

Are There Ways to Ensure Fair and Prompt Payment?

by Teresa Cheng, Gary Soo, Mohan Kumaraswamy, Wu Jin

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by Teresa Cheng¹, Gary Soo², Mohan Kumaraswamy³, Wu Jin⁴

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Introduction

In April 2000, the Chief Executive of the Hong Kong Special Administrative Region appointed the Construction Industry Review Committee (“CIRC”) to comprehensively review the current state of the industry and to recommend improvement measures, leading to the report titled “*Construct for Excellence: Report of the Construction Industry Review Committee*”. One of the main problems is that related to payments, whether they be delayed payments, loss of retention due to insolvency of upper-tier contractors or disputes on variations.

The construction industry is typically “funded” by the advance made by the lower-tier contractors (in the form of labour and work done) with the materials purchased by the upper-tier contractors for the benefit of the employer. Advanced capital funding for the works by overdrafts, trade credits or other interim means as the works progress become unavoidable. In the end, the toil and sweat of the workers usually provide a significant contribution to the capital that has to be advanced for the completion of the works.

As a result, contractors at all levels become unsecured creditors waiting for interim payment, usually 2 months after the work has been done or materials supplied. Uninterrupted cashflow becomes vital to the survival of the workers and contractors. It also impacts on whether there can exist a stable and healthy labour market and construction industry.

As so aptly pointed out in the “*Guide to Best ‘Fair Payment’ Practices*”, published by the UK Office of Government Commerce in July 2007:

“Poor payment practices in the construction industry give rise to substantial additional financing and transaction costs. More importantly certainty over how much and when payment is made builds trust between supply team members and underpins collaborative working to achieve value for money projects for clients.”

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Overseas Experience

Many jurisdictions outside Hong Kong have enacted legislation to deal with payment-related issues in construction contracts. Some other jurisdictions have adopted industrial or administrative measures to help provide security of payment in the construction industry. Examples of these include the introduction of payment bonds in several cities in Mainland China and the establishing of the “Construction Guarantee Fund” scheme in Sri Lanka to enable domestic contractors to obtain bonds and guarantees at concessionary terms.

England was the first to enact security of payment legislation. Following the Housing Grants, Construction and Regeneration Act 1996, similar legislations have been introduced in Australia, New Zealand and Singapore. Malaysia is in the course of drafting a legislation to deal with the same problem. These legislations generally enable progress claims for payments in construction contracts even if the contract itself is silent on it, and commonly contain provisions for prompt adjudication of disputes over progress payments, allowing suspension of works for non-payment or failure to provide security after adjudication, and illegalising or outlawing conditional payment provisions in construction contracts.

Whilst the merits of such legislation overseas were acknowledged, it has been remarked in Hong Kong in 2005, at least for the public sector projects, that security of payment legislation is unnecessary under local circumstances for the moment. There are some other views from the Hong Kong construction industry supporting some forms of security of payment legislation. The Construction Industry Council¹ has been discussing on the subject of security of payment and will publish the Security of Payment Guidelines for Dispute Resolution shortly. In the meantime, the Construction Industry Council is also looking at other ways in which the problems relating to payment can be addressed. A survey will soon be conducted to further study the causes of the problems.²

The experience overseas provide Hong Kong with excellent insight and real-life guidance on the practicability and effectiveness of the use of legislation and other measures, allowing the construction industry to explore whether and if so how to

¹ The Committee on Subcontracting chaired by Mr. S.S. Lee is tasked with addressing the issues relating to Security of Payment.

² The Hong Kong Construction Association has conducted a helpful survey that looked into some of the issues. CIC’s survey aims to look at the issues for a wider perspective and to collect views from all the stakeholders in the industry.

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adopt or adapt them for use in Hong Kong. Based on the above and the features of the local construction industry, various means that may be adopted to try and ensure fair and prompt payments are discussed.

Contract as the Basis

Construction payment cannot be secured without a properly and clearly written contract.

