

LEGISLATIVE COUNCIL BRIEF

CONSTRUCTION INDUSTRY SECURITY OF PAYMENT BILL

INTRODUCTION

A At the meeting of the Executive Council on 7 May 2024, the Council ADVISED and the Chief Executive ORDERED that the Construction Industry Security of Payment Bill (“the Bill”) at **Annex A**, should be introduced into the Legislative Council (“LegCo”).

JUSTIFICATIONS

B 2. The construction industry is an important impetus to promote the economic growth and social development in Hong Kong. It also provides livelihoods for hundreds of thousands of labour force. There is a wide scope of construction work, such as site formation, infrastructure development and building works, involving participation of different stakeholders, including project owners, contractors, subcontractors, consultants, suppliers and workers (see **Annex B** for examples of the myriad of contractual relationships). As construction works involve a variety of professions/ trades and there are unique features for each individual project, it is often too challenging for an individual contractor (or consultant) to rely solely on its own resources and expertise to undertake the entire work (or services). To enhance the flexibility in project procurement, subcontracting arrangement is commonly adopted in the construction industry in Hong Kong. Different stakeholders along the construction/supply chain often need to use their own capital to start off their respective shares of the work, and then receive payments from the paying parties in accordance with the work progress. Since construction projects often involve a large amount of capital, smooth cash flow for stakeholders in the supply chain is very crucial.

3. However, Construction industry stakeholders have been facing payment problems, including non-payment or delay in payment by those procuring their services. Payment problems are predominately caused by disputes and poorly drafted or unfair payment terms. Unpaid parties are often bound by construction contracts to allocate their own financial resources to continue the work. This has posed financial burdens and risk on them, especially the small and medium-sized enterprises (“SMEs”) with relatively low financial risk tolerance level. In some cases, payment problems can also lead to project delays and disruptions, and wage arrears of construction workers. To ensure the smooth running of the construction projects, it is therefore crucial to resolve the payment problems and in so doing alleviate hardship to different stakeholders and the prevalent problems of wage arrears in the construction industry.

4. To acquire a better understanding of the payment practices of the local construction industry, the Development Bureau (“DEVB”) engaged a consultant to carry

out a comprehensive and industry-wide survey in 2011 and a follow-up study in 2023 (“the Survey”). The Survey revealed that stakeholders in the construction supply chain had been experiencing payment problems over the years. The average outstanding payment per annum amounted to 5% to 12% of the total business receipts¹, and delay in payment was commonly over 6 months. In the subsequent industry stakeholders’ engagement, we have been told that the delay period could be up to 2 to 3 years for settlement of payment claims for some serious cases (e.g. substantial change in design incurring additional cost and time). The industry generally considers that there has been no noticeable improvement to the payment problems over the last decade.

5. According to the Survey, the major root causes of the payment problems in the construction industry are as follows: -

- (a) It is common in subcontracts that even though the claiming party has already completed the work or provided the services, it can only receive the payment after the paying party has received payment from the upper-tier contract (i.e. “conditional payment terms” such as “pay when paid”). Such terms are commonly found in most subcontracts. For example, they are stipulated in the Standard Form of Domestic Sub-contract published by Hong Kong Construction Association.
- (b) Some construction contracts lack provisions on specific payment arrangement, such as provisions on payment intervals and deadlines. This practice is more common in lower-tier subcontracts, which results in the claiming party not having a clear timetable for exercising contractual right to claim for payments.
- (c) There may be disagreement over the payment amount and/or the time for completing the work with knock-on impact on payment due, resulting in a payment dispute. According to the terms commonly used in a construction contract, in case a dispute cannot be resolved by negotiation or mediation, it will be settled through litigation in courts or arbitration, which by convention will normally commence only after the full completion of works under the concerned contract. This aside, litigation and arbitration proceedings are normally costly and involve very long processing time.

6. The above-mentioned payment problems in the construction industry are not unique to Hong Kong. Many countries² have already adopted a legislative approach to tackle the payment problems so as to ensure that all stakeholders along the construction supply chain can timely receive their payments. Generally, our proposed Security of Payment Legislation (“SOPL”) follows the same approach adopted by these overseas countries, with provisions to improve contractual payment terms, introduce an adjudication mechanism for speedy dispute resolution, and empower unpaid parties to suspend or slow down work or services. In our proposed SOPL, we include specific features from the overseas SOPLs and have them modified to take into account the local

¹ According to the result of the Survey, the average outstanding payment per annum of the contractors, subcontractors, consultants and suppliers accounted to 8%, 12%, 10% and 5% of the total business receipts respectively.

² The SOPL has been enacted in the United Kingdom, Australia, New Zealand, Singapore, Malaysia, Ireland and Canada.

construction practice. For example, we cover both written and oral construction contracts in the scope of applications, impose time limit on initiation of adjudication after a dispute arises, include provisions to address potential ambush, etc. A comparison on the key features of the SOPLs in overseas jurisdiction and those we are proposing for Hong Kong is tabulated in **Annex C**.

C

7. Apart from making reference to overseas legislation, we have taken into account the views from the local industry stakeholders. The DEVB established a Task Force for Preparation of Legislative Proposals to the Construction Industry Security of Payment Legislation (“Task Force”), comprising members from relevant government departments, public and private organisations and industry representatives, in 2016. The Task Force studied the SOPLs in overseas countries, and considered the opinions received from the public consultation launched in June 2015 on the proposed legislative framework, with a view to progressively taking forward the legislative work of the SOPL. Although the industry has supported the use of a legislative approach to deal with the payment problems, it has taken some time for the Government to address the diverse views of individual stakeholders on specific issues. For example, stakeholders from different sectors have held different views on the need and appropriateness for the proposed adjudication process under the SOPL to cover matters concerning arguments over claims for extension of time (“EoT”) and accordingly the relevant time-related payment disputes³. Some stakeholders also expressed concerns on what they would regard as the excessive power of the adjudicators, potential abuse of adjudication mechanism by contractors and sub-contractors and potential implications on those professionals taking up the role of contract administrators. After years of discussions, we have now narrowed the differences and achieved a broad consensus among the industry stakeholders. The issues of EoT have been addressed as stated in paragraphs 20 and 21. Under the Bill, adjudicators have to conduct adjudication proceedings in accordance with the adjudication rules of the selected Adjudicator Nominating Body (“ANB”)⁴. The Bill also includes provisions to prevent potential abuse, for example adjudicators have the power to order a party to pay a higher proportion of the costs of adjudication proceedings if it is considered that the party has abused the use of adjudication mechanism.

8. With many large-scale works projects (including but not limited to the Northern Metropolis, Kau Yi Chau Artificial Islands, railways and roads, public and private housing developments and public hospital developments) being progressively launched in Hong Kong, the Construction Industry Council (“CIC”) forecasts that the total annual construction volume in Hong Kong will maintain at a high level. It is therefore particularly timely to introduce the Bill to LegCo at this juncture. We also expect that the project procurement cost may reduce over time after the implementation of the Bill as price premiums for risk in association with non-payment/delayed payment⁵ will decline over time following improved security of payment.

³ See paragraphs 20 and 21 for details.

⁴ ANB is a body registered by the DEVB, and is responsible for stipulating the eligibility requirements of the adjudicators, establishing a panel of adjudicators and formulating nomination procedures in order to appoint suitable adjudicators to handle the payment disputes and to establish suitable adjudication rules for conducting adjudication proceedings. The Bill will empower the Secretary for Development (“SDEV”) to approve the registration of ANBs on the day on which the ordinance is published in the Gazette.

⁵ Based on the local experience and overseas studies, price premiums for risk in association with non-payment/delayed payment is typically in the range of 5-10%.

LEGISLATIVE PROPOSAL

A. Objective

9. In establishing the legislative framework, we are mindful about the need for minimizing interference in the freedom of contractual parties to agree among themselves the terms of a contract including the payment terms, and for preserving flexibility for the procurement and execution of construction and related contracts. Furthermore, the Government should not get itself entangled in contractual disputes and become the authority determining or ordering payment.

10. With the above principles in mind, the Bill aims to bring about transformative change to the prevailing improper payment practices in the construction industry by (a) prohibiting and nullifying certain unfair payment terms in contracts entered into between parties; and (b) providing an adjudication mechanism for speedy resolution of payment disputes by an independent third party, if any contractual party along the construction supply chain is aggrieved by delay in payment/non-payment and would wish to exercise its right to resolve the payment claim through the adjudication mechanism.

B. Scope of Application

11. The Bill will in general cover contracts for carrying out construction work⁶, as well as contracts for the supply of goods (e.g. materials and plant) and services related to the construction work (“Construction Contracts”) in Hong Kong. Details of the scope are as follows: -

- (a) Construction Contracts procured by the **Government and specified statutory and public organisations/ enterprises** (hereinafter referred to as “Specified Bodies”⁷) where the main contract values are not less than the specified minimum contract values⁸; and
- (b) Construction Contracts procured by the **private sector** where the main contract values are not less than the specified minimum contract values⁸, but

⁶ Construction work includes:

- (a) Construction, installation, erection, replacement, extension, renewal, alteration, repair, restoration, maintenance, dismantling or demolition of, or the addition to, specified structures as set out in Schedule 2 to the Bill at Annex A, which includes, for example slope, retaining wall, road, shore or harbour protection, supply of electricity, fuel or gas, telecommunication, water supply, drainage, sewage treatment and waste treatment facility;
- (b) Work that is for the completion of an integral or ancillary part of the above-mentioned buildings, structures or works, e.g. landscaping and utilities and services installations; and
- (c) Preparatory work in relation to the above-mentioned works, e.g. site clearance, site investigation and provision of access roads.

⁷ “Specified Bodies” include the Airport Authority, the Hong Kong Housing Authority, Hospital Authority, Mass Transit Railway Corporation Limited, electricity or town gas suppliers, etc. (Details at Schedule 3 to the Bill at Annex A).

⁸ If the main contract is a contract for the carrying out of construction work, the minimum contract value is proposed to be HK\$5 million. If the main contract is a contract for the supply of related goods or services only, the minimum contract value is proposed to be HK\$500,000. (Details at Schedule 4 to the Bill at Annex A).

with two exceptions: (i) Construction Contracts for works on existing residential buildings (e.g. interior renovation, building maintenance, etc.), and (ii) Construction Contracts for relatively minor works on existing non-residential buildings, i.e. those works not requiring approval and consent of the Building Authority (“BA”) under the Buildings Ordinance (Cap. 123) (e.g. maintenance and repair of building services installation, shop renovation, etc.).

12. The Task Force agrees that it is necessary to set minimum contract values for the application of the Bill to avoid imposing out-of-proportional legal and contract administrative burdens for small scale work (e.g. erection of hoarding, covered walkway, etc.). The Task Force agrees that there are fewer payment disputes in this kind of projects and that the disputes, if any, are more readily resolved by other means such as negotiation. We have extensively consulted the stakeholders in setting the thresholds for the proposed minimum contract values, taking into consideration the diverse perspectives of various sectors in the industry. We propose to impose the specified minimum contract values on the main Construction Contracts. In general, should the main Construction Contract be covered under the Bill, all subcontracts (including goods and services contracts) along the same supply chain will be bound by the Bill. Besides, the Bill will cover both written and oral contracts since many local small-sized contractors and subcontractors adopt oral or partly oral contracts in undertaking the Construction Contracts.

13. The Construction Contracts excluded from the Bill in paragraph 11(b)(i) and (ii) are mainly Construction Contracts procured by the general public particularly existing residential owners and SMEs. It would be impracticable to require these parties to familiarize themselves with the requirements under the Bill and to have the resources and skills to handle the payment mechanism under the Bill and to deal with potential adjudication for resolving payment disputes. It is common in overseas countries to exclude Construction Contracts involving existing residential buildings from their SOPLs. We consider the same approach could be adopted in the legislative proposal for Hong Kong. Besides, works on existing non-residential buildings not requiring approval and consent of the BA in the private sector are largely minor in nature and commonly procured by SMEs. There are less payment disputes problems since fewer layers of subcontracting are involved⁹. Hence the proposed exclusion would not have a significant impact on the overall objective of the legislation. After detailed consideration, the Task Force agrees that the proposed scope has made a proper balance between improving the payment problems encountered by stakeholders along the construction supply chain and avoidance of impacts on the general public and SMEs.

⁹ Based on the CIC’s data, the construction expenditure for works on existing private non-residential buildings with main contract value not less than the minimum contract value is approximately 1.5% of the total construction expenditure in the construction industry. Based on the result of the Survey, the outstanding payment attributed to this kind of works is only 0.6%. The aforementioned percentages could be further reduced if we narrow the work to those not requiring approval and consent of the BA as per our current proposal. These reflected the small pool of relevant works affected and their payment dispute is less significant than the others.

C. Key Features of the Bill

(a) Improvement of Contractual Payment Terms

14. The Bill will: -

- (a) **prohibit the use of “conditional payment” terms** - “conditional payment” terms, such as “pay when paid” clauses or any other clauses with the same effect¹⁰, will be rendered unenforceable between the parties to the contract with no exception. A paying party cannot deny or defer payment to a claiming party on the ground that the paying party itself has not received payment under its upper-tier contract or any other contract;
- (b) **impose time limits for the paying party to give response and make payment after a valid payment claim is made** - a paying party is required to serve payment response no later than the date as specified in the contract or 30 calendar days after a payment claim is validly made, whichever is earlier. The Bill also requires the paying party to make payment of the amount admitted in the payment response not later than the date as specified in the contract or 60 calendar days after a payment claim is served, whichever is earlier, to prevent the paying party from imposing an unreasonably long payment period in the contract; and
- (c) **introduce a set of default payment provisions** – in the event that the contract has not specified how and when progress payments are to be made, the claiming party is entitled to make payment claims on a monthly basis. The introduction of the default payment provision brings certainty and transparency of payments to all parties, in particular to lower-tier parties who are at risk of working under contracts without detailed payment terms.

15. For so long as the above provisions in paragraphs 14(a) and (b) are met, parties to the contract are still free to agree on other contractual terms, including those on the schedule and time intervals for the claiming party to submit payment claims and the basis in calculating of the payment amounts due. Any contractual terms in conflict with the above provisions to be specified in the proposed SOPL will be nullified and will not be enforceable.

(b) Introduction of Adjudication Mechanism

16. Normally, a paying party makes payments to a claiming party according to requirements set out in the contract documents such as drawings, Bills of Quantities, specifications, etc. However, payment disputes could still occur when there are disagreements, commonly on (a) valuation of additional works; (b) measurement on work progress or tasks completed; and (c) whether the work done by the claiming party meets the required workmanship and quality stipulated in contract documents. These have been revealed as the most common types of disputes in the Survey. Effective mechanism is required to resolve these disputes to streamline the cash flow.

¹⁰ One example of the clauses with the same effect is the “pay when certified” clauses which provide that the paying party is only obliged to make a payment to its subcontractor when a certificate is issued under the upper-tier contract in respect of the sub-contract works.

17. Under the Bill, an adjudication mechanism is proposed to provide a speedy, cost-effective and binding resolution process for payment disputes in the interim, to complement arbitration and litigation which normally take place at the end of the contract and are usually more costly and lengthy. The right to adjudication is available to claiming parties (including main contractors and all lower-tier subcontractors, consultants and suppliers), thereby providing protection to the entire construction supply chain including construction workers.

18. Under the Bill, a payment dispute is regarded to have arisen between the parties to the contract under three specified circumstances: (a) if there is a payment claim but the paying party fails to serve a payment response on or before the deadline, or (b) the paying party, while responding to the payment claim, disagrees with the amount of the payment claimed by the claiming party, or (c) the paying party, while responding and admitting the amount due, fails to pay the admitted amount in full on or before the deadline (either one of the above three circumstances is hereafter described as “when payment dispute arises”). Under these circumstances, the claiming party has a discretion to initiate adjudication proceedings in accordance with the Bill in respect of the payment dispute.

19. As prevailing practice, contracting parties may attempt to settle a payment dispute by mediation at any time in the course of a contract. However, a mediator will not make any binding determination but will only facilitate parties to settle a dispute. If the parties fail to reach settlement, the parties have no choice but resolve the dispute by arbitration to obtain a binding award after completion of the works. For the proposed adjudication in the course of the works, an independent adjudicator will be appointed to provide an interim, fast and binding determination within 62 working days after a claiming party initiates an adjudication (see paragraph 22(d) below). Since the proceedings of adjudication are less formal than those of arbitration, adjudication offers a less costly mechanism to help resolve parties’ payment dispute.

20. Construction Contracts generally allow the construction period to be extended where there is a delay that is not the contractor’s fault (e.g. change of design by the client, delay in giving the contractor possession of the site). This is generally described as an EoT claim. EoT claims usually run alongside claims for loss and expense resulting from the extended construction period, which may include overhead expenses, hiring of plant, etc. According to the Survey, a claim for EoT is one of the common causes for payment disputes in Construction Contracts. For settlement of time-related payment disputes, it is essential for adjudicators to assess the reasonableness of the claim for EoT and ascertain the compensation amount payable.

21. In general, it is more arduous to adjudicate a payment dispute involving EoT for completion of construction contract as well as the related compensation amount. Whilst adjudication is indeed a new mechanism for resolving payment disputes in the construction industry and it takes time to train up adequate number of experienced adjudicators, after consulting the Task Force, it is proposed that the adjudication of payment disputes in relation to the EoT entitlement will be implemented in the public sector first i.e. for Construction Contracts procured by the Government and the Specified Bodies. This arrangement allows us to thoroughly evaluate its implementation and refine the adjudication mechanism as necessary based on the experience gained. When the adjudication mechanism becomes well-developed, the SDEV will specify an effective date for the implementation of the adjudication of payment disputes in relation to the EoT

entitlement for Construction Contracts procured by the private sector. As mentioned in paragraph 16, a claiming party still faces many kinds of payment disputes arising from circumstances not relating to EoT. Adjudicators could deal with these non-EoT related payment disputes in private sector after the implementation of the Bill. Even if there are cases that only part of payment dispute relates to EoT, the adjudicator can still handle the non-EoT related part of the payment dispute.

22. Details of the proposed adjudication mechanism are as follows:

- (a) A claiming party must initiate the adjudication proceedings within 28 calendar days beginning on the date on which a payment dispute arises (see paragraph 18 for “when payment dispute arises”). The claiming party is required to serve an adjudication notice on the paying party and the ANB, stating the nature and description of the dispute, as well as the disputed amount.
- (b) The ANB must appoint a suitable and independent adjudicator¹¹, after seeking views from both parties, within 7 working days from the service of the adjudication notice by the claiming party on the ANB. The adjudicator should be well-equipped with contract administration knowledge and professional practices to adjudicate the payment dispute and to make a speedy and interim binding determination in an impartial manner for the parties concerned.
- (c) Both claimant and respondent must serve on the adjudicator submissions within the deadline as specified in the Bill or specified by the adjudicator. The adjudicator must make the determination (including the amount payable in relation to the payment dispute and interest (if any), the EoT for completion of the contract (if applicable), as well as the costs of the adjudication proceedings) within 55 working days¹² after the appointment. Adjudicators work primarily on the basis of the submissions served by both parties (such as relevant contract terms/specifications, invoices, site measurement records, expert reports, etc.) to make their determinations. While adjudicators have discretion to call conference, such conference is not normally required except for complex legal issues (e.g. jurisdictional challenge on adjudicator, settlement of complex EoT claims). The DEVB will ensure that suitable adjudication rules are issued by ANB to reflect the above policy intention that the calling of conference should be exceptional.
- (d) The paying party must pay the adjudicated amount within the period specified by the adjudicator in the determination (“payment period specified by the adjudicator”). In other words, under the expedited adjudication mechanism,

¹¹ The qualifications for adjudicators include professionals such as engineers, architects, surveyors and lawyers specialised in construction, with relevant experience on construction contract administration or disputes resolution. The ANBs will also be required to conduct conflict of interest check before the appointment.

¹² In the proposed adjudication framework, it takes 23 working days for both parties to submit relevant submissions to the adjudicators. Making reference to some trial adjudication cases, the adjudicators could generally make the determinations in less than 10 working days for simple cases. We set the 55 working days as the general upper limit to cater for more complicated cases. That said, if both parties agree, the 55 working-day deadline can be extended.

it will take only 62 working days (7 working days for ANB to appoint adjudicator and 55 working days for adjudicator to make determination assuming no extension) plus the payment period specified by the adjudicator for the settlement of a payment claim.

- (e) Both parties have the rights to refer the payment dispute to litigation, or to other dispute resolution proceedings (including arbitration) stipulated in their contracts, if they are dissatisfied with the adjudicator's determination. However, the adjudicator's determination is still binding on the parties unless the dispute is determined by other dispute resolution proceedings.
- (f) In case the paying party fails to settle the payment claim in accordance with the adjudicator's determination, the claiming party may make an application to the Court of First Instance ("CFI") for enforcement. Except in circumstances specified in the Bill (which include that the adjudicator's determination is no longer binding on the parties or that the outstanding amount has been paid in full) under which CFI will refuse to grant leave for the enforcement application, the leave of CFI will be obtained within 7 calendar days after the enforcement application is made. The adjudicator's determination can then be enforced in the same way as a judgement of the High Court.

