

Construction Industry Council

Committee on Subcontracting

Meeting No. 005/11 of the Committee on Subcontracting for 2011 was held on 22 November 2011 (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)	
	Luen-kiu CHOW	(LKC)	
	Peter Oi-ki LAM	(OKL)	
	Conrad WONG	(CW)	
	Wai-wai YU	(WWY)	
	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
	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
TSO Sing-Hin	(SHT)	Labour Department	
In Attendance:	Tommy LEUNG	(TLg)	Representing Stanley HUI
	Sonia YUNG	(SY)	Housing Department (Representing Ada FUNG)
	SUEN Kwok-keung	(KKS)	Water Supplies Department
	Ivan WONG	(IW)	Senior Manager (Council Services)
Shirley LEE	(SyL)	Manager (Council Services)	
Apologies:	Teresa CHENG	(TC)	
	Stanley HUI	(SH)	
	Koon-sun WAN	(KSW)	
	Kam-hung YU	(KHY)	
	Chun-yuen TSE	(CYT)	Hong Kong Construction Subcontractors Association

Bernard HUI	(BH)	The Hong Kong Institute of Architects
Ada FUNG	(AF)	Permanent Secretary for Transport and Housing (Housing)
Alex CHOW	(KPC)	Building Department
KWAN Sek-yiu	(SKW)	Water Supplies Department
Nelson CHAN	(NC)	Independent Commission Against Corruption

PROGRESS REPORT

Action

5.1 Confirmation of the Progress Report of the 4th Meeting for 2011

Members took note of Paper CIC/SBC/R/004/11 and confirmed the progress report of the previous meeting held on Friday, 2 September 2011 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

4.7 Task Force on Voluntary Subcontractor Registration Scheme Stage 2

Members took note of the paper “Proposed Amendment to the Composition of Management Committee of VSRS” tabled at the meeting.

The Secretariat reported that in order to maintain a balanced representation of expertise from contracting related and non-contracting related sectors and the irrelevance of union’s participation in VSRS daily operations, Com-ANF proposed to revise the membership composition from “2+3+4+2” to “3+3+3” with a maximum number of three members to be appointed from the sectors of “Employers”, “Main Contractors” and “Specialist Sub-contractors/Sub-contractors”. Representatives of Construction Site Workers General Union reiterated that the participation of labour unions would help smoothen the deliberation within the Management Committee but given they might have resources limitation, in order not to affect the operation of

the Management Committee, they would not object to the proposal. With no adverse comments from Members, the amendment to the composition of the VSRS Management Committee was approved.

[PMN: The revised membership composition “3+3+3” was approved by the Com-ANF at the 10th meeting for 2011 held on 25 November. Final approval will be sought from the council members at the 6th Council Meeting to be held on 16 December 2011.]

5.3 **Discussion of the Exploitation of Workers by Subcontractors**

Members took note of the Paper CIC/SBC/P/031/11.

With no further details provided by the ICAC and taking into consideration that CIC was not a law enforcement agency, Members proposed the best way to address this problem was to encourage workers to report any alleged act of malpractice immediately to the ICAC without hesitation or to refer such cases to the ICAC or the authority concerned for investigation. However, it was considered as a normal practice which should be differentiated from the scenario raised by ICAC that some foremen, who were paid on a commission basis, were authorised by the sub-contractors as recruitment agents looking for temporary workers.

[WWY left and CW joined the meeting at this juncture.]

5.4 **Task Force on Dispute Resolution Documentation**

Members took note of the Papers CIC/SBC/P/032/11 and CIC/SBC/P/033/11.

The Secretariat reported that the task force would propose a set of new rules for expert determination, which currently had not been exist in Hong Kong. Upon the finalisation of the report, the task force would also review the feasibility of establishing expert panels with the support from HKIE, HKIA and HKIS as well as the HKIAC to be the neutral third party.

The task force had concluded the deliberations of the exclusion of liability rule and the authority between the architect/the

Action

engineer and the expert. Under the general condition of contract, the architect/the engineer had the ultimate decision-making power to give instruction of the works. The architect/the engineer could decide if the expert determination would be followed and the contractor should act in accordance with the instruction given by the architect/the engineer. However, the expert determination would form the basis for the contractor to claim for financial compensation.

A member shared his view that it would be difficult to set up the expert panels or generate expert lists within the learned societies for the reason that every professional might consider themselves as an expert in their respective fields. Besides, the proposed time frame (i.e. 3 days) would be too short for nominating an expert.

As suggested by the Chairman, the feedback from the meeting would be relayed to the task force for further review.

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The task force had basically completed the discussion of all dispute resolution mechanisms. Any modifications and fine tuning of the rules would be carried out in due course. Members would be kept updated on the proposition of adjudication as default option.

5.5 Task Force on Security of Payment Legislation

Members took note of the Paper CIC/SBC/P/034/11.

DevB would present a draft report with analysis which was still under preparation. CIC Secretariat would check with DevB if the survey result would be available for presenting at the coming task force meeting scheduled 1 December 2011 or at a later date.

Shared by a Member, apart from Singapore, some Australian states, New Zealand and the UK, Malaysia was about to enact security of payment legislation for the construction industry in December this year.

[PMN: CIC Secretariat had checked with DevB that the analysis of survey findings would not be ready by 1 December 2011, the task force meeting had to be deferred to 6 January 2012.]

