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Building and Construction Industry Security of Payment (Amendment) Bill

Bill No. 38/2018.

Read the first time on 10 September 2018.

A BILL

i n t i t u l e d

An Act to amend the Building and Construction Industry Security of Payment Act (Chapter 30B of the 2006 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Building and Construction Industry Security of Payment (Amendment) Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

Amendment of section 2

2. Section 2 of the Building and Construction Industry Security of Payment Act (called in this Act the principal Act) is amended —

(a) by deleting the definition of “adjudicator” and substituting the following definition:

““adjudicator” means a person appointed under this Act to determine a payment claim dispute that has been referred for adjudication, and includes —

(a) a replacement adjudicator appointed under section 14A(3);

(b) a review adjudicator or a panel of review adjudicators appointed under section 18(5)(b); and

(c) a replacement review adjudicator or a replacement member of a panel of review adjudicators appointed under section 18A(3);”;

(b) by inserting, immediately after the words “supply contract” in the definition of “contract”, the words “, and includes a construction contract or a supply contract that has been terminated”;

(c) by inserting, immediately after the definition of “owner”, the following definition:

““patent error”, in relation to a payment claim, means an error that is obvious, manifest or otherwise easily recognisable on the face of the claim;”;

- (d) by inserting, immediately after the word “payment” in paragraph (a) of the definition of “progress payment”, the words “(including a final payment)”; and
- (e) by inserting, immediately after the word “date” in paragraph (b) of the definition of “progress payment”, the words “(including a final payment)”. 5

Amendment of section 4

3. Section 4 of the principal Act is amended —

- (a) by deleting the word “and” at the end of subsection (2)(b)(ii); 10
- (b) by deleting paragraph (c) of subsection (2) and substituting the following paragraphs:

“(c) any terminated contract to the extent that —

- (i) the terminated contract contains provisions relating to termination that permit the respondent to suspend progress payments to the claimant until a date or the occurrence of an event specified in the contract; and 15 20
- (ii) that date has not passed or that event has not occurred;
- (d) any contract for the prefabrication, in Singapore, of components intended for construction work to be carried out on a construction site outside Singapore, where any one of the parties to the contract is not — 25
 - (i) a body corporate incorporated under any written law in Singapore; 30
 - (ii) a limited partnership registered under the Limited Partnerships Act (Cap. 163B); or

(iii) a person carrying on a business that is registered under the Business Names Registration Act 2014 (Act 29 of 2014); and

5 (e) such other contract or class of other contracts as may be prescribed.”; and

(c) by inserting, immediately after subsection (2), the following subsection:

“(2A) To avoid doubt, this Act —

10 (a) applies to a contract that deals with the prefabrication (whether in or outside Singapore) of components that will form part of any building, structure or works, where the contract is for the supply of these
15 prefabricated components for construction work to be carried out on a construction site in Singapore; and

(b) does not apply to claims made between
20 former parties to a contract in relation to any construction work that is carried out, or goods or services that are supplied, at the time of or after the termination of the contract.”.

Amendment of section 8

25 **4.** Section 8 of the principal Act is amended by deleting subsection (5) and substituting the following subsection:

“(5) The interest payable on the unpaid amount of a progress payment that has become due and payable is at the higher of the following rates:

30 (a) the rate specified in or determined in accordance with the terms of the contract;

(b) the rate prescribed in respect of judgment debts under the Supreme Court of Judicature Act (Cap. 322).”.

Amendment of section 10

5. Section 10 of the principal Act is amended —

(a) by deleting subsection (2) and substituting the following subsections:

“(2) A payment claim must be served —

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(a) not later than —

(i) the date, or the last day of a period, specified in, or determined in accordance with, the terms of the contract relating to the purpose of this subsection; or

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(ii) the date prescribed for the purpose of this subsection if the contract does not contain such terms; and

(b) not later than 30 months after the following, whichever is applicable:

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(i) the date on which the goods and services to which the amount in the payment claim relates were last supplied;

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(ii) the latest of the following dates:

(A) the date on which the construction work to which the amount in the payment claim relates was last carried out;

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(B) the issuance date of the last document, as at the time the payment claim is served, certifying the completion of the construction work under a contract;

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(C) the issuance date of the last temporary occupation permit as at the time the payment claim is served.

5 (2A) In subsection (2) —

(a) a payment claim that is served before the date or last day mentioned in subsection (2)(a)(i) is deemed to have been served on that date or day, as the case may be; and

10 (b) a payment claim that is served before the prescribed date mentioned in subsection (2)(a)(ii) is deemed to have been served on that date.”; and

15 (b) by deleting subsection (4) and substituting the following subsections:

“(4) Nothing in subsection (1) prevents the claimant from serving an unpaid payment claim in accordance with subsection (2).

20 (5) In this section —

“issuance date”, for a document, means the date that the document is served;

“temporary occupation permit”, in respect of a building or part of a building, means —

25 (a) a temporary occupation permit granted under the Building Control Act (Cap. 29) for the building or part of the building; or

30 (b) a certificate of statutory completion issued under that Act for that building or part of that building where no temporary occupation permit is granted;

“unpaid payment claim” means —

(a) a payment claim for which full payment has not been received, and for which an adjudication application has not been brought; or

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(b) a payment claim for which —

(i) full payment has not been received; and

(ii) an adjudication application has been brought, but was withdrawn for any reason or rejected without adjudication because the claimant’s entitlement to make an adjudication application had not arisen under section 12, or because the adjudication application did not comply with the requirements under section 13(2) or (3).”.

