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CIC/CMT/P/041/12
(for discussion)

Construction Industry Council

Committee on Subcontracting

Meeting No. 004/12 of the Committee on Subcontracting for 2012 was held on 16 August 2012 (Thursday) 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. 004/12.

Agenda Item	Paper	Major Resolutions/ Progress Highlights
4.1	CIC/SBC/R/003/12	<u>Confirmation of the Progress Report of the Previous Meeting</u> – Members confirmed the progress report of the previous meeting held on Tuesday, 3 July 2012 at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.
4.2		<u>Matters Arising from the 3rd Meeting for 2012</u> Item 3.4) Wage Payment Alert No. 001/12 on Secure your Wages and Legitimate Rights To grab the attention of frontline construction workers, Members agreed that the title of the poster would be revised a bit to make it more punchy and eye-catching. However, the main content of the poster would not be changed to avoid further delay in the production. <i>[PMN: Proposed by a Member by email dated 17 August 2012, the wording of the poster in Chinese could be modified to make it more reader-friendly for the frontline construction workforce to raise their attention to secure wages and legitimate rights.</i>

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		<p><u>工資權益你要知</u> 書面合約至穩陣 僱員僱主各一份 工資算法要釐清 簽約最好有見證 留意工會發公告 工資莫人爲低報 收取現金工資時 收據紀錄要堅持</p> <p><i>The English version would be revised in accordance with the above Chinese version. It was proposed as:</i></p> <p><u>Secure Your Wages and Legitimate Rights</u></p> <ul style="list-style-type: none">• <i>Employment contract in writing; the copies retained by both parties.</i>• <i>Employment contract with clear wage calculation specified, and signed under witness of third party.</i>• <i>Note the latest wage rates announced by labour unions; don't sign an employment contract at a wage rate lower than the actual one.</i>• <i>Wage payment in cash must come with a written record which should be properly retained.]</i>
4.3	CIC/SBC/P/024/12 CIC/SBC/P/025/12	<u>Task Force on Security of Payment Legislation</u> - Members took note of the “Report on Security of Payment Legislation to Improve Payment Practices in the Construction Industry” submitted by the Task Force (Task Force Report).

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		<p>After much deliberation, the Committee endorsed the Task Force Report subject to the following enrichment to the report by including:</p> <ul style="list-style-type: none">• four common elements in security of payment as set out in Section 4 of the Task Force Report, i.e.<ul style="list-style-type: none">○ rights to progress payments for work done;○ prohibition of conditional payments (e.g. pay when paid);○ mandatory adjudication; and○ rights to suspend work in case of non-payment.• Table 4.8 “Common Payment-related Problems Encountered with Upper-tier Parties by Types of Operators” on page 67 of the final survey report. <p>To introduce a fairer payment regime, following comments would be taken into consideration when identifying the intended scope of the security of payment legislation:</p> <ul style="list-style-type: none">• The importance of independent professional advice from the engineer/architect/quantity surveyor without undue influence or pressure from employer;• In some jurisdictions, it was required by law to stipulate the due date for payment in written contract. Each payment shall be due and payable under the conditions and for the period set forth in statute or regulation;• To introduce an efficient and effective dispute resolution mechanism, e.g. mandatory adjudication to resolve the payment disputes as quickly as possible during the construction period so as to give subcontractors and suppliers rights to ensure timely cash flows down the construction supply chain;• In respect of private works contracts, adjudication could particularly facilitate the receipt of progress payment withheld due to disputes, and due to delay in payment certification

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		<p>and settlement process as indicated in table 4.8 on page 67 of the final survey report;</p> <ul style="list-style-type: none">• To eliminate “pay if/when paid” clauses from construction contracts;• To improve rights for contractors to suspend their work in non-payment circumstances;• To stipulate a reasonable period for settling the final account/final payment;• The legislative framework must take into account the common payment-related problems encountered with upper-tier parties by types of operators shown in table 4.8 on page 67 of the final survey report;• To be in line with existing Security of Payment Act in the other jurisdictions, the term “conditional payment” should be adopted instead of “pay if/when paid” payment term used in the survey; and• Considering the fact that oral contracts were also recognised in some overseas jurisdictions under the Security of Payment Act, the new task force to be set up by DevB would also take into account both written and oral contracts when developing the new legislation. <p>Members agreed that the Task Force on Security of Payment Legislation would be dissolved upon approval of the report at the Council Meeting scheduled for 31 August 2012.</p>
4.4	CIC/SBC/P/026/12	<u>Task Force on Voluntary Subcontractor Registration Scheme (VSRS) Stage 2</u> - In response to the concern on Clause 2.1(c) Requirement R3, Chairman and CYT further elaborated that instead of creating barriers to entry, the introduction of Requirement R3 aimed to relax the entry requirement by introducing a new alternative requirement for those not eligible for registration through Requirement R1 or R2. The management training course required under new R3 aimed to enhance the knowledge of potential registered subcontractors to keep abreast with good

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		management and safety practices in today's construction sites and thus to facilitate them becoming subcontractors and operating their future companies.
4.5		<u>Any Other Business</u> - The Secretariat briefly introduced the purpose, target beneficiaries, type of beneficial and effective date of the LECA Charity Fund set up by The Lift & Escalator Contractors Association on 1 August 2012.