(c) Suspension or Slowing Down Work or Services

23. Under the Bill, for two specific circumstances viz (a) the paying party has admitted the amount payable but fails to pay to the claiming party the admitted amount in full on or before the deadline and (b) the adjudicator has made a determination on the case but the paying party fails to pay the adjudicated amount in full on or before the deadline, the claiming party is entitled to suspend or slow down work or services. However, under other circumstances (such as the parties simply disagreeing on the payment amount and the adjudication process is yet to be triggered, or an adjudication on a dispute being underway), the claiming party is not entitled to suspend or slow down work or services.

24. The claiming party must serve at least 5 working days prior written notice on the paying party, as well as notifying the owner (i.e. the party procuring the main construction contract) of its intention to exercise its right to suspend or slow down work or services. This will help prompt the paying party to fulfil the responsibility as soon as possible, and to allow the owner to better understand the situation and intervene, if needed, as early as possible. Once the claiming party receives the respective outstanding payment, the claiming party must resume the work within 5 working days.

25. Under the Bill, the unpaid claiming party who exercises this right arising from the non-payment is not to be regarded as in breach of the contract, and is entitled to a reasonable EoT and payment for any loss and expenses reasonably incurred. This proposal ensures that under the specific circumstances of non-payment, the claiming party will not be obliged to continue to work or to finance the work, thereby alleviating the unnecessary financial burden and risk.

26. The rationale behind the proposal of allowing unpaid parties to suspend all or

part of the works or slow down the progress is to maintain flexibility for unpaid parties to exercise their rights in a way which best fits the needs of each contract. For example, they may wish to avoid re-mobilization of costly construction operations (e.g. tunnelling with tunnel boring machine) and teams of subcontractors after the lifting of suspension, which may significantly affect construction progress. Unpaid party may intentionally choose to slow down the work to exert pressure on the paying party to settle the admitted/adjudicated amount earlier, rather than going for the more drastic move of suspending the work as suspension could damage the commercial relationship with the paying party. This proposal of allowing a choice between suspension and slowing down has received majority support from stakeholders in the sector. Similar approach has been adopted in SOPLs in the UK and Malaysia.

D. Implementation of the Bill

27. We propose that the operation of the main provisions of the Bill will commence on the expiry of 8 months (the “commencement date”) after the date on which the Ordinance is published in the Gazette (except the SDEV’s power for registration and administration of ANBs to be effective on the Gazettal date). The Bill will apply to Construction Contracts which are entered into on or after the commencement date. This is to allow sufficient time for parties concerned to carry out the necessary preparatory work. Such preparatory work includes the issue of relevant directions by the DEVB to the registered ANBs to assist them in fulfilling their functions under the Bill, the formulation of the eligibility requirements of the adjudicators by ANBs, the establishment of a panel of adjudicators, the formulation of the adjudicator nomination procedures by the ANBs, as well as the making of adjudication rules, practice notes and code of conduct by ANBs. Besides, industry stakeholders will take time to review and revise the current contract and subcontract terms so as to comply with the requirements of the Bill. We will also conduct intensive publicity of the features of the Bill to the industry stakeholders in the run up to the commencement date.

OTHER OPTIONS

28. The introduction of the proposed legislation is the only effective means to address the problem stated in paragraph 3.

THE BILL

29. The main provisions of the Bill are as follows: -

- (a) Clause 1 sets out the short title and provides for commencement;
- (b) Clauses 2 to 6 provide for the definitions of terms and expressions for the interpretation of the Bill;
- (c) Clauses 7 to 11 provide that the Bill applies to public Construction Contracts, main private Construction Contracts, and their subcontracts, subject to certain exceptions such as private Construction Contracts for works on existing residential buildings;

- (d) Clauses 12 to 21 provide for a progress payment for a party which has carried out (or has undertaken to carry out) construction work, or has supplied (or has undertaken to supply) related goods and services, under a Construction Contract. The clauses also provide for, among other things, the procedures to make a payment claim and a payment response, as well as rendering the conditional payment provisions unenforceable between the parties to a Construction Contract;
- (e) Clauses 22 to 25 provide for, among other things, the initiation of adjudicating proceedings. Clauses 26 to 29 provide for the appointment and eligibility of an adjudicator, as well as the declaration and disclosure of interests of an adjudicator. Clauses 30 to 32 provide for the procedures to make adjudication submission, adjudication response and reply to an adjudication response;
- (f) Clauses 33 to 41 provide for the conduct of adjudication proceedings, including the jurisdiction and powers of an adjudicator, the circumstances in which an adjudicator must disregard a party's submission, response, document or evidence, the resignation of an adjudicator and the withdrawal and termination of adjudication proceedings;
- (g) Clauses 42 to 46 provide for, among other things, determinations of an adjudicator. Clauses 47 to 49 provide for the setting aside and enforcement of the determinations;
- (h) Clauses 50 to 56 provide for the general and miscellaneous matters relating to an adjudication, including the right to submit a payment dispute to court or other dispute resolution proceedings, the confidentiality of adjudication proceedings and the costs of the parties and the adjudication proceedings;
- (i) Clauses 57 to 59 provide for the right of a claiming party or claimant to suspend or slow down the construction work, or the supply of related goods and services, under a construction contract, as well as their other entitlements in exercising the right to delay in specified circumstances;
- (j) Clauses 60 to 69 provide for various miscellaneous matters of the Bill, including the functions of the SDEV and a nominating body, service of documents and the powers to make amendments to the Schedules;
- (k) Clauses 70 to 71 amends the Administrative Appeals Board Ordinance (Cap. 442);
- (l) Schedule 1 sets out the premises that are excluded from the definition of residential unit¹³. Schedules 2 and 3 contain a list of specified structures and

¹³ As mentioned in paragraph 11(b)(i), construction contracts for work procured by general public on "residential units" is to be excluded from the application of the Bill and the rationale is elaborated in paragraph 13. However, the meaning of "residential units" (i.e. units that are constructed solely or principally **for human habitation**) also includes certain premises that we intend to be covered by the Bill (e.g. hotel, guesthouse, serviced apartment, etc.), for which the work is not procured by general public. These premises therefore need to be excluded from the definition so as to ensure that the Bill applies to them.

a list of specified bodies respectively for the purposes of certain definitions in the Bill. Schedule 4 specifies the minimum contract value of a Construction Contract to which the Bill applies.

D

In respect of (k) above, the existing provisions of the Administrative Appeals Board Ordinance (Cap. 442) being amended are at **Annex D**.

LEGISLATIVE TIMETABLE

30. The legislative timetable will be –

First Reading and commencement of Second Reading debate	29 May 2024
--	-------------

Resumption of Second Reading debate, Committee Stage and Third Reading	To be notified
---	----------------

IMPLICATIONS OF THE PROPOSAL

31. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. The Bill binds the Government of the Hong Kong Special Administrative Region but it does not bind the Central People's Government's Offices. The Bill has no environmental or gender implications.

E

32. The Bill will have positive economic, social, productivity and family implications on the whole. There are no sustainability implications other than those set out in the economic implications paragraph in **Annex E**. After the Bill is enacted, with the legislative provisions to address industry's improper payment practices and facilitate speedy resolution of payment disputes, it is anticipated that the construction industry could take forward the construction work in a setting with greater certainty, in a more efficient and more cost effective manner¹⁴.

33. The Bill would also help ensure a stable and predictable income resource, supporting healthy business environment of the construction industry and the financial well-being of the construction industry practitioners. From the perspective of the workers, the main contractors and subcontractors are required to discharge their obligation under Employment Ordinance (Cap. 57) on settlement of wage disputes, regardless of the statutory rights provided under the Bill.

34. The enactment of the Bill will not impose significant compliance implications, as the triggering of the adjudication mechanism is at the discretion of the claiming party and when triggered the cost should be regarded to be affordable. For the paying party, it is only right for it to pay the claiming party the amount due.

¹⁴ The implementation of the Bill would help address the industry's improper payment practices and resolve payment disputes in early stage, thereby reducing the potential disruption to the project caused by payment problems. By providing a framework for timely payments, the Bill would contribute to a reduction in the risk premium associated with non-payment/delay payment.

35. The assessment of economic, social, productivity, family, financial and civil service implications are set out at **Annex E**.

PUBLIC CONSULTATION

36. In October 2012, the DEVB set up a Working Group on SOPL for the Construction Industry comprising representatives from developers and public bodies, professional institutions, consulting and contracting trade associations with a view to soliciting their views and comments on the essential elements and framework of the legislative proposal.

37. We launched a 3-month public consultation for the proposed legislative framework of the SOPL on 1 June 2015. The consultation results indicated that there was general public support on the proposed SOPL though some stakeholders expressed concerns over some details. The results of the public consultation were reported to the LegCo Panel on Development in June 2016.

38. In 2016, we set up the Task Force similarly comprising representatives from key stakeholder bodies mainly to resolve issues with different views for finalisation of the legislative framework. With the concerted efforts of the Task Force, general consensus has now been reached on the final legislative proposal.

39. We have also conducted briefing sessions for the construction industry practitioners to foster their understanding on the spirit and framework of the proposed SOPL. The most recent webinars, in collaboration with CIC, were conducted on 10 July and 6 December 2023, with more than 400 attendees. No adverse comments on the proposed legislative framework were received in the webinars.

40. We consulted the Business Facilitation Advisory Committee (“BFAC”) on the legislative proposal and reported the key findings of the business impact assessment (“BIA”) to the committee members on 28 June 2023. The Committee welcomed the DEVB’s continuous efforts to enhance the overall development of the construction sector. Due consideration to the issues related to prolonged assessment of the quality of works, time involved in the adjudication proceedings and effective communication with the stakeholders are of importance to ensure a smooth implementation of the proposed SOPL.

41. We briefed the LegCo Panel on Development at its meeting of 28 November 2023 on the legislative proposal and our plan to introduce the Bill into LegCo in the first half of 2024. The Panel members generally supported the proposal and urged for early implementation. During the meeting, they raised enquires on the timeframe of adjudication proceedings, the sufficiency, qualifications and nomination of adjudicators, possible abusive use of adjudication by contracts/sub-contractors and the potential implications on the role of contract administrators. In general, we provided elaborations and explanations to the members at the meeting. In late April 2024, we had a round up meeting with the relevant industry stakeholders via the Task Force to brief them on the latest proposals and generally secured their support. We will continue to liaise with them in regard to the implementation details of the adjudication mechanism.

42. A prominent construction contractor went into liquidation in recent months and one of its subcontractors disclosed to the media that the concerned contractor had been delaying payments to the concerned subcontractors for six to seven years, resulting in a considerable sum of accumulated outstanding payment. The case has revealed, once again, the severity with the bad practice of payment delays leading to the accumulation of payment overdue. There have been renewed calls from the industry stakeholders, employees union and LegCo Members for expediting the passage of the Bill to help reduce the financial burden of lower-tier subcontractors and impact to construction workers in situation where the disputes have been dragged by upper contractors.

PUBLICITY

43. A press release will be issued on 16 May 2024. We will also arrange for a spokesperson to handle the media and public enquiries. After the enactment of the Bill, publicity campaign and education programmes to promulgate the legislation in the construction industry will be arranged.

ENQUIRIES

44. For enquiries on this brief, please contact Mr Alan TANG, Principal Assistant Secretary (Works)³, at 3509 8277.

Development Bureau

16 May 2024

CONSTRUCTION INDUSTRY SECURITY OF PAYMENT BILL

ANNEXES

- Annex A - Construction Industry Security of Payment Bill
- Annex B - Examples of Layers of Participants in Construction Contracts
- Annex C - Comparison of Key Features of SOPLs in Overseas Jurisdictions and Those Being Proposed for Hong Kong
- Annex D - Existing Provisions of the Administrative Appeals Board Ordinance (Cap. 442) Being Amended
- Annex E - Implications of the Proposal
- Annex F - List of Abbreviations

Construction Industry Security of Payment Bill

Contents

Clause	Page
Part 1	
Preliminary	
Division 1—Short Title and Commencement	
1. Short title and commencement.....	1
Division 2—Interpretation	
2. Interpretation.....	2
3. Meaning of <i>construction work</i>	6
4. Meanings of <i>public contract</i> and <i>main private contract</i>	7
5. Meaning of <i>subcontract</i>	8
6. Meaning of <i>related goods and services</i>	8
Division 3—Application	
7. Ordinance applies to certain public contracts and their subcontracts.....	9
8. Ordinance applies to certain main private contracts and their subcontracts.....	10
9. When does Ordinance not apply.....	11
10. Application to Government.....	12
11. No contracting out of Ordinance.....	12

Clause	Page
Part 2	
Payments	
Division 1—Interpretation	
12. Interpretation of Part 2.....	14
Division 2—Progress Payments	
13. Right to progress payments.....	15
14. Amount of progress payment.....	15
15. Payment deadline for progress payment.....	16
Division 3—Certain Provisions in Construction Contracts	
16. Progress payment provisions.....	17
17. Conditional payment provisions.....	17
Division 4—Payment Claims and Payment Responses	
18. Payment claims.....	18
19. Payment responses.....	19
20. Payment response deadline.....	20
21. Consequences of not serving payment responses.....	21
Part 3	
Adjudication of Payment Disputes	
Division 1—Interpretation	
22. Interpretation of Part 3.....	22

Clause	Page
Division 2—Payment Disputes	
23. When does payment dispute arise	23
24. Right to initiate adjudication proceedings for payment disputes	25
Division 3—Initiating Adjudication Proceedings, Adjudicators and Adjudication Submissions and Responses	
25. How to initiate adjudication proceedings.....	25
26. Appointment of adjudicator by nominating body agreed by parties.....	27
27. Appointment of adjudicator in other ways	27
28. Who may be appointed as adjudicators	29
29. Adjudicator to declare and disclose interests	29
30. Claimant to serve adjudication submission	30
31. Respondent to serve adjudication response.....	30
32. Claimant to serve reply to adjudication response.....	31
Division 4—Conduct of Adjudication Proceedings	
33. Jurisdiction of adjudicators	32
34. Adjudicator to conduct adjudication proceedings	32
35. Powers and duties of adjudicator	33
36. When powers of adjudicator not affected.....	34

Clause	Page
37. Circumstances in which adjudicator must disregard submission etc.....	35
38. Parties may be represented.....	36
39. Resignation of adjudicator	36
40. Withdrawal of adjudication proceedings.....	37
41. Termination of adjudication proceedings.....	37
Division 5—Adjudicator's Determinations	
42. Determinations	38
43. Payment deadline for adjudicated amounts.....	39
44. Effect of determinations.....	40
45. Adjudicators may correct typographical errors etc.	40
46. Valuation of works etc. in later adjudications.....	41
Division 6—Setting Aside or Enforcement of Determinations	
47. Interpretation of Division 6	41
48. Application for setting aside determinations.....	41
49. Enforcement of determination as judgment	42
Division 7—General and Miscellaneous Matters relating to Adjudication	
50. Effect of adjudication on other proceedings.....	44
51. Confidentiality of adjudication	44
52. Costs of parties.....	45
53. Costs of adjudication proceedings.....	45

Clause	Page
54. Matters to be considered in determining proportions of costs of adjudication proceedings	46
55. Supplementary provisions on fees and expenses of adjudicator.....	47
56. Disapplication of adjudication of time-related disputes for main private contracts and subcontracts.....	48
Part 4	
Right to Delay Work or Supply	
57. Interpretation of Part 4	49
58. Claiming party's right to delay work or supply	49
59. Claimant's right to delay work or supply.....	51
Part 5	
Miscellaneous Matters	
Division 1—Interpretation	
60. Interpretation of Part 5	54
Division 2—Administration	
61. Functions of Secretary.....	54
62. Right of appeal against decisions of Secretary.....	55
63. Functions of nominating body	55
64. Nominating body may charge certain fees.....	56
65. Immunity from civil liability.....	57

Clause	Page
66. Adjudicators not compellable witnesses	57
Division 3—Service	
67. Service of adjudication documents	57
68. Service of documents on parties.....	58
Division 4—Amendment of Schedules	
69. Secretary may amend Schedules	59
Part 6	
Related Amendment	
70. Administrative Appeals Board Ordinance amended	60
71. Schedule amended.....	60
Schedule 1 Premises Excluded from Definition of <i>Residential Unit</i> in Section 2(1)	62
Schedule 2 Specified Structures	63
Schedule 3 Bodies Specified for Definition of <i>Specified Entity</i> in Section 4(3)	66
Schedule 4 Contract Value of Public Contracts or Main Private Contracts for Purposes of Section 7(1)(a)(ii) or 8(1)(a)(ii).....	69

A BILL

To

Facilitate the recovery of payments under construction contracts; to provide a mechanism for speedy resolution of payment disputes under certain construction contracts through adjudication proceedings; to give a right to a party to a construction contract, under certain circumstances, to suspend or reduce the rate of progress of the construction work or the supply of related goods and services under the contract; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

Division 1—Short Title and Commencement

1. Short title and commencement

- (1) This Ordinance may be cited as the Construction Industry Security of Payment Ordinance.
- (2) Subject to subsection (3), this Ordinance comes into operation on the expiry of 8 months after the day on which it is published in the Gazette.
- (3) The following provisions come into operation on the day on which this Ordinance is published in the Gazette—
 - (a) Division 1 of Part 1;

- (b) section 2 (in so far as it relates to Divisions 1, 2 and 4 of Part 5, except section 66);
- (c) Divisions 1, 2 and 4 of Part 5, except section 66;
- (d) Part 6.

Division 2—Interpretation

2. Interpretation

- (1) In this Ordinance—
 - adjudicated amount* (經審裁款額) means an amount determined under section 42;
 - adjudication notice* (審裁通知)—see section 25(1);
 - adjudication proceedings* (審裁程序), in relation to a payment dispute, means the process of adjudicating the payment dispute in accordance with Part 3;
 - adjudication rules* (《審裁規則》), in relation to a nominating body, means the rules made by the body in respect of the conduct of adjudication proceedings;
 - adjudicator* (審裁員) means an individual appointed in accordance with Part 3 to determine a payment dispute for which adjudication proceedings are initiated;
 - admitted amount* (認付款額)—see section 19(2)(c)(i);
 - claimant* (申索人) means a claiming party who initiates adjudication proceedings;
 - claimed amount* (申索款額)—see section 18(3)(c);
 - claiming party* (申索方)—see section 18(1);
 - common parts* (公用部分) has the meaning given by section 2 of the Building Management Ordinance (Cap. 344);
 - construction contract* (建造合約)—

- (a) means a legally enforceable agreement under which—
- (i) a party agrees to carry out construction work for another party; or
 - (ii) a party agrees to supply related goods and services for construction work to another party; but
- (b) does not include a development contract under which the whole consideration payable is calculated otherwise than by reference to the value of the construction work carried out or the related goods and services supplied;

construction site (建造工地)—

- (a) in relation to a construction contract for carrying out construction work—means the place where the construction work is, or is to be, carried out under the contract; or
- (b) in relation to a construction contract for supplying related goods and services for construction work—means the place where the construction work is, or is to be, carried out;

construction work (建造工作)—see section 3;

main private contract (總私人承包合約)—see section 4(2);

nominating body (提名團體) means a body corporate the name of which is listed on the register established and kept under section 61(1)(b);

occupation permit (佔用許可證) means—

- (a) an occupation permit or temporary occupation permit issued under section 21(2) of the Buildings Ordinance (Cap. 123); or
- (b) an instrument issued by the Director of Housing (or a person authorized by the Director of Housing) certifying

that a building constructed by or on behalf of the Hong Kong Housing Authority is completed;

owner (擁有人) means a person who—

- (a) enters into a construction contract with another person for that other person to—
 - (i) carry out construction work on a construction site; or
 - (ii) supply related goods and services for construction work on a construction site; and
- (b) is not engaged by any other person to—
 - (i) carry out construction work on the construction site under a construction contract; or
 - (ii) supply related goods and services for construction work on the construction site under a construction contract;

panel of adjudicators (審裁員名單), in relation to a nominating body, means the panel established and maintained by the body under section 63(a);

paying party (付款方)—see section 18(1);

payment claim (付款申索)—see section 18(1);

payment deadline (付款期限)—

- (a) in relation to a progress payment—means the date by which the progress payment is required to be paid under section 15; or
- (b) in relation to an adjudicated amount—means the date on which the period within which the adjudicated amount is required to be paid under section 43 expires;

payment dispute (付款爭議)—see section 23;

payment response (付款回應)—see section 19(1);

payment response deadline (付款回應期限), in relation to a payment response, means the date by which the payment response must be served under section 20;

progress payment (進度款) means a payment for carrying out construction work, or supplying related goods and services for construction work, under a construction contract and includes—

- (a) a one-off payment;
- (b) an interim payment or a final payment; and
- (c) a payment that is payable on the occurrence of an event or on a date;

public contract (公共合約)—see section 4(1);

related goods and services (相關貨品及服務)—see section 6;

residential unit (住宅單位), in relation to a building—

- (a) means a separate unit—
 - (i) contained in the building; and
 - (ii) constructed solely or principally for human habitation; but
- (b) does not include any premises in the building used, or intended to be used, solely or principally for any of the purposes specified in Schedule 1;

respondent (答辯人) means a paying party against whom adjudication proceedings are initiated;

Secretary (局長) means the Secretary for Development;

selected body (獲選團體) means—

- (a) the nominating body selected by a respondent under section 27(3)(a); or
- (b) the nominating body selected by a claimant under section 27(4)(a);

specified structure (指明構築物) means any building, structure or works specified in Schedule 2;

subcontract (分包合約)—see section 5.

