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Report of the Bills Committee on Construction Industry Security of Payment Bill

Purpose

This paper reports on the deliberations of the Bills Committee on Construction Industry Security of Payment Bill (“the Bills Committee”).

Background

2. The construction industry is an important driver of economic growth and social development in Hong Kong. It also provides livelihoods for hundreds of thousands of people in the labour force. There is a wide coverage of construction works¹ involving the participation of different stakeholders, including project owners, contractors, subcontractors, works consultants and suppliers. Construction works involve a variety of professions/trades and there are unique features for individual projects. It is difficult for an individual contractor (or works consultant) to rely on its own resources to undertake the entire works (or services). To enhance the flexibility in works procurement, subcontracting arrangement is commonly adopted in the local construction industry. Besides, stakeholders often need to use their own capital to commence the works, and then receive payments for the works, professional services, materials, plants and/or equipment, etc. from the paying parties in accordance with the progress of works and the payment terms in contracts. Since many works projects involve a large amount of capital, smooth cash flow is very crucial to the effective implementation of the works by various stakeholders in the supply chain.

3. According to the findings of an industry-wide survey and a follow-up study conducted by the Development Bureau (“DEVB”) in 2011 and 2023 respectively on the payment practices of the construction industry, the average outstanding payments per annum of the contractors, subcontractors, works consultants and suppliers accounted to 8%, 12%, 10% and 5% of the

¹ Including site formation, infrastructure, railways and housing construction.

total business receipts respectively, and payments are generally delayed for more than 6 months. In view of this, there have been long-standing calls from the construction industry for the introduction of construction industry security of payment legislation to ameliorate payment issues in the industry and provide a mechanism for speedy resolution of payment disputes.

Construction Industry Security of Payment Bill

4. Receiving its First Reading at the Council meeting of 29 May 2024, the Construction Industry Security of Payment Bill (“the Bill”) seeks to:

- (a) facilitate the recovery of payments under construction contracts;
- (b) provide a mechanism for speedy resolution of payment disputes under certain construction contracts through adjudication proceedings;
- (c) give a right to a party to a construction contract, under certain circumstances, to suspend or reduce the rate of progress of the construction works or the supply of related goods and services under the contract; and
- (d) provide for related matters.

5. The main provisions of the Bill are detailed in paragraph 29 of the Legislative Council Brief (File Ref: [DEVB\(CR\)\(W\)1-10/48](#)) and paragraphs 4 to 10 of the Legal Service Division Report on the Bill ([LC Paper No. LS35/2024](#)). The Bill, if passed, will come into operation on the expiry of eight months after the day on which it is published in the Gazette as an ordinance, except for the provisions mentioned in clause 1(3) of the Bill² (including those relating to the functions of the Secretary for Development (“the Secretary”) and the adjudicator nominating bodies, the Secretary’s proposed power to amend the Schedules to the Bill and the proposed consequential amendment to the Administrative Appeals Board Ordinance (Cap. 442). These provisions will come into operation on the day on which the enacted Ordinance is published in the Gazette.

² Division 1 of Part 1, clause 2 (in so far as it relates to Divisions 1, 2 and 4 of Part 5, except clause 66), Divisions 1, 2 and 4 of Part 5 (except clause 66), and Part 6 of the Bill.

The Bills Committee

6. At its meeting on 31 May 2024, the House Committee agreed to form a Bills Committee to scrutinize the Bill. Ir Dr Hon LO Wai-kwok and Ir Hon CHAN Siu-hung were respectively elected as Chairman and Deputy Chairman of the Bills Committee. The membership list of the Bills Committee is in [Appendix 1](#).

7. The Bills Committee held 11 meetings with the Administration and received views from the public at one of the meetings. A list of the organizations and individuals which/who have given views to the Bills Committee is in [Appendix 2](#). At the request of the Bills Committee, the Administration has provided written responses ([LC Paper No. CB\(1\)1296/2024\(03\)](#)) to the submissions³ received by the Bills Committee and the views expressed by deputations/individuals at the aforesaid meeting.

Deliberations of the Bills Committee

8. Members of the Bills Committee in general support the proposals in the Bill with a view to ameliorating the prevailing situation of payment delays in the construction industry. However, members are concerned whether the Bill is effective in addressing the payment issues arising under different circumstances in the industry, in particular the payment disputes arising from delays in final payments under works contracts. Members have also suggested that the Administration should review the extension of the scope of the Bill to deal with payment disputes in relation to contracts for large-scale maintenance works for private residential buildings. Regarding the adjudication mechanism proposed to be introduced under the Bill, members have highlighted the importance to ensure consistency in the implementation of the adjudication mechanism by different professional bodies and no potential conflicts of interest on the part of adjudicators in the cases they handle. In support of the early commencement of the Construction Industry Security of Payment Ordinance (“the Ordinance”), the Bills Committee urges the Administration to review the scope of application of the Ordinance and continue to refine the implementation details after the Ordinance has come into operation for a period of time and relevant experience has been accumulated. The deliberations of the Bills Committee are summarized in the ensuing paragraphs, with the major issues discussed including:

³ The submissions from organizations and individuals on the Bill are available on the [LegCo website](#).

- (a) [Scope of the Bill](#) (paragraphs 9 to 17);
- (b) [Operation of the proposed adjudication mechanism](#) (paragraphs 18 to 37);
- (c) [Eligibility and appointment of adjudicators](#) (paragraphs 38 to 49);
- (d) [Claiming party's right to suspend or reduce the rate of progress of work or services](#) (paragraphs 50 to 56);
- (e) [Proposals to improve the payment terms of contracts](#) (paragraphs 57 to 59); and
- (f) [Implementation timetable for the Bill](#) (paragraphs 60 to 65).

Scope of the Bill

Proposal to extend the scope of the Bill

9. The Bills Committee has suggested that more works be covered by the Bill as far as practicable. Regarding private residential buildings, some members have pointed out that many building maintenance works under the Operation Building Bright 2.0 are large-scale works and entail considerable project costs, with the value of some works contracts exceeding as much as \$100 million. However, the Administration has advised that as the ultimate paying parties in maintenance works for private residential buildings are owners' corporations or owners, who will face practical difficulties in meeting the requirements under the Bill, such works are not included in the scope of the Bill to avoid disturbance to the public.

10. The Administration has remarked that it has discussed the application of the Bill with industry stakeholders⁴ for a number of times, and there is a broad consensus in the industry on the current proposal, which balances the impact of the Bill on the industry and the public to avoid unnecessary nuisance to the general public and small enterprises. For large-scale maintenance works for private residential buildings, owners' corporations and property management companies have to take into account the opinions of owners when handling payment disputes and, in normal circumstances, they need to convene meetings to vote on major issues. They may not be able to comply with the stringent time requirements set out for adjudication

⁴ Such industry stakeholders include public and private organizations, owners, owners' corporations, related business associations in the property management industry, professional bodies and regulators, contractors, subcontractors.

proceedings under the Bill.⁵ Moreover, as there are already occupants in the properties, if a subcontractor exercises the right to suspend work during the course of maintenance works, the residential owners and occupants concerned will be exposed to safety and hygiene problems, etc. arising from the suspension of work. The property management industry also considers that applying the Bill to maintenance works for existing private residential buildings involves practical difficulties and may discourage owners from rehabilitating their old buildings. For these reasons, the Administration does not recommend such works be covered by the Bill at this stage. While understanding the Administration's consideration, members have urged the Administration to review whether it is appropriate to cover large-scale maintenance works for private residential buildings under the Ordinance after relevant experience is accumulated from the implementation of the Ordinance. The Administration has undertaken to continue to listen to views, and will conduct a review when appropriate to examine the scope of the Ordinance as necessary.

