

Building and Construction Authority



Building and Construction Industry **SECURITY OF PAYMENT ACT**

A Quick Guide

INTRODUCTION

The Building and Construction Industry Security of Payment (SOP) Act aims to improve cash-flow of the construction industry by (i) providing a statutory right to payment and (ii) establishing adjudication as a speedy and low-cost payment dispute resolution mechanism.

TWO (2) TYPES OF CONTRACTS: CONSTRUCTION, SUPPLY

The SOP Act applies to **written contracts** for construction work; or supply of services or goods for construction projects carried out in Singapore. The Act does not apply to contracts for construction works or the supply of goods or services for residential properties which do not require any plan approval under the Building Control Act. For example, contracts for renovation of HDB flats where there are no structural works involved are not covered under the Act.

For Supply Contracts, please refer to details in the Information Kit.

THREE (3) KEY PARTIES: CLAIMANT, RESPONDENT, ADJUDICATOR

A claimant is a person who claims to be entitled to a progress payment under the Act.

A respondent is a person who may be liable to make a progress payment for the works carried out or goods and services provided by a claimant under a written contract.

An adjudicator is an experienced professional who is trained by the Authorised Nominating Body (ANB) to determine a payment claim dispute that has been referred for adjudication.

FOUR (4) IMPORTANT MILESTONES:

- Claimant issues Payment Claim
- Respondent issues Payment Response
- Parties resolve dispute in the Dispute Settlement Period
- Dispute not resolved, refer to Adjudication



INFORMATION ON ADJUDICATION

A speedy and low-cost alternative Dispute Resolution mechanism:

Adjudication is a dispute resolution procedure carried out by an independent person (called the adjudicator) to determine the amount payable, if any, that is due in respect of a claim made under the SOP Act. Only a claimant can initiate an adjudication.

Costs associated with Adjudication¹:

An application fee of \$600 is payable to the Authorised Nominating Body for processing each application. A separate adjudication fee is payable to the adjudicator - the adjudicator's fee shall not exceed \$2,400 for claims below \$24,000, and shall not exceed 10% of the claimed amount for claims above \$24,000. A deposit is required from the claimant before adjudication proceedings can commence.

¹ The costs stated are not inclusive of GST

Disclaimer:

This brochure outlines some of the rights and obligations under the Building and Construction Industry Security of Payment Act and Regulations. It does not go into details and does not cover all situations. 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.

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INFO FOR CLAIMANTS

A claimant must make a valid payment claim¹ on the respondent for:

A

Construction work done by the Claimant

B

Consultancy and related services provided by the Claimant

C

Provision of construction materials, equipment or plant or labour by the Claimant to carry out construction work



The days contained in the calendar below depict the statutory timelines that apply when contractual timelines are not specified in the written contract. Day defined under statutory timeline means any calendar day, excluding public holidays.

Note:

The Act allows contracts to specify a maximum of 21 days for the respondent to issue the payment response. If the contractual timeline is not specified, the respondent has to issue the payment response within 14 days.

FOR CONSTRUCTION CONTRACTS:



You serve **Payment Claim**

- (i) If the contract specifies a date / period to serve the payment claim: You should follow the contractual date / period to serve the payment claim.
- (ii) If a contractual date / period is not specified: You should follow the statutory timeline and serve the payment claim by the last day of the month.

DIFFERENT SCENARIOS COULD AFFECT THE TIMELINES

Scenario (1) and (2)

Scenario (1): Respondent issued Payment Response BUT disputed the amount

Scenario (2): Respondent did not issue Payment Response



Both parties resolve dispute amicably within the Dispute Settlement Period

If claimed amount remains disputed, you have the right to:

- 1 issue a notice of intention to Respondent and
- 2 file for adjudication against Respondent (within next 7 days)



You can apply for adjudication based on the **Payment Claim**



Scenario (3)

Scenario (3): Respondent issued Payment Response and confirmed the amount

You issue tax invoice to accept payment response

- (i) If the contract specifies a timeline for payment to be made: Respondent has to pay within the contractual timeline (Note: Respondent has to pay within a maximum of 35 days from the date the tax invoice is submitted to the respondent.)
- (ii) If a contractual timeline is not specified: Respondent has to follow the statutory timeline and pay within 14 days from the date the tax invoice is submitted to the respondent.



You check if Respondent has made full payment

If full payment is not made by the due date, you have the right to:

- 1 issue a notice of intention to Respondent and
- 2 file for adjudication against Respondent (within next 7 days)



You can apply for adjudication based on the **Payment Claim**

¹ Templates of a valid payment claim or payment response can be found on the BCA website: http://www.bca.gov.sg/SecurityPayment/others/SOP_sampleforms.doc

² This timeline assumes that the tax invoice is issued on the same day the Payment Response is due. The timeline would be extended by the same number of days taken to issue the tax invoice.



INFO FOR RESPONDENTS

A respondent must issue a payment response¹ whether he disputes the claim or not.

A payment response is a written statement stating the proposed amount to be paid to the claimant. It shall provide reasons for withholding any monies.



The days contained in the calendar below depict the statutory timelines that apply when contractual timelines are not specified in the written contract. Day defined under statutory timeline means any calendar day, excluding public holidays.

tip 1

Any objections to amount claimed will not be considered if you do not raise it in the Payment Response

FOR CONSTRUCTION CONTRACTS:



You receive Payment Claim

- (i) If the contract specifies a timeline to issue the payment response: You should follow the contractual timeline to issue a payment response (Note: You have to issue the payment response within a maximum of 21 days from the date the payment claim is served.)
- (ii) If a contractual timeline is not specified: You should follow the statutory timeline and issue the payment response within 14 days from the date the payment claim is served.