- (2) For the purposes of this Ordinance, a residential unit is an existing residential unit if—
 - (a) in the case of a certificate of exemption having been issued under section 5(a) of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) in respect of building works for the building that contains the residential unit—
 - (i) a letter has been issued by the Director of Lands confirming that the Director of Lands has no objection to the building being occupied; or
 - (ii) a certificate of compliance or consent to assign has been issued by the Director of Lands in relation to the land on which the building is situated; or
 - (b) in any other case—an occupation permit has been issued in relation to the building that contains the residential unit.

3. Meaning of *construction work*

- (1) Construction work is—
 - (a) the construction, installation or erection of a specified structure; or
 - (b) the replacement, extension, renewal, alteration, repair, restoration, maintenance, dismantling or demolition of, or the addition to, an existing specified structure.
- (2) Without limiting subsection (1), any work mentioned in that subsection includes—
 - (a) work that is carried out to an integral or ancillary part of a specified structure, including—

- (i) making architectural features;
 - (ii) undertaking utilities and services installations;
 - (iii) landscaping; and
 - (iv) painting or decorating external or internal surfaces; and
- (b) work that is preparatory to, or for rendering complete, any work mentioned in that subsection, including—
- (i) site clearance, site investigation, excavation, filling, tunnelling and boring;
 - (ii) provision of access roads and scaffolding;
 - (iii) construction and maintenance of site offices; and
 - (iv) site restoration.

(3) In subsection (2)—

utilities and services installation (公用設施及裝備裝置) includes any electrical and mechanical installation, building services installation, electronic installation, radio and broadcasting installation and telecommunication installation.

4. Meanings of *public contract* and *main private contract*

- (1) A construction contract is a public contract if—
- (a) a party to the contract is one or more owners; and
 - (b) either—
 - (i) if there is only one owner—the owner is a specified entity; or
 - (ii) if there is more than one owner—at least one of the owners is a specified entity.
- (2) A construction contract is a main private contract if—
- (a) a party to the contract is one or more owners; and

- (b) either—
 - (i) if there is only one owner—the owner is not a specified entity; or
 - (ii) if there is more than one owner—none of the owners is a specified entity.

(3) In this section—

specified entity (指明實體) means any of the following—

- (a) the Government;
- (b) a body specified in Schedule 3;
- (c) a subsidiary undertaking (within the meaning of section 4 of Schedule 1 to the Companies Ordinance (Cap. 622)) of a body specified in Schedule 3.

5. Meaning of *subcontract*

- (1) If a construction contract (*Contract A*) (or part of *Contract A*) is entered into for—
- (a) carrying out any construction work under another construction contract (*Contract B*); or
 - (b) supplying any related goods and services for construction work under *Contract B*,
- Contract A* is a subcontract of *Contract B*, whether or not a party to *Contract A* is also a party to *Contract B*.
- (2) To avoid doubt, *Contract A* is not a subcontract of *Contract B* if *Contract A* is entered into after the discharge or termination of *Contract B*.

6. Meaning of *related goods and services*

- (1) In relation to construction work, related goods and services are any of the following—
- (a) goods of the following kind—

- (i) materials or components supplied for forming part of a specified structure arising from the construction work;
- (ii) plant, equipment or materials for use in connection with carrying out the construction work;
- (b) services of the following kind—
 - (i) providing manpower resources for the carrying out of the construction work;
 - (ii) transporting the goods specified in paragraph (a);
 - (iii) disposing any materials in connection with the construction work;
 - (iv) conducting feasibility or planning studies that may give rise to the construction work;
 - (v) providing consultancy services in connection with the construction work;
 - (vi) providing engineering testing services in connection with the construction work.

(2) In subsection (1)—

consultancy services (顧問服務) means services relating to project planning, project management, design, procurement, contract administration, asset management, asset maintenance, site supervision, surveying or quantity surveying.

Division 3—Application

7. Ordinance applies to certain public contracts and their subcontracts

- (1) This Ordinance applies to—
 - (a) a public contract—

- (i) that is entered into on or after the commencement date of this subsection; and
- (ii) the contract value of which, as at the date on which the contract is entered into, is not less than the value specified in Schedule 4; and
- (b) a subcontract of the public contract.
- (2) Subsection (1) applies to a contract or subcontract—
 - (a) whether written or oral, or partly written and partly oral; and
 - (b) whether governed by the law of Hong Kong or not.

8. Ordinance applies to certain main private contracts and their subcontracts

- (1) Also, this Ordinance applies to—
 - (a) a main private contract—
 - (i) that is entered into on or after the commencement date of this subsection; and
 - (ii) subject to subsections (3) and (4), the contract value of which, as at the date on which the contract is entered into, is not less than the value specified in Schedule 4; and
 - (b) a subcontract of the main private contract.
- (2) Subsection (1) applies to a contract or subcontract—
 - (a) whether written or oral, or partly written and partly oral; and
 - (b) whether governed by the law of Hong Kong or not.
- (3) The contract value of the main private contract under subsection (1)(a)(ii) must not include any value other than—

- (a) the value of the carrying out of construction work referred to in section 3(1)(a) under the main private contract;
 - (b) the value of the carrying out of construction work under the main private contract—
 - (i) that is referred to in section 3(1)(b); and
 - (ii) that requires the approval and consent of the Building Authority under section 14(1) of the Buildings Ordinance (Cap. 123) for it to commence or be carried out; and
 - (c) the value of the supply of related goods and services under the main private contract for the construction work specified in paragraph (a) or (b).
- (4) The contract value of the main private contract under subsection (1)(a)(ii) must also not include the value of the carrying out of construction work, or the supply of related goods and services for construction work, under the main private contract at a construction site that is—
- (a) an existing residential unit; or
 - (b) the common parts of a building (as defined by section 2 of the Building Management Ordinance (Cap. 344)) that contains one or more existing residential units.

9. When does Ordinance not apply

- (1) This Ordinance does not apply to—
 - (a) a construction contract to the extent that it contains provisions under which the consideration payable for construction work carried out, or related goods and services supplied, under the contract, is to be calculated otherwise than by reference to the value of—
 - (i) the construction work carried out; or
 - (ii) the related goods and services supplied; or

- (b) a construction contract to the extent that it contains provisions under which a party to the contract undertakes to carry out construction work, or supply related goods and services, as an employee (as defined by section 2(1) of the Employment Ordinance (Cap. 57)) of another party to the contract for whom—
 - (i) the construction work is to be carried out; or
 - (ii) the related goods and services are to be supplied.
- (2) This Ordinance does not apply to a construction contract to the extent that it deals with—
 - (a) construction work carried out outside Hong Kong; or
 - (b) related goods and services supplied for construction work carried out outside Hong Kong.
- (3) This Ordinance does not apply to a main private contract or its subcontract to the extent that the contract or subcontract deals with the carrying out of construction work, or the supply of related goods and services for construction work, at a construction site that is—
 - (a) an existing residential unit; or
 - (b) the common parts of a building (as defined by section 2 of the Building Management Ordinance (Cap. 344)) that contains one or more existing residential units.

10. Application to Government

This Ordinance applies to the Government.

11. No contracting out of Ordinance

- (1) This Ordinance has effect despite anything to the contrary in any provision in a contract or agreement.
- (2) A provision in a contract or agreement, whether in writing or not, is void to the extent that—

- (a) it is inconsistent with this Ordinance;
- (b) it has the effect of excluding, modifying or restricting the operation of this Ordinance; or
- (c) it may be construed as an attempt to deter a person from taking action under this Ordinance.

Part 2

Payments

Division 1—Interpretation

12. Interpretation of Part 2

In this Part—

billing date (發單日), in relation to a progress payment under a construction contract, means—

- (a) a date stated in, or worked out under, the contract as the date on which a payment claim for the progress payment may be made; or
- (b) if the contract does not provide for such a date—the last day of a calendar month—
 - (i) that is no earlier than the month immediately following the month in which the contract is made; and
 - (ii) in which a payment claim for the progress payment may be made for—
 - (A) construction work that has been carried out up to the last day of that calendar month under the contract; or
 - (B) related goods and services that have been supplied up to the last day of that calendar month under the contract;

carried out (進行) includes, except in paragraph (b) of the definition of *billing date*, undertaken to be carried out;

supplied (供應) includes, except in paragraph (b) of the definition of *billing date*, undertaken to be supplied.

Division 2—Progress Payments**13. Right to progress payments**

A person is entitled to a progress payment if the person—

- (a) has carried out construction work under a construction contract; or
- (b) has supplied related goods and services under a construction contract.

14. Amount of progress payment

(1) The amount of a progress payment to which a person is entitled under a construction contract is—

- (a) the amount assessed in accordance with the contract; or
- (b) if the contract does not provide for a method assessing the amount of the progress payment—the amount assessed on the basis of the value of—
 - (i) construction work carried out by the person under the contract; or
 - (ii) related goods and services supplied by the person under the contract.

(2) For the purposes of subsection (1)(b), construction work carried out, or related goods and services supplied, under a construction contract are to be valued having regard to—

- (a) the contract price or rate for the construction work or related goods and services;
- (b) any other price or rate specified in the contract;
- (c) any variation agreed to by the parties to the contract by which the contract price or rate, or any other price or rate specified in the contract, is to be adjusted by a specific amount;

- (d) in the absence of the matters referred to in paragraphs (a), (b) and (c)—a reasonable price or rate at the time the construction work was carried out or at the time the related goods and services were supplied; and
- (e) if any part of the construction work or related goods and services is defective or does not conform to the requirements of the contract but the paying party accepts the construction work or related goods and services—
 - (i) the deduction for the estimated cost of rectifying any defect or correcting any non-conformance; or
 - (ii) the deduction for the diminution in the value of the construction work or related goods and services, whichever is more reasonable.

15. Payment deadline for progress payment

- (1) A progress payment under a construction contract is required to be paid by the date on which a period of 60 days after the date on which the payment claim for the progress payment is served (or taken to be served) under section 18 (*60-day period*) expires.
- (2) However, if the parties to the construction contract concerned agree on another date by which a progress payment is required to be paid (*specified date*), and the specified date is earlier than the date on which the 60-day period expires, the progress payment is required to be paid by the specified date.
- (3) For the purposes of subsection (2), if the specified date is worked out having regard to a billing date for the progress payment and the payment claim for the payment is served on a date later than the billing date—
 - (a) the date on which the payment claim is served is taken to be the billing date for the payment; and

- (b) the specified date is to be worked out accordingly.

Division 3—Certain Provisions in Construction Contracts

16. Progress payment provisions

The parties to a construction contract may agree on—

- (a) the number of progress payments under the contract;
- (b) the interval between those payments;
- (c) the amount of each of those payments;
- (d) the circumstances in which those payments may be claimed;
- (e) subject to section 15, the date by which those payments are required to be paid; and
- (f) subject to section 20, the date by which the payment response for each payment claim for those payments is required to be served.

17. Conditional payment provisions

- (1) A conditional payment provision in a construction contract is unenforceable between the parties to the contract and has no effect in relation to any payment for—
 - (a) construction work carried out under the contract; or
 - (b) related goods and services supplied under the contract.
- (2) In this section—

conditional payment provision (有條件付款條文), in relation to a construction contract, means a provision in the contract by whatever name called—

- (a) that makes the liability of a party (*Party A*) to pay money owing to another party (*Party B*) contingent or

conditional on payment of the whole or any part of that money by a further party (*Party C*) to Party A;

- (b) that makes the date on which money owing by Party A to Party B becomes payable contingent or conditional on the date on which payment of the whole or any part of that money is made by Party C to Party A; or
- (c) that otherwise makes the liability to pay money owing, or the date on which money owing becomes payable, contingent or conditional on the operation of any other contract or agreement;

money owing (欠款), in relation to a construction contract, means money owing for—

- (a) construction work carried out under the contract; or
- (b) related goods and services supplied under the contract.

Division 4—Payment Claims and Payment Responses

18. Payment claims

- (1) A person who is or who claims to be entitled to a progress payment (*claiming party*) may serve a claim for the payment (*payment claim*) on another person who, under the construction contract concerned, is or may be liable to make the payment (*paying party*).
- (2) For the purposes of this Ordinance, if a payment claim for a progress payment is served before the billing date for the payment, the payment claim is taken to be served on the billing date.
- (3) A payment claim for a progress payment must—
 - (a) be in writing;
 - (b) identify the construction work or related goods and services to which the payment relates; and

- (c) state—
 - (i) the amount of the payment that the claiming party claims to be payable (*claimed amount*); and
 - (ii) how the claimed amount is calculated.
- (4) A claiming party may serve only 1 payment claim for a progress payment in a period that—
 - (a) begins on the billing date for the payment; and
 - (b) ends on the date immediately before the billing date for the next progress payment.
- (5) If a claiming party serves more than one payment claim in the period specified in subsection (4), the paying party may disregard any payment claim other than the first such claim.
- (6) A claiming party must not include in a payment claim any amount that is—
 - (a) the subject of any ongoing adjudication proceedings; or
 - (b) the subject of a determination that is binding on the claiming party under section 44.
- (7) If a claiming party fails to comply with subsection (3) or (6) in serving a payment claim, the claiming party is taken not to have served the payment claim.
- (8) An application for payment made under a construction contract that meets the requirements of this section is taken to be a payment claim.

19. Payment responses

- (1) A paying party served with a payment claim may reply to the payment claim by serving a response (*payment response*) on the claiming party.
- (2) A payment response must—
 - (a) be in writing;

- (b) identify the payment claim to which it relates; and
- (c) state (whichever of the following is applicable)—
 - (i) the amount that the paying party proposes to pay to the claiming party for the payment claim (*admitted amount*);
 - (ii) any difference between the claimed amount and the admitted amount;
 - (iii) how the admitted amount is calculated.
- (3) If the paying party fails to comply with subsection (2) in serving a payment response, the paying party is taken not to have served the payment response.
- (4) A paying party may amend a payment response that the paying party has served on a claiming party by serving on the claiming party an amended response by the payment response deadline.
- (5) For the purposes of subsection (4), a payment response may be amended more than once by the payment response deadline.
- (6) A certificate or assessment issued under a construction contract in response to an application for payment made under the contract that meets the requirements of this section is taken to be a payment response.

20. Payment response deadline

- (1) A payment response in reply to a payment claim must be served by the earlier of the following—
 - (a) the payment deadline of the progress payment;
 - (b) the date on which a period of 30 days after the date on which the payment claim is served (or taken to be served) under section 18 (*30-day period*) expires.
- (2) However, if the parties to the construction contract concerned agree on another date by which a payment response is required

to be served (*specified date*), and the specified date is earlier than the date on which the 30-day period expires, the payment response is required to be served by the specified date.

- (3) For the purposes of subsection (2), if the specified date is worked out having regard to a billing date for the progress payment and the payment claim for the payment is served on a date later than the billing date—
- (a) the date on which the payment claim is served is taken to be the billing date for the payment; and
 - (b) the specified date is to be worked out accordingly.

21. Consequences of not serving payment responses

If a paying party fails to serve a payment response in reply to a payment claim by the payment response deadline, the paying party—

- (a) is to be regarded as disputing the claimed amount that has not been paid by the paying party by the payment response deadline; and
- (b) is not permitted to raise any set off in the adjudication proceedings in relation to the payment claim.

Part 3

Adjudication of Payment Disputes

Division 1—Interpretation

22. Interpretation of Part 3

(1) In this Part—

adjudication response (審裁回應)—see section 31(1);

adjudication submission (審裁陳詞)—see section 30(1);

CFI means the Court of First Instance;

determination (裁定) means a determination made by an adjudicator under section 42;

dispute resolution proceedings (解決爭議程序) includes arbitration proceedings;

party (方、一方), in relation to adjudication proceedings, means a party to the proceedings;

reply to an adjudication response (審裁答覆)—see section 32(1);

working day (工作日) means a day that is not—

- (a) a general holiday;
 - (b) a Saturday; or
 - (c) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).
- (2) In this Part, a reference to costs of adjudication proceedings is to be construed according to section 53.

Division 2—Payment Disputes

23. When does payment dispute arise

- (1) For the purposes of this Ordinance, a payment dispute arises between a claiming party and a paying party if—
 - (a) the claiming party has served a payment claim on the paying party under section 18; and
 - (b) any of the events specified in subsection (2) occurs.
- (2) The events are—
 - (a) that the paying party serves a payment response on the claiming party under section 19 in which—
 - (i) the claimed amount is disputed in full; or
 - (ii) the admitted amount is less than the claimed amount;
 - (b) that the paying party—
 - (i) serves a payment response on the claiming party under section 19 in which an admitted amount is stated to be paid; but
 - (ii) fails to pay the admitted amount in full by the payment deadline of the progress payment; and
 - (c) that the paying party fails to serve a payment response in reply to the payment claim by the payment response deadline.
- (3) For the purposes of section 24, a payment dispute arises on the day following—
 - (a) if the payment dispute arises on the occurrence of an event specified in subsection (2)(a) or (c)—the payment response deadline; or

- (b) if the payment dispute arises on the occurrence of an event specified in subsection (2)(b)—the payment deadline of the progress payment.
 - (4) Despite subsection (1), if a construction contract provides for a claim handling procedure for a claim for any additional payment, a payment dispute does not arise to the extent that it relates to the additional payment unless any of following events occurs before the payment claim for the additional payment is served under section 18—
 - (a) an assessment on the additional payment has been made in accordance with the claim handling procedure;
 - (b) an assessment on the additional payment has not been made in accordance with the claim handling procedure—
 - (i) if the claim handling procedure provides for a period within which the assessment is to be made—within the period; or
 - (ii) otherwise—within a reasonable period.
 - (5) In this section—

additional payment (額外款項) means any payment that is provided for in a construction contract in relation to any expenditure or loss that is incurred by a party to the contract because of—
 - (a) the delay or disruption of the construction work or the supply of related goods and services for the construction work; or
 - (b) any variation to the construction work, or the supply of related goods and services for the construction work, that may be made under the contract;

claim handling procedure (申索處理程序), in relation to a claim for any additional payment, means a procedure for—

- (a) analyzing and determining the liability for the additional payment; and
- (b) assessing the amount of the additional payment.

24. Right to initiate adjudication proceedings for payment disputes

A claiming party may, within 28 days beginning on the date on which a payment dispute arises, initiate adjudication proceedings for the payment dispute.

Division 3—Initiating Adjudication Proceedings, Adjudicators and Adjudication Submissions and Responses

25. How to initiate adjudication proceedings

- (1) A claimant may initiate adjudication proceedings for a payment dispute against a respondent by serving a written notice of adjudication (*adjudication notice*) on the respondent.
- (2) An adjudication notice must state—
 - (a) the names and addresses of the claimant and the respondent;
 - (b) the nature and description of the payment dispute;
 - (c) the claimed amount, the admitted amount and the amount paid in relation to the payment dispute; and
 - (d) if no nominating body, or more than one nominating body, is specified in the construction contract concerned for a payment dispute—the names of the 2 nominating bodies nominated by the claimant under section 27(2).
- (3) The claimant must also serve the adjudication notice—
 - (a) if only 1 nominating body is specified in the construction contract concerned for a payment dispute—on the nominating body on the same date on which the notice is served on the respondent under subsection (1); or

- (b) if no nominating body, or more than one nominating body, is specified in the construction contract concerned for a payment dispute—on the selected body within 8 working days after the date on which the notice is served on the respondent under subsection (1).
- (4) Subject to subsections (5), (6) and (7), a claimant may serve only 1 adjudication notice for a payment dispute.
- (5) If a claimant withdraws any adjudication proceedings for a payment dispute under section 40, the claimant may, within the period specified in section 24, initiate any other adjudication proceedings for the payment dispute by serving another adjudication notice for the payment dispute.
- (6) If—
 - (a) only 1 nominating body for a payment dispute is specified in a construction contract; and
 - (b) any adjudication proceedings for the payment dispute are terminated on the ground set out in section 41(a), (e), (f) or (g),
 the claimant may, within 28 days after the date on which the adjudication proceedings are terminated, initiate any other adjudication proceedings for the payment dispute by serving another adjudication notice for the payment dispute.
- (7) Despite subsection (3)(b), if—
 - (a) a nominating body is selected under section 27 in any adjudication proceedings for a payment dispute; and
 - (b) the adjudication proceedings are terminated on the ground set out in section 41(a), (e), (f) or (g) (*previous adjudication*),
 the claimant may, within 28 days after the date on which the previous adjudication is terminated, initiate any other adjudication proceedings for the payment dispute (*new*

adjudication) by serving another adjudication notice for the payment dispute on the respondent and the selected body in the previous adjudication on the same date.