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Amendment of section 11

6. Section 11 of the principal Act is amended —

(a) by deleting the words “7 days” in subsection (1)(b) and substituting the words “14 days”; and

(b) by inserting, immediately after the words “agrees to pay,” in subsection (2), the words “or by raising objections in writing,”.

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Amendment of section 12

7. Section 12 of the principal Act is amended —

(a) by inserting, immediately after the word “accepted” in subsection (1), the words “in writing”; and

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(b) by inserting, immediately after subsection (2), the following subsection:

“(2A) For the purpose of subsection (2)(a), a claimant is considered to dispute a payment response if the claimant does not in writing accept the payment response.”.

New section 14A

8. The principal Act is amended by inserting, immediately after section 14, the following section:

“Appointment of replacement adjudicator

14A.—(1) Where an authorised nominating body becomes aware that —

(a) an adjudicator appointed under section 14 has ceased to meet the eligibility criteria for adjudicators under section 29; or

(b) the adjudicator has become unable to perform the adjudicator’s duties for any reason,

the authorised nominating body must refer the adjudication application to a person who is on the register of adjudicators established under section 28(4)(a) and whom the authorised nominating body considers to be appropriate for appointment as the replacement adjudicator to determine the adjudication application.

(2) The person to whom the adjudication application has been referred under subsection (1) may agree or decline to determine the adjudication application.

(3) The authorised nominating body must, within 7 days after becoming aware of the matters in subsection (1)(a) or (b) (as the case may be) serve on the claimant, the respondent, the principal (if known) and the owner concerned a notice in writing confirming the appointment of the person who has agreed to determine the adjudication application referred to the person under subsection (1) as the replacement adjudicator.”.

Amendment of section 15

9. Section 15 of the principal Act is amended by deleting subsection (3) and substituting the following subsections:

“(3) Subject to subsection (3A), the respondent must not include in the adjudication response an objection of any nature, unless —

(a) where the adjudication relates to a construction contract, that objection was included in the relevant payment response provided by the respondent to the claimant; or

(b) where the adjudication relates to a supply contract, that objection was raised by the respondent to the claimant in writing on or before the relevant due date.

(3A) Despite subsection (3), the respondent may include in the adjudication response an objection mentioned in subsection (3) if —

(a) in the case of an adjudication that relates to a construction contract —

(i) the circumstances of that objection only arose after the respondent provided the relevant payment response to the claimant; or

(ii) the respondent could not reasonably have known of the circumstances when providing the relevant payment response to the claimant; or

(b) in the case of an adjudication that relates to a supply contract —

(i) the circumstances of that objection only arose after the relevant due date; or

(ii) the respondent could not reasonably have known of the circumstances by the relevant due date.”.

Amendment of section 16

10. Section 16 of the principal Act is amended —

- (a) by inserting, immediately after subsection (1), the following subsection:

“(1A) If an adjudicator is appointed under section 14A(3), a new adjudication commences as if the adjudication under subsection (1) had not commenced, immediately upon expiry of the period mentioned in section 14A(3) within which the notice confirming the adjudicator’s appointment must be served.”;

- (b) by deleting the words “An adjudicator shall reject” in subsection (2) and substituting the words “Subject to subsection (2A), an adjudicator must reject”; and

- (c) by inserting, immediately after subsection (2), the following subsection:

“(2A) Despite subsection (2), an adjudicator may accept any adjudication application that is not made in accordance with section 13(3)(c) if the adjudicator is satisfied that the non-compliance does not materially prejudice the respondent.”.

Amendment of section 17

11. Section 17 of the principal Act is amended —

- (a) by inserting, immediately after the words “commencement of the adjudication” in subsection (1)(a), the words “under section 16(1) or (1A) (as the case may be) or within such longer period as may have been requested by the adjudicator and agreed to by the claimant and the respondent”;

- (b) by deleting paragraph (b) of subsection (1) and substituting the following paragraph:

“(b) in any other case, within 14 days after the commencement of the adjudication under section 16(1) or (1A) (as the case may be) or within such longer period as may have been requested by the adjudicator and agreed to by the claimant and the respondent.”;

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(c) by inserting, immediately after subsection (2), the following subsection:

“(2A) In determining an adjudication application, an adjudicator must disregard any part of a payment claim or a payment response related to damage, loss or expense that is not supported by —

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(a) any document showing agreement between the claimant and the respondent on the quantum of that part of the payment claim or the payment response; or

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(b) any certificate or other document that is required to be issued under the contract.”; and

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(d) by inserting, immediately after subsection (4), the following subsection:

“(4A) The adjudicator must not consider an objection from the respondent of any nature that was not included in the adjudication response, unless —

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(a) the circumstances of that objection only arose after the respondent lodged the adjudication response with the authorised nominating body;

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(b) the respondent could not reasonably have known of those circumstances when lodging the adjudication response with the authorised nominating body; or

(c) the objection relates to a patent error.”.

