

## **SAME BUT DIFFERENT**

### **Learnings From Hong Kong's Construction Industry Security of Payment Legislation**

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This article undertakes a comparative study of key provisions of the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) in Singapore, and the Construction Industry Security of Payment Ordinance (Cap. 652) in Hong Kong. It explores the extent to which they reflect their respective legal cultures and policy imperatives.

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#### **I. Introduction**

1 Payment insecurity is a chronic issue affecting the global construction industry. In a sector built upon layered subcontracting chains, delays in payments to downstream contractors tend to compromise cash flow and the progress of projects.

2 To address this issue, multiple jurisdictions have introduced security of payment legislation. While their objectives converge – improving payment practices and preserving cash

flow<sup>1</sup> – their legislative trajectories and institutional architectures may vary.

3 In Singapore, the Building and Construction Industry Security of Payment Act 2004<sup>2</sup> (“SOP Act”) heralded a “fast and low-cost adjudication system” to resolve payment disputes.<sup>3</sup> Alongside the SOP Act, Singapore’s security of payment regime is regulated by the Building and Construction Industry Security of Payment Regulations,<sup>4</sup> as well as the rules of the particular authorised nominating body.<sup>5</sup>

4 While the SOP Act has operated since 2005, Hong Kong’s Construction Industry Security of Payment Ordinance<sup>6</sup> (“SOPO”) is newly minted and has come into full effect in August 2025. The SOPO’s features include the introduction of an adjudication mechanism and prohibition of unfair payment terms, which are largely similar to other security of payment regimes in the region.

5 This article undertakes a comparative examination of the SOP Act and SOPO, exploring the extent to which they reflect legal cultures and policy imperatives.

## II. Legislative purpose and philosophy

6 In the 1990s, the construction industry in Singapore was characterised by sluggish productivity and limited growth.<sup>7</sup> In response, the Construction 21 Report lays out a blueprint for

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1 Peter Clayton, “International Security of Payment Legislation for the Construction Industry: Evolution, Revolution and the Search for an Optimum Model” 90(2) *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 288 at 288.

2 2020 Rev Ed.

3 Singapore Academy of Law, Law Reform Committee, “Report on the Building and Construction Industry Security of Payment Act and Corporate Insolvency and Restructuring” (April 2020) at para 1.3.

4 2006 Rev Ed.

5 See Singapore Mediation Centre, “SMC Adjudication Rules” (10th Ed, 1 January 2024).

6 Cap. 652.

7 Construction Productivity Taskforce, “Raising Singapore’s Construction Productivity: CIDB Construction Productivity Taskforce Report 1992” (Construction Industry Development Board, 1992).

reform, proposing a series of “strategic thrusts” to reposition the construction industry as a key pillar of Singapore’s economy.<sup>8</sup> A few years later and as a likely outcome of the Construction 21 Report, the SOP Act was enacted. Influenced by New South Wales’s security of payment model and designed to deliver “rough and ready justice”,<sup>9</sup> the SOP Act introduced an adjudication system that favours speed, cost-effectiveness and provisional resolution over procedural complexity.

7 This “pay now, argue later” ethos is reflected in the SOP Act’s structure: relatively tight timelines for submissions, streamlined decision-making and binding interim outcomes. Payment disputes are often resolved within a matter of weeks, and complexities within the dispute are addressed later on during arbitration or trial.

8 The SOPO’s legislative journey was more protracted, reflecting decades of deliberation, stakeholder engagement and comparative legislative borrowing. While the SOPO only made its way through the Hong Kong legislature in recent years, calls for reform date back as far as 2001, evident from the Honourable Henry Tang’s report to the Chief Executive of the Hong Kong Special Administrative Region (“Tang Report”).<sup>10</sup> Noting how “pay-when-paid” and “pay-if-paid”<sup>11</sup> arrangements are becoming industry practices in Hong Kong and how other jurisdictions have already enacted security of payment legislation, the Tang Report recommended that “further consideration should be given to the merits of, and the need for, enacting security of payment legislation having regard to local circumstances and in the light of overseas experience”.<sup>12</sup>

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8 Ministry of Information and The Arts, “Launch of Construction 21 Plan”, press release on Construction 21 Study (20 October 1999).