Many sub-contractors in Hong Kong do not enter into formal sub-contracts with the upper-tier contractors. The contract may only be partly written; it may engage uncertain arrangement like “*back-to-back*” without specific definition being given; it may even be made wholly orally. This practice poses difficulty for certainty of the payment amount, let alone prompt payment.

The need for a written contract is stressed in paragraph 2.2 of the *Guidelines on Subcontracting Practice* which states that “[s]ubcontracts executed at all layers should be made on written documents for the sake of better transparency and more effective safeguard of legal rights and obligations”. The *Guidelines on Standard Forms of Domestic Subcontracts for Basic Trades* published by the Provisional Construction Industry Co-ordination Board (“PCICB”) in May 2005 can be a useful model to be adopted to provide the essential contractual framework for payments.

Talks have been organised by the CIC to publicize the Guidelines and highlighting the importance of a written contract especially to lower-tier sub-contractors. Publicity and education efforts must be maintained so that parties become fully aware of the importance set out in such Guidelines. A review should be taken to ascertain its effect.

In other situations, main contract and nominated sub-contractors are all in standard forms but invariably inundated with numerous special conditions and particular specifications, some of which tend to obfuscate rather than illuminate.

None of the contracts stipulate a dispute resolution mechanism to resolve a dispute as and when it arises. Differences in quality or variations which result in payments being withheld cannot be dealt with promptly resulting in interrupted or delayed cashflow.

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Payment Bond

A payment bond is an agreement by a surety towards a contractor that the surety will pay to the contractor the amount of works done under the construction contract, up to the bonded amount or a percentage of the price of the works done, in case the employer defaults in its payment obligations. The surety, who is usually a bank or insurance company, agrees to provide such a bond in return for a premium paid to it. A payment bond can be used to secure payments from a contractor to its sub-contractors or suppliers, or from the employer to the contractor.

In the United States and Canada, legislation for mechanics' lien are commonly enacted in many states. To alleviate the adverse effects of a lien, payment bonds are often used in projects in the United States and Canada. A contractor is required under the contract with the employer to provide a payment bond to secure its payment obligations towards its sub-contractors and suppliers.

In Mainland China, the State Council introduced various measures, including the use of payment bonds, to change the procurement practice in the construction industry and to overcome difficulties in getting paid. In the “*Notice of the General Office of State Council Office on Resolving Payment Delay and Default Problems in the Construction Sector*”, issued in November 2003, the use of payment bonds from employers was advocated as part of the risk management measures to avoid payment problems from the very top. Since then, the use of payment bonds in Mainland China started developing rapidly.

As noted above, some form of advance capital funding for the works for a period prior to getting paid is inevitable. Hence, a guarantee that there are funds for paying the works done and materials supplied is not unreasonable. It also seems to be a fair practice as construction contracts in Hong Kong do usually require the provision of a performance bond from a surety procured by the contractor for the benefits of the employer. A payment bond procured by the payer is just a reciprocity arrangement.

There is another reason in Hong Kong for engaging the use of payment bond to secure payment from an employer to the contractor. It is not uncommon in Hong Kong for a construction contract of billions of dollars in value to be entered into between the contractor and a phantom “employer”, which is a mere two-dollar shell company. In such a case, the true ‘employer’ may attempt to take the

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benefits of the corporate veil and can avoid liability towards the contractor for any payments due, especially when the works are near completion.

Escrow Account for Retention

Under most standard forms of contracts, the employer is deemed to be holding the retention money in a fiduciary capacity as a trustee for the contractor. Hence, the contractor is entitled as a matter of law to request the employer to pay the present and future retention money into a separate trust account, as illustrated in the case of *Concorde Construction Co Ltd. v. Colgan Co Ltd.* [1984] HKC 241. Similar retention arrangement is also in place between the contractor and nominated sub-contractors. Nevertheless, under the contract, there is usually no provision setting out how this contractual obligation is to be implemented by the employer or upper-tier contractor. Other problems such as delayed release of the retention and loss of retention in situations like insolvency of the employer or upper-tier contractor are not unheard of.

