

Insights

LEGCO IN-HOUSE LAWYERS REQUEST CLARIFICATIONS REGARDING THE SECURITY OF PAYMENT BILL

Jun 24, 2024

On 19 June 2024, the Legal Service Division of the LegCo wrote a letter to the Development Bureau seeking to clarify certain matters in the Construction Industry Security of Payment Bill (“Bill”).

The Legal Service Division has requested the Development Bureau to respond before the next meeting of the Bills Committee, which was formed on 31 May 2024.

These requests for “clarification” (some of which are Legal Service Division’s comments and suggestions on the Bill) raise important practical issues about the operation of the Bill, and may persuade the Development Bureau or LegCo members to fine-tune the current wording of the Bill.

Some noteworthy comments set out in the letter by the Legal Service Division are as follows:

- 1. Splitting of contracts:** As highlighted in our earlier Insight, there was a concern by some LegCo members that industry stakeholders may split projects in order to circumvent the legislative proposal. The Legal Service Division queried whether there would be measures against industry stakeholders splitting contracts. As raised by the Legal Services Division, a possible way to tackle this is to expand Clause 11 of the Bill (which bans contracting out of this legislation) to include multiple contracts which have the effect of excluding, modifying or restricting the operation of the Bill. (Paragraph 5)
- 2. Eligibility of adjudicators:** As regards the eligibility and background of the adjudicators, the Legal Service Division queried whether it is appropriate to require the adjudicators to possess certain professional qualifications (e.g. degree or diploma in construction and engineering) or a minimum period of relevant experience under Clause 28 of the Bill. (Paragraph 9)
- 3. Adjudicator’s independence and impartiality:** The Legal Service Division requested the Development Bureau to clarify the proposed procedure for a nominating body upon receiving a declaration or disclosure from an adjudicator during the adjudication process concerning circumstances likely to give rise to justifiable doubts as to the adjudicator’s independence and impartiality, and in particular, whether the nominating body should appoint a replacement adjudicator in such circumstances. (Paragraph 10)

4. **Termination of adjudication proceedings:** One of the grounds of terminating the adjudication proceedings is where the nominating body considers that the adjudicator is unable or ineligible to act as the adjudicator (Clause 41(f) of the Bill). The Legal Service Division queried how the nominating body would make this determination and whether the nominating body would exercise any supervisory function during the adjudication proceedings. The Legal Service Division also queried whether the parties should be given the power to terminate under a wider range of circumstances, e.g. where a party considers that the adjudicator is unable or ineligible to act as the adjudicator, or that the adjudicator cannot make a determination fairly on time. (Paragraphs 17 and 18)

BCLP will continue to provide key updates of the above matters and the Bill's developments in the LegCo generally as and when they occur.

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MEET THE TEAM



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