Amendment of section 18

12. Section 18 of the principal Act is amended —

- 5 (a) by inserting, immediately after the word “more” in subsection (1), the words “, and to a claimant who is a party to an adjudication if the claimed amount exceeds the adjudicated amount by the prescribed amount or more”;
- (b) by inserting, immediately after the words “a respondent” in subsection (2), the words “or a claimant”;
- 10 (c) by inserting, immediately after the words “the respondent” in subsection (2), the words “or claimant”;
- (d) by deleting the words “paid the adjudicated amount to the claimant” in subsection (3) and substituting the words “paid the adjudicated amount to the authorised nominating
- 15 body”; and
- (e) by inserting, immediately after the word “claimant” in subsection (5)(a)(i), the words “or the respondent, as the case may be”.

New section 18A

20 **13.** The principal Act is amended by inserting, immediately after section 18, the following section:

“Appointment of replacement review adjudicator

18A.—(1) Where an authorised nominating body becomes aware that —

- 25 (a) a review adjudicator or a member of a panel of review adjudicators appointed under section 18(5)(b) has ceased to meet the eligibility criteria for adjudicators under section 29; or

- (b) a review adjudicator or a member of a panel of review adjudicators has become unable to perform the adjudicator's duties for any reason,

the authorised nominating body must refer the adjudication review application to a person who is on the register of adjudicators established under section 28(4)(a) and whom the authorised nominating body considers to be appropriate for appointment as the replacement review adjudicator or a replacement member of a panel of review adjudicators to determine the adjudication review application in place of the review adjudicator or member of a panel of review adjudicators in paragraph (a) or (b), as the case may be.

(2) The person to whom the adjudication review application has been referred under subsection (1) may agree or decline to determine the adjudication review application.

(3) The authorised nominating body must, within 7 days after becoming aware of the matters in subsection (1)(a) or (b) (as the case may be) serve on the parties to the adjudication review, the principal (if known) and the owner concerned a notice in writing confirming the appointment of the person who has agreed to determine the adjudication review application referred to the person under subsection (1) as the replacement review adjudicator or the replacement member of the panel of review adjudicators, as the case may be.

(4) The authorised nominating body must not appoint an adjudicator whose determination is the subject of the adjudication review.”.

Amendment of section 19

14. Section 19 of the principal Act is amended —

- (a) by inserting, immediately after subsection (1), the following subsections:

“(1A) If an adjudicator is appointed under section 18A(3) to replace a review adjudicator, or if 3 adjudicators are appointed under section 18A(3) to replace 3 members of a panel of review adjudicators, a new adjudication review commences —

(a) immediately upon expiry of the period mentioned in section 18A(3) within which the notice confirming the adjudicator’s appointment must be served; and

(b) as if the adjudication review under subsection (1) had not commenced.

(1B) If 2 or fewer adjudicators are appointed under section 18A(3) to replace 2 or fewer members of a panel of review adjudicators, the adjudication review resumes for the reconstituted panel to hear and determine so much of the adjudication review as the panel considers fit —

(a) immediately upon expiry of the period mentioned in section 18A(3) within which the notice confirming the adjudicator’s appointment must be served; and

(b) whether or not any part of the adjudication review has been heard by the previous panel of adjudicators.

(1C) In subsection (1B), the reconstituted panel may have regard to the evidence given and arguments adduced during the part of the adjudication review heard by the previous panel of review adjudicators.”;

(b) by deleting subsection (3) and substituting the following subsection:

“(3) The review adjudicator or the panel of review adjudicators (as the case may be) must determine the adjudication review application within —

- (a) 14 days after the commencement of the adjudication review under subsection (1) or (1A), as the case may be;
 - (b) the remainder of the 14 days after the resumption of the adjudication review under subsection (1B); or
 - (c) such longer period as may have been requested by the review adjudicator or the panel of review adjudicators (as the case may be) and agreed to by the claimant and the respondent.”;
- (c) by inserting, immediately after paragraph (a) of subsection (5), the following paragraph:
- “(aa) the amount, if any, to be returned by the authorised nominating body to the respondent;”;
- (d) by deleting the word “claimant” in subsection (5)(b) and substituting the words “authorised nominating body”;
- (e) by inserting, immediately after subsection (5), the following subsection:
- “(5A) In determining an adjudication review application, the review adjudicator or the panel of review adjudicators (as the case may be) must disregard any part of a payment claim or a payment response related to damage, loss or expense that is not supported by —
- (a) any document showing agreement between the claimant and the respondent on the quantum of that part of the payment claim or the payment response; or
 - (b) any certificate or other document that is required to be issued under the contract.”;
- and

(f) by inserting, immediately after subsection (6), the following subsection:

“(6A) The review adjudicator or the panel of review adjudicators (as the case may be) must not consider an objection from the respondent of any nature that was not included in the adjudication response, unless —

(a) the circumstances of the objection only arose after the respondent lodged the adjudication response with the authorised nominating body;

(b) the respondent could not reasonably have known of those circumstances when lodging the adjudication response with the authorised nominating body; or

(c) the objection relates to a patent error.”.

Amendment of section 20

15. Section 20(2) of the principal Act is amended —

(a) by deleting the word “respondent” and substituting the words “party who lodged the application”; and

(b) by deleting paragraph (c) and substituting the following paragraph:

“(c) the other party to the adjudication review application.”.