9 *Law and Practice of Construction Contracts in Singapore* vol 2 (Sweet & Maxwell, 6th Ed, 2025) at para 19.001.

10 Construction Industry Review Committee, “Construct for Excellence: Report of the Construction Industry Review” Committee” (January 2001).

11 Construction Industry Review Committee, “Construct for Excellence: Report of the Construction Industry Review Committee” (January 2001) at para 5.77.

12 Construction Industry Review Committee, “Construct for Excellence: Report of the Construction Industry Review Committee” (January 2001) at para 5.80.

9 The SOPO has, therefore, been a long time coming, prompting questions as to why it took Hong Kong so long to enact its own security of payment legislation.

10 Arguably, a key reason for the SOPO's delayed enactment was the adoption of the New Engineering Contract ("NEC") forms in Hong Kong public works contracts, which provide for their own contractual adjudication mechanism. Since 2009, the Development Bureau has progressively adopted NEC contracts in government projects, culminating in a 2017 directive requiring all large-scale public works contracts to use the NEC form unless justified otherwise.<sup>13</sup>

11 Given how adjudication mechanisms have already been embedded in public sector contracts, the urgency for statutory intervention in Hong Kong was comparatively reduced. Indeed, the Hong Kong government took a gradualist approach to reform, opting not to fast-track the enactment of the SOPO. Rather, the Development Bureau introduced a transitional framework by mandating the inclusion of security of payment clauses into all new public works from April 2022 onward,<sup>14</sup> allowing industry stakeholders to acclimatise to security of payment principles before formal legislation came into full effect.

12 Although the SOP Act and SOPO differ in tempo, at their core, both aim to improve payment practices, protect subcontractors and encourage efficient dispute resolution. The contrast thus lies not in their intent but in the pathways taken to get there.

### III. Institutional context

13 Beyond legislative texts, the SOP Act and SOPO were launched within markedly different institutional landscapes,

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13 For public works contracts engaging Group C contractors (*ie*, contracts valued above HK\$400m), the New Engineering Contract form shall be adopted unless there are justifications with prior endorsement.

14 Hong Kong Institute of Construction Adjudicators, "Development Bureau Technical Circular (Works) No. 6./2021: Security of Payment Provisions in Public Works Contracts" (5 October 2021).

which informed certain policy choices. In this context, Singapore and Hong Kong present contrasting environments that shaped the rollout and structure of their respective security of payment regimes.

14 Singapore benefits from an integrated and robust alternative dispute resolution infrastructure that is supported by strong institutional players like the Singapore Mediation Centre and the Singapore International Arbitration Centre.<sup>15</sup> More recently, this infrastructure has further evolved with the introduction of the Integrated Appropriate Dispute Resolution Framework or INTEGRAF in short, an initiative led by the Singapore Mediation Centre to guide parties in selecting the most suitable mode of dispute resolution for different aspects of a dispute.

15 The implementation of the SOP Act was therefore not an isolated legal form, and instead part of a broader state-endorsed movement to refine Singapore's alternative dispute resolution ecosystem. Such institutional coherence and policy alignment allowed for the fast rollout and industry uptake of the SOP Act, especially when compared to jurisdictions with less developed dispute resolution services.

16 Hong Kong, on the other hand, underwent political and legal developments in recent years, contributing to a degree of institutional caution. The construction ecosystem in Hong Kong has become increasingly fragmented in recent years, not merely due to its mix of public-private projects and subcontracting tiers, but also as a consequence of evolving political dynamics between Hong Kong and Mainland China. Indeed, the imposition of the National Security Law in 2020 and subsequent political reforms have destabilised Hong Kong's governance landscape to an extent, dampening momentum for alternative dispute resolution reform.<sup>16</sup>

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15 See Eugene K B Tan, "Harmony as Ideology, Culture, and Control: Alternative Dispute Resolution in Singapore" (2007) 9(1) *Australian Journal of Asian Law* 120.

