

SINGAPORE CONSTRUCTION INDUSTRY AND LAW UPDATES

Technical:

David Shuttleworth, Foremost Consultants Pte Ltd

Built environment sector calls for more local talent

On 22 May 2014, a five-year rebranding roadmap was rolled out to attract and retain more local talent in the built environment sector. This comes during a period of sustained construction projects requiring a continuous pool of locals to drive Singapore's urban development. Improved work environments and the adoption of good human resource practices are among key initiatives aimed at transforming the built environment sector. The roadmap has been formulated by the Ministry of National Development (MND) and the Building and Construction Authority (BCA), in consultation with industry associations and institutes of higher learning (IHLs) in Singapore. It aims to improve the work environment and enhance human resource practices in firms. In addition, it is targeted at females, teachers and students with the aim to generate greater awareness of built environment careers and attraction to the sector.

At the BCA Awards ceremony held in May 2014, the BCA and the Construction Industry Joint Committee (CIJC) comprising key industry representatives signed a Memorandum of Understanding to show the industry's commitment towards transforming the built environment sector into a workplace of choice. BCA will also develop a good practice guide to assist built environment firms in improving their human resource practices. The guide will feature best practices adopted by industry stakeholders together with new schemes to assist firms in development of their human resource competencies.

Currently, females make up about 25% of the local workforce in the built environment sector. Therefore, creating a conducive work environment, especially in the area of pro-family arrangements, could play a key role in attracting and retaining females in the sector. At the moment they represent a relatively untapped source of local manpower. The BCA will also implement a Teachers' Attachment Programme (TAP) to help teachers keep abreast with the latest developments in the built environment sector, to provide better career guidance to students.

The pilot phase of the TAP will be conducted for Institutes of Technical Education (ITE) lecturers teaching built environment courses starting this year. It will be introduced gradually, for teachers at polytechnics and Junior Colleges. Structured internships will be introduced for polytechnic and university students in built environment courses.

The BCA intends to develop guidelines for firms to enhance the learning value of internships for students, in consultation with industry stakeholders and tertiary institutions.

CONQUAS update

The Construction Quality Assessment System (CONQUAS) is now into its 8th edition (launched on 31 October 2012) promoting better quality of building projects and improved productivity. There is now a CONQUAS / BCA Quality Mark mobile application available for construction industry professionals at the Apple Store.



Case Law:

Danna Er, MPillay & Sandy Chan, Aequitas Law LLP

In the case of ***Mansource Interior Pte Ltd v Citiwall Safety Glass Pte Ltd [2014] SGHC 87***, the High Court had an opportunity to consider an interesting aspect of the adjudication regime in Singapore which practitioners will no doubt have to contend with - does submitting an adjudication response to the Singapore Mediation Centre ("SMC") after 4.30 pm constitute a submission the following day? In this case, the Respondent (in the appeal) submitted an Adjudication Application to the SMC on 28 August 2013. The Adjudication Application was served by SMC on the Appellant on 29 August 2013 and the Appellant had 7 days to file an Adjudication Response. The Appellant filed its Adjudication Response on the 7th day i.e. 5 September 2013 at 4.32 pm. In accordance with Rule 2.2 of the SMC rules, the SMC considered the Adjudication Response to be lodged on the next day, 6 September 2013. The Adjudicator determined that the Adjudication Response was lodged out of time and did not consider the Adjudication Response. The High Court however found that the Adjudicator was wrong in not considering the Adjudication Response. The SMC Rules were established for the purposes of facilitating the adjudication process only and should not affect the substantive rights of the parties under the Building and Construction Industry Security of Payment Act. The Appellant should have up to 11.59 pm of 5 September 2013 to put in the Adjudication Response. Since the Appellant was deprived of its opportunity to be heard, the adjudication determination was accordingly set aside.

The case of ***Rotol Projects Pte Ltd v CCM Industrial Pte Ltd [2014] SGHC 72*** dealt with the interpretation of a subcontract which was typical of an informal type of construction contract. While the issues in the case were resolved primarily based on the evidence submitted by parties, the Court reiterated a few general principles relating to contract interpretation worth highlighting. The Court noted that although a contextual approach has been endorsed in interpreting the terms of a contract, it is not to be applied where there are no words that need to be interpreted. On the issue of implied terms, the Court held that implied terms work to gap fill a contract to give effect to parties' presumed intentions but not all gaps in a contract are to be remedied by implication of a term. This is because a gap could arise because (i) parties did not contemplate the issue at all and so left a gap; (ii) the parties contemplated the issue but chose not to provide a term for it because they believed that the express terms of the contract adequately addressed the issue; (iii) the parties contemplated the issue but chose not to provide any term for it because they could not agree on a solution. In this case, the Court found that no detailed provisions as regards the claims procedure could be implied into the contract as parties had not contemplated the issue at all.

In ***Qingjian International (South Pacific) Group Development Co Pte Ltd v Capstone Engineering Pte Ltd [2014] SGHCR 5***, the High Court considered that emails were not an appropriate mode of service of an order of court granting leave to enforce an adjudication determination pursuant to the Building Construction Industry Security of Payment Act (Cap 30B) ("SOPA"), and that service by fax or email is only allowed with the Court's leave in accordance with Order 95 Rule 2(3)(c) of the Rules of Court. On the facts, the Court was satisfied that an exchange of communications in writing was sufficient for there to be a contract in writing under section 4(4) of the SOPA, even if parties had not explicitly set out the applicable rates and scope of works. On the question of whether an email addressed to two parties was a valid service of a payment claim in the alternative, the Court considered, *obiter dicta*, that section



37(1) of the SOPA, which concerns service of a document under the Act, was not intended to be an exhaustive list of the permissible modes of service, and that it was prepared to accept that there was an agreement that payment claims may be served by way of email.

The High Court case of *Poh Cheng Chew v K P Koh & Partners Pte Ltd and another* [2014] SGHC 20, dealt with two main issues in relation to the expert of an expert determination made pursuant to a settlement agreement, and possible repudiatory breaches on the settlement agreement. On the issue of setting aside the expert determination, the Court found that although the expert saw one party as his client, this was not in itself sufficient proof of bias. However, the expert is not to take the mistaken view that he is to act as the agent of either party. On the facts, the Court considered that the expert, in (1) taking the mentality that rectification works pursuant to the settlement agreement were to be carried out to one party's satisfaction, and (2) increasing the scope of the rectification works at the request of that party, did not take into account the interests of both parties, and therefore failed to act impartially in carrying out his duties. In making its decision on the second issue on repudiatory breach, the Court decided that parties are not entitled to agree to impose an unqualified prohibition from making complaints to the Professional Engineers Board ("PEB") under the Professional Engineers Act (Cap 253), since it was the legislative intent to make an engineer accountable for his professional conduct to both his client and the PEB.

