of the concerns associated with the contractors' liability towards self-employed persons, the Labour Department was suggested to review and deliberately consider whether the scope of the Ordinance could be extended to include self-employed people.

**Labour
Department**

To call for immediate resolution, some insurance companies might

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offer a special endorsement to the CAR policy to provide coverage for self-employed sub-contractors. Contractors might also take out a “Contractors Liability Policy” to cover third party liability with a standard optional extension clause “Extension of cover for self-employed persons/sole-proprietors”.

Employers of private and public sectors were urged to take the initiative to specify in their contracts that the CAR policy should cover liability for self-employed sub-contractors. Apart from that, the existing provisions in public works projects requiring the procurement of personal accident insurance policy should also be reviewed for the reason that the procurement of such insurance policy would not relieve the contractors’ liability towards the self-employed sub-contractors. Members were asked to refer to item 12.2 under point 13.2 on pages C30 and C31 for details of the discussion.

The task force had spent longer-than-expected period of time to discuss the following three controversial issues under Clause 11.1 “Determination by Client-Contractor”:

- i) Item 12.3 on page C31 - to maintain or delete the phrase “without reasonable cause” before the word “fails” in Clause 11.1.1(a);
- ii) Clause 11.1.1(i) on page C26 - whether a sub-contractor who willfully and without reasonable excuse fails to pay wages to an employee when they become due is liable to prosecution under the Employment Ordinance should be subject to penalty of termination for the same reason under the Domestic Sub-Contract.
- iii) AOB item on page C33 – the subject on the sub-contractor’s right to stop work on non-payment would be discussed at the next task force meeting. Commented by a Member, it might not be the best time to propose adding certain specific clauses to the domestic subcontract until relevant provisions of the main contract had been revised to correspond with those of the subcontract. In this regard, main contractors and subcontractors should try to seek common ground while reserving differences.

1.6 Update on VSRS Operations

Members took note of the Paper CIC/SBC/P/005/12.

Under the new composition of the Management Committee of

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VSRS approved by the Council on 16 December 2011, the Secretariat reported that invitation for nomination of Management Committee members would be sent to specified bodies according to the tentative schedule proposed in the paper on page C36.

To promote the concept of anti-corruption amongst VSRS registered subcontractors, a seminar would be organised on 16 March at the CIC Kowloon Bay Training Centre. Suggested by a Member, the seminar should be designed to keep subcontractors abreast of the regulatory actions under VSRS as well as to educate those in the field the best practices in the industry such as, for this time, the prevention of corruption.

Learning from past experience, the Secretariat put forwarded that to maximise the effectiveness of the briefing sessions to update subcontractors on the registration requirements, regular small-scale briefing sessions would be organised on a monthly basis at VSRS Registration Office in Sheung Wan as a pilot scheme. Each session was expected to attract 15 participants. The pilot would run for a period of three months and an evaluation would be thereafter.

1.7 Any Other Business

Members were referred to the press release tabled at the meeting as well as the supplementary information provided by the Hong Kong Construction Industry Employees General Union (HKCIEGU).

LKC complained that some unscrupulous sub-contractors demanded workers to sign contracts at a much lower pay than was actually paid. The union claimed that workers who normally earned HK\$950 a day might be forced to sign a false contract with HK\$350 daily wage. Contractors' liability would then be reduced as they were obliged to pay only what was stated in the contract when wage arrears occurred. However, many workers felt obliged to sign the contract as they were afraid of losing the jobs.

While LKC did not share the same opinion, there was a general perception amongst the industry that the problem lay mainly with the workers choosing to accept a reduced salary in the contract to avoid paying tax and MPF contribution but would eventually suffer from wage arrears or deduction when the subcontractor became insolvent or failed to pay outstanding wages owed to the workers. This bad practice, though existed in local construction industry, should be discouraged or even punished.

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Taking all comments and opinions into consideration, Chairman concluded that there was no immediate or easy solution due to the complex nature of the problem. Nonetheless, the following actions could be considered:

- i) Given workers have more bargaining power under the current market situation, respective labour unions were strongly advised to increase the efforts to educate and encourage workers to refuse to sign contracts if they have doubts about the salary rate.
- ii) Subject to the availability of the names of the unscrupulous sub-contractors, the Secretariat could check if they were registered under VSRS. The Management Committee could organise interview if the two sub-contractors were confirmed as registered subcontractors under VSRS.
- iii) A reminder to fill out the actual amount of the salary in the contract could be made to VSRS registered subcontractors.
- iv) Labour Department was requested to verify whether such malpractice had violated any provisions of the Employment Ordinance.

**Labour
Department**

An informal meeting would be organised between HKCA, HKCSA, HKFEMC, labour unions etc. to discuss and analyze the problem more deeply.

[PMN: A follow-up lunch meeting has been confirmed for 16 February 2012.]

Taking the opportunity at the last Committee Meeting before the expiry of the terms of office of some Committee and Co-opted Members by 31 January 2012, Chairman conveyed vote of thanks to those Members for their significant contributions to the work of the Committee over the past two year. Appointments of Co-opted Members to the Committee as appropriate would be made in due course.

For Members' information, there be no term limits for the positions of task force members. The task force would remain in force until the completion of the task.

All to note

1.8 Tentative Date of Next Meeting for 2012

Next meeting was scheduled for 3 April 2012 (Tuesday) at 2:30pm **All to note**
at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima
Building, 138 Gloucester Road, Wan Chai, Hong Kong.

There being no further business, the meeting was adjourned at 4:45pm.