Reviews in Australia have all been against such ‘deemed’ trusts because of serious legal shortcomings, a likely increase in the cost of building projects, failure to guarantee sub-contractors will be paid, lack of industry support and high administrative costs.

In contrast, in some other jurisdictions, such as France and New Mexico, there are legislation requiring that all retention moneys to be held in a separate escrow account, i.e. held by the escrow agent, pending the fulfillment of some condition (such as certification of practical completion or making good defects). With this, the retention money will be automatically deposited into the stipulated escrow account.

In Hong Kong, the Construction Industry Council is probably best placed to provide such services at a small fee. Retention moneys from different projects between different parties will be put into separate escrow accounts managed by the Construction Industry Council, in return for a small administrative charge. When properly operated, this arrangement creates a win-win-win situation for all and can be implemented within the contractual framework with only a minor modification.

Milestone Payment

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The milestone payment approach effects interim payments with reference to the achievement of pre-determined progress milestones, such as completion of foundation or reaching, say, the 5/F. Apart from providing improved certainty of project payments, the milestone payment approach also motivates the project team members to adopt a target cost contracting approach.

In Hong Kong, the milestone payment approach has been adopted in some public projects for quite some time. These include the Hong Kong Mass Transit Railway Corporation (“MTRC”), the airport core programme contracts and a number of other major works contracts in the public sector.

Its use is recommended in the CIRC report and in UK to simplify the interim measurement and valuation process.

Immediate Dispute Resolution

A call for speedy dispute resolution is no longer seen to be enough. Security of payment problems can only be addressed if there is immediate dispute resolution mechanisms in place. Yet, given that dispute resolution is by its very nature a spectrum ranging from party negotiation to arbitration, there are some forms of dispute resolution mechanisms that would best address the payment issues in Hong Kong. Such mechanism would be useless unless it is both speedy (in the sense of being immediate) and cheap. As a result, the Committee on Subcontracting of the Construction Industry Council has reviewed what mechanisms is best suited for resolving payment problems in Hong Kong and have prepared the Guidelines for Dispute Resolution.

In order to ensure that the cost of conducting such dispute resolution mechanisms is not going to be excessive or disproportionate to the amount claimed, the third party neutrals involved should primarily be experts or professionals from the construction sector who could be brought in and provide a result within a very short time frame. Depending on the types of disputes, different mechanisms may be used.

Mediation is always an option but as it does not necessarily lead to a result within a stipulated and defined timeframe, it may not address the payment issues that is common in the construction industry, namely that of delayed payment. Hence whilst this should always be kept in the minds of the parties, it is necessary to look at other means by which a result in some form of determination or

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adjudicative decision could be obtained.

Adjudication has attracted an understanding of the need for extensive evidence, coupled with a full oral hearing with lawyers involved and full arguments on both legal and technical issues would be made. It tends to create a picture that it is costly although the decision is not final and binding. Nonetheless, by providing an interim adjudicative decision, it does have the benefit of addressing the interim payment problems. Yet, given the way it has been practised or wrongly understood as to how it is to be practised, the costs involved has often become disproportionate to some of the smaller claims that may arise during the interim payment stages. As a result, until the correct approach to adjudication is understood and practised, other simpler, quicker and cheaper forms of dispute resolutions should also be considered.

Expert determination has not been widely used when it actually provides an excellent way in which technical issues can be decided quickly and finally by the involvement of an expert, who is a third-party neutral and trusted and respected by all parties concerned. The expert can use his or her own expertise to make a determination which is final and binding. By its nature, expert determination is most suitable for dealing with technical issues. By being able to introduce this mechanism as and when the technical question arises, difficulties that often appear in subsequent arbitration or litigation of examining sample evidence or tests reports as opposed to real and contemporaneous evidence can be avoided. It also has the clear benefit of using professionals in the industry to resolve disputes amongst the professionals. It is a good way of addressing technical issues such as the suitability of certain specifications, the quality of works or materials used or delivered to site.

