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8 July 2024

Ir Dr The Hon LO Wai-kwok, GBS, MH, JP  
Chairman  
Bills Committee on Construction Industry Security of Payment Bill  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Ir Dr The Hon LO

**The Hong Kong Institution of Engineers (HKIE) fully supports  
the Construction Industry Security of Payment Legislation (SOPL)**

The Hong Kong Institution of Engineers (HKIE) would like to express our full support to the Government in introducing the Construction Industry Security of Payment Bill into the Legislative Council and we seek for a smooth passage of the legislation as soon as possible.

The Hong Kong Institution of Engineers was incorporated in 1975 under the Hong Kong Institution of Engineers Ordinance, Chapter 1105 of the Laws of Hong Kong as the city itself went through decades of phenomenal growth in areas of infrastructure, industrial and social development with engineers playing their pivotal roles during such process.

We are a professional institution with over 30,000 members with 22 engineering disciplines and 19 Divisions to serve our members and to diversify and intensify our contributions to the development of Hong Kong. Many of our members are practitioners in the construction industry, playing vital roles in Client, Consultant, contractor and supplier organizations. We have all along actively participated in the discussions on the draft Bill for SOPL with the Government and other stakeholders in the industry. After more than two decades of discussions, we are glad that the Bill is eventually finalized with the scope and coverage established attempting to strike a balance between extending the protection to as many stakeholders as possible while satisfying the interests among individual groups of stakeholders.

We trust that the SOPL will bring about enhanced protection to the stakeholders along the supply chain in the construction industry, in particular in the following aspects:

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#### Improvement of contract payment terms

The SOPL requires paying parties to respond to payment claims and settle full admitted amount within stipulated time limits, and forbids the unfair payment terms such as “pay when paid” and “pay if paid”. The SOPL establishes a level playing field for practitioners such that working parties can obtain timely payment corresponding to their works done. It definitely secures a regular and healthy cash flow along the supply chain in the construction industry.

#### Introduction of adjudication mechanism

The SOPL introduces the adjudication mechanism with a view to resolving payment disputes in a rapid and cost effective manner. Claiming parties are allowed to initiate adjudication when payment disputes arise. Since the adjudicator’s determination is binding in the interim, claiming parties do not have to wait till the completion of the entire works for initiating costly and timely arbitration or litigation in order to obtain their entitled payment. We believe that this arrangement can further help ensure the proper cash flow along the supply chain of the industry. However, it is important to ensure that the adjudication process remains fair and impartial. Therefore, we recommend that the Bill explicitly exclude without prejudice communications from adjudication submissions to protect the integrity of settlement negotiations and align with existing legal frameworks.

As one of the Adjudicator Nominating Bodies under the Government’s Security of Payment Provisions for Public Works scheme, we have been heavily engaged in the discussions with the Government to formulate the details of the adjudication mechanism such as adjudicator eligibility criteria and adjudication documents including practice notes. Although adjudication is a rather new dispute resolution mechanism in local construction industry, we have wealth of learned and accredited adjudicators who are construction professionals proficient in contract administration and/or dispute resolution in local construction industry. We are confident that there are sufficient well-trained and competent adjudicators capable to fairly and timely adjudicate the payment disputes under the SOPL.

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Entitlement to suspend works or supply

The SOPL also provides for the working parties to suspend the works in the event that they do not fully receive their entitled payments. Whilst this is probably the last resort that working parties may adopt to claim their entitled payment and prevent further losses, we do not foresee that the working parties will casually exercise this right. However, this is a very useful tool and means to protect their limited right.

Implementation of the SOPL will definitely enhance protection to stakeholders of the construction industry in respect of securing their cash flow, which will ultimately foster a healthy and sustainable development in the construction industry. By refining the draft to exclude without prejudice communications and align with the Mediation Ordinance, the legislature can preserve the efficacy and fairness of the adjudication process. We look forward to the smooth passage of the SOPL, and we are committed to render full support to the Government in preparing for the implementation.

Thank you for your kind attention.

Yours sincerely



Ir Eric S C MA  
President