- (8) Despite subsection (2)(d), an adjudication notice served under subsection (7) is not required to state the names of the 2 nominating bodies nominated by the claimant under section 27(2).
- (9) If a claimant serves an adjudication notice on a selected body in a previous adjudication under subsection (7)—
 - (a) the body is taken to be the selected body in the new adjudication and is to comply with section 27(5) for the purposes of the new adjudication; and
 - (b) the new adjudication is to proceed accordingly.

26. Appointment of adjudicator by nominating body agreed by parties

- (1) This section applies if—
 - (a) a claimant initiates adjudication proceedings for a payment dispute against a respondent; and
 - (b) only 1 nominating body is specified in the construction contract concerned as the nominating body for the payment dispute.
- (2) The nominating body must, within 7 working days after the date on which the adjudication notice is served on the body—
 - (a) nominate and appoint an adjudicator in accordance with the adjudication rules of the body; and
 - (b) inform the claimant and respondent in writing of the appointment.

27. Appointment of adjudicator in other ways

- (1) This section applies if—

- (a) a claimant initiates adjudication proceedings for a payment dispute against a respondent; and
- (b) either—
 - (i) no nominating body is specified in the construction contract concerned as the nominating body for the payment dispute; or
 - (ii) more than one nominating body is specified in the construction contract concerned for the selection of the nominating body for the payment dispute (*potential nominating bodies*).
- (2) The claimant must, in the adjudication notice—
 - (a) in the case of subsection (1)(b)(i)—nominate 2 nominating bodies; or
 - (b) in the case of subsection (1)(b)(ii)—nominate 2 nominating bodies from the potential nominating bodies.
- (3) The respondent must, within 5 working days after the date on which the adjudication notice is served on the respondent—
 - (a) select one of the nominating bodies from the claimant's nomination; and
 - (b) serve a written notice on the claimant to inform the claimant of the nominating body selected by the respondent.
- (4) If the respondent fails to inform the claimant under subsection (3), the claimant must, within 3 working days after the expiry of the deadline mentioned in that subsection—
 - (a) select one of the nominating bodies from the claimant's nomination; and
 - (b) serve a written notice on the respondent to inform the respondent of the nominating body selected by the claimant.

- (5) The selected body must, within 7 working days after the date on which the adjudication notice is served on the body—
- (a) nominate and appoint an adjudicator in accordance with the adjudication rules of the body; and
 - (b) inform the claimant and respondent in writing of the appointment.

28. Who may be appointed as adjudicators

- (1) Subject to subsection (2), an individual may be appointed as an adjudicator in relation to a payment dispute if the individual is on the panel of adjudicators of a nominating body.
- (2) An individual is ineligible to be appointed as an adjudicator in relation to a payment dispute if—
 - (a) the individual has a conflict of interest in respect of the appointment; or
 - (b) circumstances exist that give rise to justifiable doubts as to the individual's independence or impartiality.

29. Adjudicator to declare and disclose interests

- (1) When an individual is approached by a nominating body in connection with the individual's possible appointment as an adjudicator in relation to a payment dispute, the individual must declare in writing that—
 - (a) the individual has no conflict of interest in respect of the appointment; and
 - (b) either—
 - (i) there are no circumstances likely to give rise to justifiable doubts as to the individual's independence or impartiality as the adjudicator; or

- (ii) there are circumstances likely to give rise to justifiable doubts as to the individual's independence or impartiality as the adjudicator.
- (2) If the individual makes a declaration under subsection (1)(b)(ii), the individual must, together with the declaration, disclose in writing the circumstances.
- (3) From the time of accepting the appointment as an adjudicator until the adjudication proceedings are completed, an adjudicator must, as soon as the adjudicator is aware, disclose in writing any circumstances likely to give rise to justifiable doubts as to the adjudicator's independence or impartiality.
- (4) A declaration or disclosure under this section must be made in a way specified in the adjudication rules of the nominating body concerned.

30. Claimant to serve adjudication submission

- (1) A claimant must serve on the adjudicator and the respondent a written submission identifying the adjudication notice to which the submission relates (*adjudication submission*).
- (2) An adjudication submission must be served within 1 working day after the date on which the claimant is informed of the appointment under section 26(2)(b) or 27(5)(b).
- (3) An adjudication submission may contain any supporting documents and evidence that the claimant considers relevant to the adjudication.

31. Respondent to serve adjudication response

- (1) A respondent must serve on the adjudicator and the claimant a written submission in reply to the adjudication submission (*adjudication response*).
- (2) An adjudication response must be served within—

- (a) 20 working days after the date on which the adjudication submission is served on the respondent; or
 - (b) a longer period that the adjudicator specifies.
- (3) An adjudication response—
- (a) may contain any supporting documents and evidence that the respondent considers relevant to the adjudication; and
 - (b) may specify the adjudication submission, document or evidence (or any part of it) given by the claimant that comprises a submission, document or evidence—
 - (i) of which the respondent was unaware on the date on which the adjudication notice is served;
 - (ii) that should reasonably have been served on the respondent before the date on which the adjudication notice is served; and
 - (iii) that cannot be fairly considered and responded to by the respondent.
- 32. Claimant to serve reply to adjudication response**
- (1) A claimant must serve on the adjudicator and the respondent a written submission in reply to the adjudication response (*reply to an adjudication response*).
 - (2) A reply to an adjudication response must be served within—
 - (a) 2 working days after the date on which the adjudication response is served on the claimant; or
 - (b) a longer period that the adjudicator specifies.
 - (3) A reply to an adjudication response may only specify the adjudication response, document or evidence (or any part of it) given by the respondent that comprises a submission, response, document or evidence—

- (a) of which the claimant was unaware on the date on which the adjudication notice is served;
- (b) that should reasonably have been served on the claimant before the date on which the adjudication notice is served; and
- (c) that cannot be fairly considered and responded to by the claimant.

Division 4—Conduct of Adjudication Proceedings

33. Jurisdiction of adjudicators

- (1) The jurisdiction of an adjudicator is limited to determining—
 - (a) the payment dispute for which a party initiates adjudication proceedings under section 24; and
 - (b) any other matters that are necessary to exercise the jurisdiction conferred by paragraph (a).
- (2) An adjudicator has the power to rule on the adjudicator's own jurisdiction.

34. Adjudicator to conduct adjudication proceedings

- (1) An adjudicator must conduct adjudication proceedings in the way the adjudicator considers appropriate within the powers, and subject to the duties, under section 35.
- (2) When conducting adjudication proceedings, an adjudicator—
 - (a) is not bound by the rules of evidence; and
 - (b) subject to section 37, may receive and take into account any relevant document, evidence or information, whether or not it would be admissible in a court of law.

35. Powers and duties of adjudicator

- (1) An adjudicator in determining a payment dispute may exercise the following powers—
 - (a) to establish the procedures in conducting the adjudication proceedings for the payment dispute;
 - (b) to determine the language or languages to be used in the proceedings;
 - (c) to extend the period for an adjudication response to be served under section 31(2)(b);
 - (d) to extend the period for a reply to an adjudication response to be served under section 32(2)(b);
 - (e) to request or allow a party to submit further written submission that the adjudicator reasonably requires;
 - (f) to request or allow a party to produce any document or evidence, or provide any information, that the adjudicator reasonably requires;
 - (g) to specify a period within which the submission of further written submission, the production of documents or evidence, or the provision of information is to be made;
 - (h) to appoint an independent expert to inquire or report on any specific matter, unless otherwise agreed by the parties;
 - (i) to call a conference of the parties;
 - (j) to carry out, or require a party to carry out, an inspection of the construction site, any construction work or any other thing to which the payment dispute relates;
 - (k) to direct any opening up of any construction work done or any tests or experiments to be conducted;
 - (l) to give any direction as may be necessary or expedient for the conduct of the proceedings.

- (2) An adjudicator in determining a payment dispute must perform the following duties—
 - (a) to declare and disclose interests;
 - (b) to act independently, impartially and in a timely way and to avoid incurring unnecessary expenses;
 - (c) to conduct adjudication proceedings in accordance with the adjudication rules of the nominating body that appoints the adjudicator;
 - (d) to comply with the principles of natural justice.
- (3) The parties must comply with any request made or direction given by the adjudicator under subsection (1).

36. When powers of adjudicator not affected

- (1) The power of an adjudicator to determine a payment dispute in adjudication proceedings is not affected by the failure of—
 - (a) the respondent to serve an adjudication response under section 31;
 - (b) the claimant to serve a reply to an adjudication response under section 32; or
 - (c) any of the parties—
 - (i) to make a submission (other than an adjudication submission) within the period specified by the adjudicator; or
 - (ii) to comply with any request made or direction given by the adjudicator under section 35.
- (2) In the event of a failure set out in subsection (1), the adjudicator may determine the payment dispute on the basis of the documents, evidence and information available to the adjudicator.

37. Circumstances in which adjudicator must disregard submission etc.

- (1) An adjudicator must not consider any submission, response or reply made by a party unless it is served on the adjudicator within the specified period.
- (2) Subsection (3) applies if a party (*Party A*) specifies in an adjudication response or a reply to an adjudication response that the submission, response, document or evidence (or any part of it) given by the other party comprises a submission, response, document or evidence—
 - (a) of which Party A was unaware on the date on which the adjudication notice is served;
 - (b) that should reasonably have been served on Party A before the date on which the adjudication notice is served; and
 - (c) that cannot be fairly considered and responded to by Party A.
- (3) If an adjudicator is satisfied that the submission, response, document or evidence (or any part of it) specified by Party A as mentioned in subsection (2) comprises a submission, response, document or evidence falling within the descriptions in subsection (2)(a), (b) and (c), the adjudicator must disregard the submission, response, document or evidence (or the part of it) to the extent that it falls within those descriptions.
- (4) In subsection (1)—

specified period (指明期間) means—

 - (a) in relation to an adjudication submission—the period specified in section 30(2);
 - (b) in relation to an adjudication response—the period specified in section 31(2)(a) or (b) (as applicable);

- (c) in relation to a reply to an adjudication response—the period specified in section 32(2)(a) or (b) (as applicable); or
- (d) in relation to any further written submission—the period specified for the submission by the adjudicator concerned under section 35(1)(g).

38. Parties may be represented

A party may be represented by any other person (whether legally qualified or not) that the party considers appropriate.

39. Resignation of adjudicator

- (1) If an adjudicator considers that it is not possible to make a determination fairly within the period required under section 42(5), the adjudicator may resign by—
 - (a) serving a written notice of resignation on each party on the same date; and
 - (b) serving a written notice of resignation on the nominating body that appoints the adjudicator.
- (2) The resignation made under subsection (1) takes effect on the date on which the notice of resignation is served on the parties.
- (3) If an adjudicator considers that a circumstance under section 28(2)(a) or (b) has arisen in relation to the adjudicator for the payment dispute concerned, the adjudicator must resign by—
 - (a) serving a written notice of resignation on each party on the same date; and
 - (b) serving a written notice of resignation on the nominating body that appoints the adjudicator.
- (4) The resignation made under subsection (3) takes effect on the date on which the notice of resignation is served on the parties.

40. Withdrawal of adjudication proceedings

- (1) A claimant may at any time withdraw the adjudication proceedings by serving a written notice of withdrawal on—
 - (a) the respondent;
 - (b) the nominating body on which the adjudication notice has been served; and
 - (c) if an adjudicator has been appointed—the adjudicator.
- (2) If the adjudication proceedings are withdrawn under subsection (1), the claimant must bear the costs of the adjudication proceedings unless the adjudicator determines otherwise.

41. Termination of adjudication proceedings

Adjudication proceedings are terminated if—

- (a) the nominating body fails to nominate and appoint an adjudicator under section 26(2)(a) or 27(5)(a);
- (b) the claimant fails to serve an adjudication submission on the adjudicator and the respondent within the period specified in section 30(2);
- (c) the claimant serves a notice of withdrawal under section 40(1);
- (d) the respondent pays the claimant in full the amount claimed in the proceedings;
- (e) the adjudicator resigns under section 39(1) or (3);
- (f) the nominating body considers that the adjudicator is unable or ineligible to act as the adjudicator;
- (g) the adjudicator fails to serve a determination on the nominating body under section 42(5);
- (h) the payment dispute is settled by written agreement between the parties; or

- (i) the payment dispute is determined in any court or other dispute resolution proceedings.

Division 5—Adjudicator's Determinations**42. Determinations**

- (1) For the purposes of any adjudication proceedings for a payment dispute, an adjudicator must determine—
 - (a) the payment dispute; and
 - (b) the proportion and the amount of the costs of the adjudication proceedings payable by each party.
- (2) However—
 - (a) the adjudicator is not required to make a determination under subsection (1)(a) if—
 - (i) the adjudication proceedings are terminated on any of the grounds set out in section 41; or
 - (ii) the adjudicator decides under section 33 that the adjudicator does not have jurisdiction to determine the payment dispute under this Part; and
 - (b) the adjudicator is not required to make a determination under subsection (1)(b) if the adjudicator is not entitled to be paid any fees or expenses for the adjudication proceedings under section 55.
- (3) If the adjudicator determines under subsection (1)(a) that a party is entitled to an extension of time for completing the construction work or the supply of related goods and services for construction work under the construction contract concerned, the adjudicator must also determine—
 - (a) the number of days that the time for completing the construction work or the supply of related goods and services under the contract is to be extended; and

- (b) the amount payable based on the extension of time.
- (4) If the adjudicator determines under subsection (1)(a) that a party is liable to make a payment under the construction contract concerned, the adjudicator must also determine—
- (a) the total amount payable in relation to the payment dispute (including any amount under subsection (3)(b)) and the costs of the adjudication proceedings; and
 - (b) the amount of interest payable (if any), whether expressed in an actual amount or by reference to a rate.
- (5) The adjudicator must make a determination and serve it on the nominating body that appoints the adjudicator within—
- (a) 55 working days after the date on which the adjudicator is appointed; or
 - (b) a longer period agreed by the parties.
- (6) A determination made under this section must—
- (a) be in writing; and
 - (b) contain reasons for the determination.
- (7) As soon as reasonably practicable after a determination is served under subsection (5), the nominating body must serve the determination on each party.
- (8) Despite subsection (7), if the nominating body is satisfied that the fees and expenses of the adjudicator payable by the parties have not been paid, the nominating body may withhold the service of the determination on the parties until the fees and expenses are paid.

43. Payment deadline for adjudicated amounts

- (1) If an adjudicator determines that a party is liable to pay an adjudicated amount to another party, the party must pay the amount to that other party—

- (a) within the period specified by the adjudicator in the determination for the party to pay the amount to that other party; or
 - (b) if no such period is specified—within 30 days after the date on which the determination is served on the parties under section 42(7).
- (2) For the purposes of a determination, a period specified under subsection (1)(a) must not begin on a date before the date on which the determination is served on the parties under section 42(7).

44. Effect of determinations

A determination is binding on the parties unless—

- (a) it is set aside by the CFI under section 48;
- (b) the payment dispute to which the determination relates is settled by written agreement between the parties; or
- (c) the payment dispute is determined in any court or other dispute resolution proceedings.

45. Adjudicators may correct typographical errors etc.

- (1) An adjudicator may, on the adjudicator's own initiative or at the request of a party, correct in a determination any computational or typographical error or any error of a similar nature.
- (2) To avoid doubt—
- (a) any correction made to a determination under this section does not affect the validity of the determination; and
 - (b) the time limit set out in section 43(1)(b) runs from the date on which the determination is served on the parties under section 42(7).

46. Valuation of works etc. in later adjudications

- (1) Subsection (2) applies if an adjudicator has, under section 42(1)(a), determined—
 - (a) the value of any construction work carried out under a construction contract; or
 - (b) the value of any related goods and services supplied under a construction contract.
- (2) If any later adjudication involves working out the value of the construction work or of the related goods and services, the adjudicator for the later adjudication must give the work, or the goods and services, the same value as that previously determined.
- (3) However, subsection (2) does not apply if the claimant or respondent in the later adjudication satisfies the adjudicator for the later adjudication that the value of the construction work, or the related goods and services, has changed since the previous adjudication.

Division 6—Setting Aside or Enforcement of Determinations**47. Interpretation of Division 6**

In this Division—

set aside application (撤銷申請), in relation to a determination, means an application to set aside the determination under section 48.

48. Application for setting aside determinations

- (1) The CFI may, on an application made by a party to adjudication proceedings, set aside a determination made in the proceedings if—

- (a) the determination was improperly procured through fraud or bribery;
 - (b) there has been a material denial of natural justice in the proceedings;
 - (c) the adjudicator has not acted independently or impartially in the proceedings; or
 - (d) the adjudicator has acted in excess of the adjudicator's jurisdiction in the proceedings.
- (2) A set aside application may only be made within 14 days after the date on which the determination is served on the parties under section 42(7).
 - (3) A set aside application must be supported by an affidavit by the applicant—
 - (a) exhibiting—
 - (i) the determination; and
 - (ii) the construction contract to which the determination relates; and
 - (b) stating the ground of the application.
 - (4) The party making a set aside application must pay into the CFI as security the unpaid portion of the adjudicated amount that the party is liable to pay, in the way the CFI directs, pending the final determination of the application.
 - (5) The leave of the CFI is required for any appeal from a decision of the CFI to grant or refuse a set aside application.

49. Enforcement of determination as judgment

- (1) A determination made in adjudication proceedings may, with leave of the CFI, be enforced in the same way as a judgment of the High Court in its civil jurisdiction.

- (2) An application to enforce a determination (*enforcement application*) may only be made by a party to the adjudication proceedings after the expiry of the payment deadline of the adjudicated amount under the determination.
- (3) Also, an enforcement application may only be made if no set aside application in relation to the determination is pending.
- (4) An enforcement application must be supported by an affidavit by the applicant—
 - (a) exhibiting—
 - (i) the determination; and
 - (ii) the construction contract to which the determination relates; and
 - (b) stating that at the time the application is made, the adjudicated amount has not been paid in full.
- (5) The CFI must grant leave within 7 days after the date on which an enforcement application is made unless—
 - (a) a set aside application in relation to the determination is pending; or
 - (b) the CFI is satisfied that—
 - (i) the determination is no longer binding on the parties; or
 - (ii) the adjudicated amount has been paid in full.
- (6) If leave is granted under subsection (5), the CFI may enter judgment in terms of the determination.
- (7) The leave of the CFI is required for any appeal from a decision of the CFI to grant or refuse an enforcement application.

Division 7—General and Miscellaneous Matters relating to Adjudication

50. Effect of adjudication on other proceedings

- (1) This Part does not affect any right of a party to a construction contract to submit a payment dispute relating to or arising from the contract in any court or other dispute resolution proceedings.
- (2) If a payment dispute being adjudicated is submitted in any court or other dispute resolution proceedings, the submission does not terminate or otherwise affect the adjudication proceedings.

51. Confidentiality of adjudication

- (1) A person must not disclose or give to another person any information relating to—
 - (a) any adjudication proceedings; or
 - (b) a determination.
- (2) Despite subsection (1), a person may disclose or give to another person information referred to in that subsection if—
 - (a) the information is in the public domain;
 - (b) the disclosure is made with the consent of each party to the adjudication proceedings;
 - (c) the disclosure is made to a nominating body because of the operation of this Part;
 - (d) the disclosure is necessary for the purpose of setting aside or enforcing the determination;
 - (e) the disclosure is made in any other adjudication proceedings or any court or other dispute resolution proceedings in connection with the construction contract

- in respect of which the payment dispute under the adjudication arises;
- (f) the disclosure is made in accordance with a requirement imposed by law; or
- (g) the disclosure is made to—
- (i) a professional or any other adviser of the person for the purpose of seeking legal or other professional advice;
 - (ii) an insurer authorized under the Insurance Ordinance (Cap. 41), a bank as defined by section 2(1) of the Banking Ordinance (Cap. 155) or a money lender licensed under the Money Lenders Ordinance (Cap. 163), for reasonable commercial purposes; or
 - (iii) any other person who is responsible for administering the construction contract in respect of which the payment dispute under the adjudication arises.

52. Costs of parties

A party is not liable to pay any costs or expenses incurred by the other party (other than the costs of adjudication proceedings) as a result of or in relation to the adjudication proceedings.

