

**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.

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Summary Notes of the Committee on Subcontracting Meeting No. 003/12.

<b>Agenda Item</b>	<b>Paper</b>	<b>Major Resolutions/ Progress Highlights</b>
3.1	CIC/SBC/R/002/12	<b><u>Confirmation of the Progress Report of the Previous Meeting</u></b> – 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		<b><u>Matters Arising from the 2<sup>nd</sup> Meeting for 2012</u></b> - 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.
3.3		<b><u>Consultation on Proposed Amendments to Simplify the Contribution Calculation Methods for Casual Employees Joining Industry Schemes</u></b> - 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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		<p>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.</p> <p>In order to minimise the disputes and to simplify the administrative procedures, 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.</p>
3.4	CIC/SBC/P/018/12	<p><b><u>Wage Payment Alert No. 001/12 on Secure Your Wages and Legitimate Rights</u></b> - Two design options, namely option A and option B for the poster on "Secure Your Wages and Legitimate Rights were presented for Members' selection.</p> <p>Option B was chosen because the design and messages were apparently simpler and more straightforward. In response to Members' comments, the poster would be revised accordingly.</p>

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		<p>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.</p>
3.5	<p>CIC/SBC/P/019/12 CIC/SBC/P/020/12 CIC/SBC/P/021/12</p>	<p><b><u>Task Force on Dispute Resolution Documentation</u></b> - The Task Force on DRD 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. 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.</p> <p>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.</p> <p>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</p>

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		subcontract level as well.
3.6	CIC/SBC/P/022/12	<p><b><u>Task Force on Voluntary Subcontractor Registration Scheme (VSRS) Stage 2</u></b> - The following issues were highlighted for discussion:</p> <ul style="list-style-type: none"> <li>• Clause 10.2(k) – From a legal perspective, the task force 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.</li> </ul> <p>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:</p> <ol style="list-style-type: none"> <li>i. The defendant must be given the benefit of the doubt;</li> <li>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</li> <li>iii. The terms of reference and the amount of work expected from the Management Committee.</li> </ol> <p>Members could rest assured that the proposed regulatory actions would be taken by the Management Committee in a step-by-step, incremental way.</p>

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		<p>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.</p> <ul style="list-style-type: none"><li>• Clause 10.6 – 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.</li><li>• 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 passing the relevant trade tests for construction craftsman conducted by the CIC by being a registered skilled workers for designated trade.</li><li>• 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</li></ul>

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		under Housing Authority.
3.7	CIC/SBC/P/023/12	<p><b><u>Update on VSRS Operations</u></b> - 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.</p> <p><i>[PMN: The induction briefing for new members of the Management Committee was held on 13 July 2012.]</i></p>
3.8		<p><b><u>Any Other Business</u></b> – Mr. Chan Chau-fat 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. 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.</p>