Minimum contract value specified under the Bill

11. The Bills Committee notes that the Bill applies to works contracts of \$5 million or above.⁶ Given the wide scope of construction work, some members are concerned whether the Bill covers the various professions and trades involved in construction works, including the services provided by self-employed persons (e.g. dump truck drivers) and the general work in some trades (e.g. landscaping services), most of which do not meet the minimum contract value requirement specified in the Bill.

12. The Administration has advised that the \$5 million threshold currently stipulated in the Bill only applies to main contracts. As far as an ordinary construction site is concerned, a main contract value of \$5 million is a very small amount in a relative sense. In other words, as long as the main contract value for site construction works is not less than \$5 million, any kinds of subcontracts involved (including subcontracts involving landscaping works or self-employed persons such as dump truck drivers), whether written or oral, will be protected by the Ordinance even if the contract value of the subcontracts is less than \$5 million. The minimum contract value specified for the application of the Bill serves to avoid

⁵ For instance, owners/owners' corporations may not be able to serve an adjudication response within 20 working days after the date on which an adjudication submission is served as they need to take into account the views of many owners and convene meetings to vote on major issues.

⁶ The minimum contract value is proposed to be HK\$5 million if the main contract is entered into for the carrying out of construction work. The minimum contract value is proposed to be HK\$500,000 if the main contract is entered into for the supply of related goods or services only.

imposing out-of-proportional legal and contract administrative burdens for small-scale works.

The applicability of the Bill to construction contracts procured in different circumstances

13. Members have pointed out that some construction contracts may be jointly signed by private organizations, bodies specified in Schedule 3 to the Bill and residential property owners which/who own title to different parts of the buildings; and in reality, buildings may be used for both residential and commercial purposes, as well as other non-exempted purposes such as staff quarters. In case of different mixed circumstances where regulated and exempted areas are involved, the industry may not be sure whether a construction contract is covered by the Bill and how the contract value of the regulated part is calculated. In this connection, members have requested the Administration to explain how construction contracts involving different mixed circumstances are dealt with under the Bill, and to provide the industry with clear and easy-to-understand guidance on the principles of applicability and scope of the Ordinance.

14. The Administration has explained that as regards whether the Bill applies to construction contracts procured in different circumstances, relevant requirements are mainly set out in clauses 4, 5, 7, 8 and 9. The scope of application to a construction contract is determined based on, firstly, whether its main contract is a “public contract”⁷ or a “main private contract”⁸. If a construction contract is a “public contract” under clause 4, the applicability of the Bill to this “public contract” or its “subcontract” depends on whether the “public contract” satisfies clause 7(1)(a). If the “public contract” is entered into on or after the effective date of clause 7(1) (i.e. eight months after the day on which the Ordinance is published in the Gazette), and its contract value is not less than the value specified in Schedule 4 on the date of entering into the contract, then the Bill will apply to the “public contract” and its “subcontract” (regardless of whether the construction work carried out under these contracts is new works or repair and alteration works). However, the Bill does not apply to any part of these

⁷ Under clause 4(1) of the Bill, a “public contract” is defined to mean a construction contract to which one party is the “owner” and the “owner” is a “specified entity” (If there is more than one “owner”, it refers to the situation of at least one “owner” being a “specified entity”), which is the Government, a specified entity in Schedule 3 or its subsidiary undertaking as defined in clause 4(3) of the Bill.

⁸ Under clause 4(2) of the Bill, if none of the “owners” of the main contract is the Government, a specified entity in Schedule 3 or its subsidiary undertaking, the contract is a “main private contract”.

contracts that falls within the description of clause 9(1)⁹ or 9(2)¹⁰ of the Bill.

15. The Administration has further advised that if a construction contract is a “main private contract” under clause 4 and satisfies clause 8(1)(a) (i.e. the “main private contract” is entered into on or after the day of the expiry of eight months after the Ordinance is published in the Gazette, and on the date of entering into the contract, its contract value calculated in accordance with clauses 8(3) and (4) is not less than the value specified in Schedule 4), the Bill applies to the “main private contract” and its “subcontract” (regardless of whether the construction work carried out under these contracts is new works or repair and alteration works). However, the Bill does not apply to any part of these contracts that falls within the description of clause 9(1)⁹, 9(2)¹⁰ or 9(3)¹¹ of the Bill. For example, if contracts are entered into by owners’ corporations and contractors for carrying out any works (e.g. addition of plant rooms and repairs to external walls) in the “common parts” of existing residential buildings, the Bill does not apply to these contracts and their “subcontracts”.

16. Regarding some members’ concern about the situations of repair and alteration works carried out in existing composite buildings (e.g. buildings partially for residential purposes and partially for commercial purposes), the

⁹ Under clause 9(1) of the Bill, the Bill does not apply to contract provisions in respect of which the consideration payable is calculated otherwise than by reference to the value of the construction work or related goods and services (Taking the operation part under a Design-Build-Operate main contract as an example, maintenance works are generally self-funded by the revenue generated during the operation), or contract provisions in respect of which a party to the contract carries out the construction work as an employee.

¹⁰ Under clause 9(2) of the Bill, the Bill does not apply to a construction contract to the extent that it deals with the construction work as defined in clause 3 carried out outside Hong Kong or related goods and services supplied for construction work carried out outside Hong Kong. For example, if a building proposed to be constructed under a contract is located outside Hong Kong, the Bill does not apply to the contract provisions relating to the proposed building.

¹¹ Under clause 9(3) of the Bill, the Bill does not apply to those parts of the “main private contract” and its “subcontract” that are existing residential unit or the related “common parts”. The “common parts” in clause 9(3) refer to the common parts of a building, within the meaning of section 2 of the Building Management Ordinance (Cap. 344), that contains existing residential units. A deed of mutual covenant usually specifies the demarcation of “common parts”.

Administration has advised that if a party to a contract¹² is the “owners” and such “owners” include a “specified entity” and a private residential owner or an owner of commercial establishment (e.g. a retail shop or an office), the contract is a “public contract” under the Bill. If its contract value is not less than the value specified in Schedule 4, the Bill applies to the relevant part of the “public contract”.¹³ If repair and alteration works are carried out in an existing composite building under a “main private contract”, its contract value should include the value of the works carried out in the non-residential part (e.g. certain floors of retail shops, offices, guesthouses or hostels/quarters¹⁴) which require the approval and consent of the Building Authority under section 14(1) of the Buildings Ordinance (Cap. 123) before the works are commenced or carried out (i.e. commonly referred to as requiring “BA’s approval” in the industry), but not include the value of any construction work carried out in the existing residential units and related “common parts”. If the contract value so calculated is not less than the value specified in Schedule 4, the Bill applies to the non-residential part under the “main private contract” and its “subcontract”. The Administration has undertaken to provide the industry with clear and easy-to-understand guidance, and publicize and briefly introduce the aforesaid principles of applicability and scope to the industry.

