

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2004

A Brief Introduction to the Act



“Improving cash-flow by expediting payment in the building and construction industry.”

KEY FEATURES OF THE ACT

Parties carrying out work or supplying goods or services in the construction industry for projects in Singapore have a right to payment.

The Act applies to all written contracts including supply of goods or services except for construction work carried out or goods or services supplied on any residential property which does not require the approval of the Commissioner of Building Control under the Building Control Act.

The Act bars “pay when paid” and “pay if paid” clauses in any contract and any contract provision that attempts to contract out of the Act is void.

Contracting parties can agree on terms of payment including when payments are due under the contract. However, the Act will provide for default payment periods if there are no contractual provisions, as well as maximum number of days for payment response and payment due under a contract.

The claimant has the right to apply for adjudication through the Authorised Nominating Body (ANB) if he does not receive any payment response or full payment or disputes the response amount by the respondent.

The ANB shall appoint an adjudicator whose determination is binding and the adjudicated amount is payable by the due date unless and until the dispute is determined by a court or tribunal or at any other dispute resolution proceeding, or settled by agreement of the parties.

The respondent may apply for the review of the adjudication determination if he is unhappy with the determination, provided the disputed amount is large.

The principal who is the respondent’s immediate client can make direct payment to the claimant when the respondent fails to pay the adjudicated amount and recover it from the respondent.

The claimant is entitled to suspend work or supply if the respondent fails to pay the full adjudicated amount. The suspension ends when full payment is made.

The Act also includes other recourses to the claimant such as the right to exercise lien on goods and enforcement of an adjudication determination as a judgment debt.

QUESTIONS & ANSWERS

Q: What type of contract is covered?

A: The Act applies to all **written** contracts for construction work or supply of services or goods for construction projects carried out in Singapore.

Q: Does the Act apply to construction or supply contract in relation to residential property?

A: 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 Building Plan submission under the Building Control Act. For example, renovation contracts for HDB flats are not covered under the Act.

Q: Who can make claims under the Act?

A: Any person who, under a contract concerned, has carried out construction work or supplied goods or services can make payment claim under the Act. For example, a main contractor claiming against a developer/owner or a subcontractor claiming against the main contractor.



Q: What can a claimant claim for?

A: A claimant can make a payment claim on the respondent for:

- a) construction work done by the claimant;
- b) consultancy and related services provided by the claimant; or
- c) provision of construction materials, equipment or plant or labour to carry out construction work.

This includes a single or one-off payment as well as monthly payment or stage payment, including final payment.

Q: How should a claimant make a claim?

A: The payment claim must:

- a) be made within the period stated in the contract;
- b) be in writing and served on the respondent;
- c) identify the contract which the claim relates;
- d) identify and describe the items claiming for; and
- e) state the claimed amount supported with relevant documentation and calculations.

Q: What is a payment response?

A: A payment response is a written statement stating the proposed amount to be paid to the claimant by the respondent who shall provide reasons for withholding any monies if the response amount is less than the claimed amount.

For a pure supply contract, the respondent is not required to serve a payment response. He is deemed to accept the goods when he acknowledges the delivery and payment has to be made to the claimant accordingly.

Q: When should the respondent respond?

A: The respondent must issue a payment response according to the contract provision subject to maximum of 21 days after a payment claim is served. In the absence of contractual provision, the response due date shall be 7 days after a payment claim is served.



Q: What happens if the response amount is less than the claimed amount or if the respondent does not give a payment response?

A: The claimant may accept the reasons given, if any, by the respondent for partial payment and wait for payment or he may clarify the matter with the respondent and attempt to achieve mutual settlement if he disputes the response amount. The same approach shall apply if there is no response from the respondent.

The respondent has up to 7 days after the date allowed for response to vary the payment response or provide a payment response if he fails to do so earlier. If the dispute remains unresolved on the expiry of this 7-day settlement period, the claimant may apply for adjudication under this Act.

Q: When should the respondent pay the claimed amount?

A: The respondent must pay the claimant according to the contract provision subject to maximum of 35 days after the date of payment response or tax invoice is provided. In the absence of contractual provision, the payment due date shall be 14 days after a payment response is served.

For pure supply contracts, payment must be made according to contract provision subject to maximum of 60 days after a payment claim is served or 30 days in the absence of contractual provision.

Q: What happens if the respondent does not pay by the due date for payment?

A: If the respondent does not pay the claimant the full amount stated in the payment response or tax invoice by the due date, the claimant may apply for adjudication under this Act.

Q: What is an adjudication?

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

Q: What is an Authorised Nominating Body (ANB)?

A: An ANB is a body authorised to receive and administer adjudication applications and adjudication responses, appoint adjudicators, issue adjudication determinations and provide relevant support to facilitate adjudication.

Q: What happens if the respondent fails to pay the adjudicated amount?

A: The claimant can file the adjudication determination, supported with an affidavit stating the outstanding amount, in court as a judgment debt. The claimant can also suspend construction work or supply of goods or services, and/or exercise lien over unfixed goods supplied by the claimant and which have not been paid for.

The principal who is the respondent's immediate client may also make direct payment of the outstanding amount to the claimant.

Q: What is the effect of adjudication determination?

A: An adjudication determination made under this Act is binding on the parties unless the dispute is re-adjudicated and determined by the review adjudicator(s) or finally determined by a court or tribunal or at any other dispute resolution proceeding, or settled agreement of the parties. However, the adjudicated amount in the first instance must be paid.

Q: What are the important things that the one needs to check when using the Act?

A: One should:

- a) know the contract, its payment terms and particulars of the parties concerned;
- b) seek legal advice if either party to the contract is insolvent;
- c) check the Act for details on how to make a valid payment claim, provide payment response and make adjudication submission; and
- d) note and comply with any timeframe imposed under the contract and the Act.



RELEVANT REFERENCES

An Information Kit, which outlines the basic rights and obligations as well as the key features of the Building and Construction Industry Security of Payment Act, has been produced for benefit of everyone in the building and construction industry.

A copy of the Information Kit, which includes sample forms and notices that can be used under the Act, is downloadable from the Building and Construction Authority website at: http://www.bca.gov.sg/SecurityPayment/security_payment_legislation.html

USEFUL CONTACTS:

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CAUTION:

This brochure only outlines some of the rights and obligations under the Building and Construction Industry Security of Payment Act. It does not go into details and does not cover all situations. For full appreciation of rights and obligations, the reader should consult the Act or obtain relevant legal advice.