5.6 Task Force on Standard Contract Provisions for Domestic Subcontracts

Action

Members took note of the Papers CIC/SBC/P/035/11, CIC/SBC/P/036/11 and CIC/SBC/P/037/11.

KCT reported that the progress was a little bit behind the schedule at the moment since the task force had spent longer-than-expected period of time to discuss chapter 10 “Insurances and Bond”.

An insurance practitioner from the Hong Kong Federation of Insurers was invited to brief Members on the existing construction related insurance policies. Three issues were highlighted on the subjects of standard insurance coverage as well as the administrative charge:

- 1) Self-employed persons and/or sole proprietors are not “employees” under the Employees’ Compensation Ordinance, hence would not be covered by the employees’ compensation insurance by default. However, Members opined that self-employed persons who performed a range of manual laboring jobs at building and construction sites should also be regarded as employees and they should not be treated less favorably than ordinary employees simply because of their employment status.

Supplemented by a Member, unlike EC insurance, personal accident insurance was strictly speaking not an alternative to EC insurance because the personal accident insurance provides cash benefits to the insured that could only be procured by self. Even if the self-employed person had arranged a personal accident insurance and was compensated with the sum insured, it would not serve to reduce the contractor’s compensatory liability.

Committee Members gave full support to the view that the construction industry should urge the insurance sector to extend the coverage to self-employed persons who had no compensatory insurance for injury.

- 2) Contractors’ all risks and third party liability insurance would not indemnify claims by injured self-employed persons and/or sole proprietors by reason of the exclusion Clause 4.6.1.2 in the standard CAR insurance policy. Besides, if the third party liability insurance policy arranged

Action

by the employer under the main contract without a cross-liability clause, it would be impossible for the main contractor to arrange for a separate policy with cross-liability coverage because such an insurance plan was not available on the market. Summing up the discussion, the task force proposed that the third party liability insurance shall contain the cross-liability clause as a standard provision in the policy of main contracts.

To solve the problems faced by self-employed persons and the proposition of incorporating cross-liability clause as a new standard provision in third party liability insurance, the Secretariat was asked to arrange a meeting between the stakeholders of construction industry, the Hong Kong Federation of Insurers, DevB and Labour Department.

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- 3) KCT emphasized that there was a need for the DevB, HA and Labour Department to review the safety performance measurement and scoring system (e.g. the 1,000 person accident rate) to avoid distortion caused by failure to report minor accidents because of unreasonably high administrative charge imposed by client-contractors upon sub-contractors for reporting accidents and processing EC claims on their behalf. Nonetheless, a Member expressed that there was no easy fix to the problem due to its complex nature. Companies set charges differently as a result of different overhead expenses.

To prevent main contractors from suppressing accident reporting to avoid negative impacts on company performance, Chairman sought support from Com-CSS to conduct a review of the current safety performance measurement system and to provide a breakdown of accidents by different levels of severity with a view to exploring the possibility of segregating the calculation of accident rate in accordance with the severity of accident.

Com-CSS

After completing the discussion of the last two chapters (i.e. chapters 11 and 12), the task force would conduct an overall review of the draft form before submitting to the Committee for endorsement.

5.7 Update on VSRS Operations

Action

Members took note of the Paper CIC/SBC/P/038/11 and a draft letter to registered subcontractors regarding “About Regulatory Actions” tabled at the meeting.

Members were brought to the attention of a draft letter tabled at the meeting that the Management Committee of VSRS would adopt a more stringent regulatory action such as a penalty of six-month suspension of registration against subcontractors who had committed safety-related offences resulting in fatality from 1 January 2012.

In response to a Member’s query, the Secretariat advised that the concerned regulatory action had already been listed out in clause 10.4 of the Rules and Procedures for the Primary Register of the VSRS. However, the duration of license suspension would be determined by the Management Committee.

With different opinion, a Member pointed out that the nature, to what extent and under what circumstances regulatory action should be taken must be clearly specified. Reference should also be made to the mechanisms adopted by various government departments or public sector organisations such as Buildings Department. However, Chairman opined that the regulatory actions should offer sufficient flexibility to determine appropriate penalties to be imposed in each case given the large variety in the scale of subcontractors. Hence, only broad terms could be specified for regulatory actions.

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To increase awareness, education and recognition amongst subcontractors, the Management Committee was advised to defer the effective date of implementation by three to six months to ensure that the Secretariat had adequate time to properly disseminate the key messages and details.

Before the adoption of more stringent measures in 2012 as discussed, the Management Committee would still conduct regulatory hearing to impose the appropriate regulatory action against subcontractors convicted of site safety accidents involving fatality.

5.8 Tentative Work Plan for Year 2012

Members took note of the Paper CIC/SBC/P/039/11.

Action

In continuation of last year's works, the Committee would continue to carry out and complete the tasks specified in the paper. Should the enactment of security of payment legislation be required, more effort, not only the Task Force on Security of Payment but also the Committee as a whole, would be spent on it.

5.9 Tentative Meeting Schedule for Year 2012

Members took note of the Paper CIC/SBC/P/040/11.

Four committee meetings for 2012 were tentatively scheduled on 3 January, 3 April, 3 July and 9 October respectively.

5.10 Any Other Business

In consultation with the DevB, the HKIAC had revised the Domestic Arbitration Rules to bring them into line with the new Arbitration Ordinance which came into effect on 1 June 2011. Members were welcome to send comments to the Secretariat no later than 5 December for consolidation.

5.11 Tentative Date of Next Meeting for 2012

Next meeting was scheduled for 3 January 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 4:45pm.