¹² A party to a contract does not include an agent of a party to the contract. For example, the property management sector has indicated during the consultation that under some circumstances, a “specified entity” in Schedule 3 may obtain the authorization of the owners of a building to act as their agent to sign a maintenance contract with a contractor, but the parties to the maintenance contract remain the owners and the contractor, and the maintenance contract is therefore not a “public contract”.

¹³ If any part of the contract falls within the description of clause 9(1) or 9(2) of the Bill, the Bill does not apply to that part.

¹⁴ For student hostel and staff quarter under item 2 of Schedule 1 to the Bill, there is no relevant definition in existing legislation. The parties to the contract have to determine whether the premises is a student hostel or staff quarter as generally understood by ordinary people based on the facts and circumstances of each case. Practically, if construction work which requires BA’s approval is to be carried out in a building, the contracting parties should have sufficient information to define whether the premises is one of those specified in Schedule 1. However, it is uncommon for construction work that requires BA’s approval with a value not less than the value specified in Schedule 4 to be carried out in hostels/quarters located on certain floors of an existing composite building. On the contrary, a more common example is that the entire building is a student hostel or staff quarter, and the owner may carry out addition or alteration works in the building which require BA’s approval and the value of such works is not less than the value specified in Schedule 4.

Schedule 3 to the Bill – Bodies Specified for Definition of Specified Entity in Section 4(3)

17. As telecommunications companies may carry out construction works involving specified structures (e.g. works used for telecommunications), members have urged the Administration to review whether telecommunications companies should be included in Schedule 3 to the Bill as “specified entities”. In response to the Bill Committee’s suggestion, the Administration will propose an amendment to Schedule 3 to the Bill to include major telecommunications service providers therein.

Operation of the proposed adjudication mechanism

Adjudication rules, practice notes, and codes of conduct for adjudicators

18. The Bills Committee notes that in exercising the functions of the Secretary under clause 61(1)(a) of the Bill, the Secretary should oversee the performance of the functions of a nominating body. Clauses 63(d) and 63(e) of the Bill respectively provide that the functions of a nominating body include making adjudication rules and practice notes as well as a code of conduct for adjudicators. In this connection, members are concerned how the Administration ensures that the adjudication rules, practice notes and codes of conduct for adjudicators made by different nominating bodies will be consistent and effective. Members have also sought explanation on the eligibility for registration as an adjudicator nominating body.

19. The Administration has replied that DEVB will formulate the main content of the adjudication rules, practice notes and code of conduct for adjudicators to be made by a nominating body, and such main content serves as the requirements that a nominating body must follow when making aforesaid documents in the future. For the purposes of the Bill, the Secretary may, pursuant to clause 61(2)(d) of the Bill, give to a nominating body any direction that the Secretary considers appropriate, including the direction that when making the aforesaid documents, the nominating body must follow the main content and, subject to the approval by the Secretary, may include other details to meet their operational needs and professional ethics requirements. Also, when a body applies for registration (or renewal) as a nominating body, the Secretary will, pursuant to the power conferred under clause 61(2)(a) of the Bill, review the adjudication rules, practice notes and code of conduct for adjudicators drafted by the body. If the documents submitted by the body (including the main content as well as the details included by the body) fail to meet relevant requirements, the Secretary may refuse to approve the body’s application for registration (or renewal) by virtue of clause 61(2)(a). The Administration believes that the

aforesaid administrative arrangements are sufficient to ensure the consistency and effectiveness of the adjudication rules, practice notes and codes of conduct for adjudicators made by different nominating bodies. The Administration has added that upon the gazettal of the Ordinance, interested bodies may apply to the Secretary for registration as a nominating body. Such bodies need to establish that they have sufficient manpower, financial resources and capabilities in performing the functions of a nominating body. They also need to have taken root in Hong Kong for years and enjoy good recognition/reputation in the local construction industry.

20. To reflect clearly in the Bill that there will be a certain degree of consistency among professional bodies in implementing the adjudication mechanism, the Bills Committee has requested the Administration to refine the drafting of relevant provisions in the Bill. In response to members' request, the Administration will propose an amendment to clause 61(2)(d) of the Bill to provide that the Secretary may give to a nominating body appropriate directions, such as a direction in relation to the contents of the adjudication rules, practice notes or code of conduct for adjudicators to be made by the nominating body under clause 63, to better reflect the actual operation of the provisions.

Time for dealing with a claim and adjudication outcome

21. The Bills Committee notes that the Bill imposes time limits for a paying party to give a response and make a payment after receipt of a valid payment claim. A paying party is required to serve a payment response no later than the date as specified in the contract or 30 calendar days after a payment claim is validly made, whichever is earlier. The Bill also requires that a paying party should pay the amount admitted in the payment response no later than the date as specified in the contract or 60 calendar days after a payment claim is made, whichever is earlier. If the paying party fails to give a payment response by the payment response deadline, or does not agree with the amount claimed by the claiming party, or fails to pay the admitted amount in full by the payment deadline, a payment dispute is regarded to have arisen, and the claiming party may initiate adjudication proceedings.

22. Members have pointed out that under the proposed adjudication mechanism, the time required to complete the handling of an entire payment claim is 62 working days (including 7 working days for an adjudicator nominating body to appoint an adjudicator (if only one nominating body is specified in the contract) and a maximum of 55 working days for the adjudicator to make a determination (if there is no extension of time), plus the payment period specified by the adjudicator. Members have urged the

Administration to consider tightening the time frames for the various procedures with a view to expediting a claiming party's recovery of money owing. On the other hand, some members are concerned that if a claiming party has already initiated adjudication proceedings, the paying party will deliberately continue to delay payment pending the outcome of adjudication. In this connection, members have enquired whether the Bill will impose penalties for a paying party's delay in payment. Members have also enquired about the mechanism for handling the dissatisfaction of a paying party and a claiming party with an adjudicator's determination.

23. The Administration has advised that as proposed under the Bill, the time between a claiming party initiating adjudication proceedings and a paying party making a payment¹⁵ is about three months, which represents a substantial reduction in the time for recovery of money owing as compared with the present situation where payments are often delayed for more than half a year, or even up to two to three years. In fact, the claiming party may initiate adjudication proceedings once the paying party fails to serve a payment response within 30 calendar days after a payment claim is made, or by the payment deadline of the progress payment, the paying party fails to pay in full the admitted amount which is stated to be paid by the paying party in the payment response, or in response to a payment claim, the paying party disagrees with the amount claimed by the claiming party. The adjudication mechanism proposed in the Bill seeks to provide a speedy and cost-effective process for resolving interim payment disputes, serving as a complement to arbitration and litigation, which normally take place only at the end of the contract; and it is not the legislative intent of the Bill to impose criminal liability on a paying party. The Administration has also advised that if the paying party and claiming party are dissatisfied with the adjudicator's determination, both parties have the rights to proceed with the payment dispute by resorting to litigation or other dispute resolution proceedings (including arbitration) as stipulated in their contracts. However, the adjudicator's determination is still binding on both parties until the dispute is determined by other dispute resolution proceedings.