16 See Wendy Shidi Wu, "How Does Hong Kong's New National Security Law Affect Its International Arbitration Status?", *The American Review of* (cont'd on the next page)

17 Against this backdrop, the Hong Kong International Arbitration Centre remains the primary institution for commercial arbitration, although recent efforts to diversify dispute resolution offerings have led to the establishment of the South China International Arbitration Center (Hong Kong) (“SCIAHK”) in 2019. SCIAHK was created to strengthen Hong Kong’s role in the Greater Bay Area, offering arbitration under rules drafted based on the 2013 UNCITRAL Arbitration Rules.<sup>17</sup> It also benefits from inclusion in the arrangement with Mainland China for court-ordered interim measures.

18 It remains to be seen how SCIAHK will interact with the SOPO’s adjudication framework as the legislation comes into full effect. For now, its existence underscores the evolving, albeit fragmented, nature of Hong Kong’s alternative dispute resolution landscape.

#### **IV. Design features**

##### **A. Timelines**

19 The SOP Act mandates that an adjudicator must determine an adjudication application within 14 days after commencement (or seven days, if no payment response and adjudication response are filed), reinforcing its “pay now, argue later” approach.<sup>18</sup> In contrast, the SOPO allows 55 working days from the adjudicator’s appointment to make a determination, subject to extensions.<sup>19</sup> This reflects the SOPO’s more cautious embrace of procedural regularity over urgency.

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*International Arbitration* (29 September 2020).

17 Compare United Nations Commission on International Trade Law, UNCITRAL Arbitration Rules (with new article 1 as adopted in 2013) and South China International Arbitration Center (Hong Kong) Arbitration Rules Art 1.

18 Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) s 17(1).

19 Section 42(5) of Construction Industry Security of Payment Ordinance (Cap. 652).

**B. Section 15(3) of Building and Construction Industry Security of Payment Act 2004 versus s 21 of Construction Industry Security of Payment Ordinance**

20 Key procedural provisions also reveal divergence. Section 15(3) of the SOP Act precludes a respondent from raising in an adjudication response an objection of any nature, including jurisdictional objections, unless the objection was included in the relevant payment response provided by the respondent to the claimant. The Singapore Court of Appeal in *W Y Steel Construction Pte Ltd v Osko Pte Ltd*<sup>20</sup> affirmed that s 15(3) is:<sup>21</sup>

... jurisdictional in the sense that it curtails the power of an adjudicator to allow a respondent to raise new grounds for withholding payment that were not included in his payment response and, for that matter, an adjudicator's power even to consider such grounds at all.

21 While the decision came prior to the Building and Construction Industry Security of Payment (Amendment) Act 2018,<sup>22</sup> it is understood that the pre- and post-amendment wording convey the same meaning, *ie*, a respondent has to either pay the claimed amount or answer the claim by filing a payment response.<sup>23</sup>

22 Section 21 of the SOPO adopts a similar position but affords slightly more discretion. The section reads:

**21. Consequences of not serving payment responses**

If a paying party fails to serve a payment response in reply to a payment claim by the payment response deadline, the paying party—

(a) is to be regarded as disputing the claimed amount that has not been paid by the paying party by the payment response deadline; and

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20 [2013] 3 SLR 380.

21 *W Y Steel Construction Pte Ltd v Osko Pte Ltd* [2013] 3 SLR 380 at [33].

22 Act 47 of 2018.

23 *Law and Practice of Construction Contracts* vol 1 (Sweet & Maxwell, 6th Ed, 2025) at para 19.054.

(b) is not permitted to raise any set off in the adjudication proceedings in relation to the payment claim.

23 Evidently, s 21 of the SOPO imposes a narrower restriction. While the respondent is deemed to dispute the claimed amount, it is prohibited from raising set-offs in the adjudication proceedings. The SOPO thus does not explicitly preclude late jurisdictional objections, leaving room for adjudicators to consider such challenges if raised later.

**C. Section 17(3) of Building and Construction Industry Security of Payment Act 2004 versus s 57 of Construction Industry Security of Payment Ordinance**

24 Section 17(3) of the SOP Act reads:

(3) 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—

(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.

