

Construction Industry Security of Payment Bill to be introduced into LegCo

The Development Bureau (DEVB) published the Construction Industry Security of Payment Bill today (May 16) to establish a mechanism for improving the delay payment problems among contracting parties, which have existed in the construction industry for a long time.

A DEVB spokesman said that there is a wide scope of construction work that involves a variety of professions/trades, and the work has unique features, making it challenging for an individual contractor or consultant to undertake an entire project. To enhance the flexibility in project procurement, subcontracting arrangement is commonly adopted in the construction industry in Hong Kong. There are various contracting parties involved in construction projects including clients, contractors, subcontractors, suppliers, consultants, etc. If a party delays in payment, it will pose financial pressure on various stakeholders along the supply chain, especially the small and medium-sized enterprises with relatively low financial risk tolerance level. Payment problems may also lead to project delays and disruptions, and wage arrears of construction workers.

The Bill stipulates provisions to improve contractual payment terms, establish an adjudication mechanism to resolve disputes quickly, and grant unpaid parties the right to suspend or slow down the progress of work or services under the circumstances specified in the legislation, to ensure that all stakeholders can get their entitled payment in a timely manner. The key provisions of the Bill are as follows:

1. Improvement of contractual payment terms

Prohibit the use of unfair payment terms, such as "pay when paid" and impose time limits for the paying party to give response to payment claims and make payment of the full amount that the paying party has admitted payable;

2. Introduction of adjudication mechanism

When a payment dispute arises, the claiming party is entitled to initiate the adjudication proceedings; the contracting parties can resolve the payment dispute through an independent adjudicator; the adjudicator has to make the determination within 55 working days after the appointment; and both parties have the rights to refer the payment dispute to litigation or arbitration, if they are dissatisfied with the adjudicator's determination; and

3. Suspension or slowing down progress

If 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, or 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.

The Bill applies to contracts with the main contract values not less than the specified minimum contract values, i.e. \$5 million for carrying out construction work and \$0.5 million for contracts for the supply of goods (e.g. materials and plant) and services related to the construction work. Considering that the general public may not be familiar with the construction contracts and relevant legislations, and it is difficult for them to comply with the requirements in the legislation, to avoid causing impact to the general public, the Bill will not apply to: (1) contracts for works on existing private residential buildings (e.g. interior renovation, building maintenance, etc); and (2) contracts for relatively minor works on existing private non-residential buildings, i.e. those works not requiring approval and consent of the Building Authority under the Building Ordinance (Cap. 123) (e.g. maintenance and repair of building services installation, shop renovation, etc).

The spokesman said that great importance is attached to the freedom of contracting parties to agree among themselves terms of a contract. The Government/legislation will not determine or order payment for any of the contracting parties. The Bill prohibits unfair contractual payment terms, and provide a speedy and binding adjudication mechanism for the contracting parties to resolve interim payment disputes.

When establishing the legislative framework and drafting the legislation, the DEVB has maintained close contact and communication with various stakeholders in the construction industry. The Legislative Council (LegCo) Panel on Development was briefed on the proposed legislation in November last year.

The spokesman said, "As the construction volume in Hong Kong will be maintained at a high level, it is an opportune time to bring forward the legislation to improve the delay payment problem in the construction industry. The construction industry has also reached a broad consensus on the major provisions of the Bill, and urged for early legislation. We expect that the project procurement cost may reduce over time after the implementation of the Bill as price premiums for risk in association with delay payment will decline following improved security of payment. The Government will fully support the LegCo's examination of the Bill, with the hope that the Bill could be passed and implemented as soon as possible."

The Bill will be gazetted tomorrow (May 17) and introduced into the LegCo for first reading on May 29. For details of the proposed legislation, please refer to the LegCo Brief issued today.