

Construction Industry Council

Committee on Subcontracting

Meeting No. 002/12 of the Committee on Subcontracting for 2012 was held on 25 April (Wednesday) at 2:30pm at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

Summary Notes of the Committee on Subcontracting Meeting No. 002/12.

Agenda Item	Paper	Major Resolutions/ Progress Highlights
2.1	CIC/SBC/R/001/12	<p><u>Confirmation of the Progress Report of the Previous Meeting</u> – 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 <u>and</u> is liable to prosecution.....”</p> <p>Members of the Com-SBC approved the Progress Report CIC/SBC/R/001/12 of the last meeting held on 13 January 2012.</p>
2.2	CIC/SBC/P/006/12	<p><u>Matters Arising from the 1st Meeting for 2012</u></p> <p>1.7 - An informal meeting was organised on 16 February 2012 with HKCA, HKCSA, HKFEMC, labour unions and DevB to discuss the issue relating to employment contracts with understated wages (commonly known as 大細糧). To attract the attention of frontline workers, a reminder in the form of poster with cartoon images will be published to encourage workers to sign the employment contracts specifying the actual wages to protect their statutory rights</p>

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		and/or compensation. 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. Only soft approach should be taken as a guide for workers to prevent pay cuts and reduction in compensation. The Secretariat would proceed with the design of the poster and submit to Com-SBC for comment before seeking approval from the Council.
2.3	CIC/SBC/P/007/12	<u>Proposed Nomination of Co-opted Members from Feb 2012 to Jan 2014</u> – Members endorsed the list of Co-opted Members as set out at Annex A of the Summary Notes which included the re-appointment of three Task Force Chairmen as well as the representatives from DevB and ICAC, and 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.
2.4	CIC/SBC/P/008/12	<u>Update on Proposed New Membership of Management Committee of VSRS</u> – Members endorsed the nominees as new members of Management Committee of VSRS. 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

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		the Council.
2.5	CIC/SBC/P/009/12	<p><u>Task Force on Dispute Resolution Documentation</u> - Invited by HKFEMC, Task Force Chairman gave an introduction of the new dispute resolution mechanisms at the seminar organised on 14 April 2012 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.</p> <p>A formal consultation with relevant organisations would be conducted on 5 July 2012 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. 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.</p> <p>The Secretariat recapped the previous discussion that the adoption of DRA system in subcontract level was not recommended due to the following practical difficulties:</p> <ul style="list-style-type: none">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,

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		<p>frequent meetings and day-to-day details;</p> <p>ii. There might be a concern of the employer and the main contractor to share a higher DRA fee for subcontracts.</p> <p>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.</p>
2.6	CIC/SBC/P/010/12 CIC/SBC/P/011/12	<p><u>Task Force on Security of Payment Legislation</u> – DevB submitted a draft survey report 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.</p> <p>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.</p>

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2.7	CIC/SBC/P/012/12 CIC/SBC/P/013/12 CIC/SBC/P/014/12	<p><u>Task Force on Standard Contract Provisions for Domestic Subcontracts</u> - 22 meetings were 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 Task Force Chairman, would be circulated for review for a period of six weeks upon receiving the full document.</p> <p>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.</p>
2.8	CIC/SBC/P/015/12	<p><u>Task Force on Voluntary Subcontractor Registration Scheme (VSRS) Stage 2</u> - The following issues were highlighted:</p> <ul style="list-style-type: none"> • To allow sufficient time for promulgate the enhanced rules and procedures, the VSRS Stage 2 would be scheduled for 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

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		<p>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.</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>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</p>

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		<p>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.</p>
2.9	CIC/SBC/P/016/12	<p><u>Update on VSRS Operations</u> - 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.</p> <p>Members endorsed the general principles for determining the extent of regulatory actions against fatal site accident 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 relating to the death of workers. The register of other trades or specialties under the VSRS would not be affected.</p> <p>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.</p> <p>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</p>

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		construction site accidents, Members were brought attention to the letter in Annex A of the paper. To convey a concise and clear message to subcontractors, 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.
2.10		<u>Any Other Business</u> Nil.

Committee on Subcontracting

Proposed Nomination of Co-opted Members
from February 2012 to January 2014

A. Re-appointment

Mr. Bernard HUI	Chairman of Task Force on Security of Payment Legislation
Mr. TANG Ki-cheung	Chairman of Task Force on Standard Contract Provisions for Domestic Subcontracts
Mr. TSE Chun-yuen	Chairman of Task Force on the Stage 2 VSRS Development Bureau
Mr. CHAN Chau-fat	
Mr. Nelson CHAN	Independent Commission Against Corruption

B. Nomination from Organisation

Mr. WONG Sing-lam	Contractor's Authorised Signatory Association
Mr. Anthony CHAN	Hong Kong General Building Contractors Association
Mr. CHAN Sam-choi	Construction Site Workers General Union
Mr. Tommy LEUNG	Airport Authority Hong Kong

C. Term of Office

- (i) As endorsed by the CIC, Co-opted Member holds office for a period not exceeding 2 years and is eligible for re-appointment to the same committee on the expiry of his/her term of office, but may not serve as such a member continuously for more than 6 years.
- (ii) The term of office of the above Co-opted Members, if appointed, will end on 31 January 2014.