Payment issues during the construction period often relates to matters such as the valuation of variations. Sometimes, the time taken by the Engineer or the Architect or the Project Q.S. may be long or may be seen to be partial. The intervention of a third-party neutral who effectively replaces the role of the Engineer, the Architect or the Project Q.S. would remove such unnecessary problems. Independent expert certification may be a process that can be introduced to the construction industry whereby the independent expert certifier who is a professional in the construction industry can be brought in to make an interim but contractually binding certification in lieu of that of the Certifier stipulated in the contract. Provided that a stipulated and short timeframe is set out, the independent expert certifier would be able to look at the documents that the

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parties have already generated to make an interim decision quickly so as to ensure cash flow if payment ought to be made on an interim binding decision dismissing the claim so as to curtail unnecessary proliferation of arguments. It may be a relatively new concept for use in this way in Hong Kong but is certainly a concept that has its attractions in the light of the issues that have to be addressed.

Arbitration if allowed to be conducted immediately would enable some disputes to be resolved quickly and finally. An interpretation of the particular contractual clause that will dictate how the contract will continue to be administered could be dealt with by a documents-only arbitration. It would not divert the focus of the parties away from the construction of the works because an arbitration conducted immediately as and when a dispute arise will be a lot more focused and therefore succinct. The issue would be narrow and clearly identified. The evidence would be immediately available and can be viewed, if necessary, by the arbitrator on site. If any fact finding needs to be conducted, that can be conducted very quickly by way of a short hearing. Arbitration therefore provides the parties with the option of obtaining a final and binding decision so that they can “move on” and continue to focus on the construction of the works. The Short Form Arbitration Rules of the Hong Kong International Arbitration Centre, for instance, is intended and framed to deal with specific and narrow issues and hearing would only be conducted if necessary.

Given that the certification of the independent expert certifier, the decision of the adjudicator are interim in nature, the post-completion arbitration clause can then provide a means by which an aggrieved party may seek to review the interim decisions if thought appropriate. As a result, a provision allowing the parties to take the matter to a final determination by an arbitrator after completion of the works will address any potential injustice that may arise in the light of the speed in which these interim decisions or certifications have to be provided.

Another major issue in relation to payment is the time taken for reaching a final account. Each of the above measures can still be adopted. Where specific issues have been decided either by way of some form of interim decision or certification, other issues may then fall away leading to a more speedy conclusion on the final account. If the whole final account has to go through arbitration as is now commonly the situation, the time in which the contractor could receive payment from the final account will be delayed simply because there is dispute as to the exact amount as opposed to the contractor’s entitlement.

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It may be thought by some that immediate dispute resolution does not benefit the employer. With respect, this is fundamentally flawed. A project that is tainted with unresolved payment issues will create animosity or mistrust amongst the site personnel which is not going to be beneficial to the project as a whole. Furthermore, unresolved payment issues may lead to sub-contractors being unable to pay the workers which will then create adverse publicity to the project damaging the livelihood of the workers themselves too.

Dispute avoidance however should not be forgotten. The use of dispute resolution advisor in public projects have generally been found to be beneficial to all concerned. The continued use of dispute resolution advisors in various projects is to be encouraged. Coupled with the availability of the choice of the parties to use whichever forms of dispute resolution mechanism immediately as and when the dispute arise will actually focus the minds of the parties dealing with claims and administering the contract and that may lead to parties being more realistic and reasonable. In other words, the mere existence of the dispute resolution advisor with immediate dispute resolution mechanism may, hopefully, have the benefit of not having had to invoke any of such dispute resolution mechanisms at all. The deterrent effect brought about by having such measures in place, that is the ability of a party to bring in a third-party neutral immediately and not at the end of the contract should not be under-estimated.