53. Costs of adjudication proceedings

- (1) For the purposes of this Part, the costs of adjudication proceedings—
- (a) include—
- (i) the fees charged under section 64(1) and payable to the nominating body that appoints the adjudicator and the expenses incurred by the body;

- (ii) the fees and expenses of the adjudicator specified in subsection (2); and
 - (iii) the costs of any independent expert appointed, or of any inspection of a construction site, any construction work or any other thing carried out, under section 35(1); but
- (b) do not include the costs or expenses incurred by a party as a result of or in relation to the adjudication proceedings.
- (2) An adjudicator is entitled to be paid the amount for fees and expenses for adjudicating a payment dispute, having regard to the work done and expenses incurred by the adjudicator.
- (3) Without limiting subsection (4), the parties are jointly and severally liable to pay the costs of the adjudication proceedings.
- (4) Subject to section 40(2), the parties are each liable to pay the costs of the adjudication proceedings—
- (a) in the proportions that the adjudicator determines; or
 - (b) if the adjudicator is not required to determine the proportion of the costs of the adjudication proceedings under section 42(2)(b)—in equal proportions.
- (5) In subsection (2)—
- adjudicating* (審裁), in relation to an adjudicator, includes accepting the appointment as the adjudicator and considering and determining the payment dispute in the adjudication.

54. Matters to be considered in determining proportions of costs of adjudication proceedings

In determining the proportion of the costs of adjudication proceedings payable by a party, the adjudicator may consider the following matters—

- (a) the relative success of the party in the proceedings;

- (b) whether the party initiated or participated in the proceedings—
 - (i) for an improper purpose;
 - (ii) vexatiously or frivolously; or
 - (iii) without a reasonable prospect of success;
- (c) whether the party has acted unreasonably leading up to the proceedings;
- (d) whether the party has acted unreasonably in the conduct of the proceedings;
- (e) if the party is the respondent—the reasons given by the party for not making the progress payment that is the subject of the adjudication notice;
- (f) whether the proceedings are withdrawn by the claimant under section 40(1);
- (g) any other matter the adjudicator considers relevant in making the determination.

55. Supplementary provisions on fees and expenses of adjudicator

- (1) An adjudicator is not entitled to be paid any fees or expenses for adjudication proceedings if the proceedings are terminated on the ground set out in section 41(e), (f) or (g).
- (2) However, subsection (1) does not apply if the adjudicator has decided under section 33 that the adjudicator did not have jurisdiction to determine the payment dispute under this Part.
- (3) If the CFI sets aside a determination under section 48, the adjudicator is still entitled to be paid the adjudicator's fees and expenses for the adjudication proceedings.
- (4) Subsection (3) only applies if the adjudicator acted in good faith in adjudicating (as defined by section 53(5)) the payment dispute in the adjudication.

56. Disapplication of adjudication of time-related disputes for main private contracts and subcontracts

- (1) If a payment dispute concerns a dispute in relation to which the amount is to be determined on the basis of an assessment on a claiming party's extension of time entitlement under a main private contract or its subcontract (*time-related dispute*)—
 - (a) the claiming party may not initiate adjudication proceedings for the payment dispute under section 24 to the extent that it relates to the time-related dispute; and
 - (b) the adjudicator has no jurisdiction to determine the time-related dispute under this Part.
- (2) However, if the claiming party and the paying party agree on the extension of time in relation to the time-related dispute but do not agree on the amount payable by the paying party based on the extension of time—
 - (a) the claiming party may initiate adjudication proceedings for the time-related dispute under section 24; and
 - (b) the adjudicator has jurisdiction to determine the time-related dispute under this Part.
- (3) This section expires on a day to be appointed by the Secretary by notice published in the Gazette.

Part 4

Right to Delay Work or Supply

57. Interpretation of Part 4

In this Part—

delay (延遲) means suspend or reduce the rate of progress;

intended starting date (擬開始日) means the date on which the person serving a notice of intention intends to start delaying the carrying out of construction work, or the supply of related goods and services;

notice of intention (意向通知) means a notice to delay the carrying out of construction work, or the supply of related goods and services;

working day (工作日) means a day that is not—

- (a) a general holiday; or
- (b) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

58. Claiming party's right to delay work or supply

- (1) A claiming party may delay carrying out the construction work, or supplying the related goods and services, under a construction contract if all the conditions set out in subsection (2) are satisfied.
- (2) The conditions are—
 - (a) that the claiming party has served a payment claim for a progress payment on a paying party under section 18;
 - (b) that the paying party has—

- (i) served a payment response on the claiming party under section 19 in which an admitted amount is stated to be paid; but
- (ii) failed to pay the admitted amount in full by the payment deadline of the progress payment;
- (c) that after the payment deadline of the progress payment and at least 5 working days before the intended starting date, the claiming party—
 - (i) has served on the paying party a notice of intention that meets the requirements set out in subsection (3); and
 - (ii) has notified the owner of the claiming party's intention to delay carrying out the construction work or supplying the related goods and services; and
- (d) that the admitted amount is not paid in full before the intended starting date.
- (3) A notice of intention must—
 - (a) be in writing;
 - (b) state that it is served under this Ordinance; and
 - (c) indicate the claiming party's intention to delay carrying out the construction work, or supplying the related goods and services, under the construction contract.
- (4) Unless the claiming party specifies the intended starting date in a notice of intention, for the purposes of subsection (2), the date after 5 working days after the date on which the notice of intention is served on the paying party is taken to be the intended starting date.
- (5) A claiming party exercising the right under subsection (1)—
 - (a) is not to be regarded as in breach of the construction contract;

- (b) is not liable for any loss or damage suffered by the paying party, or by any person claiming through the paying party, as a result of delaying the carrying out of the construction work, or the supply of the related goods and services;
- (c) is entitled to a reasonable extension of time to complete the contract;
- (d) is entitled to recover from the paying party any loss and expenses that have reasonably been incurred as a result of delaying the carrying out of the construction work, or the supply of the related goods and services; and
- (e) must resume the carrying out of the construction work or the supply of the related goods and services within 5 working days after the date on which the claiming party receives the admitted amount in full.

59. Claimant's right to delay work or supply

- (1) A claimant may delay carrying out the construction work, or supplying the related goods and services, under a construction contract if all the conditions set out in subsection (2) are satisfied.
- (2) The conditions are—
 - (a) that the respondent has failed to pay to the claimant the adjudicated amount in full by the payment deadline of the adjudicated amount;
 - (b) that after the payment deadline of the adjudicated amount and at least 5 working days before the intended starting date, the claimant—
 - (i) has served on the respondent a notice of intention that meets the requirements set out in subsection (3); and

- (ii) has notified the owner of the claimant's intention to delay carrying out the construction work or supplying the related goods and services; and
- (c) that the adjudicated amount is not paid in full before the intended starting date.
- (3) A notice of intention must—
 - (a) be in writing;
 - (b) state that it is served under this Ordinance; and
 - (c) indicate the claimant's intention to delay carrying out the construction work, or supplying the related goods and services, under the construction contract.
- (4) Unless the claimant specifies the intended starting date in a notice of intention, for the purposes of subsection (2), the date after 5 working days after the date on which the notice of intention is served on the respondent is taken to be the intended starting date.
- (5) A claimant exercising the right under subsection (1)—
 - (a) is not to be regarded as in breach of the construction contract;
 - (b) is not liable for any loss or damage suffered by the respondent, or by any person claiming through the respondent, as a result of delaying the carrying out of the construction work, or the supply of the related goods and services;
 - (c) is entitled to a reasonable extension of time to complete the contract;
 - (d) is entitled to recover from the respondent any loss and expenses that have reasonably been incurred as a result of delaying the carrying out of the construction work, or the supply of the related goods and services; and

- (e) must resume the carrying out of the construction work or the supply of the related goods and services within 5 working days after the date on which the claimant receives the adjudicated amount in full.
-

Part 5

Miscellaneous Matters

Division 1—Interpretation

60. Interpretation of Part 5

In this Part—

function (職能) includes a power and a duty.

Division 2—Administration

61. Functions of Secretary

- (1) For the purposes of this Ordinance, the functions of the Secretary are—
- (a) to oversee the performance of the functions of a nominating body set out in section 63;
 - (b) to establish and keep a register of nominating bodies; and
 - (c) to perform any other functions that are conferred or imposed on the Secretary under this Ordinance.
- (2) Without limiting subsection (1), the Secretary may—
- (a) determine an application for registration, or renewal of registration, as a nominating body;
 - (b) suspend or cancel the registration of a nominating body;
 - (c) regulate the fees of a nominating body or adjudicator;
 - (d) give to a nominating body any direction that the Secretary considers appropriate in relation to any function of the body set out in section 63;

- (e) inquire or investigate into a complaint or information against a nominating body; and
 - (f) require a nominating body to provide any document or information in relation to any function of the body set out in section 63.
- (3) The Secretary may, in writing, delegate to a public officer any of the Secretary's functions under this Ordinance.
- (4) However, the power to delegate conferred by subsection (3) may not be delegated.

62. Right of appeal against decisions of Secretary

- (1) A body corporate that is aggrieved by any of the following decisions made by the Secretary under section 61(2)(a) or (b) in respect of the body corporate may appeal to the Administrative Appeals Board—
- (a) a decision to refuse to register the body corporate as a nominating body;
 - (b) a decision to refuse to renew the registration of the body corporate as a nominating body;
 - (c) a decision to suspend the registration of the body corporate as a nominating body;
 - (d) a decision to cancel the registration of the body corporate as a nominating body.
- (2) An appeal does not suspend the decision unless the Secretary decides otherwise.

63. Functions of nominating body

For the purposes of this Ordinance, the functions of a nominating body are—

- (a) to establish and maintain its panel of individuals for the nomination and appointment of adjudicators;

- (b) to nominate and appoint an individual to be an adjudicator;
- (c) to receive and refer adjudication notices to adjudicators;
- (d) to regulate the conduct of adjudication proceedings, including the making of adjudication rules and practice notes of the body for matters in relation to adjudication;
- (e) to make and administer a code of conduct for adjudicators;
- (f) to establish and publish schedules of fees and expenses for services provided under this Ordinance by the body;
- (g) to provide training for individuals who are on its panel of adjudicators;
- (h) to provide the Secretary with documents or information required by the Secretary; and
- (i) to perform any other functions that are—
 - (i) conferred or imposed on a nominating body under this Ordinance; or
 - (ii) directed by the Secretary for the purposes of this Ordinance.

64. Nominating body may charge certain fees

- (1) A nominating body may charge a party to adjudication proceedings a fee for any service provided by the body in connection with the proceedings.
- (2) A nominating body may—
- (a) charge an individual a fee for including the individual in the panel of adjudicators of the body; and
 - (b) charge an individual who is included in the panel of adjudicators of the body a training fee.

65. Immunity from civil liability

- (1) Neither an adjudicator nor a nominating body is civilly liable for an act done or omitted to be done by the adjudicator or the body in good faith in performing or purportedly performing a function under this Ordinance.
- (2) Neither the Secretary nor a public officer is civilly liable for an act done or omitted to be done by the Secretary or the public officer in good faith in performing or purportedly performing a function under this Ordinance.
- (3) Subsection (2) does not affect any liability of the Government for the act or omission of the Secretary or the public officer.

66. Adjudicators not compellable witnesses

An adjudicator who has determined a payment dispute under this Ordinance must not be compelled to give evidence or provide or produce any document or other material in—

- (a) any civil proceedings in connection with the payment dispute;
- (b) an arbitration in connection with the payment dispute; or
- (c) any other dispute resolution proceedings in connection with the payment dispute.

Division 3—Service**67. Service of adjudication documents**

- (1) A document that is authorized or required to be served under Part 3 (other than an adjudication notice or a written notice under section 27(3)(b) or (4)(b)) must be served—
 - (a) in a way specified by the nominating body concerned; or
 - (b) if no way is so specified—in a way specified by the adjudicator.

- (2) An adjudication notice that is authorized or required to be served on a nominating body or selected body under section 25(3)(a) or (b), (5), (6) or (7) must be served on the body in a way specified by the body.

68. Service of documents on parties

- (1) This section applies to a document—
 - (a) that is authorized or required to be served under—
 - (i) Part 2;
 - (ii) section 27(3)(b) or (4)(b); or
 - (iii) Part 4; or
 - (b) that is an adjudication notice.
- (2) The document may be served by a party to a construction contract (*serving party*) on another party to the contract (*receiving party*) in a way agreed between the parties.
- (3) If no way is so agreed, the document may be served by a serving party on a receiving party—
 - (a) by leaving it at, or sending it by registered post to, the last known residence or place of business of the receiving party; or
 - (b) without affecting paragraph (a)—
 - (i) if the receiving party is an individual—by delivering it to the receiving party by hand;
 - (ii) if there is a record of receipt of fax transmission by the receiving party—by sending it by fax transmission to the last known fax number of the receiving party; or
 - (iii) if there is a record of receipt of electronic mail transmission by the receiving party—by sending it

by electronic mail transmission to the last known electronic mail address of the receiving party.

- (4) Subsection (5) applies if—
- (a) a document is served under subsection (2) but there is no agreement between the parties on how to determine the date of service of the document; or
 - (b) a document is served under subsection (3).
- (5) The document is taken, in the absence of evidence to the contrary, to have been served on the receiving party—
- (a) if it is left at the receiving party's last known residence or place of business—on the day on which it is so left;
 - (b) if it is sent by registered post—on the day after the day on which it is so sent;
 - (c) if it is delivered by hand—on the day on which it is so delivered; or
 - (d) if it is sent by fax transmission or electronic mail transmission—on the day on which it is so transmitted.

Division 4—Amendment of Schedules

69. Secretary may amend Schedules

The Secretary may, by notice published in the Gazette, amend Schedule 1, 2, 3 or 4.

Part 6

Related Amendment

70. Administrative Appeals Board Ordinance amended

The Administrative Appeals Board Ordinance (Cap. 442) is amended as set out in section 71.

71. Schedule amended

The Schedule—

Add

“80. Construction Industry Security of Payment Ordinance (of 2024)

A decision of the Secretary for Development—

- (a) to refuse to register a body corporate as a nominating body under section 61(2)(a);
- (b) to refuse to renew the registration of a body corporate as a nominating body under section 61(2)(a);
- (c) to suspend the registration of a body corporate as a nominating body under section 61(2)(b); or
- (d) to cancel the registration of a body corporate as a

nominating body under
section 61(2)(b).”

Schedule 1

[ss: 2 & 69]

**Premises Excluded from Definition of *Residential Unit*
in Section 2(1)**

1. A hotel or guesthouse within the meaning of section 2A of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349)
 2. A student hostel or staff quarter
 3. A hospital within the meaning of section 4 of the Private Healthcare Facilities Ordinance (Cap. 633)
-

Schedule 2

[ss. 2 & 69]

Specified Structures

1. Any new land formed by reclamation or site formation, man-made slope, landslide hazard mitigation measures, earth-retaining structure, cavern or underground space, including the access tunnel or shaft of the underground space
2. Any residential, commercial, industrial, institutional, communal or recreation building (whether it is constructed wholly or partly above or below ground level), including its foundation or support
3. Any walkway, cycle track, road, highway, railway, tramway, cableway, aerial ropeway or any other works used for the purpose of pedestrian or vehicular commuting (whether they are wholly or partly at-grade, on bridge or viaduct or in tunnel), including the lighting, traffic control facility, cover and noise barrier contained in such works
4. Any airport, helipad or any other works used for the purpose of air navigation, including the traffic control and logistic facility contained in such works
5. Any canal, port, container terminal, typhoon shelter, dock, pier, quay, jetty, beacon, lighthouse, landing steps, mooring dolphin, floating pontoon, slipway, tide gauge station or any other works used for the purpose of marine navigation, including the traffic control and logistic facility contained in such works

6. Any beach, promenade, harbour steps or any other works used for the purpose of any coastal recreational activity
7. Any seawall, breakwater or any other works used for the purpose of protection of any shore or harbour
8. Any power generation plant or installation, gas production plant, storage facility, flue gas treatment facility, flue gas discharge facility, pipeline, gas supply pressure regulating installation, power transformation facility, power transmission and distribution line or any other works used for the purpose of supply of electricity, fuel or gas
9. Any underground telecommunication line, cable landing station or any other works used for the purpose of telecommunication
10. Any dam, impounding reservoir, treatment facility, disposal or discharge facility, service reservoir, tank, well, pumping facility, aqueduct, channel, culvert, water mains or any other works used for the purpose of water supply, including the monitoring and control facility contained in such works
11. Any dam, pond, flood lake, tank, treatment facility, disposal or discharge facility, pumping facility, channel, culvert, tunnel, pipeline or any other works used for the purpose of drainage, flood protection, river regulation or revitalization of water bodies, including the monitoring and control facility contained in such works
12. Any tank, treatment facility, disposal or discharge facility, pumping facility, tunnel and associated drop or riser shaft, sewer, channel, culvert, tunnel, pipeline or any other works used for the purpose of sewage treatment and associated sludge and odour treatment, including the monitoring and control facility contained in such works

-
13. Any landfill, incinerator, transfer facility, treatment facility, disposal or discharge facility or any other works used for the purpose of solid waste treatment, including the monitoring and control facility contained in such works
 14. Any storage, processing, treatment, sorting or transfer facility or any other works used for the purpose of management of construction waste or construction inert materials, including the monitoring and control facility contained in such works
 15. Any other building or structure (whether it is constructed wholly or partly above or below ground level), including its foundation or support
-

Schedule 3

[ss. 4 & 69]

Bodies Specified for Definition of *Specified Entity* in Section 4(3)

1. Airport Authority
2. The Chinese University of Hong Kong
3. City University of Hong Kong
4. CLP Power Hong Kong Limited
5. Construction Industry Council
6. The Education University of Hong Kong
7. The Hong Kong Academy for Performing Arts
8. The Hong Kong and China Gas Company Limited
9. Hong Kong Baptist University
10. Hong Kong Cyberport Development Holdings Limited
11. The Hongkong Electric Company, Limited
12. Hong Kong Housing Authority

-
13. Hong Kong Housing Society
 14. Hongkong International Theme Parks Limited
 15. The Hong Kong Polytechnic University
 16. Hong Kong Science and Technology Parks Corporation
 17. Hong Kong Sports Institute Limited
 18. Hong Kong Trade Development Council
 19. The Hong Kong University of Science and Technology
 20. Hospital Authority
 21. Kowloon-Canton Railway Corporation
 22. Lingnan University
 23. MTR Corporation Limited
 24. Ocean Park Corporation
 25. The University of Hong Kong
 26. Urban Renewal Authority
 27. Vocational Training Council

-
28. West Kowloon Cultural District Authority

Schedule 4

[ss. 7, 8 & 69]

Contract Value of Public Contracts or Main Private Contracts for Purposes of Section 7(1)(a)(ii) or 8(1)(a)(ii)

1. In relation to a public contract or main private contract for the carrying out of construction work (whether or not the contract is also for the supply of related goods and services), the value specified for section 7(1)(a)(ii) or 8(1)(a)(ii) (whichever is applicable) is \$5,000,000.
2. In relation to a public contract or main private contract for the supply of related goods and services only, the value specified for section 7(1)(a)(ii) or 8(1)(a)(ii) (whichever is applicable) is \$500,000.

Explanatory Memorandum

The main objects of this Bill are—

- (a) to facilitate the recovery of payments under construction contracts;
- (b) to provide a mechanism for speedy resolution of payment disputes under certain construction contracts through adjudication proceedings; and
- (c) to give a right to a party to a construction contract, under certain circumstances, to suspend or reduce the rate of progress of the construction work or the supply of related goods and services under the contract.

2. The Bill contains 6 Parts and 4 Schedules.

Part 1—Preliminary

Division 1—Short Title and Commencement

3. Clause 1 sets out the short title and provides for commencement.

Division 2—Interpretation

4. Clause 2 contains the definitions for the interpretation of the Bill. Clauses 3, 4, 5 and 6 provide for the meanings of *construction work*, *public contract*, *main private contract*, *subcontract* and *related goods and services*.

Division 3—Application

5. Clause 7 provides that the Bill applies to certain public construction contracts and their subcontracts.
6. Clause 8 provides that the Bill applies to certain main private construction contracts and their subcontracts.

7. Clause 9 excludes certain construction contracts from the application of the Bill, including a construction contract to the extent that it deals with construction work carried out outside Hong Kong.
8. Clause 10 provides that the Bill applies to the Government.
9. Clause 11 confirms that the Bill has effect despite anything to the contrary in any provision in a contract or agreement.

Part 2—Payments

Division 1—Interpretation

10. Clause 12 contains the definitions for the interpretation of Part 2.

Division 2—Progress Payments

11. Clause 13 states that a person who has carried out (or undertaken to carry out) construction work, or has supplied (or undertaken to supply) related goods and services, under a construction contract is entitled to a payment (*progress payment*).
12. Clause 14 provides for the amount of a progress payment to which a person is entitled under a construction contract.
13. Clause 15 provides for the deadline by which a progress payment is required to be paid.

