

**Construction Industry Council**

**Committee on Subcontracting**

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The 2<sup>nd</sup> Meeting of the Committee on Subcontracting for 2009 was held on Tuesday, 10 March 2009 at 2:30 pm at Room 1201, Murray Building, Garden Road, Central.

Present:

Shing-see LEE	(SSL)	Chairman
Teresa CHENG	(TC)	
James CHIU	(JC)	
Chun-wa CHOI	(CWC)	
Edgar KWAN	(EK)	
Chun-yuen TSE	(CYT)	
Conrad WONG	(CW)	
Wai-wai YU	(WWY)	
Ada FUNG	(AF)	for Permanent Secretary for Transport and Housing (Housing)
Tak-hing CHEUNG	(THC)	Construction Site Workers General Union
Bernard HUI	(BH)	The Hong Kong Institute of Architects
Wai-tai LAW	(WTL)	The Hong Kong Construction Association
Sing-lam WONG	(SLW)	Contractor's Authorized Signatory Association
Tak-fai LEUNG	(TFL)	Development Bureau
Siu-wai HUI	(SWH)	Buildings Department
Sonia YUNG	(SY)	Housing Department
Sing-hin TSO	(SHT)	Labour Department
Chi-keung FUNG	(CKF)	Water Supplies Department
Kenny FOK	(KF)	Independent Commission Against Corruption

In Attendance:

Bernard WU	(BWU)	The Hong Kong Institute of Surveyors
Andrew AGLIONBY	(AAY)	Baker & McKenzie (for Agenda item 2.1 only)
Chandy YE	(CE)	Baker & McKenzie (for Agenda item 2.1 only)
Irene CHENG	(ICG)	Housing Department
Forrest FONG	(FF)	Housing Department
Jackie CHAN	(JaCN)	KPMG (for Agenda item 2.4.1 only)
Christopher TO	(CT)	Executive Director
Ivan WONG	(IW)	Senior Manager (Council Services) 2

	Phoebe LEUNG	(PLG)	Manager (Council Services) 2
	Yvonne MAK	(YM)	Manager (Council Services) 4
Apologies:	Tat-tong CHEUNG	(TTC)	
	Stanley HUI	(SH)	
	Koon-sun WAN	(KSW)	
	Paul CHONG	(PC)	The Hong Kong Federation of Electrical and Mechanical Contractors
	C S SO	(CSS)	Henderson Land Development Co. Ltd.
	Chi-hung LAI	(CHL)	Hong Kong Construction Industry Employees' General Union
	Joseph NG	(JN)	Hong Kong General Building Contractors Association
	Lawrence NG	(LN)	Hong Kong Marble and Granite Merchants Association
	Hung-yuen YAU	(HYY)	Association of Electrical Contractors

## **PROGRESS REPORT**

### **Action**

#### **2.1 Security of Payment (1<sup>st</sup> Part)**

Members received a presentation from the representatives of Baker & McKenzie on different measures for improving security of payment.

[AAY and CE left the meeting after the presentation.]

#### **2.2 Confirmation of the Progress Report of the Previous Meeting**

Members took note of Paper CIC/SBC/R/001/09 and confirmed the progress report of the 1<sup>st</sup> meeting held on Tuesday, 13 January 2009 at Murray Building.

#### **2.3 Matters Arising from the Previous Meeting**

##### **2.3.1 Guidelines on Measures for Protection of Workers' Entitlement to Wage Payment**

The subject was discussed under Agenda item 2.4.2.

2.3.2 Security of Payment

This subject was discussed under Agenda item 2.5.

2.3.3 Takeover of Voluntary Subcontractor Registration Scheme

The takeover arrangement was approved by the Committee on Administration and Finance and endorsed by CIC.

[JaCN joined the meeting for Agenda item 2.4.1.]

2.4 **Protection of Workers' Entitlement to Wage Payment**

2.4.1 Consultancy Study on Housing Authority's Procurement Systems in Securing Payment of Wages to Workers (New Works and Maintenance Works Contractors)

Members took note of the Paper CIC/SBC/P/008/09 and received a briefing from the Hong Kong Housing Authority (HA) on the background of the consultancy study. KPMG, the consultant commissioned by HA, explained to Members the key findings of the study and the potential improvement opportunities on enhancing cost-effectiveness of wage payment monitoring measures.