24. Members have pointed out that clauses 30 and 32 of the Bill respectively stipulate that a claimant must serve an adjudication submission within one working day after the claimant is informed of the appointment of adjudicator by the nomination body and serve a reply to adjudication response within two working days after the respondent serves an

¹⁵ Under clause 43 of the Bill, a party who is liable to pay an adjudicated amount in a determination must pay the amount within the period specified by the adjudicator (clause 43(1)(a)); if no payment deadline is specified in an adjudicator's determination, the party must pay the amount within 30 days after the date on which the determination is served on the parties under section 42(7) (clause 43(1)(b)).

adjudication response, whereas clause 31 of the Bill provides that a respondent must serve an adjudication response within 20 working days after the claimant serves an adjudication submission on the respondent. Opining that the Bill gives the impression of imposing more stringent time requirements on claimants, members have sought explanation of the rationale for that and whether there is room for relaxing the requirements on claimants. Some members have also suggested that the Administration may consider providing flexibility by allowing a claimant to opt to serve in advance an adjudication submission on the nominating body, which will then be passed on to the appointed adjudicator.

25. The Administration has explained that clause 24 of the Bill stipulates that the claimant may, within 28 days beginning on the date on which a payment dispute arises, initiate adjudication proceedings for the payment dispute. The longest period from the time when the claimant initiates adjudication proceedings to the time when the nominating body formally appoints an adjudicator is generally 7 working days (if only one nominating body is specified in the contract), that means the claimant has more than one month from the date on which a payment dispute arises to prepare an adjudication submission. The one working day as provided in clause 30 of the Bill primarily allows the claimant to arrange to serve a written submission on the adjudicator and the respondent. As regards clauses 31 and 32 of the Bill, a respondent must give an adjudication response (together with supporting documents and evidence, if necessary) to the claimant's adjudication submission within 20 working days and may specify any parts thereof which the respondent is unaware of and cannot fairly consider before the adjudication notice is served; whereas a reply to an adjudication response, which the claimant is required to give within two working days, merely serves to allow the claimant to specify the parts which the respondent has submitted but the claimant is unaware of and cannot fairly consider before the adjudication notice is served, and the claimant is not required to provide anything supplementary in response to the respondent's adjudication response. Where necessary, the claimant may apply to the adjudicator for an extension of time. During the Administration's consultation with the industry,¹⁶ various stakeholders considered that the time requirements for the respective procedures set out in the Bill are manageable. In fact, the time limits in the proposed adjudication proceedings are relatively lenient compared with similar legislation in other countries.

¹⁶ The Administration has advised that as reconfirmed with the industry stakeholders at the meeting of the Task Force for the Construction Industry Security of Payment Ordinance on 1 November 2024, the various time limits in the proposed adjudication proceedings are practicable.

Processing of applications for setting aside and enforcing adjudication determinations

26. The Bills Committee notes the submission from the Hong Kong Bar Association expressing concern that the implementation of the Bill may give rise to a lot of applications for setting aside and enforcing adjudication determinations, thus increasing the workload of the Judiciary. In this connection, members have enquired whether the Administration has had discussions with the Judiciary in drafting the Bill to assess the associated workload in the future, ensuring that the Judiciary will have sufficient resources to properly handle such applications.

27. The Administration has responded that as clause 48(4) of the Bill provides that a party applying for setting aside adjudication determinations must pay the unpaid portion of the adjudicated amount to the court as security, and such application involves complex legal procedures and additional costs, abuse of such application was unlikely to arise. Moreover, clause 59 of the Bill grants a claimant the right to suspend or reduce the rate of progress of work, and clause 59(2)(b)(ii) requires that prior notification should be given to the project owner so that the project owner may intervene as early as possible when necessary. It is therefore believed that applying to the court for enforcement of determinations under clause 49 of the Bill will not be common. The actual impact of the Bill on court resources depends on the caseload filed for setting aside and enforcing determinations. The Administration will maintain communication with the Judiciary, and review and seek resources as necessary.

28. To enable the Judiciary to utilize its resources more effectively, the Administration will propose amendments to clauses 48 and 49 of the Bill accordingly, which include providing appropriate flexibility regarding the time limits for the court to grant leave for enforcement applications under clause 49(5), and confer jurisdiction upon the Court of First Instance (“CFI”) and the District Court to process applications for setting aside and enforcing adjudication determinations within their jurisdiction. Regarding clause 49 of the Bill, the Bills Committee has discussed at its meeting matters relating to the court’s judgment about interest and costs when an enforcement order is made. To facilitate the court’s handling of the applications, the Administration will propose an amendment to clause 49(4) to provide that the applicant must state in an affidavit related matters (including the amount determined by the adjudicator in respect of the dispute, the costs of adjudication proceedings and interests, so the court is not required to make calculations on its own). The Administration will also propose an amendment to add clause 49A to confer on the Chief Judge the power to make rules relating to set aside applications and enforcement applications.

Besides, clause 48(1) will be amended to provide that the court may, on a set aside application, set aside a determination in whole or in part.

29. The Bills Committee notes that clause 48(5) of the Bill provides that the leave of CFI is required for any appeal from a decision of CFI on an application for setting aside a determination. In this connection, members have sought clarification on whether the party who makes the set aside application may lodge an appeal to the Court of Final Appeal in case of CFI's refusal to grant leave.

30. The Administration has advised that the drafting of clause 48(5) of the Bill replicates section 81(4) of the Arbitration Ordinance (Cap. 609), which stipulates that the leave of CFI is required for any appeal from a decision of CFI on an application for setting aside an arbitral award. By reference to arbitration-related ordinances and the relevant Rules of the High Court, the leave of CFI is required for any appeal from a decision of CFI under section 81(4) of the Arbitration Ordinance. However, under the common law,¹⁷ the higher courts retain residuary jurisdiction over the lower courts and may exercise such jurisdiction in exceptional circumstances to review the decisions of the lower courts on appeal applications.

Suggestion on the appointment of adjudication panel

31. In view of the wide variety of professions and trades involved in construction works and the uniqueness of each works project, some members have suggested that the Administration should review its proposal to appoint one adjudicator to handle a payment dispute, and consider appointing a panel formed by several adjudicators from different professions to jointly handle each case instead.

32. The Administration has advised that adjudicators are professionals (e.g. architects, engineers, surveyors and solicitors) who are familiar with the operation of the industry, possess years of experience in managing construction contracts or resolving related disputes and have completed relevant adjudicator training programmes. In normal circumstances, one adjudicator should be capable enough to handle the payment disputes over the contracts covered by the Bill. In exceptional circumstances, an adjudicator may, by virtue of the power conferred by the Bill, appoint an independent expert to assist the adjudicator in inquiring or reporting on any specific matter. The above arrangement is more effective than appointing a number of adjudicators in ensuring that the nomination and appointment of adjudicator can be completed within 7 working days and the whole

¹⁷ *China International Fund Limited v Dennis Lau & Ng Chun Man Architects & Engineers (HK) Ltd.* [2016] 1 HKC 35.

adjudication process can be completed within 55 working days, and high adjudication expenses can be avoided.

Consolidated adjudication

33. Members have enquired whether claims can be consolidated under the proposed adjudication mechanism if several contractual parties at the lower tier simultaneously initiate adjudications on payment disputes with their contractual parties at the upper tier.

