

**HKU-CICID-HKIE-CIOB-ACMA
Seminar**

***Managing Payment Disputes
through legislation and contract –
a comparative analysis***

by

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Topics

- **Payment disputes**
- The “**IND Wallace standard form**”
aka the **Singapore Institute of Architects (SIA) Form**
- **Statutory Adjudication in Singapore**
- **Payment Bonds and more in USA**

Payment disputes - 1

- **Promise of Payment – consideration**
- **Frequency of payment – entire contract**
- **Payment for work done – entitlement & scope**
- **Valuation of work done – amount due**
- **Honouring payment – right to set-off**

Payment disputes - 2

1. Promise of Payment as part of consideration

2. Frequency of payment affects entitlement to payment

- **Entire contract : precise & exact performance** [substantial performance / *de minimis* rule]
- **Interim payment**
 - Monthly
 - Milestone

Payment disputes - 3

3. Payment for work done

- **Verification by certifier of amount of work properly done as at a particular date – entitlement**
- **Provision for materials on site**
- **Provision for defective works**

Payment disputes - 4

4. Valuation of work done

- **Contract sum / rates**
- **Common law : star rates /**
Quantum meruit

Payment disputes - 5

5. Honouring payment

1. Right to set-off

2. Right to interest

- Non-payment
- Late payment
- Reduced payment [withholding]

IND Wallace standard form / SIA Form - 1

- 1. Promise of Payment as part of consideration – cl 31(1)**
- 2. Frequency of payment affects entitlement to payment – cll 31(1) & 31(3): dates or stages**
- 3. Payment for work done – cl 31(2)**
- 4. Valuation of work done & sums certified – cll 31(2) & 31(5)**
- 5. Honouring payment – cl 31(1)**

IND Wallace standard form / SIA Form - 2

Consequences of breaches - 1

1. Failure to issue certificate

1. Power to “suspend all work” – cl 33(4);

2. Ground for termination: “Er improperly or fraudulently interferes with or influences or obstructs the issue of A’s cert or there is fraudulent collusion bet the Er & A” – cl 33(1)(c)

IND Wallace standard form / SIA Form - 3

Consequences of breaches - 2

2. Failure to make payment to C

1. **“full effect by way of Summary Judgment or Interim Award shall” “be given” “until such final judgment or award such decision or certificate shall be binding” – cl 31 (11);**
2. **Ground for termination – cl 33(1)(b)**
 - **Remove unfixed goods & matls except those already paid for [cl 33(3)(a)]**

IND Wallace standard form / SIA Form - 4

Consequences of breaches - 3

2. Failure to make payment to NSC/DSC

1. “Er may pay some or all of any sums certified directly to the NSC/DSC” –

cl 30 (4)

– C Deemed to have received payment **[cl30(2)]**

Statutory Adjudication in Singapore - 1

1. **Statutory Entitlement to Progress Payment**
– **s 5**
2. **Frequency of payment** found in definition of Progress Payment – **s 2** : single/one-off or event or date
3. **Payment for work done** – **s 5**
4. **Amount/Valuation** of Progress Payment – **ss 6 & 7**
5. **Statutory due date** – **s 8**

Statutory Adjudication in Singapore - 2

Consequences of breaches - 1

1. Failure to pay on due date under s 8

Statutory right to serve Payment Claim

- **Contains Claimed Amount –
outstanding PP + Interest [s8(5)]**

2. Failure to pay Response Amount under s 12

Statutory right to apply for Adjudication

Statutory Adjudication in Singapore - 3

Consequences of breaches – 2

3. Failure to pay Adjudicated Amount under s 12

Statutory remedies

- Right of lien on goods – **ss 23(1)(a) & 25**
- Right to suspend work/supply – **ss 23(1)(b) & 26**
- Right to enforce AA as judgment debt – **ss 23(2) & 27**
- Right of principal to make direct payment to claimant - **s 24**

Payment Bonds and more in USA

- **Mechanics Lien Law** – Maryland Statute 1791
- **Miller Acts – bonds : performance & payment**
[response to certain public project not caught by ML]
- **Prompt payment statutes** – interest penalty & limited right to withhold in the event of dispute [backcharges]
- **Stop payment statutes** – lien
- **Construction trust funds statute** – moneys paid to contractor to be held as trustees

Observations & Conclusions

- Payment disputes all over the world are the same: **liability, quantum & timing of payment**
- **Freedom of contract is not about fairness** : it works for those who have a **greater bargaining power**
- **Statutory regulation ensures widespread application**

The End
Thank You

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"Managing Payment Disputes through legislation and
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