Division 3—Certain Provisions in Construction Contracts

14. Clause 16 clarifies that the parties to a construction contract are free to agree on a progress payment provision in the construction contract.
15. Clause 17 states that a conditional payment provision in a construction contract is unenforceable between the parties.

Division 4—Payment Claims and Payment Responses

16. Clause 18 empowers a person who is or who claims to be entitled to a progress payment (*claiming party*) to serve a claim for the payment (*payment claim*) on another person who is or may be liable to make the payment (*paying party*).
17. Clause 19 provides that a paying party may reply to a payment claim by serving a response (*payment response*) on the claiming party.
18. Clause 20 provides for the deadline for a paying party to serve a payment response.
19. Clause 21 specifies the consequences on a paying party of not serving a payment response by the deadline.

Part 3—Adjudication of Payment Disputes

Division 1—Interpretation

20. Clause 22 contains the definitions for the interpretation of Part 3.

Division 2—Payment Disputes

21. Clause 23 sets out how and when a payment dispute between a claiming party and a paying party arises.
22. Clause 24 provides that a claiming party may, within 28 days beginning on the date on which a payment dispute arises, initiate adjudication proceedings for the payment dispute.

Division 3—Initiating Adjudication Proceedings, Adjudicators and Adjudication Submissions and Responses

23. Clause 25 deals with the procedures for initiating adjudication proceedings. The claiming party who wishes to initiate adjudication proceedings (*claimant*) must serve a written notice of adjudication

- (*adjudication notice*) on the paying party against whom the proceedings are initiated (*respondent*).
24. Clauses 26 and 27 deal with the procedures for appointing an adjudicator.
 25. Clause 28 sets out the circumstances in which an individual is or is not eligible to be appointed as an adjudicator.
 26. Clause 29 requires an adjudicator to declare and disclose any interests that may affect the adjudicator's independence or impartiality.
 27. Clause 30 provides that a claimant must serve an adjudication submission within 1 working day after the date on which the claimant is informed of the appointment of the adjudicator.
 28. Clause 31 provides that a respondent must serve an adjudication response within 20 working days after the date on which the adjudication submission is served or a longer period that the adjudicator specifies.
 29. Clause 32 provides that a claimant must serve a reply to an adjudication response within 2 working days after the date on which the adjudication response is served or a longer period that the adjudicator specifies.

Division 4—Conduct of Adjudication Proceedings

30. Clause 33 provides for the jurisdiction of an adjudicator.
31. Clause 34 requires an adjudicator to conduct adjudication proceedings within the powers, and subject to the duties, under clause 35.
32. Clause 35 specifies the powers and duties of an adjudicator, including the power to establish the procedures in conducting adjudication proceedings.

33. Clause 36 clarifies that the power of an adjudicator is not affected by the failure of any party to serve a response or reply, to make a submission (other than an adjudication submission), or to comply with any request made or direction given by the adjudicator.
34. Clause 37 sets out the circumstances in which an adjudicator must disregard a party's submission, response, document or evidence.
35. Clause 38 clarifies that a party may be represented by any other person, whether legally qualified or not.
36. Clause 39 enables an adjudicator to resign if the adjudicator considers that it is not possible to make a determination fairly within the period required under clause 42(5). It also requires an adjudicator to resign if the adjudicator considers that the adjudicator has become ineligible to be appointed as an adjudicator in relation to the payment dispute concerned.
37. Clause 40 enables a claimant to withdraw the adjudication proceedings at any time. However, the claimant must bear the costs of the proceedings unless the adjudicator determines otherwise.
38. Clause 41 sets out the circumstances in which adjudication proceedings are terminated.

Division 5—Adjudicator's Determinations

39. Clause 42 requires an adjudicator—
 - (a) to determine the payment dispute for which the adjudication proceedings are initiated and the proportion and the amount of the costs of the adjudication proceedings payable by each party; and
 - (b) to make a determination within 55 working days after the date on which the adjudicator is appointed or a longer period agreed by the parties.

40. Clause 43 provides that a party who is liable to pay an adjudicated amount in a determination must pay the amount within the period specified by the adjudicator.
41. Clause 44 provides for the effect of a determination.
42. Clause 45 empowers an adjudicator to correct any computational or typographical error or any error of a similar nature in a determination.
43. Clause 46 requires an adjudicator in a later adjudication to give the construction work, or related goods and services, the same value as that previously determined unless the adjudicator is satisfied that the value has changed since the previous adjudication.

Division 6—Setting Aside or Enforcement of Determinations

44. Clause 47 contains the definition for the interpretation of Division 6 of Part 3.
45. Clause 48 empowers the Court of First Instance (*CFI*), on an application made by a party to adjudication proceedings, to set aside a determination under certain circumstances. The party making the application must pay into the CFI as security the unpaid portion of the adjudicated amount.
46. Clause 49 provides that a determination may, with leave of the CFI, be enforced in the same way as a judgment of the High Court.

Division 7—General and Miscellaneous Matters relating to Adjudication

47. Clause 50 ensures that any right that a party to a construction contract may have to submit a payment dispute in any court or other dispute resolution proceedings is not affected.
48. Clause 51 prohibits a person from disclosing any information relating to any adjudication proceedings or determination, except under certain circumstances.

49. Clause 52 clarifies that a party is not liable to pay any costs or expenses incurred by the other party (other than the costs of adjudication proceedings) as a result of or in relation to the adjudication proceedings.
50. Clause 53 provides that the parties to adjudication proceedings are jointly and severally liable to pay the costs of the proceedings, which include the fees and expenses of the nominating body and the adjudicator. That clause also provides that the parties are each liable to pay the costs of the proceedings in the proportions that the adjudicator determines.
51. Clause 54 sets out the matters an adjudicator may consider in determining the proportions of the costs of the adjudication proceedings payable by the parties to the proceedings.
52. Clause 55 provides for supplementary provisions on the fees and expenses of an adjudicator.
53. Clause 56 provides for the disapplication of the adjudication of time-related disputes for main private construction contracts and their subcontracts. A claiming party may not initiate adjudication proceedings for a payment dispute if the amount in relation to the payment dispute is to be determined on the basis of an assessment on the claiming party's extension of time entitlement under the main private construction contract or its subcontract.

Part 4—Right to Delay Work or Supply

54. Clause 57 contains the definitions for the interpretation of Part 4.
55. Clause 58 gives a claiming party a right to delay carrying out the construction work, or supplying the related goods and services, under a construction contract if the amount admitted by the paying party is not paid in full and certain other conditions are satisfied. A claiming party exercising the right is not to be regarded as in breach of the

construction contract and is not liable for any resulting loss or damage.

56. Clause 59 gives a claimant a right to delay carrying out the construction work, or supplying the related goods and services, under a construction contract if the adjudicated amount is not paid in full and certain other conditions are satisfied. Again, a claimant exercising the right is not to be regarded as in breach of the construction contract and is not liable for any resulting loss or damage.

Part 5—Miscellaneous Matters

Division 1—Interpretation

57. Clause 60 contains the definition for the interpretation of Part 5.

Division 2—Administration

58. Clause 61 sets out the functions of the Secretary for Development (*Secretary*), including the functions to oversee the performance of the functions of a nominating body and to establish and keep a register of nominating bodies.
59. Clause 62 provides for a right of appeal against certain decisions of the Secretary.
60. Clause 63 sets out the functions of a nominating body, including the functions to nominate and appoint adjudicators and to regulate the conduct of adjudication proceedings.
61. Clause 64 specifies the fees that may be charged by a nominating body.
62. Clause 65 protects from civil liability an adjudicator, a nominating body, the Secretary or a public officer in respect of an act done or omitted to be done by them in good faith in performing or purportedly performing a function under the Bill.

63. Clause 66 protects an adjudicator from being compelled to give evidence or provide or produce any document or other material in any civil proceedings, arbitration or other dispute resolution proceedings.

Division 3—Service

64. Clause 67 sets out how a document that is authorized or required to be served under Part 3 (other than clause 27(3)(b) or (4)(b)) of the Bill must be served, including how an adjudication notice must be served on a nominating body by a claiming party.
65. Clause 68 sets out how a document that is authorized or required to be served under clause 27(3)(b) or (4)(b) or Part 2 or 4 of the Bill and an adjudication notice must be served on a party to a construction contract.

Division 4—Amendment of Schedules

66. Clause 69 empowers the Secretary to amend Schedules 1, 2, 3 and 4 to the Bill.

Part 6—Related Amendment

67. Part 6 (clauses 70 and 71) amends the Administrative Appeals Board Ordinance (Cap. 442).

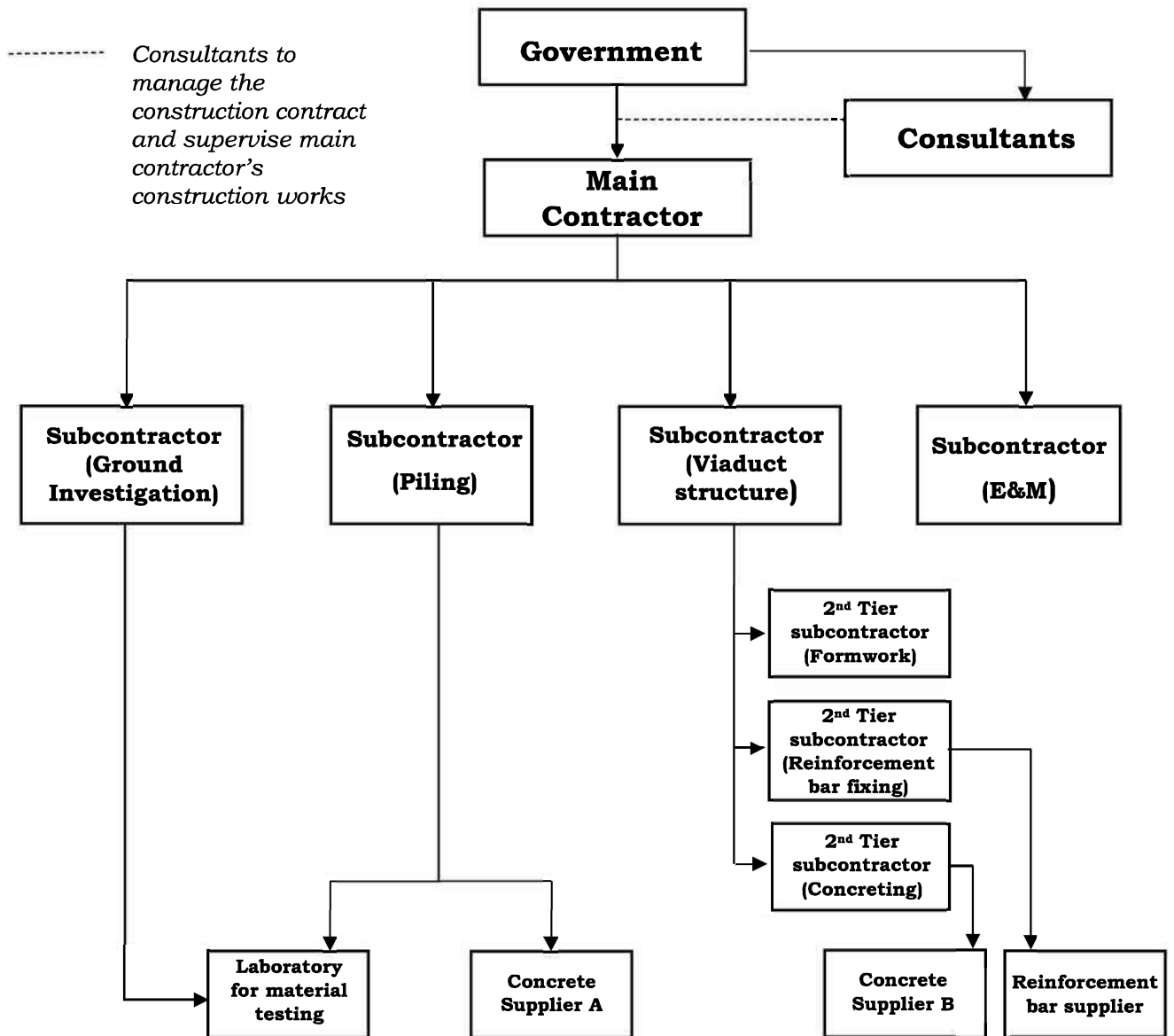
Schedules

68. Schedule 1 sets out the premises that are excluded from the definition of *residential unit* in clause 2(1).
69. Schedule 2 contains a list of buildings, structures and works for the definition of *specified structure* in clause 2(1).
70. Schedule 3 contains a list of bodies specified for the definition of *specified entity* in clause 4(3).

-
71. Schedule 4 specifies the contract value of a public construction contract or main private construction contract for the purposes of clause 7(1)(a)(ii) or 8(1)(a)(ii).

**Examples of Layers of Participants
in Construction Contracts**

Example: Public works highway construction contract

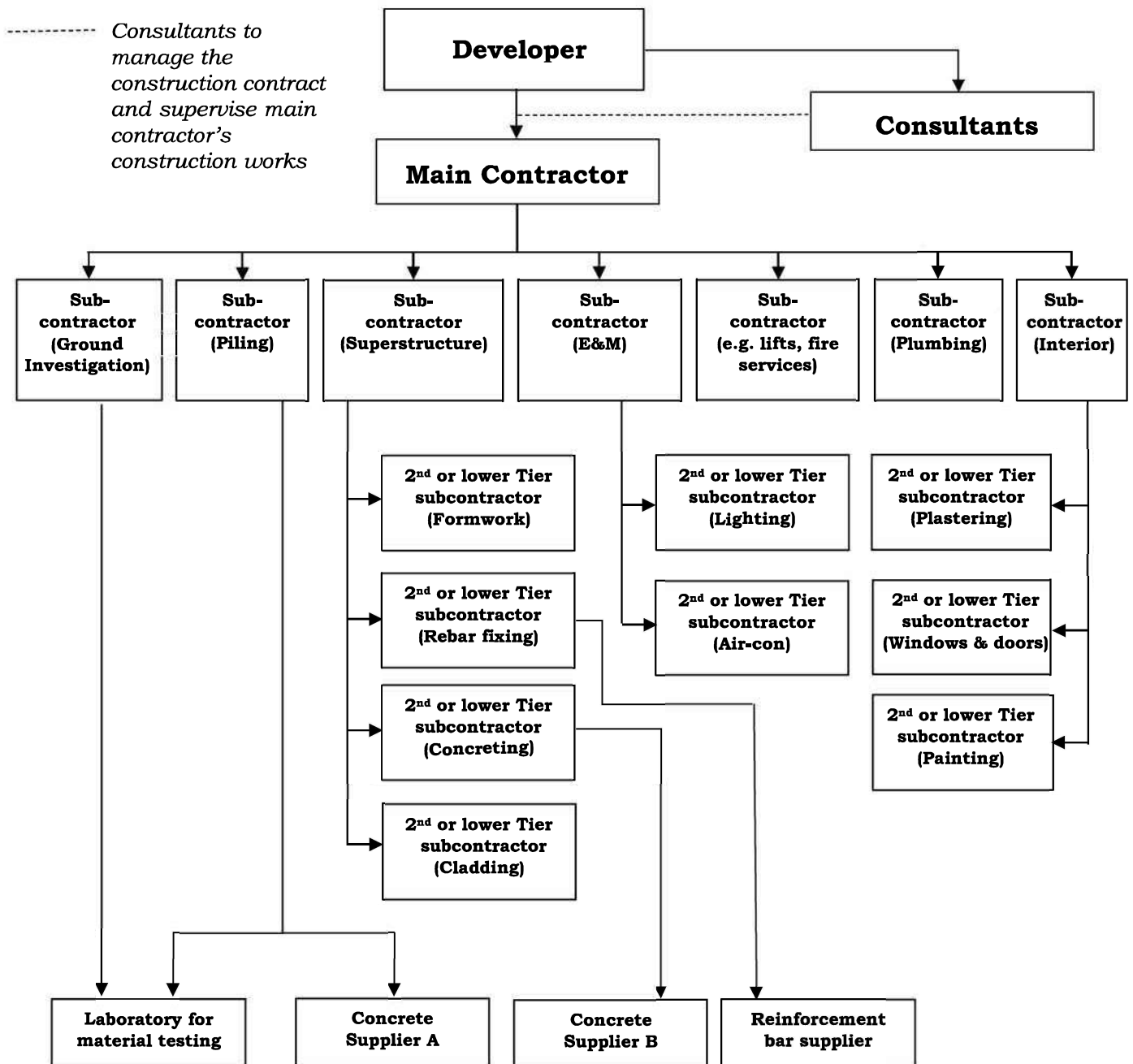


Notes:

- (1) The solid arrow represents the existence of an actual contractual connection between the parties.
- (2) The arrow tail represents the paying party and arrowhead represents the claiming party for a payment submission.

Examples of Layers of Participants in Construction Contracts

Example: Private sector building construction contract



Notes:

- (1) The solid arrow represents the existence of an actual contractual connection between the parties.
- (2) The arrow tail represents the paying party and arrowhead represents the claiming party for a payment submission.

**Comparison of Key Features of SOPLs
in Overseas Jurisdictions and Those Being Proposed for Hong Kong**

SOPL has been enacted in many jurisdictions¹, such as United Kingdom (UK), New Zealand (NZ), Singapore (SGP), Malaysia (MAL), New South Wales (NSW) and Western Australia (WA) in Australia which have been commonly quoted as main streams of SOPL in the relevant literature.

Generally, the proposed SOPL follows same approach with the overseas countries to improve contract payment terms, introduce an adjudication mechanism for speedy dispute resolution, and empower unpaid parties to suspend or slow down work or services.

In our proposed SOPL (HK), we feature in key elements of SOPL in overseas countries with a view to maximizing the protections to the stakeholders while we also take into account local construction practices. Our SOPL framework (covering the majority of the key features in the table below) was first proposed in the 2015 Public Consultation document, with subsequent refinements fully deliberated with the Task Force comprising members from relevant government departments, public and private organisations and industry representatives.

¹ There are 7 countries involving 19 jurisdictions with SOPL enacted. Apart from 6 jurisdictions stated above, there are Ireland, 6 other federated states/territories in Australia and 6 federal/provinces in Canada.

Table C1 – Scope of Application

Key Feature	HK	UK	NZ	SGP	MAL	NSW	WA
Contract can be written or oral ^{Note (1)}	●	●	●	(in writing only)	(in writing only)	●	●
Impose restriction(s) on certain Construction Contracts (e.g. excluding works on residential buildings, works of certain scale etc.)	●	●	●	●	●	●	●
Professional services covered	●	●	●	●	●	●	●
Supply contracts covered ^{Note (2)}	●			●	●	●	●

Notes:

- (1) Subcontractors are most likely to be working on the basis of oral or partly oral agreements.
- (2) Suppliers of materials and plant are key elements of the construction supply chain. These supply contracts involve financial and resource commitment by the supplier (e.g. pre-fabricated concrete segment for bridge construction).

