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Procurement Policies Department
Business Development Group

26 November 2019

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Dear Sir/Madam,

COMMENCEMENT OF THE BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT (AMENDMENT) ACT 2018 & (AMENDMENT) REGULATIONS 2019

Objective

This circular informs the industry regarding the commencement of the Building and Construction Industry Security of Payment (Amendment) Act 2018 and the Building and Construction Industry Security of Payment (Amendment) Regulations 2019 **from 15 December 2019**.

Background

2 The Building and Construction Industry Security of Payment (SOP) Act aims to facilitate cashflow and introduce a fast and low-cost adjudication mechanism to deal with payment disputes in the construction industry. BCA, together with industry stakeholders, had conducted a review on the SOP Act and Regulations. The review has considered feedback from parties involved in the payment claim and adjudication processes, as well as the latest development in construction technologies and case law regarding adjudication.

3 The Building and Construction Industry Security of Payment (Amendment) Bill was passed in Parliament in October 2018 and the Building and Construction Industry Security of Payment (Amendment) Regulations is gazetted on 26 November 2019. Both the Amendment Act and Regulations are listed in the Annexures and available for downloading from Singapore Statutes Online at <https://sso.agc.gov.sg/>.

Key Amendments

4 The key amendments to the Act and/or Regulations include:

a. Expanding and clarifying the scope of the application of the Act

- Expand the SOP Act to include contracts relating to prefabrication of components
- Clarify that claims for work done or goods supplied before contract termination are valid
- Clarify that adjudicators are to consider claims on damages, losses, and expenses only when the quantum of such claims can be supported by documents

b. Enhancing requirements on handling of payment claims and responses

- Prescribe a shorter time limit for service of payment claims
- Clarify a payment claim will be valid even if it is served before the date or period specified in the contract
- Allow unpaid payment claims to be repeated under the Act
- Clarify the default timeline for payment claim and definition of a “month”

c. Improving the adjudication processes

- Allow claimants (and not just respondents) to apply for adjudication review
- Allow adjudicators to disregard specific circumstances where claimants have failed to provide certain documents or information in adjudication applications, so long as the respondents were not materially prejudiced
- Clarify that any objections by respondents not included in payment responses will be disregarded by adjudicators or the Courts, unless respondents can prove that their objections could not have been made known earlier

5 Besides the above, other revision to improve the operation of the Act include:

- Revising minimum interest rate for late payment
- Specifying a non-exhaustive list of grounds on which parties can commence proceedings to set aside the adjudication determination
- Allowing documents to be served via email, and instant messaging platforms in an agreed file format

6 The amendments will come into operation **from 15 December 2019**, unless otherwise specified in the Amendment Act or Regulations.

7 For application of the amendments to specific payment claims, contracts or adjudication applications, please refer to the Amendment Act or Regulations or seek professional advice.

Briefing Sessions

8 To familiarise the industry with the amendments, BCA will conduct briefing sessions in due course. More information on the amendments and briefing sessions will be released on <https://www.bca.gov.sg/SecurityPayment/review.html>. For general enquiries, please email them to bca_enquiry@bca.gov.sg.

9 Last but not least, we would like to thank all stakeholders who had participated in the review of the SOP Act and Regulations. Your valuable contribution is greatly appreciated.

Yours faithfully



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FREQUENTLY ASKED QUESTIONS

Note: For a full appreciation of rights and obligations, the reader should refer to the Act and/or Regulations as well as seek independent legal advice.

Q1. Can claimants apply for adjudication if the contract has been terminated?

- A1. Currently, the SOP Act is silent on whether claimants can apply for adjudication if the contract has been terminated. The Amendment Act has made explicit that claimants can claim for work done before contract termination.

Nonetheless, we understand that many standard contracts have special arrangements for claims when a contract has been terminated, especially when the contract has been terminated for default. Thus the Amendment Act still respect contract clauses that permit respondents to suspend payment for terminated contracts until contractual condition(s) is met.

Q2. Does prefabrication works fall under the definition of a construction or supply contract?

- A2. The Act covers two types of contracts – construction contracts and supply contracts. Supply contracts involve supply of goods only, without on-site assembly, construction or installation. As prefabrication works is akin to construction works albeit they can be carried out off-site, they are classified as construction contracts under the Act.

Q3. Why is the Amendment Act requiring claimants to accept a payment response in writing?

- A3. The industry gave feedback that verbal acceptance from claimants on payment responses could lead to factual disagreements. This complicates the adjudication application process as there are different timelines (e.g. whether the Dispute Settlement Period would kick in) to follow depending on whether the payment response has been accepted. The amendment will help reduce the ambiguity by requiring claimants to accept the payment response in writing.

Technically, this does not impose any additional requirement on the claimants, as standard submissions of documents such as an invoice, is a common practice already adopted in industry.

Q4. One of the amendments allows the service of document under the Act to be made via emails. How do we ensure that service of documents by email will not be delivered to the wrong addressee?

- A4. The relevant email address should be the last email address given by the addressee or known to the sender as being an address for service of documents. If the email is not capable of being retrieved by the recipient, such as if the sender receives any message that the email was “not delivered”, the document would not

be considered as validly served. Under such circumstances, it would be necessary for the sender to use other modes of service.

Q5. Supply contracts are very straightforward and it is not a common practice for respondents to respond to payment claims in writing. Why is it necessary to make it a requirement for response to be made in writing when payments are withheld?

A5. Supply contracts do not require a payment response in the same form as construction contracts as claims are processed in a different way. However, there could be situations in which respondents disagree with the invoice amount for supply contracts. In such situations, respondents should inform claimants in writing the reasons for not making full or partial payment. This will allow the adjudicator to consider these reasons if the claimants made an adjudication application later. The intent is to facilitate adjudication process and minimise unnecessary argument over unclear documentation.

Q6. In the Amendment Act, belated objections will only be considered by adjudicators if the objections (i) are due to new circumstances that had arisen, (ii) could not have reasonably been known about earlier, or (iii) relate to patent errors. What are examples of such valid objections?

A6. For new circumstances that had arisen, an example of a valid objection would be when an adjudicator considers a claim for damage, loss or expense that is not supported by any document showing agreement of the parties. This is non-compliant with provisions of the Act in making the adjudication determination.

One example of objections that could not have been known earlier is the scenario when a respondent comes to know later of a pre-existing business relationship (i.e. conflict of interest) between the adjudicator and the claimant.

Examples of patent errors include obvious mistakes in the claimant's adjudication application such as the payment claim is not supported by any documentary evidence or other material.

Q7. The SOP Act is to facilitate the cash-flow for claimants. Why are we lengthening the payment time where claimants are eligible for adjudication review?

A7. When claimants are eligible to apply for adjudication review, we want to prevent a situation whereby the claimant lodges the review application after receiving the adjudicated amount. Therefore, to protect respondents' interest, the Amendment Act will require respondents to only make payments to the claimants between the 8th and 10th day after the respondent is served the adjudicator's determination. This means that claimants will receive payment within 10 days instead of within 7 days based on the existing Act.

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