Amendment of section 22

16. Section 22 of the principal Act is amended —

(a) by inserting, immediately after the words “provided in” in subsection (1), the words “subsection (1A) and”;

(b) by inserting, immediately after subsection (1), the following subsection:

“(1A) Where a respondent is required in consequence of the adjudication determination to pay an adjudicated amount to the claimant, and the claimant is entitled under section 18(2) to lodge an application for the review of the adjudication determination, the respondent must pay that amount —

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(a) not earlier than 7 days but within 10 days after the respondent is served the adjudicator’s determination;

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(b) within 7 days after the respondent is served the adjudication review determination of an adjudication review brought by the claimant; or

(c) on or before the date (if any) determined by the review adjudicator or the panel of review adjudicators under section 19(5)(b) as the date that the amount is payable,

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whichever is the later.”; and

(c) by deleting subsection (2) and substituting the following subsections:

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“(2) Where an application for the review of an adjudicator’s determination has been lodged by the respondent, an authorised nominating body to whom an adjudicated amount has been paid under section 18(3) must pay the relevant amount to the party who is entitled to payment —

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(a) within 7 days after the adjudication review determination is served on that party; or

(b) on or before a later date (if any) determined by the review adjudicator or the panel of review adjudicators under section 19(5)(b) as the date that the amount is payable.

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(3) Where the adjudicated amount under an adjudication review determination is higher than the adjudicated amount under the adjudication determination, a respondent who has paid the adjudicated amount under the adjudication determination to the authorised nominating body under section 18(3) must pay the difference to the claimant —

(a) within 7 days after the adjudication review determination is served on the respondent; or

(b) on or before a later date (if any) determined by the review adjudicator or the panel of review adjudicators under section 19(5)(b) as the date that the amount is payable.”.

Amendment of section 27

17. Section 27 of the principal Act is amended by inserting, immediately after subsection (5), the following subsections:

“(6) The grounds on which a party to an adjudication may commence proceedings under subsection (5) include, but are not limited to, the following:

(a) the payment claim was not served in accordance with section 10;

(b) the claimant served more than one payment claim in respect of a progress payment, otherwise than permitted under section 10;

(c) the payment claim was in respect of a matter that has already been adjudicated on its merits in proceedings under this Act;

(d) the adjudication application or the adjudication review application was not made in accordance with the provisions of this Act;

(e) the adjudicator failed to comply with the provisions of this Act in making the adjudication determination;

- (f) the adjudication determination requires the claimant to pay an adjudicated amount to the respondent;
- (g) a breach of the rules of natural justice occurred in connection with the making of the adjudication determination;
- (h) the making of the adjudication determination was induced or affected by fraud or corruption.

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(7) A respondent may not commence proceedings under subsection (5) on any ground if the objection to support that ground was not included in the respondent's adjudication response, unless —

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- (a) the circumstances of the objection to support that ground only arose after the respondent lodged the adjudication response with the authorised nominating body; or
- (b) the respondent could not reasonably have known of those circumstances when lodging the adjudication response with the authorised nominating body.

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(8) Without affecting a court's powers under any other written law or rule of law, a court may, in any proceedings under subsection (5) —

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- (a) set aside an adjudication determination in whole or in part;
- (b) remit the whole or any part of the adjudication determination to the adjudicator;
- (c) correct in the adjudication determination any clerical mistake, error arising from an accidental slip or omission, or a defect of form; and
- (d) award costs to any party to an adjudication.

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(9) Where the court makes an order of remission under subsection (8)(b) —

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- (a) Parts IV to VII apply, with the necessary modifications, to the determination of the remitted

issues by the adjudicator, as if the remitted issues were issues in an adjudication that commenced on a date specified by the court in the order; and

(b) the adjudicator's determination of the remitted issues has effect as if it were an adjudication determination for the purposes of this Act.”.

Amendment of section 28

18. Section 28(4) of the principal Act is amended —

(a) by deleting the word “and” at the end of paragraph (e); and

(b) by inserting, immediately after paragraph (e), the following paragraph:

“(ea) abide by any regulations that the Minister may prescribe; and”.

New section 28A

19. The principal Act is amended by inserting, immediately after section 28, the following section:

“Authorised nominating body to maintain trust account

28A.—(1) An authorised nominating body must open and maintain a trust account with a bank for the purpose of holding the adjudicated amount mentioned in section 18(3).

(2) An authorised nominating body must not withdraw any money from a trust account except for the purpose of subsection (3) or making a payment under section 22(2).

(3) All interest earned from the maintenance of adjudicated amounts received in a trust account accrue to the authorised nominating body, which may dispose of the interest in such manner as the authorised nominating body considers fit.

(4) Money held in a trust account is not available for payment of the debts of an authorised nominating body or liable to be paid or taken in execution under the order or process of a court.

(5) Nothing in subsection (4) takes away or affects any lawful claim that a claimant or a respondent has against money held in a trust account.