DIFFERENT SCENARIOS COULD AFFECT THE TIMELINES

Scenario (1) and (2)

Scenario (1) : You issue Payment Response BUT dispute the amount

Scenario (2) : You did not issue Payment Response



Both parties resolve dispute amicably within the Dispute Settlement Period

If claimed amount remains disputed, Claimant has the right to:

- 1 issue a notice of intention to you and
- 2 file for adjudication against you (within next 7 days)



Claimant can apply for adjudication based on the Payment Claim



Scenario (3)

Scenario (3) : You issue Payment Response and confirm the amount

Claimant issues tax invoice to accept payment response

- (i) If the contract specifies a timeline for payment to be made: You should pay within the contractual timeline (Note: You have to pay within a maximum of 35 days from the date the tax invoice is submitted to you.)
- (ii) If a contractual timeline is not specified: You should follow the statutory timeline and pay within 14 days from the date the tax invoice is submitted to you.



You make full payment

If full payment is not made by the due date, Claimant has the right to:

- 1 issue a notice of intention to you and
- 2 file for adjudication against you (within next 7 days)



Claimant can apply for adjudication based on the Payment Claim

¹ Templates of a valid payment claim or payment response can be found on the BCA website: http://www.bca.gov.sg/SecurityPayment/others/SOP_sampleforms.doc

² This timeline assumes that the tax invoice is issued on the same day the Payment Response is due. The timeline would be extended by the same number of days taken to issue the tax invoice.

EXAMPLE¹: CALCULATION OF TIMELINE

In this example, the fictional Contract ABC specifies the Contractor (which is the Claimant) is to serve payment claims on the last calendar day of every month. It also specifies that the Employer (which is the Respondent) is to serve a Payment Response within 21 calendar days upon the receipt of the payment claim.



Claimant serves Payment Claim on last calendar day
(i.e. 31 Jul 2018)



Respondent issues Payment Response (on or before last day)

Deadline for Respondent to issue Payment Response
(Note: Both 9 & 22 Aug 2018 are public holidays)

- By contract: 31 Jul 2018 + 21 calendar days = 21 Aug 2018
- By statute: 31 Jul 2018 + 21 days = 23 Aug 2018

The last day for Respondent to issue payment response is the earlier of the contractual or statutory period i.e. 21 Aug 2018

Scenario (1) : Respondent issues **Payment Response** on or before Day 21
BUT disputes the amount

Scenario (2) : Respondent did not issue **Payment Response** by Day 21

Note:

Do pay attention to how a “day” is defined in your contract or under the Act.

tip 2

Always note and comply with any timeframe imposed under the contract (unless they are invalid under the Act).

Where the contract provides for definitions and timelines (that are valid under the Act), parties shall observe the payment terms under the contract.

If the contract does not provide definitions and timelines, the default statutory definitions and timelines presented in the previous page apply.

Prior to entering the Dispute Settlement Period, parties should follow the contractual timelines as long as they are valid.



Parties resolve dispute amicably within the Dispute Settlement Period (on or before last day)

End of Dispute Settlement Period (Note: 22 Aug 2018 is a public holiday)

21 Aug 2018 + 7 days = 29 Aug 2018

If claimed amount remains disputed, Claimant has the right to:

- 1 Issue a notice of intention to Respondent *and*
- 2 file for adjudication against Respondent (within next 7 days)



Claimant applies for adjudication based on the Payment Claim (on or before last day)

Deadline to apply for adjudication application

29 Aug 2018 + 7 days = 5 Sep 2018

Upon entering the dispute settlement period, parties shall observe the statutory definitions and timelines defined under the Act.

tip 3

Under the Act, statutory timelines are based on a “day” which is defined as any day other than a public holiday.

¹ This (fictional) example is for illustrative purposes only. Actual project and contract details may vary.

POST-ADJUDICATION

If both parties accept the amount as specified in the adjudication determination, Respondent should make payment within 7 days.

Filing an appeal on the Adjudication Determination (i.e. Adjudication Review):

A respondent who is discontented with the determination is entitled to apply to review the determination if the amount determined exceeds the amount he responded to by more than \$100,000, on condition that he has paid the original adjudicated amount to the Authorised Nominating Body (ANB).

On the other hand, a claimant who is discontented with the determination is entitled to apply to review the determination if what he claimed exceeds the amount determined by more than \$100,000.

Adjudication Determination has been issued

Scenario (1): Respondent entitled to review



Respondent has 7 days to decide whether he wishes to review the determination.



Final day for Respondent to apply for review. Respondent who wishes to apply for review has to pay the adjudicated amount to the ANB before he is eligible to apply for a review.

Scenario (2): Claimant entitled to review



Final day for Claimant to apply for review.

If the Claimant applies for a review, Respondent pays upon the conclusion of the review.

Respondent should wait for 7 days to observe whether Claimant applies to review the determination.



If the Claimant does not apply for review, Respondent should pay within the next 3 days.

When Respondent fails to pay the adjudicated amount, Four possible remedies are possible under SOP Act

01

Claimant can suspend construction work and/ or supply of goods and services

02

Claimant can file the adjudication determination in Court as a judgment debt

03

Claimant can exercise lien over unfixed goods that have not been paid for

04

Respondent's immediate client (the Principal) may pay the claimant directly

For more information on Adjudication, you may wish to:



Visit BCA's website <https://www1.bca.gov.sg/growth-and-transformation/procurement/procurement-and-legal-frameworks/security-of-payment-act/>
Visit ANB's website <https://www.mediation.com.sg/business-services/adjudication/>



Consult relevant professionals for advice



Attend the SOP Act-related courses organised by BCA or other training providers