34. The Administration has advised that the Bill does not prohibit consolidated adjudication. However, by reference to the relevant arrangements under the arbitration mechanism, consolidated adjudication can only be achieved under certain conditions (the same matter of dispute, disputes arising in the same supply chain, disputes arising at the same time, all parties involved agreeing with such consolidation, etc.). Moreover, in case of a consolidated adjudication, an adjudicator will need to examine the documents submitted by various parties at the same time, which may prolong the time required for adjudication and hinder the completion of the adjudication within 55 working days. The Administration will maintain communication with the industry and, if necessary, study the matter of consolidated adjudication and work out the details with the nominating bodies for the industry's reference.

Costs of adjudication

35. Members have enquired at the time when a claiming party decides to initiate adjudication proceedings in respect of a payment dispute under the Bill, whether the claiming party knows about what costs are involved in the adjudication proceedings and whether such costs need to be apportioned, and whether the costs of adjudication proceedings will be borne in full by the paying party if the adjudicator determines that the claim is justified. Members have also stressed that the costs of adjudication should be set at a level affordable to downstream subcontractors in order not to discourage them from using the adjudication mechanism. In addition, members have asked the Administration to explain what measures are in place to prevent abuse of the adjudication mechanism.

36. The Administration has advised that the costs involved in adjudication include the administrative costs of the nominating body, the fees and expenses of the adjudicator, as well as the costs of any independent expert appointed, or of any inspection of a construction site, any construction work or any other thing carried out, under clause 35(1) of the Bill. Taking into account the matters set out in clause 54 of the Bill, the adjudicator will

also determine in the process of adjudication how such costs are shared between the claiming party and the paying party, making a judgment as to which party should pay a higher proportion of the costs of adjudication based on, for example, the share of responsibility between the two parties. As the costs of adjudication should be within the range affordable to all parties, the Bill also empowers the Secretary to regulate the fees of nominating bodies and adjudicators. Nominating bodies will publish the fees of their services for stakeholders' reference and the Administration will also impose caps on the fees to be charged by nominating bodies and/or adjudicators.

37. As regards measures to prevent abuse of the adjudication mechanism, the Administration has advised that under the Bill, both parties to a contract are required to go through the "claim handling procedure" provided for in the contract before the claiming party initiates adjudication for the dispute. The Bill also provides that the adjudicator must disregard evidence which a party to a contract could have given before the adjudication, but which the other party is unaware of before the adjudication and unable to respond to in sufficient time during the adjudication. The Bill also empowers the adjudicator to determine that the party who abuses the mechanism should pay all or a higher proportion of the costs of adjudication. Meanwhile, a claiming party cannot initiate adjudication again on the same dispute to seek a different value. The Administration will also draw up practical guidelines to advise adjudicators that in assessing the grounds in a dispute, an adjudicator should give due consideration to the professional assessments made by the contract administrator (e.g. an engineer, architect or surveyor).

Eligibility and appointment of adjudicators

Manpower and eligibility criteria for adjudicators

38. Members are concerned whether there are sufficient adjudicators in Hong Kong to handle payment disputes, and whether the Administration will set minimum eligibility requirements for adjudicators to ensure their quality. Besides, some members have sought clarification on whether persons who have committed criminal offences or professional misconduct are still eligible to be an adjudicator.

39. The Administration has advised that it is preliminarily estimated that there are currently 200-odd professionals eligible to be an adjudicator. As the Bill, if passed, will come into operation on the expiry of eight months after the day on which it is published in the Gazette as an ordinance, the Administration will urge nominating bodies to ramp up their recruitment and training efforts in the interim, so that there will be more eligible adjudicators to assist in adjudication. The Administration has advised that it will work

out the main content of the code of conduct for adjudicators, which include requiring adjudicators to declare whether they have been convicted of criminal offences, and appropriate requirements will be imposed on the eligibility criteria and code of conduct for adjudicators proposed for submission by a nominating body for the purpose of establishing its panel of adjudicators, which cover criteria such as professional qualifications, experience, integrity (e.g. whether there has been any violation of professional ethics), to ensure that adjudicators are suitable professionals. In fact, for some professional institutions currently involved in arbitration, when they decide whether to accept an individual's application for becoming an arbitrator, they will also consider whether the applicant has committed a criminal offence or violated professional ethics. In addition, the membership registration mechanism and professional ethics guidelines of relevant professional institutions provide that an investigation committee will be set up in response to their members' committing of criminal offences or violation of professional ethics, and different actions will be taken according to individual circumstances, including disciplinary actions (e.g. suspension or revocation of their professional qualifications). By following the above approach, a nominating body can avoid including in its panel of adjudicators any persons who have committed criminal offences or violated professional ethics (e.g. bribery and other offences of dishonesty).

40. The Bills Committee notes that even if a claimant or respondent disagrees with a nominating body on the appointment of a candidate as an adjudicator, the nominating body still has the right to make the final decision on the appointment. In this connection, members have requested the Administration to clarify whether the final decision made by the nominating body is subject to judiciary review if the claimant or respondent does not agree with such decision.

41. The Administration has advised that under the current legislation, the leave of the court must be obtained before an application for judicial review is made. By reference to foundational precedents, one of the crucial points in ascertaining whether a decision is subject to judicial review is whether the decision involves public elements. However, since a nominating body's decision on the appointment of an adjudicator for an individual payment dispute stems from the selection of the nominating body by the two contractual parties in the dispute, and the nominating body's acts ensued as aforesaid because of such selection, the public elements involved are minimal.

Mechanism for an adjudicator's declaration and disclosure of conflicts of interest

42. The Bills Committee notes that one of the eligibility criteria of adjudicators is being professionals in the construction-related field. In this

connection, members have enquired about the Administration's measures to prevent an adjudicator with a potential conflict of interest from being appointed to handle a case.

43. The Administration has advised that in the proposed main content of adjudication rules, the Administration will require that a nominating body should consider the experience and qualifications of the adjudicator required for the case concerned and select some suitable candidates from its panel of adjudicators, and the adjudicator candidates should declare and disclose to the nominating body any conflict of interest or circumstances likely to give rise to justifiable doubts as to their independence or impartiality. After that, the nominating body should put forward the nominations of more than one suitable adjudicator candidate and provide the information on such candidates' declaration and disclosure to the two parties in the adjudication. Any of the parties may express opinions, if any, to the nominating body within a specified period (currently proposed to be within two to three working days), and the nominating body should take into account such opinions and appoint a suitable adjudicator pursuant to clause 28(2) of the Bill. In this connection, the Administration is formulating a set of unified guidelines for handling conflicts of interest in adjudication proceedings based on the Guidelines on Conflicts of Interest in International Arbitration 2024 drawn up by the International Bar Association, so that nominating bodies and adjudicators can follow such guidelines in handling conflicts of interest.

44. The Legal Adviser has invited members to note that clause 29(3) of the Bill generally requires an adjudicator to make a disclosure in writing as soon as possible, but it does not specify the basic principles (e.g. to whom the disclosure should be made in writing). While clause 29(4) of the Bill proposes that procedurally, a declaration of interests be made in the manner specified in the adjudication rules, the Legal Adviser has drawn members' attention that implementation details (e.g. adjudication rules or practice notes) made by way of administrative measures are not required to be scrutinized by the Bills Committee prior to the passage of the Bill, and the effect of such administrative measures is different from that of subsidiary legislation as any amendments subsequently made thereto are not subject to scrutiny by the Legislative Council ("LegCo").