Table C2 – Improvement of contract Payment Terms

Key Feature	HK	UK	NZ	SGP	MAL	NSW	WA
Prohibition on “conditional payment terms” such as “pay when paid”	•	•	•	•	•	•	•
Parties free to agree on inclusion of provisions in contract setting out specific payment schedules	•	•	•	•	•	•	•
Default payment provisions in the absence of express agreement under the contract	•	•	•	•	•	•	•
Claiming party entitled to serve payment claim / notice	•	•	•	•	•	•	•
Paying party entitled to give payment response	•	•	•	•	•	•	•

Table C3 – Introduction of Adjudication Mechanism:

Key Feature	HK	UK	NZ	SGP	MAL	NSW	WA
Only payment disputes (including time-related payment disputes) can be adjudicated <i>Note (3)</i>	●	(Any disputes)	(Any disputes)	●	●	●	●
Only claimant can initiate adjudication <i>Note (4)</i>	●	(Both parties)	(Both parties)	●	(Both parties)	●	●
Adjudication can only be initiated within a set period after the dispute arises <i>Note (5)</i>	●	(At any time)	(At any time)	●	(At any time)	●	●
Adjudicator Nominating Body (ANB) set up for appointment of adjudicators	●	●	●	●	●	●	●
Immunity from civil liability for adjudicators	●	●	●	●	●	●	●
Adjudicator can determine the proportion of the cost of adjudication proceedings to be paid by the parties <i>Note (6)</i>	●		●	●		●	●
Adjudicator to disregard new submissions or evidence under certain circumstances <i>Note (7)</i>	●			●			●
Parties required to go through claim handling procedures under the contract before adjudication <i>Note (8)</i>	●			●			
Enforcement of adjudicator’s determination (i.e. entered as court order/judgement)	●	(need to apply for summary judgement)	●	●	●	●	●

Notes:

- (3) The rationale of including time-related payment disputes in the scope of adjudication in Hong Kong is given in paragraphs 20 and 21 of the paper.*
- (4) In Hong Kong, it is uncommon for paying parties to adjudicate their claims but they will exercise their contractual right of set off to reduce the amount payable to the party undertaking work or providing goods/services.*
- (5) Adjudication is meant to provide rapid dispute resolution on an interim basis and allow parties to resolve issues at an early stage. A time limit for initiation of adjudication is consistent with this objective.*
- (6) Allowing the adjudicator to determine the proportion of the cost of adjudication proceedings to be paid by the parties will provide an incentive against speculative pursuit of unrealistic claims and the maintaining of unrealistic defences to delay payment.*
- (7) The provision is included to create a strong incentive on the parties to present all their key arguments and evidence to the other party before adjudication is commenced. It is designed to prevent ambush where a party deliberately holds back new submissions and evidence to deploy for the first time in an adjudication in the hope of gaining a tactical advantage.*
- (8) Claim handling procedures prevent pre-mature referral of payment dispute in relation to claims for additional payment (e.g. variation orders, prolongation cost) to adjudication. It is also a provision to prevent ambush, in particular for complex claims.*

Table C4 – Suspension or Slowing Down Work or Services

Key Feature	HK	UK	NZ	SGP	MAL	NSW	WA
Unpaid party’s right to suspend in relation to non-payment of adjudicated amounts	•		•	•	•	•	•
Unpaid party’s right to suspend in relation to non-payment of (deemed) admitted amounts ^{Note (9)}	•	•	•			•	•
Unpaid party required to serve advanced notice to paying party	•	•	•	•	•	•	•
Unpaid party required to notify principal and/or owner ^{Note (10)}	•			•			
Suspending party (i.e. unpaid party) expressly entitled to extension of time	•	•	•	•	•		
Suspending party (i.e. unpaid party) expressly entitled to loss and expenses (either general or specified)	•	•		•	•	•	•
Suspending party to resume work in specific period after receiving payment ^{Note (11)}	•	No specified period	No specified period	•	•	•	•

Notes:

- (9) *Where amounts are admitted as due, it makes sense to allow rights to suspend or slow down work or services sooner to smoothen cash flow of the unpaid party.*
- (10) *Notifying the owner allows the owner to better understand the situation and intervene, if needed, as early as possible.*
- (11) *Specifying a period provides greater certainty and also imposes a clear obligation on the suspending party to resume work within a specified period once it has been paid.*

Disclaimer

The information contained in the tables above is intended to furnish readers with general approaches adopted by overseas countries. The Government is not responsible for any errors or omissions, or for any loss or damage that may result from the use of the aforesaid information.

Schedule

[ss. 3, 4 & 22]

Item	Ordinance	Decision
1.	Apprenticeship Ordinance (Cap. 47)	A decision of the Director of Apprenticeship or any public officer in the performance or exercise of any function, duty or power under the Ordinance.
2.	Boilers and Pressure Vessels Ordinance (Cap. 56)	<p>(a) The revocation or suspension of an appointment as a boiler inspector, air receiver inspector or pressurized fuel container inspector under section 5A. (<i>Amended 15 of 2002 s. 8</i>)</p> <p>(b) A decision of the Boilers and Pressure Vessels Authority on the issue or endorsement of a certificate of competency under section 6(1)(a) or (3A)(a). (<i>Added 15 of 2002 s. 8</i>)</p> <p>(c) A decision of the Boilers and Pressure Vessels Authority to revoke or amend a certificate of competency under section 6(4)(a) or (b), as the case may be. (<i>Added 15 of 2002 s. 8</i>)</p>
3.	Employment Ordinance (Cap. 57)	A decision of the Commissioner for Labour under section 53(1) to refuse to issue or renew or to revoke a licence to operate an employment agency.
4.	Factories and Industrial Undertakings Ordinance (Cap. 59)	<p>(a) An exemption by the Commissioner for Labour under section 7(4) of an industrial undertaking from any regulation.</p> <p>(b) An order by the Commissioner for Labour under section 7(4), for an industrial undertaking to adopt special precautions in addition to any precautions required by any regulation.</p> <p>(c) Under section 9A—</p>

Item	Ordinance	Decision
5.	Quarries (Safety) Regulations (Cap. 59 sub. leg. F)	<ul style="list-style-type: none"> (i) the issue by the Commissioner for Labour of a prohibition notice in respect of a notifiable workplace; (ii) a refusal by the Commissioner for Labour to cancel a prohibition notice; (iii) the giving by the Commissioner for Labour of any direction upon the cancellation of a prohibition notice. <p>(d) <i>(Repealed 39 of 1997 s. 49)</i></p> <ul style="list-style-type: none"> (a) A refusal by the Commissioner for Labour to approve any person as a supervisor or deputy supervisor under regulation 4(1) or 6(1). (b) A withdrawal by the Commissioner for Labour of his approval of a supervisor or deputy supervisor under regulation 10(1).
6.	Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59 sub. leg. Z)	<ul style="list-style-type: none"> (a) A refusal by the Commissioner for Labour to register a person as a safety officer under regulation 7. (b) The cancellation by the Commissioner for Labour of a person's registration as a safety officer under regulation 9. (c) The suspension by the Commissioner for Labour of a person's registration as a safety officer under regulation 10. (d) A refusal by the Commissioner for Labour to renew or revalidate a person's registration as a safety officer under regulation 7B. <i>(Added L.N. 100 of 2002)</i>
7.	Weights and Measures Ordinance (Cap. 68)	A decision of the Commissioner, as defined in section 2, or of an authorized officer which is taken in the exercise or performance of any function under the Ordinance.
8.	Miscellaneous Licences Ordinance (Cap. 114)	The decision under section 5 of any officer authorized to issue a licence under the Ordinance as to the grant of a licence, the renewal of a licence or the revocation of a licence.

Item	Ordinance	Decision
9.	Control of Chemicals Ordinance (Cap. 145)(<i>Amended 23 of 2002 s. 14</i>)	A decision of the Commissioner, as defined in section 2(1), under the Ordinance, relating to— <ul style="list-style-type: none"> (a) the issue of a licence or permit; (b) the refusal to issue a licence or permit; (c) the cancellation or suspension of a licence or permit; (d) the cancellation or variation of any condition or the specification of a new condition in a licence or permit.
10.	Gambling Ordinance (Cap. 148)	The decision under section 22 of the public officer appointed by the Secretary for Home and Youth Affairs as to the grant of a licence, the renewal of a licence, the imposition of conditions of a licence or the cancellation of a licence. (<i>Amended 17 of 2011 s. 28; L.N. 144 of 2022</i>)
11.	Chinese Temples Ordinance (Cap. 153)	<ul style="list-style-type: none"> (a) The refusal by the Chinese Temples Committee under section 4 to grant an exemption from section 4(1). (b) The withdrawal by the Chinese Temples Committee under section 4 of an exemption granted under section 4(1).
12.	Weapons Ordinance (Cap. 217)	A decision of the Commissioner of Police under section 9(1) to order the delivery up to him or seizure of any martial arts weapon.
13.	<i>(Repealed 37 of 2018 s. 171)</i>	
14.	Firearms and Ammunition Ordinance (Cap. 238)	<ul style="list-style-type: none"> (a) A decision of the Commissioner of Police refusing to grant a licence under section 30 or to renew a licence under section 32. (b) A decision of the Commissioner of Police, under section 33, cancelling a licence or varying or revoking any condition attached thereto or adding any further condition or deleting any premises from a dealer's licence at which business may be carried on. (c) The imposition of a condition of licence which is considered to be unreasonable.

Item	Ordinance	Decision
		<p>(d) A decision of the Commissioner referred to in section 34(1AA). <i>(Added 14 of 2000 s. 33)</i></p> <p>(e) The imposition of a term or condition under section 4(3), 12(4), 12A(3), 27A(1), 29 or 46C(3), which is considered to be unreasonable. <i>(Added 14 of 2000 s. 33)</i></p>
15.	<p>Massage Establishments Ordinance (Cap. 266)</p>	<p>A decision of the licensing authority under section 6, 7, 8 or 9.</p>
16.	<p>Grant Schools Provident Fund Rules (Cap. 279 sub. leg. C)</p>	<p>A question of interpretation or application of the Rules.</p>
17.	<p>Subsidized Schools Provident Fund Rules (Cap. 279 sub. leg. D)</p>	<p>A decision of the Board under the Rules.</p>
18.	<p>Mining Ordinance (Cap. 285)</p>	<p>The cancellation of an Authorized Buyer's Licence under section 41.</p>
19.	<p>Mining (General) Regulations (Cap. 285 sub. leg. A)</p>	<p>A decision of the Commissioner of Mines under regulation 30(4A)(a) specifying the rate per tonne at which royalty shall be payable in respect of minerals and the period for which it shall be payable.</p>
20.	<p>Dangerous Goods Ordinance (Cap. 295)</p>	<p>A decision under section 9 of an officer authorized under the Ordinance to issue a licence—</p> <ul style="list-style-type: none"> (a) to refuse to grant a licence; (b) to refuse to renew a licence; or (c) to revoke a licence.
21.	<p>Dangerous Goods (Control) Regulation (Cap. 295 sub. leg. G)</p>	<ul style="list-style-type: none"> (a) Prohibiting or imposing conditions on, under section 103(1), the use of a licensed tank for the storage of certain dangerous goods. (b) Prohibiting or imposing conditions on, under section 125(1), the use of a tank on a licensed tank vehicle for containing certain dangerous goods. <i>(Replaced 29 of 2021 s. 44)</i>

Item	Ordinance	Decision
22.	Business Registration Ordinance (Cap. 310)	<p>(a) The service of a notice under section 3(4) by the Commissioner of Inland Revenue that a person is to be deemed to be a person carrying on business.</p> <p>(b) The service of a notice under section 3(4AA) by the Commissioner of Inland Revenue that a person is to be deemed to be a person carrying on business at a branch of a business.</p> <p>(c) The service of a notice under section 6(4D) by the Commissioner of Inland Revenue requesting a person to notify a change to a different name. <i>(Replaced 13 of 2010 s. 28)</i></p> <p>(d) The service of a notice under section 9(5) by the Commissioner of Inland Revenue that an exemption is not granted. <i>(Added 23 of 2002 s. 14)</i></p>
23.	Motor Vehicles (First Registration Tax) Ordinance (Cap. 330)	A decision of the Commissioner for Transport under the Ordinance.
24.	Animals (Control of Experiments) Ordinance (Cap. 340)	A refusal to issue a licence, endorsement or permit under section 7, 8, 9, 10 or 14.
25.	Chinese Permanent Cemeteries Rules (Cap. 1112 sub. leg. A)	<p>A decision of the Board of Management of the Chinese Permanent Cemeteries not to withdraw a notice in rule 12(2) regarding reversion of a subscriber lot to the Board.</p> <p>Note: The Board of Management of the Chinese Permanent Cemeteries is specified for the purposes of section 22(5) of this Ordinance.</p>
26.	Sewage Services Ordinance (Cap. 463)	A decision of the Drainage Authority under the Ordinance. <i>(Added 105 of 1994 s. 15)</i>
27.	Timber Stores Ordinance (Cap. 464)	<p>A decision of the Director relating to—</p> <p>(a) an application for a licence under section 4;</p> <p>(b) an application for transfer of a licence under section 5;</p>

Item	Ordinance	Decision
		(c) the revocation, suspension, refusal to renew or transfer; amendment or variation of conditions of a licence under section 8. (<i>Added 11 of 1995 s. 23</i>)
28.	Marine Parks Ordinance (Cap. 476)	A decision of the Country and Marine Parks Authority under section 11 or 22 of the Ordinance. (<i>Added 37 of 1995 s. 36</i>)
29.	Personal Data (Privacy) Ordinance (Cap. 486)	<p data-bbox="671 492 1370 571">A decision of the Privacy Commissioner for Personal Data—</p> <p data-bbox="740 586 1370 710">(a) to impose conditions on his consent to the carrying out of a matching procedure under section 32(1)(b)(i);</p> <p data-bbox="740 725 1370 848">(b) to refuse to consent to the carrying out of a matching procedure under section 32(1)(b)(ii);</p> <p data-bbox="740 864 1370 1032">(c) to refuse under section 39(3) to carry out an investigation initiated by a complaint; (<i>Amended 18 of 2012 s. 44</i>)</p> <p data-bbox="740 1048 1370 1171">(ca) to terminate under section 39(3A) an investigation initiated by a complaint; (<i>Added 18 of 2012 s. 44</i>)</p> <p data-bbox="740 1187 1370 1310">(d) not to delete under section 46(5) a matter from a report under the Ordinance;</p> <p data-bbox="740 1326 1370 1404">(e) not to serve an enforcement notice under section 47;</p> <p data-bbox="740 1420 1370 1588">(f) to serve an enforcement notice under section 50; (<i>Added 81 of 1995 s. 73. Amended 32 of 2021 s. 14</i>)</p> <p data-bbox="740 1603 1370 1713">(g) to serve a cessation notice under section 66M. (<i>Added 32 of 2021 s. 14</i>)</p>
30.	Dutiable Commodities Ordinance (Cap. 109)	A decision of the Commissioner of Customs and Excise under section 7, 26, 26A or 29. (<i>Added 46 of 1996 s. 43</i>)
31.	Dogs and Cats Ordinance (Cap. 167)	(a) A decision by a police officer or an authorized officer under section 6(1)(c) (i) or (ii) to destroy a dog.

Item	Ordinance	Decision
		<ul style="list-style-type: none"> (b) A decision by an authorized officer under section 9 in specifying the place or period of detention of a dog or cat or any other thing under this Ordinance. (c) A decision by an authorized officer under section 10 to vary the period of detention of a dog or cat or any other thing under this Ordinance. (d) A decision by an authorized officer under section 11(1) to refuse an application for the removal from detention under this Ordinance of a dog or cat or any other thing. (e) A decision by the Director under section 11(2) to order the forfeiture of a dog or cat or any other thing. (f) A decision by the Director under section 17(2) to impose any condition in granting an exemption under section 17. <i>(Added 97 of 1997 s. 11)</i>
32.	Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E)	A decision of the Commissioner for Transport under regulation 12L(1). <i>(Added 25 of 2005 s. 40)</i>
33.	Child Care Services Ordinance (Cap. 243)	<p>A decision of the Director of Social Welfare —</p> <ul style="list-style-type: none"> (a) under section 7(2), refusing an application for registration; (b) under section 9, cancelling a registration; (c) under section 11B(3), refusing an application for exemption from registration; (d) under section 11D, revoking an exemption from registration; (e) under section 15B(2), determining a person to be unsuited to act as a childminder; (f) under section 15C(4), refusing a request for the issue of a certificate;

Item	Ordinance	Decision
		(g) under section 15D(4), refusing to make a declaration that a person should no longer be deemed unsuited to act as a childminder. <i>(Added 38 of 1997 s. 19)</i>
34.	Wild Animals Protection Ordinance (Cap. 170)	A decision of the Director in relation to— (a) the granting of or the refusal to grant a permit or a special permit pursuant to section 13 or 15; or (b) the cancellation of a permit or a special permit under section 15A. <i>(Added 77 of 1996 s. 22)</i>
35.	Occupational Safety and Health Ordinance (Cap. 509)	A decision of the Commissioner for Labour under Part III. <i>(Added 39 of 1997 s. 49)</i>
36.	Ozone Layer Protection Ordinance (Cap. 403)	A decision of the Director of Environmental Protection under section 5, 6 or 7 or under provisions of the regulations that may be specified to be subject to an appeal under section 8. <i>(Added 6 of 1997 s. 10)</i>
37.	Human Reproductive Technology Ordinance (Cap. 561)	(a) A determination of the Council on Human Reproductive Technology referred to in section 28(5) to which section 28(6) applies. (b) The suspension of a licence under section 29. <i>(Added 47 of 2000 s. 48)</i>
38.	Freight Containers (Safety) Ordinance (Cap. 506)	A decision of the Director— (a) <i>(Repealed 14 of 2006 s. 20)</i> (b) under section 9, that an approval shall no longer be valid; (c) under section 12 or 13, in an application for approval of an examination procedure; (d) under sections 14 to 16, in relation to control of the use of a container; (e) under section 23, in relation to an application for the review of a decision of an authorized person; (f) under section 25, in relation to any request for exemption under that section. <i>(Added 32 of 1997 s. 29)</i>

Item	Ordinance	Decision
39.	Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202)	A decision in a review under section 22. <i>(Added 56 of 1997 s. 7)</i>
40.	Child Care Services Regulations (Cap. 243 sub. leg. A)	A decision of the Director of Social Welfare under regulation 4 refusing an application for inclusion in a register or removing the name of a person from a register. <i>(Added L.N. 272 of 1997. Amended 32 of 2000 s. 37)</i>
41.	Prevention of Copyright Piracy Ordinance (Cap. 544)	A decision of the Commissioner of Customs and Excise under section 11 or 12 of the Ordinance. <i>(Added 22 of 1998 s. 43)</i>
42.	Education Ordinance (Cap. 279)	(a) An attendance order made under section 74(1). (b) A variation of an attendance order made under section 74(2). <i>(Added 8 of 2001 s. 31)</i>
43.	Merchant Shipping (Local Vessels) Ordinance (Cap. 548)	A decision of the Director of Marine— (a) to refuse to authorize under section 7 a person as a surveyor; (b) to attach conditions to an authorization under section 7; (c) to revoke an authorization under section 7; (d) to serve a detention order; (e) to give a direction under section 53(1)(a); (f) to refuse to comply with a request under section 54(2); (g) to refuse to grant permission under section 66; (h) to attach conditions to a permission under section 66; (i) to revoke a permission under section 66; (j) to give a direction specified in an improvement notice under section 73(1). <i>(Added 43 of 1999 s. 91)</i>
44.	Dangerous Dogs Regulation (Cap. 167 sub. leg. D)	A direction by an authorized officer under section 14 of the Regulation. <i>(Added L.N. 185 of 2000)</i>

Item	Ordinance	Decision
45.	Factories and Industrial Undertakings (Safety Management) Regulation (Cap. 59 sub. leg. AF)	<p>(a) A decision of the Commissioner for Labour to refuse to register a person under section 6 or to register a person under that section subject to conditions.</p> <p>(b) A decision of the Commissioner for Labour under section 24(1) to require the appointment of a new safety review officer.</p> <p>(c) A decision of the disciplinary board under section 29(2) to reprimand a registered person, cancel the registration of a registered person or suspend the registration of a registered person. <i>(Added L.N. 298 of 1999)</i></p>
46.	Port Control (Cargo Working Areas) Regulations (Cap. 81 sub. leg. A)	A decision of the Director or the supervisor under regulation 4A(4), 5B, 6AA, 7, 7A, 7B, 7C, 7D, 7E, 13 or 21. <i>(Added L.N. 280 of 1999)</i>
47.	Karaoke Establishments Ordinance (Cap. 573)	A decision of the Secretary for Home and Youth Affairs or the Director of Food and Environmental Hygiene (as the case may be) under section 5, 6, 8, 9 or 10. <i>(Added 22 of 2002 s. 22. Amended L.N. 144 of 2022)</i>
48.	Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566)	A determination or decision of the Director of Social Welfare under section 6(2)(b), 8(3)(b), 9(3)(b) or 14. <i>(Added 10 of 2001 s. 33)</i>
49.	Road Traffic Ordinance (Cap. 374)	A decision of the Commissioner of Police under section 55(3). <i>(Added 3 of 2002 s. 17)</i>
50.	Dutiable Commodities Regulations (Cap. 109 sub. leg A)	A forfeiture of security under regulation 27(2). <i>(Added 23 of 2002 s. 14)</i>
51.	Security and Guarding Services Ordinance (Cap. 460)	A decision under section 14(5), 15(3), 16(4), 18(4), 21(2), 23(4), 24(4), 24A(13) or 25(4). <i>(Added 23 of 2002 s. 14)</i>

Item	Ordinance	Decision
52.	Merchant Shipping (Seafarers) Ordinance (Cap. 478)	A decision of the Superintendent of the Mercantile Marine Office— (a) to refuse to grant a permit; (b) to impose any condition under section 52(3); or (<i>Amended 16 of 2013 s. 84</i>) (c) (<i>Repealed 16 of 2013 s. 84</i>) (d) to cancel a permit under section 56(1). (<i>Added 23 of 2002 s. 14. Amended 16 of 2013 s. 84</i>)
53.	Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J)	A decision of the Seafarers' Authority— (<i>Amended L.N. 143 of 2016</i>) (a) to refuse to issue or renew a certificate of competency under section 7B; or (b) to refuse to issue a licence under section 10(2). (<i>Added 23 of 2002 s. 14. Amended L.N. 143 of 2016</i>)
54.	<i>(Repealed L.N. 143 of 2016)</i>	
55.	Merchant Shipping (Seafarers) (Engine Room Watch Ratings and Electro-technical Ratings) Regulation (Cap. 478 sub. leg. V)	A decision of the Seafarers' Authority to refuse to issue a certificate of proficiency under section 4A. (<i>Added 23 of 2002 s. 14. Amended L.N. 143 of 2016</i>)
56.-58.	<i>(Repealed L.N. 143 of 2016)</i>	
58A.	Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478 sub. leg. AF) (<i>Amended E.R. 4 of 2017</i>)	A decision of the Seafarers' Authority— (a) to require a deficiency to be rectified under section 100(2); or (b) to direct that a ship must not proceed to sea under section 100(3). (<i>Added L.N. 143 of 2016</i>)

