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WK Lo's Sharings

HKIE International Conference

**“Adopting Dispute Resolution Mechanism for the
Construction Industry in Hong Kong and the Greater Bay Area”**

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Resolving disputes



- Expensive
- Time-consuming
- Negative impact on a company



Hence...

- To address as early as possible
- To reach effective settlements
- Arbitration and litigation approaches only as last resort



Ever-booming development of the construction industry

In Hong Kong, the construction industry accounts for about **5%** of the GDP, and employees account for about **8%** of the total workforce in Hong Kong. According to the Census and Statistics Department, the gross value of construction works by main contractors in **2021** totalled **HK\$233.7 billion**.

Construction disputes –
on a steady rise



Measure of Hong Kong Government



- Government has implemented a mediation clause as an alternative mode for settlement of construction disputes
- Mediation is not the pursuit of right and wrong, but can let go of the emotions of both parties and rationally analyze the consequences
- A ruling in mediation, can become a contract after both parties sign it



Mediation development in Hong Kong

- Introduced in Hong Kong firstly in 1984 by the government on construction contracts
- The complexity of construction contracts and subcontracts, all put and packed together develop various kinds of complex construction disputes
- Leading to the extremely high transaction costs for settlement through adjudicative processes



Mediation development in Hong Kong

- **The Hong Kong Mediation Code 2009 requires mediators to have specialised training and accreditation**
- **A flexible means of dispute resolution to be adaptable and customisable to meet the needs**
- **However, mediation requires the cooperation of both parties and may take a long time**



Security of Payment Legislation

- Published in 2015 by the Government
- “Pay first, argue later” method
- The decision can be challenged
- The parties must act in accordance with a strict timetable and the adjudicator must deliver a decision within a certain period of time
- A default payment scheme in the legislation will be triggered if a construction contract fails to identify a valid payment mechanism



Proposed Security of Payment Legislation for the
Construction Industry

Consultation Document

Implementation of security of payment in public work contracts



- On 5 October 2021, the Hong Kong Development Bureau issued Technical Circular (Works) No. 6/2021
- After 1 April 2022, all public works main contracts, including design and build contracts and term contracts, as well as relevant subcontracts at all tiers are subject to the contractual SOP regime
- Introduction of the mandatory security of payment provisions in the public work contract is certainly a significant step forward



Professional legal service hub



The Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) has pledged strong support for the establishment of Hong Kong as an Asia-Pacific centre for international legal and dispute resolution services.



Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone



- Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of the Shenzhen Special Economic Zone came into operation in October 2020
- Allow Hong Kong enterprises registered in the Qianhai Cooperation Zone to agree on the choice of Hong Kong law, in their civil and commercial contracts
- Seek to extend the current measures from Qianhai to the entire GBA
- Seize the opportunity to achieve initial results in resolving inter-regional legal conflicts



Good project management, particularly management of the content, deadlines, costs, information, communications, risks, changes and decision-making, and an adequate contingency provision and risk reserves, are the most effective ways to reduce the frequency and intensity of claims and conflicts.





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