The Committee on Subcontracting of the Construction Industry Council has prepared the Security of Payment Guidelines for Dispute Resolution which will be promulgated shortly and it is hoped that the construction industry will voluntarily adopt such measures so that the security for payment problems can be eliminated or at least minimised. Yet, if this is not to lead to any positive results of removing payment disputes, other measures such as statutory adjudication may have to be introduced to coerce parties to deal with the disputes as and when it arises.

Statutory Adjudication

Most contracts still currently provide for arbitration after substantial completion of works whilst giving an option for the parties to mediate or adjudicate. Such contractual provisions are not conducive to security of payment.

In other jurisdictions, statutory adjudication is an essential element of the whole

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scheme for security of payment. Experiences in these jurisdictions generally indicate that statutory adjudication is running without much dissatisfaction or complaints. Each piece of legislation of course contains slight variations. There are differences, for instance, as to what can be referred to adjudication, how the adjudication process should proceed and conclude, and the enforcement and challenge procedures of a decision by the adjudicator.

As an illustration, in UK, the initiation of the adjudication process requires the giving of a notice of adjudication and the actual acceptance of the reference to adjudication. In New Zealand and Singapore, there is a review procedure for the decision or determination after the adjudication. In other places, the challenge of the decision is brought to court and the judicial sentiments in various jurisdictions differ as to the extent of the need for strict compliance with due process or rules.

What would be the right model, if at all, for Hong Kong is not an easy question to answer. However, to make statutory adjudication effective, there are several matters that need to be kept in mind.

The primary purpose of security of payment legislations is to provide certainty both as to the timing and amount of payment that a party is entitled to under a construction contract. The common engagement of conditional payment clauses such as the pay-when/if-paid clauses in sub-contracts contradicts this very purpose. Further such clauses can render the statutory adjudication system ineffective in operation. For these and other reasons, conditional payment clauses are not acceptable and have been rendered illegal and unenforceable in the various pieces of security of payment legislation overseas. Hong Kong should give careful thought to this when embarking on the legislation exercise.

A body to administer these statutory adjudications may be useful. In Singapore this is provided for. Hong Kong may consider using the Hong Kong International Arbitration Centre as an administration body.

ARRANGEMENT FOR WORKERS

When dealing with security of payment, one should not of course lose sight of the need of safeguards for the frontline construction workers, who are even more vulnerable than sub-contractors in many cases.

The industry has been urged to invest more in improving the quality of its

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workforce by providing a more stable employment for construction workers by widening the use of direct labour, starting with the core trades. Employers can assist through the contractual requirements of contractors using direct labour.

For unpaid workers, the Employment Ordinance (Cap. 57) has already imposed a liability for head or upper-tier contractors to pay for a maximum of 2-month wages of workers engaged by its lower-tier sub-contractors. Nonetheless, wage disputes and wage arrears still have given rise to much concern over the past years in the construction industry. Problems arise out of the lack of knowledge of the identity of the sub-contractor who engaged the unpaid workers, the innocent main contractor often ends up “picking up the bill”. There may be a need to review this legislation in the not too distant future. In the meantime, various measures to tackle the problems have been introduced.

The Construction Workers Registration Ordinance (Cap. 583) can be made use of to help combat employment of illegal workers and assist in resolving wage disputes between the contractors and the workers, when coupled with the availability of site attendance records under the computerized smart card system and implementation of site entrance control measures.

The Subcontractor Management Plan in public work projects requires contractors to submit with their tender, details of their sub-contracting arrangements and to update the plan quarterly during the contract and, thereby enhancing the transparency of the individual contractor’s sub-contracting arrangement and accountability. The Voluntary Sub-contractor Registration Scheme in place provides that sub-contractors who have failed to pay their workers may be disciplined or removed from the registry. Coupled with the Sub-contractor Management Plan, it is hoped that the frequent offenders of the labour law will gradually be rehabilitated or expelled from the market.