(6) In this section —

“bank” has the meaning given by the Banking Act (Cap. 19); 5

“trust account” means a current or deposit account maintained in the name of the authorised nominating body at a bank, in the title of which the words “BCISOPA ANB — Adjudicated Amount Client Account” appear.”. 10

Amendment of section 29

20. Section 29 of the principal Act is amended by deleting subsection (3) and substituting the following subsection:

“(3) A person to whom an adjudication application has been referred by the authorised nominating body under section 14, 14A, 18 or 18A, and who — 15

(a) is or becomes interested in any way, whether directly or indirectly, in any contract or other matter that relates to the adjudication application; or 20

(b) is or becomes aware that he —

(i) does not meet the eligibility criteria in subsection (1); or

(ii) is not eligible to be an adjudicator in relation to a contract for any reason mentioned in subsection (2)(a) or (b), 25

must immediately disclose the nature of his interest, the nature of his ineligibility or the reason for which he is not eligible (as the case may be) to the authorised nominating body.”.

Amendment of section 31

21. Section 31 of the principal Act is amended —

(a) by deleting the words “or expenses” in subsection (2); and

(b) by deleting the words “and expenses” in subsection (3)(a).

Amendment of section 32

22. Section 32 of the principal Act is amended —

(a) by deleting the words “suit or other legal proceedings” in subsection (1) and substituting the word “liability”; and

(b) by deleting subsection (2) and substituting the following subsection:

“(2) No liability shall lie against an authorised nominating body or any person acting under the direction of the authorised nominating body with respect to anything done or omitted to be done —

(a) in good faith in the discharge or purported discharge of the authorised nominating body’s function of nominating adjudicators under this Act; and

(b) in good faith and with reasonable care in the discharge or purported discharge of any other functions or duties of the authorised nominating body under this Act.”.

Amendment of section 37

23. Section 37 of the principal Act is amended —

(a) by deleting the word “may” in subsection (1) and substituting the word “must”;

(b) by deleting the word “or” at the end of subsection (1)(b);

(c) by deleting the full-stop at the end of paragraph (c) of subsection (1) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

“(d) by sending it by email to the person’s email address; or

(e) by sending it by any other electronic method authorised by regulations made under section 41(1) for the service of documents of that kind if the person consents to service of a document of that kind in that way.”; and

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(d) by deleting subsection (2) and substituting the following subsections:

“(2) Service of a document on a person under this section takes effect —

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(a) if the document is sent to the person’s usual or last known place of business under subsection (1)(c) — when the document is received at that place;

(b) if the document is sent by email — at the time that the email becomes capable of being retrieved by the person; or

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(c) if the document is sent by any other electronic method mentioned in subsection (1)(e) — at the time that the electronic communication transmitting the document becomes capable of being retrieved by the person.

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(2A) In this section, “email address” means —

(a) the last email address given by the addressee concerned to the person serving the document as the email address for the service of documents; or

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(b) the last email address of the addressee concerned known to the person serving the document.”.

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Amendment of section 39

24. Section 39 of the principal Act is amended by deleting the words “11(1)(a) or (b), 12(5), 13(3)(a), 14(3), 15(1), 17(1)(a) or (b), 18(2) or (6), 19(3), 22(1)(a) or (2)(a)” and substituting the words “10(2)(b),
 5 11(1)(a) or (b), 12(5), 13(3)(a), 14(3), 14A(3), 15(1), 17(1)(a) or (b), 18(2) or (6), 18A(3), 19(3), 22(1)(a), (1A)(a) or (b), (2)(a) or (3)(a)”.

Saving and transitional provisions

25.—(1) The definition of “adjudicator” in section 2 of the principal Act as in force immediately before the date of commencement of
 10 section 2(a) continues to apply in relation to an adjudication application or an adjudication review application, where the relevant payment claim was served before that date.

(2) Section 10 of the principal Act as in force immediately before the date of commencement of section 5 continues to apply to the service
 15 of a payment claim in relation to a contract that was entered into before that date.

(3) Section 11(1) and (2) of the principal Act as in force immediately before the date of commencement of section 6 continues to apply to the provision of a payment response under section 11(1) or 12(4), or a
 20 response under section 11(2), where the relevant payment claim was served before that date.

(4) Section 12 of the principal Act as in force immediately before the date of commencement of section 7 continues to apply in relation to a claimant’s entitlement to make an adjudication application, where the
 25 relevant payment claim was served before that date.

(5) Section 8 does not apply to an adjudication application where the relevant payment claim was served before the date of commencement of that section.

(6) Section 15 of the principal Act as in force immediately before the date of commencement of section 9 continues to apply to an
 30 adjudication response, where the relevant payment claim was served before that date.

(7) Section 16 of the principal Act as in force immediately before the date of commencement of section 10 continues to apply to an adjudication application, where the relevant payment claim was served before that date.

(8) Section 17 of the principal Act as in force immediately before the date of commencement of section 11 continues to apply to an adjudicator's determination of an adjudication application, where the relevant payment claim was served before that date.

(9) Section 18 of the principal Act as in force immediately before the date of commencement of section 12 continues to apply to an adjudication review application, where the relevant payment claim was served before that date.

(10) Section 13 does not apply to an adjudication review application where the relevant payment claim was served before the date of commencement of that section.

(11) Section 19 of the principal Act as in force immediately before the date of commencement of section 14 continues to apply to an adjudication review application, where the relevant payment claim was served before that date.

(12) Section 20 of the principal Act as in force immediately before the date of commencement of section 15 continues to apply in relation to the withdrawal of an adjudication application or an adjudication review application, where the relevant payment claim was served before that date.