Liability to be borne by adjudicators for incorrect declaration of interests

45. Regarding clause 29 of the Bill which provides that an adjudicator should declare and disclose interests on his/her own, members consider it necessary to set out clearly the relevant duties of an adjudicator in the unified guidelines on conflict of interest in adjudication proceedings, including the

other liabilities an adjudicator should bear for incorrect declaration.

46. The Administration has advised that under clause 29(4) of the Bill, an adjudicator shall declare and disclose in a way specified in the adjudication rules of the nominating body, whilst the proforma used for making declaration and disclosure will clearly specify that if an adjudicator fails to declare and disclose interests truthfully, there is a chance that the adjudicator may contravene the code of conduct for adjudicators or even the relevant legislation and regulations, so as to remind the adjudicator of the relevant responsibility. The Administration will also require the nominating body to provide appropriate training to familiarize adjudicators with the contents of the code of conduct and the unified guidelines.

47. The Administration has further advised that if an adjudicator fails to declare and disclose truthfully, the adjudicator may face consequences of varying degrees. For example, the adjudicator's determination may be set aside by the court as a result of his/her failure to act independently or impartially due to conflict of interests, or the nominating body may take disciplinary actions against the adjudicator having considered the circumstances, such as suspension or revocation of his/her qualification as an adjudicator. In addition, if an adjudicator makes a false statement in a declaration or disclosure or fails to make a disclosure pursuant to clause 29 of the Bill, such acts may constitute a contravention of the Crimes Ordinance (Cap. 200) or the Theft Ordinance (Cap. 210).

Resignation of adjudicators

48. Members have pointed out that under clauses 39(1)(a) and 39(3)(a) of the Bill, a resigning adjudicator should serve a written notice of resignation on each party to the adjudication proceedings on the same date. Members have called on the Administration to consider amending clauses 39(1)(b) and 39(3)(b) of the Bill by imposing the same time limit to stipulate that a resigning adjudicator should on the same date serve the notice on the nominating body that appoints the adjudicator, with a view to enhancing the clarity of relevant operational arrangements and ensuring that the nominating body will receive the notice of resignation from the adjudicator in a timely manner.

49. The Administration has advised that under the Bill, if an adjudicator considers that it is not possible to make a determination within the period required under clause 42(5), or that a circumstance under clause 28(2)(a) or (b) (i.e. a conflict of interest or justifiable doubts as to his/her independence or impartiality) has arisen, a notice of resignation has to be served on both parties to the adjudication on the same date pursuant to clauses 39(1)(a) and

39(3)(a); and under clauses 39(2) and 39(4), the resignation takes effect on that date. In response to the Bills Committee's suggestion, the Administration will propose an amendment to clause 39 of the Bill to stipulate that an adjudicator should, in respect of his/her resignation under clauses 39(1) and 39(3), serve a written notice of resignation on each party to the adjudication proceedings and the nominating body on the same date. Consequential amendments will also be made to clauses 39(2) and 39(4) of the Bill to provide that the resignation takes effect on the date on which the written notice is served.

Claiming party's right to suspend or reduce the rate of progress of work or services

Payment disputes arising from default on the final payment under a contract

50. The Bills Committee notes that clauses 57 to 59 of the Bill provide that a claiming party or claimant may exercise the right to suspend or reduce the rate of progress of the carrying out of the construction work or the supply of related goods and services under a construction contract, and exercise other entitlements in relation to the right to suspend or reduce the rate of progress subject to the fulfilment of specified conditions. However, some members have pointed out that there is a prevalent issue of defaulting on the final payment under a contract for several years in the construction industry. As the contractual party claiming for the final payment has already completed the work under the contract, the arrangement under the Bill to empower the claiming party to suspend or reduce the rate of progress of work or services will not help the claiming party put pressure on the paying party to make payment as early as possible, nor will it relieve the claiming party of its financial burden. Members have urged that measures should be put in place to assist the claiming party in resolving the problem of final payment (e.g. setting a time limit for account settlement).

51. The Administration has explained that during the course of account settlement, the claiming party and the paying party often need to analyze all the claimed amounts (such as an increase in the contract value resulting from additional works) before the final contract amount can be ascertained. Hence, for some contracts, depending on the quantity and the claimed amounts involved, the account settlement process may sometimes take a longer time. The Administration has advised that the Bill is applicable to account settlement, including specifying the payment response deadline (not more than 30 days) and the payment deadline (not more than 60 days) for the paying party in respect of a payment claim, as well as the adjudication mechanism. However, if the claimed amounts in relation to account settlement involve the "claim handling procedure" as provided for in the

contract, this contractual procedure must be gone through first. If the claiming party disagrees with the outcome after the paying party has gone through the “claim handling procedure”, the claiming party may make a payment claim and, if necessary, initiate an adjudication for the dispute under the Bill.

52. The Administration has further advised that if the contract does not stipulate the time for completion of the “claim handling procedure”, there is also a mechanism in the Bill to require the “claim handling procedure” to be completed within a reasonable time, failing which the claiming party may make a payment claim and, if necessary, initiate an adjudication pursuant to the Bill. Moreover, the Bill can facilitate early resolution of mid-contract disputes by both parties during the construction stage, which can improve the cash flow of stakeholders in the supply chain and reduce the time required for account settlement. Separately, the Administration is promoting the adoption of the “New Engineering Contract” (“NEC”) form for the settlement of government works accounts. Under the NEC form, in relation to the “claim handling procedure” during the course of works, both parties to the contract are required to negotiate claims for additional payments within a specified period of time, thus greatly reducing the number of future disputes over additional payments and the time required for handling such disputes, thereby effectively shortening the time required for account settlement.

Protection for workers

53. Members have pointed out that the income of workers will be reduced in the event of suspension of work, and the progress of work of downstream contractual parties may also be affected by the exercise of the relevant right by the claiming party. In this connection, members have enquired whether there are corresponding measures to protect workers and whether the claiming party will be allowed to exercise the right to suspend or reduce the rate of progress of work or services at an earlier stage when the payment problem arises (such as allowing the claiming party to exercise the right after initiating adjudication proceedings).

54. The Administration has advised that in the case where the claiming party has filed a claim for works payment and the paying party has responded but failed to make full payment of the admitted amount by the specified deadline as undertaken, the claiming party may exercise the right to suspend or reduce the rate of progress of work or services, and is required to notify the paying party and the project owner (i.e. the party who procures the main construction contract) at least five working days before exercising the right. The claiming party may also suspend or reduce the rate of progress of work

or services if the adjudication proceedings in respect of the case have been completed and the adjudicated amount is not paid in full by the paying party. However, it is considered inappropriate to allow the claiming party to exercise the right once the adjudication proceedings have been initiated, as it will not be possible to judge whether the paying party is liable to pay before the adjudicator has made a determination. As regards how to protect the interests of workers in the event of suspension of work, the Administration has advised that the Bill proposes that the claiming party should notify the paying party and the project owner at least five days before exercising the right. This will help remind the paying party to fulfil his obligations as soon as possible, and enable the project owner to have a clearer picture of the situation and make early intervention when necessary to expeditiously handle payment disputes, so that the works will not be affected and workers will be able to continue to work and receive their wages.

