



GET READY TO ADJUDICATE: A STATUTORY 'SECURITY OF PAYMENT' REGIME IS ON THE HORIZON IN HONG KONG

In May 2024, the Government of the Hong Kong SAR took its most significant step yet towards implementing a statutory 'security of payment' regime in Hong Kong, with the publication of the long-awaited *Construction Industry Security of Payment Bill*. The move marks a major development for 'security of payment' in Hong Kong.

Background

A contractual adjudication pilot scheme for public works contracts has been in place in Hong Kong since December 2021, which aimed to facilitate timely processing of payments and provide an interim mechanism for the expeditious resolution of payment disputes before the enactment of a statutory regime. Details of the pilot scheme can be found in the March 2023 edition of our Construction Bulletin¹. The pilot scheme, however, is restricted in its scope and application, applying only to certain public works contracts.

Recent developments

On 16 May 2024, the Development Bureau published the *Construction Industry Security of Payment Bill (CISP Bill)* which, when enacted, will establish a statutory mechanism to address unfair payment terms and payment delays, and expeditiously adjudicate payment disputes between contracting parties.

The Bill was gazetted on 17 May 2024 and will be introduced to the Legislative Council (**LegCo**) for first reading on 29 May 2024. A copy of the CISP Bill can be accessed at: <https://www.gld.gov.hk/egazette/english/gazette/file.php?year=2024&vol=28&no=20&extra=0&type=3&number=10>.

Like the Singapore and Australian models, only payment disputes (including time-related payment disputes) are subject to the adjudication mechanism. Another key feature of the CISP Bill is that unpaid parties are empowered to suspend or slow down construction works or services.

Subject to limited exclusions, the CISP Bill envisages that the statutory 'security of payment' regime will apply to all 'traditional' construction contracts, as well as all contracts for the supply of related goods and services, and contracts for 'ancillary' construction work including architectural, utilities and services, landscaping, painting, electrical and civil works. Given its broad application, the CISP Bill is likely to impact almost all (if not all) stakeholders in the construction industry, including developers/employers, contractors of all tiers, suppliers and consultants.

While a legislative timetable for the enactment of the CISP Bill has not yet been proposed, the introduction of a bill to LegCo is one of the final hurdles prior to a bill becoming Hong Kong law. We will monitor developments closely and provide further updates in due course.

HFW's global construction practice has a wealth of experience advising on similar 'security of payment' regimes in jurisdictions such as England, Singapore and Australia. If you would like to discuss 'security of payment' in Hong Kong in greater detail, please contact the authors of this article, or your usual HFW contact(s).



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¹ <https://www.hfw.com/insights/Construction-Bulletin-March-2023/>

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