(13) Section 22 of the principal Act as in force immediately before the date of commencement of section 16 continues to apply to the payment of an adjudicated amount, where the relevant payment claim was served before that date.

(14) Section 27 of the principal Act as in force immediately before the date of commencement of section 17 continues to apply to the commencement of proceedings, and the proceedings, to set aside an adjudication determination, where the payment claim to which the adjudication determination relates was served before that date.

(15) Section 29 of the principal Act as in force immediately before the date of commencement of section 20 continues to apply to determine the eligibility of an adjudicator in an adjudication application or an adjudication review application, where the payment claim was served before that date.

(16) Section 31 of the principal Act as in force immediately before the date of commencement of section 21 continues to apply to the payment of an adjudicator's fees and expenses, where the payment claim to which the adjudication application or adjudication review application heard by the adjudicator relates was served before that date.

(17) Section 32 of the principal Act as in force immediately before the date of commencement of section 22 continues to apply to an adjudicator, an authorised nominating body, or any person acting under the direction of an authorised nominating body with respect to anything done or omitted to be done in the discharge or purported discharge of the functions of any of these persons under the Act, where the relevant payment claim was served before that date.

(18) Section 37 of the principal Act as in force immediately before the date of commencement of section 23 continues to apply to the service of any document under Parts III to VI of the principal Act (other than a payment claim), where the relevant payment claim was served before that date.

EXPLANATORY STATEMENT

This Bill seeks to amend the Building and Construction Industry Security of Payment Act (Cap. 30B) for the following main purposes:

- (a) to impose a new limitation period for the service of a payment claim, enable a payment claim to be served before the due date, and specify when a payment claim that is served before the due date is deemed to have been served;
- (b) to provide that a respondent may not include in the adjudication response any objection that was not included in the relevant payment response or raised to the claimant in writing on or before the relevant due date, except in specified circumstances;

- (c) to provide for the appointment of a replacement adjudicator, a replacement review adjudicator, or a replacement member of a panel of review adjudicators, and the effect of such an appointment on an adjudication application or an adjudication review application;
- (d) to require an adjudicator not to consider any objection from the respondent that was not included in the adjudication response, except in specified circumstances;
- (e) to enable a claimant to lodge an application for the review of an adjudication determination where the claimed amount exceeds the adjudicated amount by the prescribed amount or more;
- (f) to provide for measures to safeguard the adjudicated amount that a respondent is required to pay, pending the outcome of an adjudication review application brought by the respondent;
- (g) to specify a non-exhaustive list of grounds on which a party to an adjudication may commence proceedings to set aside the adjudication determination, and the circumstances under which that party is prevented from relying on a ground to commence such proceedings;
- (h) to provide for certain powers of the court in proceedings to set aside an adjudication determination;
- (i) generally to improve the administration of the Act and proceedings under the Act, and enhance supervision over the conduct of adjudicators and authorised nominating bodies.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 to make consequential amendments to the definition of “adjudicator”, following the introduction of replacement adjudicators and replacement review adjudicators in clauses 8 and 13. The clause also expands the definition of “contract” to include a construction contract or a supply contract that has been terminated, and clarifies that the definition of “progress payment” includes a final payment.

In addition, clause 2 inserts a new definition of “patent error” based on the decision of *Comfort Management Pte Ltd v. OGSP Engineering Pte Ltd* [2018] SGCA 19. Examples of patent errors, as set out in the decision, include the following:

- (a) the contract to which the payment claim relates is not a contract between the claimant and the respondent;
- (b) the documentary evidence or other material submitted by the claimant plainly contradicts the claimed amount;

- (c) the payment claim is not supported by any documentary evidence or other material.

Clause 3 amends section 4 to limit the application of the Act in respect of any terminated contract that contains provisions relating to termination that permit the respondent to suspend progress payments to the claimant until a date or occurrence of an event specified in the contract. The Act will not apply to the terminated contract if that date has not passed or that event has not occurred. In addition, the Act does not apply to a contract for the prefabrication, in Singapore, of components intended for construction work to be carried out on a construction site outside Singapore, where any party to the contract is not incorporated in Singapore, a limited partnership registered in Singapore or carrying on a business registered under the Business Names Registration Act 2014 (Act 29 of 2014).

Clause 3 also inserts a new subsection (2A) into section 4 to clarify that the Act applies to a contract that deals with the prefabrication of components overseas that will form any part of any building, structure or works, provided that the contract is for the supply of these prefabricated components for construction work to be carried out on a construction site in Singapore. In addition, the new subsection (2A) clarifies that the Act does not apply to claims made in relation to any construction work that is carried out, or goods and services that are supplied, on or after a contract is terminated.

Clause 4 deletes and substitutes section 8(5) to provide that the interest payable on the unpaid amount of a progress payment that has become due and payable is at the higher of the rate specified in or determined in accordance with the terms of the contract, or the rate prescribed in respect of judgment debts under the Supreme Court of Judicature Act (Cap. 322).

