New SIA Building Contract 2016 (Lump Sum)

Introduction

As the year draws to a close, we reflect on a number of new contracts that have been published. In this edition, we turn our eye on domestic standard forms and discuss the Singapore Institute of Architects’ launch of a new suite of contracts known as the SIA Building Contracts 2016. This is a suite of 6 contracts, the Lump Sum Contract, the Design & Build Contract, the Subcontract and their respective international versions.

In this update, we highlight a number of key changes to the SIA Building Contract 2016 (Lump Sum) since the previous 9th Edition and discuss the differences between the domestic version and international version.

Setting Out – Clause 8

In the 9th Edition, the architect was responsible for determining the levels which may be required for the execution of the works and to furnish the contractor with the necessary drawings.

In the 2016 Edition, this obligation has been shifted to the contractor, who shall submit to the architect for approval, a complete and comprehensive setting out and levelling proposal required for the execution of the works. In addition, the contractor shall not be permitted to commence work until 14 days after the submission of the setting out and levelling proposal. There will be no extension of time for any delay so caused.

Payment of Variation – Clause 12(5)

The 2016 Edition now requires that the contractor, upon receiving an instruction or direction from the architect to make a submission to the employer, architect and quantity surveyor, which shall include a breakdown of prices and milestone of stages (if required by the architect). The breakdown of prices shall be considered by the quantity surveyor in his valuation for payment.

The clause has also been reorganised into circumstances where the contractor is entitled to payment in full for the variation and circumstances where the contractor is not entitled to any additional payment beyond the original contract sum.

Time for Completion – Clause 22

The 2016 Edition sets out details regarding the completion certificate and outstanding works. The contractor shall notify the architect and within 28 days, the architect shall issue a completion certificate or a list of outstanding works. The completion certificate shall include the period to vacate the site and period for taking over the works.
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The architect may issue a completion certification notwithstanding outstanding works, provided the works are minor, can be completed following removal of contractor's site organisation and major equipment, and without unreasonable disturbance of the Employer's occupation of the property. This completion certificate shall include record of outstanding works, terms of agreement for completion and agreement regarding the retention monies.

Extension of Time – Clause 23(6)

Clause 23(6) on sequential and concurrent causes of delay is new. If there are any sequential causes, some which justify an extension of time and other(s) do not; the time of the delay shall be divided into a period entitling the contractor to an extension of time and that which do not. If there are more than one cause concurrently causing the delay, the total time delay shall be divided equitably between conditions and events that justify an extension of time and those which do not.

Payment of Contractor and Interim Certificate – Clause 31(1) to (3)

Clause 31 now only contains the contractual provisions for payment and the provisions relating to the Building and Construction Industry Security of Payment Act (Cap. 30B) ("SOP Act") on timelines for payment are at Clause 40.

The 2016 Edition has also separated the clauses on interim payment based on periodic valuation and interim payments by milestone.

Final Certificate – Clause 31(9) to (10)

Under the 9th Edition, the issuance of the final certificate was a 4-step process. The contractor submits the final account documents to the architect, the architect issues the statement of final account to the contractor, the contractor then issues his final payment claim to the employer (copied to the architect) and finally, the architect issues the final certificate to the employer (copied to the contractor).

The 2016 Edition streamlines this process to 2 steps. Upon achievement of completion, the contractor shall submit a final account claim to the architect, which shall contain details of all quantities, rates and prices, adjustments and additional compensation claimed. Thereafter, the architect shall within 84 days issue the final certificate. The final certificate shall be evidenced by documents showing the architect's measurement and valuation and the final balances due and separately state the final amounts due to each nominated sub-contractor/supplier and designated sub-contractor/supplier.

Termination on Insolvency of Contractor – Clause 32(7)

In the 9th Edition, the employment of the contractor will be automatically terminated upon the insolvency of the contractor. This has been amended in the 2016 Edition and the employer may terminate the contract by serving a notice of termination.
Termination and Suspension by Contractor – Clause 33

The 2016 Edition no longer contains the clause which entitles the contractor to terminate the contract if the contractor has failed to receive payment of an adjudicated amount within 7 days of an adjudication determination and upon serving written notice.

International Version

The international version of the SIA Building Contract 2016 (Lump Sum) has a few amendments to cater to an international contract. The applicable currency, governing law and language of arbitration are to be stipulated. The SOP Act is not applicable.

Conclusion

The SIA Building Contract 2016 (Lump Sum) is a major change from the 9th Edition, with new mechanisms, and it attempts to address the prior shortcomings. It is easier to read and use as the clauses have been broken into multiple sub-sections and only days are being used (all usage of months converted to days).

The changes discussed above are not intended to be exhaustive and legal advice should be obtained before using the forms (or adding particular conditions). If you have any queries or wish to understand any or all the changes made, please reach out to us at our contact below.

In the new year, we will be following up with an update on the SIA Building Contract 2016 (Design & Build), as well as, the new rainbow suite of the FIDIC Standard Form. Last but not least, we wish everyone a wonderful new year and best wishes for 2018!
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