

DRAFT

CIC/CMT/P/055/11  
(for discussion)

**Construction Industry Council**

**Committee on Subcontracting**

Meeting No. 005/11 of the Committee on Subcontracting for 2011 was held on 22 November 2011 (Tuesday) at 2:30pm at Meeting Room 1, CIC Headquarters, 15/F Allied Kajima Building, 138 Gloucester Road, Wan Chai, Hong Kong.

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Summary Notes of the Committee on Subcontracting Meeting No. 005/11:

<b>Agenda Item</b>	<b>Paper</b>	<b>Major Resolutions/ Progress Highlights</b>
5.1	CIC/SBC/R/004/11	<u>Confirmation of the Progress Report of the Previous Meeting</u> - Members of the Com-SBC approved the Progress Report CIC/SBC/R/004/11 of the last meeting held on 2 September 2011.
5.2		<u>Matters Arising from the 3<sup>rd</sup> Meeting for 2011 - Task Force on Voluntary Subcontractor Registration Scheme Stage 2</u> In order to maintain a balanced representation of expertise from related sectors and the non-directly relevance of union's participation in VSRS daily operations, Com-ANF proposed to revise the membership composition to "3+3+3" with a maximum number of three members to be appointed respectively from the sectors of "Employers", "Main Contractors" and "Specialist Sub-contractors/Sub-contractors". Representatives of Construction Site Workers General Union reiterated that the participation of labour unions would help smoothen the deliberation within the Management Committee but given they might have resources limitation,

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		in order not to affect the operation of the Management Committee, they would not object to the proposal. With no adverse comments from Members, the amendment to the composition of the VSRS Management Committee was approved.
5.3	CIC/SBC/P/031/11	<u>Discussion of the Exploitation of Workers by Subcontractors</u> - With no further details provided by the ICAC and taking into consideration that CIC was not a law enforcement agency, Members proposed the best way to address this problem was to encourage workers to report any alleged act of malpractice immediately to the ICAC without hesitation or to refer such cases to the ICAC or the authority concerned for investigation. However, it was considered as a normal practice which should be differentiated from the scenario raised by ICAC that some foremen, who were paid on a commission basis, were authorised by the sub-contractors as recruitment agents looking for temporary workers.
5.4	CIC/SBC/P/032/11 CIC/SBC/P/033/11	<u>Task Force on Dispute Resolution Documentation</u> - The task force would propose a set of new rules for expert determination, which currently had not been exist in Hong Kong. Upon the finalisation of the report, the task force would also review the feasibility of establishing expert panels with the support from HKIE, HKIA and HKIS as well as the HKIAC to be the neutral third party.  The task force had concluded the deliberations of the exclusion of liability rule and the authority between the architect/the engineer and the expert. Under the general condition of contract, the

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		<p>architect/the engineer had the ultimate decision-making power to give instruction of the works. The architect/the engineer could decide if the expert determination would be followed and the contractor should act in accordance with the instruction given by the architect/the engineer. However, the expert determination would form the basis for the contractor to claim for financial compensation.</p> <p>The task force had basically completed the discussion of all dispute resolution mechanisms. Any modifications and fine tuning of the rules would be carried out in due course. Members would be kept updated on the proposition of adjudication as default option.</p>
5.5	CIC/SBC/P/034/11	<p><u>Task Force on Security of Payment Legislation</u> - DevB would present a draft report with analysis which was still under preparation. It might be available for presenting at the task force meeting scheduled for 1 December 2011 or at a later date.</p> <p>Apart from Singapore, some Australian states, New Zealand and the UK, Malaysia was about to enact security of payment legislation for the construction industry in December this year.</p> <p><i>[PMN: As advised by DevB, the analysis of survey findings would not be ready by 1 December 2011, the task force meeting would be deferred to 6 January 2012.]</i></p>
5.6	CIC/SBC/P/035/11 CIC/SBC/P/036/11 CIC/SBC/P/037/11	<p><u>Task Force on Standard Contract Provisions for Domestic Subcontracts</u> - An insurance practitioner from the Hong Kong Federation of Insurers was invited to brief Members on the</p>

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		<p>existing construction related insurance policies. Three issues were highlighted on the subjects of standard insurance coverage as well as the administrative charge:</p> <p>i) Self-employed persons and/or sole proprietors are not “employees” and hence would not be covered by the employees’ compensation insurance by default. However, Members opined that self-employed persons who performed a range of manual labouring jobs at building and construction sites should also be regarded as employees and they should not be treated less favorably than ordinary employees simply because of their employment status.</p> <p>Unlike EC insurance, personal accident insurance was strictly speaking not an alternative to EC insurance because the personal accident insurance provides cash benefits to the insured that could only be procured by self. Even if the self-employed person had arranged a personal accident insurance and was compensated with the sum insured, it would not serve to reduce the contractor’s compensatory liability.</p> <p>Committee Members gave full support to the view that the construction industry should urge the insurance sector to extend the coverage to self-employed persons who had no compensatory insurance for injury.</p> <p>ii) Contractors’ all risks and third party liability insurance would not indemnify claims by injured self-employed persons and/or sole proprietors by reason of the exclusion Clause 4.6.1.2</p>

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		<p>in the standard CAR insurance policy. Besides, if the third party liability insurance policy arranged by the employer under the main contract without a cross-liability clause, it would be impossible for the main contractor to arrange for a separate policy with cross-liability coverage because such an insurance plan was not available on the market.</p> <p>To solve the problems faced by self-employed persons and the proposition of incorporating cross-liability clause as a new standard provision in third party liability insurance, the Secretariat was asked to arrange a meeting between the stakeholders of construction industry, the Hong Kong Federation of Insurers, DevB and Labour Department.</p> <p>iii) To prevent main contractors from suppressing accident reporting to avoid negative impacts on company performance, Chairman sought support from Com-CSS to conduct a review of the current safety performance measurement system and to provide a breakdown of accidents by different levels of severity with a view to exploring the possibility of segregating the calculation of accident rate in accordance with the severity of accident.</p>
5.7	CIC/SBC/P/038/11	<p><u>Update on VSRS Operations</u> - Members were brought to the attention of a draft letter tabled at the meeting that the Management Committee of VSRS would adopt a more stringent regulatory action against subcontractors who had committed safety-related offences resulting in fatality from 1 January 2012.</p>

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		To increase awareness, education and recognition amongst subcontractors, the Management Committee was advised to defer the effective date of implementation by three to six months to ensure that the Secretariat had adequate time to properly disseminate the key messages and details.
5.8	CIC/SBC/P/039/11	<u>Tentative Work Plan for Year 2012</u> - In continuation of last year's works, the Committee would continue to carry out and complete the tasks specified in the paper. Should the enactment of security of payment legislation be required, more effort, not only the Task Force on Security of Payment but also the Committee as a whole, would be made.
5.9	CIC/SBC/P/040/11	<u>Tentative Meeting Schedule for Year 2012</u> - Four committee meetings for 2012 were tentatively scheduled on 3 January, 3 April, 3 July and 9 October respectively.
5.10		<u>Any Other Business</u> - In consultation with the DevB, the HKIAC had revised the Domestic Arbitration Rules to bring them into line with the new Arbitration Ordinance which came into effect on 1 June 2011. Members were welcome to send comments to the Secretariat no later than 5 December for consolidation.