



We would like to congratulate James Chan, Ian Cheung and L. S. Mok who have all passed their NEC4 ECC PM Accreditation. A great achievement which has boosted our existing team of accredited NEC4 PMs.

Well done!

NEWSLETTER

JUNE, 2023

Disruption Claims

It is some time since we discussed claims on disruption and the difficulties in making such claims. However, with the potential of the Security of Payment Legislation ("SOPL") supposedly being passed near the end of the year, this will give contractors and sub-contractors more chance of success with claims for disruption. Why do we say this? Well, with the SOPL comes Adjudication and this opens the doors for more of these types of claims succeeding. As we all know, currently in the Hong Kong Construction Industry, Contract Administrators are most reluctant to recognise the merits of these types of claims so much so that they dismiss claims for disruption out of hand without considering the merits, even well-prepared claims are rejected whereas other claims such as EOT and prolongation cost are treated more fairly.

As our readers may be aware, disruption claims are notoriously more difficult to prove, however, notwithstanding these difficulties, in our opinion, Adjudication will provide contractors/sub-contractors with better opportunities for a fair hearing of claims for disruption. Firstly the appointed Adjudicator is an independent professional and can look at the merits of the claim purely based on the merits. Further, the Adjudicator's costs are shared between the parties to the dispute and therefore the Adjudicator will have no direct responsibility to either of the parties and is free to give his decision unencumbered. More importantly, a notice of adjudication can be issued during the progress of the Works, there is no need to wait until the end of the project. If the employer, or the contractor, or the sub-contractor, disagree with the Adjudicator's decision, the alternative is to revert to Arbitration. However, this will be after the project is completed and there is no guarantee that an Arbitrator will find differently to the Adjudicator.

Despite our enthusiasm, the onus will still be on the contractor and/or the sub-contractor to demonstrate that their claim for disruption has merit and that they can successfully demonstrate that they have incurred disruption as a consequence of a variation or a change in design, or an instruction for additional work and not because of their own default, this will need very careful record keeping during the progress of the works and learning how to prepare for such claims.

Likewise, there will be a bigger onus on Contract Administrators to review such claims for disruption more critically than previous approaches, because failing to do so, may well lead to the contractor and/or the sub-contractor issuing a notice of adjudication.

We therefore suggest to contractors and sub-contractors alike, you may need to rethink the basis of your approach to tendering, including what sort of information you will need to provide to demonstrate at a later date that you have incurred disruption. As for Employers and Contract Administrators, likewise, you need to think what information you need at the time of tendering should you be faced in the future with claims for disruption.

We at the Contracts Group can be of assistance should any of our readers choose to request our services once the Security of Payment Legislation is passed, with several HKIAC Accredited Adjudicators in our team.

Project News

Bouygues Travaux Publics and Dragages Hong Kong Joint Venture has been awarded the contract for the **Tung Chung Line Extension (TUE) – Tung Chung West Station and Tunnels Project**, MTRC Contract No. 1201.

The project involves a westward extension of the Tung Chung Line (TCL), and the design and construction of a new station at Tung Chung West and a tunnel from the existing Tung Chung Station. When completed, the project will improve railway accessibility to Tung Chung West and Tung Chung East areas, as well as the proposed developments at Lantau North and the airport expansion plans. The Tung Chung West Station and Tunnels project will serve existing public housing estates and property developments in the vicinity.

The construction of the TUE is expected to begin in mid-2023, with a target completion date of 2029.

China State – Alchmex Joint Venture (China State Construction Engineering (Hong Kong) Limited – Alchmex International Construction Limited Joint Venture) has been awarded a HK\$3 billion contract for the **Yuen Long Barrage and Nullah Improvement Schemes**.

The scope will comprise of provision of a barrage scheme in Yuen Long including the construction of an automatic flood barrier of about 60 metres (m), a stormwater pumping station, a master control centre and the associated electrical and mechanical facilities in the Yuen Long Nullah; modification of about 300 m of the Yuen Long Nullah and drainage improvement works at the intersection of the Yuen Long Nullah and the Yuen Long Bypass Floodway; construction of drainage channels of about 200 m; improvement of flood walls of about 3.2 kilometres (km) along the Kam Tin River and construction of flood walls of about 0.8 km along the Yuen Long Nullah and the Sham Chung River; revitalisation of a section of about 1 km of the Yuen Long Nullah between the Long Ping Station and the location of the proposed barrage and ancillary works.

Construction commenced on 29 May 2023 and the anticipated completion date is mid-2030.

HONG KONG CONSTRUCTION INDUSTRY STATISTICS

Census & Statistics Department's construction output statistics for the first quarter of 2023 ('Q1') show:

- ★ The gross value of construction works performed by main contractors in Q1 of 2023 increased by 7.4% from a year earlier to HK\$62.6 billion. In real terms there was a 8.7% increase for Q1 of 2023 after removing the effect of price changes.
- ★ Private sector sites were up 18.2% for Q1 of 2023 from a year earlier at HK\$17.0 billion.
- ★ Public sector sites increased by 0.5% for Q1 of 2023 to HK\$23.5 billion.
- ★ Gross value of construction works at locations other than construction sites (maintenance, decoration, repair, electrical installations, etc.) was up 7.9% for Q1 of 2023 at HK\$22.1 billion.
- ★ Residential Building projects accounted for the largest share in gross value for Q1 of 2023 at HK\$12.5 billion (up by 16.4%) with transport projects coming in second at HK\$10.1 billion, up 32.4% from Q1 of 2022.