

BRIEFING NOTE

The COVID-19 Virus and Facilitating Payments in the Construction Sector – A Rundown on the Security of Payment Act (“SOPA”)

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Introduction

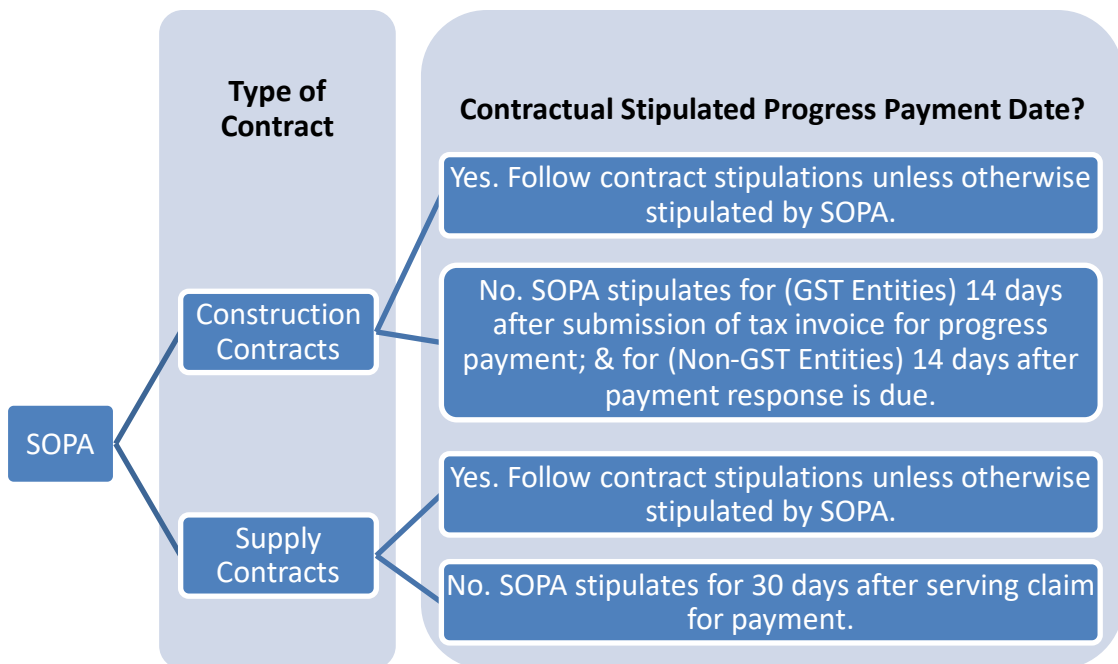
In today’s crisis brought about by COVID-19, cash flow has become an increasingly important issue. This is especially so in the construction industry, where the multitude of parties – owners, contractors, sub-contractors and suppliers – involved in any project demands the maintenance of a healthy cash flow. In these turbulent times, construction industry players would be even more concerned with the timely receipt of outstanding payments.

In this briefing note, we set out how construction industry players may rely on the Security of Payment Act (Cap. 30B) (“SOPA”) to ensure a healthy inflow of outstanding payments.

Overview of the Security of Payment Act (Cap. 30B)

The SOPA was enacted to facilitate payments predominantly for: (a) construction work done; and (b) related goods or services supplied in the construction industry.

Under the SOPA, parties are entitled to progress payments for staged construction works, or goods and services supplied, under strict timelines:



Steps to Claim for Payment under the SOPA

Parties claiming for payment (the “Claimant”) should seek professional assistance to prepare and serve a payment claim on the party(s) liable to make payment (the “Respondent”). The payment claim should state the amount payable, as well as set out the basis of the claim and any other relevant information supporting the claim.

Where there are no objections to the payment claim, Respondents are encouraged to make payment of the claimed amount. In some instances, however, there may be reasons to dispute the payment claim (for e.g., no payment is due or a lesser payment is due). In these situations, the Respondent should work with its legal advisors to submit a response indicating the amount that should be payable (if any) and containing reasons supporting the response.

If the amount indicated in the response is accepted and paid to the Claimant, the claims process is completed. Otherwise, the Claimant may proceed to apply for adjudication.

Adjudication

An application for adjudication may be submitted on the basis that:

- the amount indicated in the response has been accepted but payment was not made within the stipulated period;
- the response is disputed; or
- no response is received within the stipulated period.

As part of the adjudication process, the Claimant and Respondent are often assisted by legal advisors to prepare their respective positions. Thereafter, the adjudicator conducts the adjudication (which may involve additional documents/submissions from the parties, conferencing with the parties, or inspecting the construction work or supply of related goods and services), before making a determination.

Should an adjudicated amount be payable, the Respondent would be encouraged to make prompt payment. Otherwise, there may be disruption to the progress of construction works. This is because the Claimant may suspend work (for construction contracts) or exercise a lien over goods supplied but unpaid (for supply contracts) if it does not receive payment.

How We Can Help

Adjudication is a cost and time efficient procedure for construction industry players to ensure prompt payments. In the current (and post) pandemic landscape, as the economy is further squeezed by the effects of COVID-19, adjudication will continue to play a crucial role in the

construction industry. This is especially so for many projects where one weak link in the chain of contracts may lead to delays and disruption to the completion of the project.

To facilitate the efficiency and efficacy of the adjudication process, parties are encouraged to engage legal counsels with: (a) the experience to understand the issues; (b) the time to pursue (or defend) the payment claim; and (c) the passion to drive the adjudication. [*Refer to our briefing note on this topic [here](#)*]

Our construction team has a wealth of experience acting and advising owners, contractors, sub-contractors and suppliers in major construction and infrastructure projects. At all times, we pride ourselves with delivering prompt and top-quality advice that best advances our clients' commercial interest.

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