Item	Ordinance	Decision
58B.	Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training) Regulation (Cap. 478 sub. leg. AJ) <i>(Amended E.R. 4 of 2017)</i>	A decision of the Seafarers' Authority to refuse to issue or renew a certificate of proficiency under section 9. <i>(Added L.N. 143 of 2016)</i>
58C.	Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation (Cap. 478 sub. leg. AI) <i>(Amended E.R. 4 of 2017)</i>	A decision of the Seafarers' Authority to refuse to issue a certificate of proficiency under section 8. <i>(Added L.N. 143 of 2016)</i>
58D.	Merchant Shipping (Seafarers) (Navigational Watch) Regulation (Cap. 478 sub. leg. AH) <i>(Amended E.R. 4 of 2017)</i>	A decision of the Seafarers' Authority to refuse to issue a certificate of proficiency under section 6. <i>(Added L.N. 143 of 2016)</i>
58E.	Merchant Shipping (Seafarers) (Tankers) Regulation (Cap. 478 sub. leg. AG) <i>(Amended E.R. 4 of 2017)</i>	A decision of the Seafarers' Authority to refuse to issue a certificate of proficiency or an endorsement, or to refuse to renew an endorsement, under section 6. <i>(Added L.N. 143 of 2016)</i>
58F.	Merchant Shipping (Seafarers) (Ships Using Low-flashpoint Fuels) Regulation (Cap. 478 sub. leg. AK) <i>(Amended E.R. 2 of 2019)</i>	A decision of the Seafarers' Authority to refuse to issue or renew a certificate of proficiency under section 6. <i>(Added L.N. 18 of 2019)</i>

Item	Ordinance	Decision
58G.	Merchant Shipping (Seafarers) (Ships Operating in Polar Waters) Regulation (Cap. 478 sub. leg. AL) (<i>Amended E.R. 2 of 2019</i>)	A decision of the Seafarers' Authority to refuse to issue or renew a certificate of proficiency under section 6. (<i>Added L.N. 18 of 2019</i>)
59.	Marine Fish Culture Ordinance (Cap. 353)	<p>A decision of the Director of Agriculture, Fisheries and Conservation—</p> <ul style="list-style-type: none"> (a) to refuse to grant or renew a licence under section 8(6); (b) to refuse to approve the transfer of a licence under section 8A(3)(b); (c) to cancel a licence under section 9(1); (d) to refuse to grant a permit under section 14(1); (e) to cancel or refuse to renew a permit under section 14(2). (<i>Added 10 of 2005 s. 230</i>)
60.	Land (Miscellaneous Provisions) Ordinance (Cap. 28)	A decision of the Director of Highways under section 10M(13) relating to an assessment made under section 10M(1)(d), (g), (h) or (i). (<i>Added 17 of 2003 s. 15</i>)
61.	Adoption Ordinance (Cap. 290)	<p>A decision of the Director of Social Welfare —</p> <ul style="list-style-type: none"> (a) on the assessment of a person's suitability to be an adoptive parent; (b) to terminate a placement; (c) on a person's application to become or continue to be an accredited body; or (d) to suspend or revoke a person's status as an accredited body, <p>as referred to in section 30. (<i>Added 28 of 2004 s. 35</i>)</p>
62.	Medical Clinics Ordinance (Cap. 343)	<ul style="list-style-type: none"> (a) A refusal by the Registrar of Clinics under section 8 to grant or renew an exemption in respect of a clinic. (b) A cancellation by the Registrar of Clinics under section 8 of an exemption granted in respect of a clinic.

Item	Ordinance	Decision
		(c) An order by the Registrar of Clinics under section 11 to refuse an application for the registration of a clinic or to cancel the registration of a clinic. <i>(Added 10 of 2005 s. 7)</i>
63.	Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586)	A decision of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation relating to— <ul style="list-style-type: none"> <li data-bbox="740 622 1370 703">(a) the refusal to issue a licence under section 23; <li data-bbox="740 719 1370 799">(b) an application to extend or renew a licence under section 24; <li data-bbox="740 815 1370 896">(c) an application to vary a licence under section 24; <li data-bbox="740 911 1370 1077">(d) any condition specified in a licence issued under section 23 or extended, renewed or varied under section 24; or <li data-bbox="740 1093 1370 1167">(e) the cancellation of a licence under section 26. <i>(Added 3 of 2006 s. 58)</i>
64.	Merchant Shipping (Security of Ships and Port Facilities) Ordinance (Cap. 582)	A decision of the Director of Marine under section 7(1)(a) or (c) or 8(2). <i>(Added 13 of 2004 s. 18)</i>
65.	Merchant Shipping (Security of Ships and Port Facilities) Rules (Cap. 582 sub. leg. A)	A decision of the Director of Marine under rule 27(1). <i>(Added L.N. 130 of 2004)</i>
66.	Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 592)	A decision of the Secretary for Education — <i>(Amended L.N. 130 of 2007)</i> <ul style="list-style-type: none"> <li data-bbox="740 1733 1370 1814">(a) not to re-appoint an assessment agency under section 8(1); <li data-bbox="740 1830 1370 1955">(b) on the length of a term of re-appointment specified under section 8(1)(b); <li data-bbox="740 1971 1370 2123">(c) to impose any conditions or restrictions under section 8(1)(c) in re-appointing an assessment agency; and

Item	Ordinance	Decision
67.	Genetically Modified Organisms (Control of Release) Ordinance (Cap. 607)	<p>(d) to cancel an appointment or re-appointment under section 8(5). <i>(Added 6 of 2007 s. 51)</i></p> <p>(a) A decision of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation—</p> <p>(i) under section 10(1)(a) on an application for approval of a genetically modified organism;</p> <p>(ii) under section 11(5)(a) on a request to vary a prior decision on an application for approval of a genetically modified organism;</p> <p>(iii) under section 12(1) to vary a prior decision on an application for approval of a genetically modified organism or on a request to vary such a prior decision.</p> <p>(b) A direction of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation—</p> <p>(i) under section 12(7) on the safekeeping or disposal of a genetically modified organism or a container containing the organism;</p> <p>(ii) under section 41(2) to dispose of a forfeited thing through repatriation or destruction.</p> <p>(c) A decision of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation under section 16(3)(a) to enter certain information submitted for the approval of a genetically modified organism in the register. <i>(Added 7 of 2010 s. 55)</i></p>

Item	Ordinance	Decision
68.	Bunker Oil Pollution (Liability and Compensation) Ordinance (Cap. 605)	<p>(a) A decision of the Director of Marine or a person authorized under section 25(1) to refuse to issue an insurance certificate under section 16.</p> <p>(b) A decision of the Director of Marine or a person authorized under section 25(1) to impose any condition under section 16.</p> <p>(c) A decision of the Director of Marine or a person authorized under section 25(1) to cancel an insurance certificate under section 17.</p> <p>(d) A decision of the Director of Marine to refuse to grant an exemption under section 23.</p> <p>(e) A decision of the Director of Marine to impose any condition under section 23. <i>(Added 14 of 2009 s. 40)</i></p>
69.	Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)	A decision of the Director of Social Welfare under section 7, 8, 9 or 10(1). <i>(Added 12 of 2011 s. 31)</i>
70.	Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613)	A decision of the Director of Social Welfare under section 7, 8, 9(1), 11 or 12. <i>(Added 12 of 2011 s. 31)</i>
71.	Companies Ordinance (Cap. 622)	<p>(a) A direction of the Registrar of Companies under section 109(1) to change a company name.</p> <p>(b) A decision of the Registrar of Companies to serve a notice under section 780(1)(b). <i>(Added 28 of 2012 ss. 912 & 920)</i></p>
72.	Fisheries Protection Ordinance (Cap. 171)	<p>A decision of the Director of Agriculture, Fisheries and Conservation—</p> <p>(a) to refuse to register a vessel on application made under section 14(1), 14A(2), 14B(8), 19(1), 21(1) or 21A(8); <i>(Amended 22 of 2020 s. 14)</i></p> <p>(ab) to refuse to issue a provisional approval under section 14B(2); <i>(Added 22 of 2020 s. 14)</i></p>

Item	Ordinance	Decision
73.	Pesticides Ordinance (Cap. 133)	<p data-bbox="671 129 1374 992"> (b) to impose conditions under section 16; (c) to add, remove or amend any conditions or refuse to do so under section 17; (ca) to refuse to issue a certificate of eligibility under section 21A(2); <i>(Added 22 of 2020 s. 14)</i> (d) to cancel a registration under section 24; (e) to refuse to issue or renew a research fishing permit under section 25; (f) to impose conditions in respect of a research fishing permit under section 25(3); and (g) to cancel a research fishing permit under section 29. <i>(Added 13 of 2012 s. 20)</i> </p> <p data-bbox="671 1003 1374 1081">A decision of the Director of Agriculture, Fisheries and Conservation—</p> <p data-bbox="740 1093 1374 2056"> (a) to refuse to register a pesticide under section 5(3)(b); (b) to register a pesticide subject to conditions under section 5(5); (c) to cancel or suspend the registration of a pesticide, or to modify, add to or cancel any condition, under section 6; (d) to refuse to issue a licence or permit under section 9(2)(b); (e) to issue a licence subject to conditions under section 9(5); (f) to issue a permit subject to conditions under section 9(7); (g) to vary the particulars of a licence or permit, or to modify, add to or cancel the conditions of a licence or permit, under section 9(8); (h) to cancel or suspend a licence under section 10; (i) to cancel a permit under section 11; </p>

Item	Ordinance	Decision
74.	Electronic Health Record Sharing System Ordinance (Cap. 625)	<p data-bbox="740 129 1374 293">(j) to confirm or vary under section 13(3)(b) the directions given under section 13(1). <i>(Added 14 of 2013 s. 28)</i></p> <p data-bbox="671 311 1374 389">A decision of the Commissioner for the Electronic Health Record—</p> <p data-bbox="740 405 1374 483">(a) to refuse to register a healthcare recipient under section 8(1);</p> <p data-bbox="740 499 1374 622">(b) to suspend the registration of a healthcare recipient under section 10(1);</p> <p data-bbox="740 638 1374 761">(c) to cancel the registration of a healthcare recipient under section 11(1);</p> <p data-bbox="740 777 1374 990">(d) to refuse to register a healthcare provider as a healthcare provider for the Electronic Health Record Sharing System under section 20(1);</p> <p data-bbox="740 1005 1374 1128">(e) to suspend a registration of a registered healthcare provider under section 24(1);</p> <p data-bbox="740 1144 1374 1301">(f) to cancel a registration of a registered healthcare provider under section 25(1). <i>(Added 15 of 2015 s. 63 and E.R. 3 of 2015)</i></p>
75.	Private Healthcare Facilities Ordinance (Cap. 633)	<p data-bbox="671 1317 1374 1350">A decision of the Director of Health—</p> <p data-bbox="740 1366 1374 1444">(a) to refuse to issue a licence under section 17(1)(b);</p> <p data-bbox="740 1460 1374 1583">(b) to issue a licence subject to particular conditions under section 17(3);</p> <p data-bbox="740 1599 1374 1677">(c) to refuse to renew a licence under section 21(2);</p> <p data-bbox="740 1693 1374 1816">(d) to impose particular conditions on renewing a licence under section 21(3);</p> <p data-bbox="740 1832 1374 2000">(e) to approve an application for variation of the scale or scope of services subject to particular conditions under section 23(3);</p> <p data-bbox="740 2016 1374 2134">(f) to refuse an application for variation of the scale or scope of services under section 23(4) or (5);</p>

Item	Ordinance	Decision
		<ul style="list-style-type: none"> (g) to approve an application for variation of the class of specialized service subject to particular conditions under section 24(3); (h) to refuse an application for variation of the class of specialized service under section 24(4) or (5); (i) to suspend or cancel a licence under section 28(1); (j) to suspend a facility service under section 29(1); or (k) to amend the conditions of a licence under section 37(1). (<i>Added 34 of 2018 s. 141 and E.R. 5 of 2018</i>)
76.	<p>Conservation of Antarctic Marine Living Resources (Toothfish Catch Documentation Scheme) Regulation (Cap. 635 sub. leg. A) (<i>Amended E.R. 5 of 2020</i>)</p>	<p>A decision of the Director of Agriculture, Fisheries and Conservation—</p> <ul style="list-style-type: none"> (a) to attach a condition to a licence under section 14(1); (b) to refuse an application for a licence under section 15(1); or (c) to cancel a licence under section 16(1)(b), (c), (d) or (e). (<i>Added L.N. 152 of 2019</i>)
77.	<p>Limited Partnership Fund Ordinance (Cap. 637) (<i>Amended E.R. 5 of 2020</i>)</p>	<p>A direction of the Registrar of Companies to change the name of a limited partnership fund under section 42 or 43. (<i>Added 14 of 2020 s. 121</i>)</p>
78.	<p>Mercury Control Ordinance (Cap. 640) (<i>Amended E.R. 5 of 2021</i>)</p>	<p>A decision of the Director of Environmental Protection—</p> <ul style="list-style-type: none"> (a) to refuse to issue a permit under section 18, 20 or 22; (b) to impose conditions under section 18, 20, 22 or 27; (c) to refuse to renew a permit under section 27; (d) to refuse to issue a duplicate of a permit under section 28; (e) under section 30 to vary a condition imposed under Part 3 in respect of a permit;

Item	Ordinance	Decision
		(f) under section 31 to refuse to vary a condition imposed under Part 3 in respect of a permit; (g) to suspend a permit under section 34; (h) to cancel a permit under section 35; (i) to give a disposal direction under section 39; or (j) to refuse to vary a disposal direction under section 40. <i>(Added 19 of 2021 s. 88)</i>
79.	Small Unmanned Aircraft Order (Cap. 448 sub. leg. G) <i>(Amended E.R. 5 of 2022)</i>	A decision of the Director-General of Civil Aviation in a review under section 61(3). <i>(Added L.N. 115 of 2021)</i> <i>(Amended E.R. 1 of 2012; E.R. 1 of 2015)</i>

Note:

The following enactments also give a right of appeal to the Administrative Appeals Board—

- s. 19 of the Merchant Shipping (Local Vessels)(Dwelling Vessels) Regulation (Cap. 548 sub. leg. A);
- s. 53 of the Merchant Shipping (Local Vessels)(Certification and Licensing) Regulation (Cap. 548 sub. leg. D);
- s. 11 of the Merchant Shipping (Local Vessels)(Typhoon Shelters) Regulation (Cap. 548 sub. leg. E);
- s. 47 of the Merchant Shipping (Local Vessels)(General) Regulation (Cap. 548 sub. leg. F);
- s. 86 of the Merchant Shipping (Local Vessels)(Safety and Survey) Regulation (Cap. 548 sub. leg. G);
- s. 10 of the Merchant Shipping (Local Vessels)(Compulsory Third Party Risks Insurance) Regulation (Cap. 548 sub. leg. H);
- s. 72 of the Merchant Shipping (Local Vessels)(Works) Regulation (Cap. 548 sub. leg. I);
- s. 42 of the Hazardous Chemicals Control Ordinance (Cap. 595).

Implications of the Proposal

ECONOMIC IMPLICATIONS

1. The Bill will provide clearer legislative protections and an adjudication mechanism for speedy resolution of payment disputes to stakeholders along the construction supply chain to mitigate the payment problem, which will facilitate construction works to be taken forward in a more efficient manner. This should help attract new businesses and investments to the industry, as well as encouraging existing companies to expand their operations.

SOCIAL AND PRODUCTIVITY IMPLICATIONS

2. BIA has been conducted to grasp the concerns and compliance difficulties of the contractor, subcontractors, suppliers and consultants within the construction industry in complying with the legislation. The BIA has demonstrated that the enactment of the Bill would bring about significant benefits for all parties involved in the construction industry in Hong Kong and the compliance implication are not significant with only minimal compliance costs.

3. The implementation of the Bill can enhance the overall quality and timely delivery of projects. Contractors, subcontractors, suppliers and consultants will have greater confidence in receiving payment on time for their work, reducing financial strain and enabling them to focus on project execution. This, in turn, can foster a more efficient and productive construction industry, leading to improved project outcomes and reduced delays.

4. The introduction of adjudication mechanism under the Bill necessitates the establishment and operation of a pool of qualified adjudicators. This creates opportunities for professionals with expertise in construction law, contract management, and dispute resolution to offer their services as adjudicators. ANBs, to be registered by the SDEV under the Bill, will be required to establish a clear and transparent admission criteria and selection process, to foster a level playing field and promote fair competition.

FAMILY IMPLICATIONS

5. The Bill would help improve the cashflow of the stakeholders (including main contractors, subcontractors, consultants and suppliers) along the supply chain in the construction industry, allowing them to meet their financial obligations and support their families. It would also help minimize the likelihood of employees (including construction workers) being left unpaid due to their employers' financial difficulties, thus maintaining stable and predictable income for these families.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

6. The project procurement cost may reduce over time after the implementation of the Bill as price premiums for risk in association with non-payment/delayed payment (typically in the range of 5-10% in accordance with local experience and overseas studies) will decline over time in response to improved security of payment. This would help consolidate the revenue of the Government.

7. The enactment of the Bill may give rise to additional expenditure arising from the costs of the adjudication proceedings that may take place, such as payment of fees for ANBs and adjudicators and appointment of independent expert (if any) etc., which the Government as a contractual party to a Construction Contract may have to bear jointly with the other parties. The adjudication proceedings will also give rise to additional workload in government bureaus/departments (B/Ds) administering the Construction Contracts and in Legal Advisory Division (Works) (LAD(W)) in respect of legal support required in the process. The additional expenditure and staffing requirements associated with adjudication for B/Ds under the Bill are expected to be relatively minor and will be absorbed by B/Ds with their existing resources. The legal support required will depend on the number of cases being referred to adjudication and their complexity and scale. LAD(W) will try to absorb the additional work load with the existing resources but will keep monitoring the situation after the Bill comes into operation and seek additional resources in accordance with the established mechanism if such need arises in the future.

8. There is established mechanism for resolving disputes, including payment disputes, under the Construction Contracts, such as by way of arbitration or court proceeding. The amount decided by arbitration/court which is payable to the claiming party would be charged to the project vote of the capital works projects, while the relevant legal costs would be borne by the Department of Justice. For adjudication under the Bill, the existing arrangement set out above will be followed for settlement of the relevant payments.

9. Nevertheless, the Bill can act as a deterrent against payment delays. By creating a legal framework that emphasizes timely and fair payment practices, the legislation can foster better communication between the Government and contractors/consultants. This, in turn may reduce the likelihood of disputes arising, leading to possible cost savings associated with other dispute resolution mechanisms. As disputes can be settled through a quicker and more cost effective process, the reliance on very costly arbitration or litigation can be reduced. This not only saves resources but also streamlines the resolution of payment disputes, benefitting both the Government and the parties involved. Over the long term, the additional expenditure and workload arising from the enactment of the Bill are anticipated to be effectively balanced by the benefits brought forth by the legislation.

10. The provision of setting aside and enforcement of adjudicators' determination under the Bill will likely bring about additional caseload for the courts, particularly for the Court of First Instance. The actual resource implications will depend on the number of applications for setting aside and enforcement after the enactment of the Bill. In case the Judiciary cannot absorb the additional caseload in the future, it will sort out the necessary financial and manpower resource requirements with the Government and seek resources in accordance with the established mechanism.

11. As for the implementation of the registration mechanism of ANBs, the additional expenditure and workloads will be absorbed by the DEVB with existing resources. The DEVB will keep monitoring the situation and seek additional resources in accordance with the established mechanism with justifications should such needs arise in the future.

List of Abbreviations

the Bill	- Construction Industry Security of Payment Bill
ANB	- Adjudicator Nominating Body
BA	- Building Authority
B/Ds	- Bureaus/departments
BFAC	- Business Facilitation Advisory Committee
BIA	- Business Impact Assessment
CFI	- Court of First Instance
CIC	- Construction Industry Council
DEVB	- Development Bureau
ExCo	- Executive Council
EoT	- Extension of Time
FLU	- The Federation of Hong Kong and Kowloon Labour Unions
HKCIEGU	- Hong Kong Construction Industry Employees General Union
HKFTU	- Hong Kong Federation of Trade Unions
LAD(W)	- Legal Advisory Division (Works)
LegCo	- Legislative Council
SDEV	- Secretary for Development
SMEs	- Small and medium-sized enterprises
SOPL	- Security of Payment Legislation

Task Force

- Task Force for Preparation of Legislative Proposals to the Construction Industry Security of Payment Legislation

URA

- Urban Renewal Authority