In public housing projects, new measures have been introduced since May 2006. They include the coupled use of electronic site access control, supplemented with workers’ attendance records for cross-referencing with employment records; requiring workers’ employment agreements and labour records for contractors and sub-contractors; implementing a wage payment monitoring system and records, with payment by auto-pay; and implementing a sub-contractor management plan.

With these, situations of falsified allegation over self-employment and fabricated

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wage slips, or wage receipts signed under duress should be reduced.

However, initiatives for proper safeguards or monitoring from the employers are crucial to help change the culture of the industry and ensure security of payment all the way to the wage payments to workers.

CONCLUSION

Cashflow is the lifeblood of the Hong Kong construction industry. The experience and systems in many jurisdictions outside Hong Kong in relation to the use of legislative and other measures to enhance the ease and security of payment can provide guidance and insights for considering the preferred path forward for Hong Kong.

Through outlining and reviewing such options and alternatives, some views on their practicability and benefits for application in Hong Kong have been expressed. This analysis is by no means the conclusion of the subject. It is high time the construction industry in Hong Kong should review the question of security of payment, thinking more for the betterment of the construction industry in Hong Kong as a whole and less for one's own immediate or short-term interests.

There is no panacea for all. It is expected that different measures would have to be used to deal with different problems. Unless and until the industry as a whole is prepared to face the problems and jointly find solutions for them, the payment problems will perpetuate affecting all concerned resulting in a bad reputation for the Hong Kong construction industry. The industry should work together to address these problems so as to establish a healthy reputable and professional construction industry in Hong Kong.

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引言

現時建築業界合約付款的安排，實質是由簽約承建商透支貨款和下層次承建商透支工資，最快兩個月後才能在「送抵地盤物料」和「工程進度」的糧款中收回。現金週轉成為承建商和建造業工友的生命綫。

海外經驗

海外很多地區已經採取不同措施對付業內不良行徑，中國大陸和斯里蘭卡設立基金以優惠條款提供付款保障，英國、澳洲、紐西蘭和星加坡自 1996 年起先後立法保障糧款，附以快速決斷機制暫定爭議的付款。

香港不時檢討海外立法的效果，最近政府在2005年認為最少在公共工程項目方面，不需要立法保障各層承建商之間的糧款支付。現時建造業議會正在商討這個議題，一面著手制訂指引，另一方面將進行問卷調查探究問題癥結所在。

合約為本

工程糧款必須以合約為依歸，所以清晰的書面合約對各層承建商同等重要。2005年臨時建造業統籌委員會發佈的「分判指引」已敦促業界執行，現時建造業議會亦大力推廣其中「主要行業的標準直屬分判合約指引」在同業間使用。

市面的標準合約，包括總承建商和指定承建商合約，大多自行加入特別條款，但有效的糾紛調解機制，却付之闕如。

付款保證書

付款保證書是保證人（通常是銀行或保險公司）同意在業主違約不能付款時向承建商支付保證金額或額定比率的完工糧款。在美國、加拿大和近期中國大陸都被普遍採用。總承建商亦可向次承建商和供應商提供付款保證書。

在香港，承建商向業主提供履行合約的保證書已甚為普遍，所以由業主向承建商提供付款保證書亦是合理的雙向安排。在香港很多業主法律上是兩「文」註冊的影子公司，付款保證書可減少別有用心的業主藏身於影子公司幕後。

保固金代管戶口

法律闡釋保固金是業主以信託人身份替承建商代管，總承建商和指定分判商亦是同樣的關係。但合約條文並沒有清楚訂明如何強制保固金額存放至獨立信託人的代管戶口，並引致延誤發放保固金或在業主破產時不能追回。