As to wage payment protection measures, some Members expressed their concern about the high staff and administrative costs incurred by the provision of on-site Labour Relations Officers. KPMG said that in the long term, review on the role of Labour Relations Officer was recommended following increased awareness about wage payment monitoring. It was also observed that some subcontractors deliberately took advantage of existing practice and persistently delayed the wage payments for a short period or even failed to make payments. For the latter case, main contractors would have to bear additional costs as the Employment Ordinance provides that they are liable for the first two months' unpaid wages of employees employed by their sub-contractors. Some Members pointed out that Voluntary Subcontractor Registration Scheme (VSRS) in fact provided measures to combat the problems. According to the rules of the VSRS, registered subcontractors would be subject to regulatory actions if

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they were convicted for failure to pay wages on time to workers under provisions of Sections 23, 24 and 25 of the Employment Ordinance. As an enhancement, regulatory actions should be considered against subcontractors with record of persistent delay in wage payment though they might not be brought to court.

[JaCN left the meeting after the presentation.]

[AF left the meeting at this juncture.]

2.4.2 Guidelines on Measures for Protection of Workers' Entitlement to Wage Payment

Members took note of the Paper CIC/SBC/P/005/09. After deliberations, Members agreed that the measures adopted by the Development Bureau would be chosen for the preparation of the proposed guidelines which would give CIC's recommended practices for reference by the industry stakeholders. While the format of the proposed guidelines was not critical, proper adjustment to the contract documents of individual projects would be inevitable. As such, incorporating a brief summary and introduction in the proposed guidelines should be sufficient. The Secretariat was directed to revise the guidelines for Members' further deliberation.

**CIC  
Secretariat**

[EK, ICG and FF left the meeting at this juncture.]

2.5 **Security of Payment (2<sup>nd</sup> Part)**

2.5.1 Progress of Survey of Problems of Outstanding Payments in Construction Supply Chain (Survey)

Members took note of the Paper CIC/SBC/P/006/09 and endorsed the proposal for the design and conduct of the Survey submitted by Public Opinion Programme (POP) of the University of Hong Kong dated 16 February 2009. The Secretariat would arrange for agreement execution with POP accordingly.

2.5.2 Strategy in Speeding Up the Priority Issues

Members deliberated on the strategy in speeding up the

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priority issues in relation to security of payment and drew up the following plan of action.

(a) Dispute resolution mechanisms

With the help of the Secretariat, Ms Teresa CHENG would prepare a guideline on different dispute resolution mechanisms with reference to the papers previously prepared by the Provisional Construction Industry Co-ordination Board. Members also suggested that the guideline may cover possible timelines for each mechanism and the adoption of mandatory adjudication.

**TC/  
CIC  
Secretariat**

(b) Protection of workers' wages

The Secretariat was directed to revise the draft of the Guidelines on Measures for Protection of Workers' Entitlement to Wage Payment for Members' deliberation at the next scheduled meeting.

**CIC  
Secretariat**

(c) Contract-based subcontracting

Members recalled that the Provisional Construction Industry Co-ordination Board published the Guidelines on Standard Forms of Domestic Subcontracts for Basic Trades in May 2005. However, the recommended practice was not widely adopted by main contractors due to practical difficulty in the risk sharing between main contractors and subcontractors. The Secretariat was directed to suggest ways of promulgating the Guidelines for Members' consideration.

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(d) Retention money

Members noted that escrow accounts could be one of the solutions to help tackle the problems of outstanding payments resulted from delayed closing of final accounts. However, it was agreed that escrow account method could not be implemented in isolation as disbursement systems for escrow funds and mechanisms for resolving disputes on releasing of escrow funds would be important considerations. Meanwhile, the Secretariat was directed to keep review of the retention money in collaboration with dispute resolution mechanisms.

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The Committee would start the discussion on payment bond and legislation in due course.

**2.6 Update on the Progress of the Stage 2 VSRS**

Members took note of the Paper CIC/SBC/P/007/09 and agreed with the Task Force that it would not be suitable to set requirements for financial capability under the Stage 2 VSRS considering the lack of adequate information from subcontractors at the moment. The Task Force would propose the details of the structure of Register of Subcontractors for consideration by the Committee.

[JC left the meeting at this juncture.]

**2.7 Any Other Business**

Nil.

**2.8 Tentative Date of Next Meeting for 2009**

12 May 2009 (Tuesday) at 2:30 pm at Room 1201, Murray Building, Central, Hong Kong

**All to note**

There being no further business, the meeting adjourned at 5:10 pm.