Clause 5 amends section 10 to introduce the term “unpaid payment claim” and to provide that nothing in section 10(1) prevents the claimant from serving an unpaid payment claim in accordance with section 10(2). The clause also introduces a new limitation period in section 10(2)(b) for the service of a payment claim. The new 30-month limitation period is calculated by reference to —

- (a) the date on which the goods and services to which the amount in the payment claim relates were last supplied; or
- (b) the latest of the following dates:
 - (i) the date on which the construction work to which the amount in the payment claim relates was last carried out;
 - (ii) the issuance date of the last document, as at the time the payment claim is served, certifying the completion of the construction work under a contract;
 - (iii) the issuance date of the last temporary occupation permit as at the time the payment claim is served.

In addition, clause 5 inserts a new subsection (2A) into section 10 to specify the deemed date of service for a payment claim that is served before the applicable due date in section 10(2).

Clause 6 amends section 11(1) to increase the amount of time for a respondent to provide a payment response from 7 to 14 days after the payment claim is served under section 10, where the construction contract does not provide for the response time. The clause also amends section 11(2) to require objections to be raised in writing.

Clause 7 amends section 12(1) to insert a new requirement that a claimant must accept a payment response in writing. The clause also inserts a new subsection (2A) into section 12 to state that a claimant is considered to dispute a payment response if the claimant does not in writing accept the payment response.

Clause 8 inserts a new section 14A to enable an authorised nominating body to refer an adjudication application to a person who is on the register of adjudicators, and whom the authorised nominating body considers to be appropriate for appointment as the replacement adjudicator, to determine the adjudication application where the authorised nominating body becomes aware that —

- (a) an adjudicator has ceased to meet the eligibility criteria for adjudicators; or
- (b) the adjudicator has become unable to perform the adjudicator's duties for any reason.

The new section 14A also provides that the person to whom the adjudication application has been referred may agree or decline to determine the adjudication application, and sets out the notice requirements for the appointment to be effective.

Clause 9 amends section 15 by deleting and substituting subsection (3) with new subsections (3) and (3A). The new subsection (3) provides that a respondent must not include in the adjudication response an objection of any nature unless that objection was included in the relevant payment response (in the case of a construction contract) or raised by the respondent to the claimant in writing with such particulars as may be prescribed, on or before the relevant due date (in the case of a supply contract).

The new subsection (3A) sets out the exceptions to the new subsection (3). In the case of a construction contract, the exceptions are if the circumstances of the objection only arose after the respondent provided the relevant payment response to the claimant, or if the respondent could not reasonably have known of the circumstances when providing the payment response to the claimant. In the case of a supply contract, the exceptions are if the circumstances of the objection only

arose after the relevant due date, or if the respondent could not reasonably have known of the circumstances by the relevant due date.

Clause 10 inserts a new subsection (1A) into section 16 to provide that if a replacement adjudicator is appointed, a new adjudication commences as if the adjudication under subsection (1) had not commenced, immediately upon expiry of the period mentioned in section 14A(3) within which the notice confirming the adjudicator's appointment must be served. The clause also inserts a new subsection (2A) into section 16 to enable an adjudicator to accept any adjudication application that is not made in accordance with section 13(3)(c) if the adjudicator is satisfied that the non-compliance does not materially prejudice the respondent.

Clause 11 makes amendments to section 17 consequential to the amendments in clause 10. If a new adjudication commences in the circumstances set out in section 16, the period within which an adjudicator must determine an adjudication application is adjusted accordingly. The period may be extended upon the adjudicator's request if both the claimant and the respondent agree. The clause also inserts a new subsection (2A) into section 17, which requires an adjudicator to disregard any part of a payment claim or a payment response related to damage, loss or expense that is not supported by a document showing agreement between the parties on the quantum of that part of the payment claim or the payment response, or a certificate or other document that is required to be issued under the contract.

In addition, clause 11 inserts a new subsection (4A) into section 17 to prevent the adjudicator from considering an objection from the respondent of any nature that was not included in the adjudication response. This is unless the circumstances of that objection only arose after the respondent lodged the adjudication response with the authorised nominating body, the respondent could not reasonably have known of those circumstances when lodging the adjudication response with the authorised nominating body, or if the objection relates to a patent error.

Clause 12 amends section 18 to enable a claimant to make an adjudication review application if the claimed amount exceeds the adjudicated amount by the prescribed amount or more. The clause also amends section 18 to provide that any adjudicated amount that a respondent is required to pay in consequence of an adjudication determination must be paid to an authorised nominating body.

Clause 13 inserts a new section 18A to enable an authorised nominating body to refer an adjudication review application to a person who is on the register of adjudicators, and whom the authorised nominating body considers to be appropriate for appointment as the replacement review adjudicator or a replacement member of a panel of review adjudicators, to determine the adjudication review application where the authorised nominating body becomes aware that —

- (a) a review adjudicator or a member of a panel of review adjudicators has ceased to meet the eligibility criteria for adjudicators; or
- (b) a review adjudicator or a member of a panel of review adjudicators has become unable to perform his or her duties for any reason.

The new section 18A also provides that the person to whom the adjudication review application has been referred may agree or decline to determine the adjudication review application, and sets out the notice requirements for the appointment to be effective.