55. Members have enquired about whether, in case the contracts involved in payment disputes are all oral contracts and the submissions of the claimant and the respondent do not contain any contractual terms in simple written form or in the form of mobile phone messages, it would be difficult for the adjudicator to make a determination even if oral contracts are covered by the Bill. Some members have also pointed out that the industry is plagued with the problem of paying wages in two batches of different amounts, i.e. the amount of payroll specified in a written contract does not tally with the actual amount of payroll, which may involve oral contracts without any written records. In this connection, they have asked what options have been put in place to tackle the problem of paying wages in two batches of different amounts. Members have suggested that the Administration should step up efforts to encourage the industry and stakeholders to enter into written contracts when undertaking construction works, so as to provide greater protection for both parties.

56. The Administration has advised that it will draw up practice notes to provide guidelines to adjudicators on how to deal with different forms of contracts, including oral agreements. In calculating the amount to be paid, the principle is to conduct adjudication in accordance with the contractual terms. As regards oral contracts, adjudicators should consider them in the light of the evidence submitted by both parties. The Administration has further advised that the Bill mainly deals with disputes between the parties to a contract, and therefore the approach is commercial contract dispute resolution. If contractual disputes are resolved, subcontractors will receive their entitled payments and workers will also be much better off in terms of getting their pay. The Administration has reiterated that it is not the purpose of the Bill to deal with the problem of defaulting on payment of wages to workers (including the problem of paying wages in two batches of different

amounts), and that irrespective of their statutory rights conferred by the Bill, main contractors and subcontractors are required to fulfil their obligations under the Employment Ordinance (Cap. 57) in relation to wage dispute resolution, and the rights and interests of construction workers under the Employment Ordinance and the Protection of Wages on Insolvency Fund will not be affected by the Bill.

Proposals to improve the payment terms of contracts

Bankruptcy of the paying party

57. Given that the Bill prohibits “conditional payment” terms in contracts (such as the “pay when paid” contractual terms), members are concerned that stakeholders concerned may not be able to cope with the financial pressure brought about by the implementation of the Ordinance amid the relatively difficult economic environment in recent years. In this connection, some members have suggested specifying cases of non-payment caused by bankruptcy of upstream contractual parties in the supply chain as an exception, where the enforcement of the “pay when paid” contractual terms will be allowed, to prevent series of bankruptcy of downstream contractual parties. Members also note that exceptions are provided under the security of payment systems in the United Kingdom and Ireland to allow the enforcement of the “pay when paid” contractual terms in case of non-payment caused by bankruptcy of upstream contractual parties in the supply chain. In addition, there are views that even if the Administration is unable to include in the Bill measures to support downstream contractual parties who are affected by bankruptcy of upstream contractual parties, it should take other measures to assist downstream contractual parties.

58. According to the Administration, the Bill aims to improve the payment terms of contracts, including prohibiting the inclusion of unfair payment terms, such as the “pay when paid” terms, in contracts, and provide an adjudication mechanism for quick resolution of payment disputes by an independent third party, so as to ameliorate the long-standing problem of contractual delay in payment among stakeholders in the supply chain of the construction industry. However, the situation where a contractor becomes insolvent and is declared bankrupt falls within the scope of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), and the settlement of debt owed by the contractor through liquidation proceedings should be processed in accordance with the mechanisms provided for in the said Ordinance. The fundamental principle of the Bill is to allow stakeholders in the supply chain to receive their entitled payments after completing the work as required under the contract. In the case where upstream contractors or subcontractors in the supply chain go bankrupt, if

the “pay when paid” terms in the contracts between downstream subcontractors and its next downstream subcontractors as well as further downstream subcontractors remain effective, all downstream subcontractors will be unable to receive their entitled payments upon completion of work, which is contrary to the fundamental principle mentioned above. The Bill will facilitate the contractual parties to receive their entitled payments in a timely manner in accordance with the contract. If the contractual parties resolve payment disputes in a timely manner and make payment as scheduled at different stages of the contract, the amount outstanding during the contract period will be reduced, thereby alleviating the financial pressure that downstream subcontractors may face if upstream contractual parties go bankrupt. The Administration will continue to maintain communication with the industry stakeholders and explore whether there are appropriate and feasible measures apart from the Bill, such as how to assist contractors or subcontractors being defaulted on payments by a bankrupt party to prove to the liquidator the default amount as soon as possible, with a view to having their entitled payments reimbursed through liquidation proceedings if an adjudication determination has been made under the Bill.

59. The Administration has further advised that with the exception of the United Kingdom and Ireland, none of the other countries or regions with construction industry security of payment legislation (including New South Wales of Australia, New Zealand, Singapore) provides for the enforcement of the “pay when paid” contractual terms in case upstream contractual parties go bankrupt. When the Administration consulted the industry in 2015, the majority of the industry stakeholders supported an across-the-board prohibition of the “pay when paid” terms to ameliorate the payment issue of the construction industry in Hong Kong, and considered that no exemption should be granted in the event of bankruptcy of an upstream contractual party in the supply chain.

Implementation timetable for the Bill

Payment disputes involving extension of time

60. Under the Bill, adjudication of payment disputes involving extension of time will first be implemented in the Government and the entities specified in Schedule 3 to the Bill. The Bills Committee notes the aspiration of some deputations that the Bill should cover payment disputes involving extension of time in private works projects as early as possible. In this connection, members have enquired about the considerations for deciding when to further extend the adjudication of such disputes to the construction contracts procured by the private sector, and requested the Administration to provide the relevant implementation timetable.

61. The Administration has replied that as adjudication of payment disputes involving extension of time is generally more complicated, it will be more prudent to implement the relevant adjudication by phases. Implementing in the first phase adjudication of payment disputes involving extension of time for construction contracts procured by public organizations (i.e. the Government and specified entities) will enable the Administration to conduct a comprehensive assessment of its implementation and, in the light of the experience gained, to refine the adjudication mechanism as and when necessary. The Administration has stated in the Bill that it will announce the implementation time in due course by notice published in the Gazette to make this aspect applicable to private works. After the first phase of implementation, the nominating body will step up training for adjudicators and maintain close communication with the industry to review the effectiveness of adjudicating such disputes. Adjudication of payment disputes involving extension of time will be extended to private works in due course when the industry is well-prepared.

62. Members have expressed concern whether clause 56(3) of the Bill, which empowers the Secretary to repeal clause 56 of the Bill by notice published in the Gazette, constitutes an usurpation of the powers of the LegCo under the Basic Law. The Administration has clarified that the legislative intent is that all public works and private works, irrespective of whether time-related disputes are involved, will be subject to the regulation of the Ordinance in the future. As the Ordinance is planned to be implemented by phases, clause 56 of the Bill provides that for the time being, the adjudication mechanism under the Ordinance will not be applicable to time-related disputes in respect of private works. The Administration has added that there are similar provisions in the laws of Hong Kong empowering the relevant authorities to invalidate certain provisions of an ordinance by notice published in the Gazette. As the notice under clause 56(3) of the Bill will affect the legal effect of clause 56 of the Bill, such notice, which is subsidiary legislation, will be subject to negative vetting under the existing law and procedures and therefore does not deprive LegCo of its scrutiny power.

