

THE CONTRACTS GROUP LTD.

Commercial, Contractual and Management Consultants
to the Construction Industry

NEWSLETTER
MAY 2021

10

CELEBRATING
YEARS

Security of Payment

A decade or so ago, a joint survey undertaken by the Government of the HKSAR Development Bureau and the Construction Industry Council highlighted significant payment problems experienced by parties, notably different tiers of subcontracts, within the Hong Kong Construction Industry.

Then, in 2015, the Development Bureau produced a consultation document concerning the implementation of proposed Security of Payment Legislation (“SOPL”) for the Construction Industry. Despite the momentum built up during the consultation process, the implementation of such legislation came up against opposition from particular professional institutions, as noted in the Development Bureau’s Report on Public Consultation on the proposed SOPL issued in April 2016.

Now, 5 years later, the Development Bureau has issued a further draft Technical Circular addressing SOPL, albeit in a slightly different form. Rather than introducing new legislation, as was proposed in 2015, the Development Bureau’s consultation paper is now proposing provisions in *the spirit of SOPL* for incorporation into the respective tiers of sub-contracts under Government contracts before implementing any legislation.

Based on the draft documentation, the Development Bureau plans to tentatively introduce SOP provisions for all new public works contracts, term contracts, and related subcontracts for work tendered post-July / August 2021. The intent of such provisions is similar to the legislation previously tabled in that the SOP provisions seek to improve payment practices and the speedy resolution of payment disputes through defined payment rights and obligations and an interim dispute resolution mechanism.

The provisions include:

- Imposing strict time periods for responses to payment claims and actual payment (30 calendar days and 60 calendar days respectively from the date of payment claim).
 - Invalidation of conditional payment provisions, i.e., “pay when paid” clauses.
 - Adjudication of payment disputes in a timely manner (appointment of an Adjudicator in 5 working days and an adjudication decision within 55 working days from the date of appointment) including assessment of EOT and time-related costs arising therefrom.
 - Monitoring and enforcement of adjudication decisions under the SOP provisions to be reflected in quarterly performance reports.
 - Rights to suspend or reduce progress of Works where a party fails to make payment, with an option for a subcontractor claimant to request Employer to make direct payment of any unpaid adjudicated amount.
 - No limitation on the type or value of the Works under this proposal, however, any subsequent legislation will likely apply to contracts / service or supply agreements above a certain value.
 - Time-related costs to be enforceable, however, EOT can be disputed at a later date.
- As readers are aware, many countries have already successfully implemented SOP legislation. It is considered by many contractors, sub-contractors, consultants, sub-consultants, and suppliers in those jurisdictions to be a necessary tool in ensuring project cash flow. With legislation in place to ensure payments throughout the supply chain are made in a timely and efficient manner, even where matters are in dispute.

From The Contracts Group Limited’s experience, there has been no marked change or improvement in the payment situation in Hong Kong over the past decade. Consequently, we consider that compulsory SOP provisions / legislation would undoubtedly benefit the Construction Industry in Hong Kong, as it has already done in other jurisdictions.



Project News

Penta-Ocean Construction Ltd. have been awarded a **HK\$2.06 billion** contract for the Redevelopment of No. 32 University Drive and IT Building for the University of Hong Kong.

The works involve demolition of existing structures and construction and fitting out of multiple buildings and laboratories, as well as a link bridge and associated works and landscaping.

The work started in March 2021 and is scheduled for completion in mid-2024.

Staff News

The Contracts Group are pleased to welcome Mr. Jayden Choi, a Project Quantity Surveyor who is providing contracts administration services on the 3RS project at Hong Kong International Airport.

Jayden is a chartered quantity surveyor who has 5 years of experience having been employed by consultants, and having worked on a range of building projects and renovation and A&A works for contractors, subcontractors and developers.



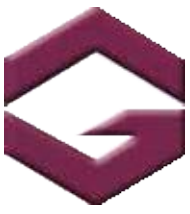
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THE CONTRACTS GROUP LTD.

Commercial, Contractual and Management Consultants
to the Construction Industry

2021年
5月通訊

10 CELEBRATING
YEARS

付款保障

大約十多年前，香港政府發展局和建造業議會進行的一項共同調查顯示，香港建築業各方人士在分包合同的不同級別都遇到了嚴重的付款問題。

有見及此，在2015年，發展局就實施擬議的付款保障條例（“SOPL”）編制了一份諮詢文件。即使在諮詢過程中建立了推動作用，正如發展局在2016年4月發布關於擬議的SOPL的公眾諮詢報告中所指出，有關的立法工作還是遭到了相關的專業機構的反對。

時至今日，經過五年，發展局草擬了另一份形式上略有不同有關SOPL的技術通告。發展局今次的諮詢文件並未像2015年的建議那樣引入新的法例，而是提出在實施任何法例之前將以 *SOPL的精神* 擬定的條款納入政府合同下各個級別的分包合同。

根據該草擬文件，發展局計劃暫定對所有2021年7月 / 8月後招標的新公共工程合約、定期合約及有關分包合約引入SOP條款。這些條款的內容與之前所草訂的條例大致相同，是旨在通過明確規定的付款權利和義務以及臨時糾紛解決機制來改善付款方式 and 迅速解決付款糾紛。

這些條款包括：

- 對付款申索和實際付款的回覆作出嚴格的時限規定（從付款申索之日起計，分別為30個日曆日和60個日曆日）。
- 廢除有條件付款的相關條款，即「先收款、後付款」條款。
- 對付款糾紛作出適時的審裁（在5個工作天內任命一名審裁員，在任命之日起55個工作天內作出審裁決定），包括評估延長工期（EOT）及其產生與時間有關的費用。
- 在季度表現報告中反映監督和執行在SOP條款下的審裁決定。
- 在一方未付款的情況下有權暫停或者減慢工作進度，或分包商可以選擇要求業主直接支付任何欠付的裁決金額。
- 此提案對工程的類型或價值是沒有限制，但是，隨後的立法可能只適用於超過一定價值的合同 / 服務或供應協議。
- 條款對與時間有關的費用是可具有執行性的，而有關EOT的爭議亦可以在日後提出。

正如各位讀者留意到，許多國家已經成功為SOP立法。許多這些司法管轄區的承建商、分包商、顧問、分包顧問和供應商都認為它是確保工程項目現金流的必要工具。制定相關法規可以確保即使在有糾紛的情況下，整個供應鏈的款項都能及時有效地繳付。

以The Contracts Group Limited的經驗來看，過去十年在香港的工程付款問題並沒有明顯的變化或改善。因此，我們認為在香港引入強制性的SOP條款 / 立法，就如同其他司法管轄區一樣，毫無疑問地令建造業受惠。



項目信息

五洋建設成功投得香港大學重建32號大學徑和資訊科技大樓價值20.6億港元的合同。

工程包括拆除現有的建築結構，並在多個建築物和實驗室進行裝修，以及一座連接橋和相關的工程和園景美化。

工程於2021年3月開展，計劃於2024年年中完成。

員工信息

The Contracts Group很高興歡迎項目工料測量師 Jayden Choi先生加入，為香港國際機場的3RS項目提供合約管理服務。

Jayden是一名特許測量師，擁有5年顧問工作經驗，曾為承建商、分包商和發展商從事一系列的建築、翻新及改建工程。



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