Clause 14 amends section 19 to state the circumstances in which a new adjudication review commences, in the event that a replacement review adjudicator or one or more replacement members of a panel of review adjudicators are appointed under section 18A. If a new adjudication review commences, the period within which the adjudication review must be determined is adjusted accordingly. The period may be extended upon request by the review adjudicator or the panel of review adjudicators if both the claimant and the respondent agree. The clause also inserts a new subsection (5A) into section 19, which requires a review adjudicator or a panel of review adjudicators to disregard any part of a payment claim or a payment response related to damage, loss or expense that is not supported by a document showing agreement between the parties on the quantum of that part of the payment claim or the payment response, or by a certificate or other document that is required to be issued under the contract.

In addition, clause 14 inserts a new subsection (6A) into section 19 to prevent the review adjudicator or the panel of review adjudicators (as the case may be) from considering an objection from the respondent of any nature that was not included in the adjudication response. This is unless the circumstances of that objection only arose after the respondent lodged the adjudication response with the authorised nominating body, the respondent could not reasonably have known of those circumstances when lodging the adjudication response with the authorised nominating body, or if the objection relates to a patent error.

Clause 15 makes amendments to section 20(2) consequential to the amendments in clause 12.

Clause 16 amends section 22 to address the following issues:

- (a) the period within which a respondent is required in consequence of an adjudication determination to pay an adjudicated amount to a claimant, where the claimant is entitled to lodge an adjudication review application;
- (b) the period within which an authorised nominating body to whom an adjudicated amount has been paid must pay the relevant amount set out in an adjudication review determination to the party who is entitled to payment;

- (c) the period within which a respondent who has paid an adjudicated amount under an adjudication determination to an authorised nominating body must pay a claimant any additional amount set out in an adjudication review determination.

Clause 17 inserts a new subsection (6) into section 27 to specify a non-exhaustive list of grounds on which a party to an adjudication may commence proceedings to set aside the adjudication determination or a judgment obtained under section 27. The clause also inserts a new subsection (7) into section 27 to prevent a respondent from commencing such proceedings on any ground if the objection to support that ground was not included in the respondent's adjudication response. The exceptions are if the circumstances of that objection only arose after the respondent lodged the adjudication response with the authorised nominating body, or if the respondent could not reasonably have known of those circumstances when lodging the adjudication response with the authorised nominating body.

In addition, clause 17 inserts a new subsection (8) into section 27 to specify the powers of a court in proceedings brought by a party to an adjudication to set aside the adjudication determination or a judgment obtained under section 27. The clause also inserts a new subsection (9) into section 27 to apply provisions of the Act to an order of remission made by the court, as if the remitted issues were issues in an adjudication and the adjudicator's determination of the remitted issues were an adjudication determination.

Clause 18 amends section 28(4) to require an authorised nominating body to abide by any regulations that the Minister may prescribe.

Clause 19 inserts a new section 28A to require an authorised nominating body to open and maintain a trust account with a bank for the purpose of holding any adjudicated amount paid to the authorised nominating body. The clause also sets out when the authorised nominating body may withdraw the money held in the trust account, the treatment of interest earned from the money, and the circumstances under which a claim may be made against the money.

Clause 20 amends section 29 by deleting and substituting subsection (3) to require a person to whom an adjudication application has been referred by the authorised nominating body to make disclosures to the authorised nominating body in the following circumstances:

- (a) the person is or becomes interested in any way, whether directly or indirectly, in any contract or other matter that relates to the adjudication application;
- (b) the person is or becomes aware that he or she does not meet the eligibility criteria for adjudicators in subsection (1);

- (c) the person is or becomes aware that he or she is not eligible to be an adjudicator in relation to a contract for any reason mentioned in subsection (2)(a) or (b).

Clause 21 amends section 31 to enable an adjudicator to be paid, and retain any payment received, for the adjudicator's expenses described in subsection (1)(b), even if the adjudicator fails to make a determination on the application within the time allowed by section 17 or 19.

Clause 22 amends section 32(1) to provide that no liability shall lie against an adjudicator with respect to anything done or omitted to be done in good faith, in the discharge or purported discharge of the adjudicator's functions or duties under the Act. The clause also deletes and substitutes section 32(2) to provide that no liability shall lie against an authorised nominating body or any person acting under the direction of the authorised nominating body with respect to anything done or omitted to be done in good faith in the discharge or purported discharge of the authorised nominating body's function of nominating adjudicators under the Act. All other functions and duties of the authorised nominating body under the Act must be discharged in good faith and with reasonable care in order for such immunity to apply.

Clause 23 amends section 37(1) to clarify that the modes of service prescribed in that section are mandatory. The clause also amends section 37(1) to enable documents to be served on a person by email, or by any other electronic method authorised by regulations made under section 41(1) for the service of documents of that kind if the person consents to service of a document of that kind in that way.

In addition, clause 23 deletes and substitutes section 37(2) to provide for when service of a document on a person under section 37 takes effect in 2 other specific scenarios. If the document is sent to the person's usual or last known place of business under subsection (1)(c), service takes effect when the document is received at that place. If the document is sent by email or any other electronic method authorised by regulations made under section 41(1) for the service of documents of that kind, service takes effect at the time that the email or the electronic communication transmitting the document becomes capable of being retrieved by the recipient.

Clause 24 amends section 39 to make amendments that are consequential to the specification of new periods of time in sections 10(2)(b), 14A(3), 18A(3), and 22(1A)(a) and (b) and (3)(a).

Clause 25 sets out the saving and transitional provisions.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