在澳洲的檢討顯示「隱含」信託人身份是嚴重的法律漏洞。在法國和墨西哥，當局已立例保固金必須存放至獨立信託人的代管戶口。

在香港，建造業議會是適當人選以低廉的行政費用提供代管戶口服務。

里程碑付款

里程碑付款辦法是依據預定進度里程碑（如地基，某樓層等）完成而發放糧款，在港鐵、機場核心工程和其他公務工程項目都有採用，此舉可減省中期糧款的量度和估算。

即時解決紛爭

「盡快」解決紛爭已不能滿足業界需求，快速而廉宜的機制來保障付款已是刻不容緩。建築業議會現正檢討可行方案，希望依賴業界專家和專業人士擔任獨立第三者在短時間內解決紛爭。

調解當然是一個自願性的選擇，但不能確保在預定時限內解決。

決斷（Adjudication）被認為要求廣泛舉證，律師出席聆訊爭辯，往往令費用與爭議數額不合比例，結果雖可強制執行但仍不是終極裁決紛爭。

專家論證是解決技術性爭論的有效途徑。委任獨立專家即時論證作出決議，可避免竣工後仲裁或訴訟中的舉證困難。此方法最適宜用於技術性爭議：如某規格是否適用，安裝或物料質量是否達標。



獨立專家亦可擔任第三者工料測量師，假如就中期糧款出現爭議，各方提交已有的相關文件，由獨立專家決定，保障各級承建商的現金週轉。

仲裁在工程進展期間亦有助解決某些爭論。例如合約條文以何種行政手段執行，可以書面仲裁即時決定如何繼續執行合約。另外以事實為主的狹義爭議，亦可以簡易仲裁方式立即解決，香港國際仲裁中心「簡易仲裁程序」正是以此精神而撰寫。

鑒於第三者工料測量師的決定和Adjudication的決斷都是暫時執行的決定，所以竣工後的仲裁條文仍有必要，以備不滿一方申請終極覆核。

依期達成結算書亦是重要議題。假如其他爭論已靠上述機制即時解決，則結算書只需同意應得金額，無須爭拗各項權益。

各項即時決斷機制是否對業主不利呢？懸而未決的爭議只會製造敵意和猜疑。假使糧款延誤而分判商未能依法支薪，必然引致不利輿論和影響工友生計，工程項目必受拖累。

請謹記爭議調解員功不可沒，公務工程的爭議調解員令各方受惠，假使結合上述即時決斷機制，更能發揮阻嚇作用，令各方踏實而合理地解決問題，避免局外人介入的情況。

建造業議會屬下的分判委員會剛制訂「解決紛爭指引」，希望業界響應而自願採用，否則可能需要立例引入法定決斷。

法定決斷

外國法定決斷確保工程糧款的支付，效果不俗。條文細節，因地制宜而各有不同，譬如甚麼爭論可以轉介、決斷程序、強制執行和上訴程序等。

如果香港立法，則需事先考慮下列課題：

- 「先收款後付款」等附帶條件的付款條文勢必宣告作廢。
- 甚麼機構負責管理法定決斷個案（香港國際仲裁中心應可勝任）。

對工友的安排

保障糧款不能遺漏工友的利益，業主可以合約條款要求承建商僱用直屬工人。

欠薪工人可以依據57章僱傭條例向承建商層層追討不超過兩個月的薪金。

另外，583章建造業工人註冊法例亦可協助遏止非法勞工和排解工資爭議。

公務工程項目中的「分判商管理計劃書」增強分判安排的透明度和問責。「自願性分判商註冊計劃」亦處分或刪除違例的承建商。

房屋署自2006年起實施工資監察系統，進一步杜絕虛假自僱人士，支薪記錄和脅迫簽署收據。

結論

現金週轉是香港建造業界的生命線，各地的保障計劃、法例和機制，可堪借鑒。

文中列舉並檢視各項可行方案，冀希業界摒棄眼前私利，以大局為重，嚴肅解決保障糧款問題。否則糧款問題陰魂不散，令整體蒙羞。具體問題需要採用適當的方案處理，並沒有萬應良方，萬望業界群策群力，攜手共創健康、專業、聲譽良好的建造業。

(註：此為中文撮要，本文以英文為準)