63. Members have further expressed concern about the possible problems arising from the fact that the said subsidiary legislation will come into operation immediately or within a short period of time after its publication in the Gazette, and hope that the Administration will provide sufficient time for LegCo to scrutinize the Gazette notice, with an undertaking that the commencement date will be set at a date after the expiry of the scrutiny period under the negative vetting procedure. The Administration has responded that it will follow the usual procedures of

LegCo and advised that the relevant provision is clearly set out in clause 56 of the Bill, which has also been scrutinized by members during the scrutiny stage. Many members of the industry very much hope that the Bill will cover time-related payment disputes in the future, and members have not expressed disagreement in this regard. The Administration has remarked that it will discuss with the industry and specify the time when clause 56 of the Bill will cease to have effect only when the industry is well-prepared.

Publicity and public education

64. Members have suggested that the Administration should set out the frequently asked questions on the implementation details of the Ordinance and formulate clear guidelines (including using flowcharts and diagrams to illustrate the time requirements for various parts of the adjudication proceedings) for the reference of the industry, so as to enable the industry to have a better understanding of the specific operation of the Ordinance and the consequences of failing to fulfil the relevant obligations as a paying party. In addition, members consider that after the implementation of the Ordinance, a case database should be set up for disclosure of adjudication outcome as a means of sharing experience with the industry, with a view to enhancing the effectiveness and deterrent effect of the Ordinance.

65. Noting members' suggestions, the Administration has advised that it has widely consulted various stakeholders (including project owners, contractors, subcontractors, consultants, suppliers and the labour sector) before finalizing the legislative proposals in the Bill, and a general consensus has now been reached after years of discussion. The Administration will continue to maintain communication with the industry and take into account members' views to work together on the implementation details as well as the publicity and education in relation to the Ordinance.

Enquiries raised by the Legal Adviser to the Bills Committee on the contents of the Bill and the Administration's responses

66. The Legal Adviser has made enquiries with the Administration on the legal and drafting aspects of the Bill, to which the Administration has provided its responses. The Legal Adviser's enquiries and the Administration's responses are set out in LC Paper Nos. [CB\(1\)844/2024\(01\)](#) and [CB\(1\)1148/2024\(01\)](#). Members have taken note of the contents of the above papers.

Proposed amendments to the Bill

67. Apart from the amendments mentioned in paragraphs 17, 20, 28 and 49 above, the Administration will also propose other amendments to the Bill. The amendments seek to address members' suggestions and concerns or to enhance the clarity and comprehensibility of the clauses. In addition, the Administration will propose certain textual and consequential amendments to the Bill.

68. The Bills Committee has scrutinized the draft amendments and raised no objection to them. Neither has the Legal Adviser identified any difficulties relating to the legal and drafting aspects of the draft amendments. The Bills Committee will not propose any amendments to the Bill.

Resumption of Second Reading debate on the Bill

69. The Bills Committee has completed the scrutiny of the Bill. The Administration has indicated its intention to resume the Second Reading debate on the Bill at the Council meeting of 18 December 2024, to which the Bills Committee has no objection.

Consultation with the House Committee

70. The Bills Committee reported its deliberations to the House Committee on 6 December 2024.

Council Business Divisions
Legislative Council Secretariat
11 December 2024

Bills Committee on Construction Industry Security of Payment Bill

Membership List

Chairman Ir Dr Hon LO Wai-kwok, GBS, MH, JP

Deputy Chairman Ir Hon CHAN Siu-hung, JP

Members Hon KWOK Wai-keung, BBS, JP
Hon LAU Kwok-fan, MH, JP
Hon Tony TSE Wai-chuen, BBS, JP
Ir Hon LEE Chun-keung, JP
Hon LAM Chun-sing
Hon Andrew LAM Siu-lo, SBS, JP
Hon Dennis LEUNG Tsz-wing, MH
Hon Judy CHAN Kapui, MH, JP
Ir Hon Gary ZHANG Xinyu
Hon Benson LUK Hon-man
Hon LAI Tung-kwok, GBS, IDSM, JP
Hon Louis LOONG Hon-biu
Hon Adrian Pedro HO King-hong

(Total: 15 members)

Clerk Ms Connie HO

Legal Adviser Miss Dorothy YUNG

Construction Industry Security of Payment Bill

**List of organizations/individuals which/who have submitted views to
the Bills Committee**

Organizations/individuals which/who attended the meeting on 16 July 2024
to give views

1. Liberal Party Development and Construction Industry Concern Group
2. Registered Specialist Trade Contractors Federation
3. The Hong Kong Concretor Contractors Association Limited
4. Contractor's Authorised Signatory Association
5. Hong Kong Bar-bending Contractors Association
6. Hong Kong Architectural Ceiling Association
7. The Association of Plastering Sub-Contractors
8. Registered Specialist Trade Contractors Federation - Scaffolding Committee
9. Registered Specialist Trade Contractors Federation - Erection of Concrete Precast Component Committee
10. Registered Specialist Trade Contractors Federation - Landscaping Committee
11. Construction Industry Council
12. Hong Kong Formwork Contractors Association
13. Registered Specialist Trade Contractors Federation - Curtain Wall Committee
14. Hong Kong Small and Medium Enterprises Association
15. The Hong Kong Registered Contractors Association
16. Quon Hing Concrete Company Limited
17. Hong Kong Construction Association
18. The Hong Kong Federation of Electrical and Mechanical Contractors
19. Southa Holdings Limited
20. The Hong Kong Electrical and Mechanical Contractors' Association
21. Hong Kong Construction Sub-Contractors Association
22. Hong Kong Construction Miscellaneous Contractors Association
23. Hong Kong Leveling Contractors Association
24. Hong Kong Marble and Granite Merchants Association
25. Hong Kong Tower Crane Association
26. Hong Kong Professional Hoisting Engineering Association
27. Hong Kong Waterproofing Contractor Association
28. Hong Kong and Kowloon Scaffolders General Merchants Association
29. The Hong Kong Professional Gondola Association
30. Hong Kong Concrete Pump Merchant Association
31. Hong Kong Metal Engineering Contracting Association

32. Bamboo Scaffolding Association of Hong Kong
33. The Hong Kong Painting Contractors Association
34. CFC Formwork and Engineering Limited
35. Hung Tung Construction Company Limited
36. Wing Kwong Painting Company Limited
37. Cemac (Hong Kong) Limited
38. Hong Kong Construction Industry Employees General Union
39. Chuen Lik Transportation & Engineering Limited
40. The Hong Kong Association of Property Management Companies Limited
41. Hong Kong Dumper Truck Drivers Association
42. The Federation of Hong Kong Electrical and Mechanical Industries Trade Unions
43. The Hong Kong Institute of Architects
44. Hong Kong Institution of Engineers
45. Hong Kong Institute of Arbitrators
46. Hong Kong Housing Society
47. The Hong Kong Institute of Surveyors
48. The Association of Consulting Engineers of Hong Kong
49. Urban Renewal Authority
50. Mr YU Wai-wai

Organizations/individuals which/who have submitted written views only

51. 何曼筠
52. Chinese Dream Think Tank
53. Demolition Machinery Operating Staff Association
54. Hong Kong Building Demolition Workers Union
55. Hong Kong Construction Site Asbestos Removal Employees Union
56. The Hong Kong Bar Association