25 A strict evidentiary threshold is therefore imposed. Adjudicators must disregard any part of a payment claim or response relating to damage, loss or expense unless it is supported by the prescribed documents.

26 Indeed, s 17(3) was enacted to address the lengthened adjudication process due to increasingly “complex claims”.<sup>24</sup> Such claims include complicated prolongation costs, damages, losses or expenses. Section 17(3) thus prevents adjudication from being bogged down by complex claims which are better suited for arbitration or litigation.

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24 *Range Construction Pte Ltd v Goldbell Engineering Pte Ltd* [2021] 2 SLR 91 at [52]–[53].

27 Rather than limiting the types of claims adjudicators may consider, s 57 of the SOPO takes a slightly different route by disapplying adjudication for time-related disputes involving private contracts where the quantum depends on an assessment of the claimant's entitlement to an extension of time. Section 57 of the SOPO reads:

**57. Disapplication of adjudication of time-related disputes for main private contracts and subcontracts**

(1) If a payment dispute concerns a dispute in relation to which the amount is to be determined on the basis of an assessment on a claiming party's extension of time entitlement under a main private contract or its subcontract (***time-related dispute***)—

(a) the claiming party may not initiate adjudication proceedings for the time-related dispute under section 24; and

(b) the adjudicator has no jurisdiction to determine the time-related dispute under this Part.

(2) However, if the claiming party and the paying party agree on the extension of time in relation to the time-related dispute but do not agree on the amount payable by the paying party based on the extension of time—

(a) the claiming party may initiate adjudication proceedings for the time-related dispute under section 24; and

(b) the adjudicator has jurisdiction to determine the time-related dispute under this Part.

(3) This section expires on a day to be appointed by the Secretary by notice published in the Gazette.

28 Accordingly, adjudication for time-related disputes involving private contracts is permitted only if parties have already agreed on the extension of time but not on the corresponding payment. This transitional carve-out reflects Hong Kong's more cautious legislative posture, intending to shield adjudicators from complex extension of time disputes that may be ill-suited to adjudication's fast-track nature.

**D. Dual track versus single track payment claims**

29 The notion of a “dual railroad track” under the SOP Act can be said to originate from s 5 of the Act, which states that: “Any person who has carried out any construction work, or supplied any goods or services, under a contract is entitled to a progress payment.” The High Court in *Tienrui Design & Construction Pte Ltd v G & Y Trading and Manufacturing Pte Ltd*<sup>25</sup> interpreted this provision as creating a statutory entitlement to payment that is separate and distinct from the contractual entitlement to be paid. This gave rise to a “dual railroad track system”, where the statutory regime under the SOP Act was seen to co-exist with the contractual regime.<sup>26</sup>

30 Under this theory, a claimant is allowed to pursue payment under either track – statutory or contractual – or advance a claim that draws on both. The SOP Act was thus initially viewed as creating a parallel entitlement to progress payments, regardless of the terms of the underlying contract.

31 However, this position was later decisively rejected by the Court of Appeal. In *Far East Square Pte Ltd v Yau Lee Construction (Singapore) Pte Ltd*,<sup>27</sup> the court held that the SOP Act “was not meant to alter the substantive rights of the parties under the contract, [nor] was it meant to give rise to a payment regime independent of the contract”.<sup>28</sup> In *Shimizu Corp v Stargood Construction Pte Ltd*,<sup>29</sup> the Court of Appeal further confirmed that there is no separate statutory entitlement to a progress payment where a contract has already made provisions for such payments. The SOP Act operates as a “gap-filler”, reinforcing the primacy of the contract.<sup>30</sup>

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25 [2015] 5 SLR 852.

26 *Tienrui Design & Construction Pte Ltd v G & Y Trading and Manufacturing Pte Ltd* [2015] 5 SLR 852 at [30].

27 [2019] 2 SLR 189.

28 *Far East Square Pte Ltd v Yau Lee Construction (Singapore) Pte Ltd* [2019] 2 SLR 189 at [31].

29 [2020] 1 SLR 1338.

30 *Shimizu Corp v Stargood Construction Pte Ltd* [2020] 1 SLR 1338 at [29].

32 The legal position in Singapore is now settled: the SOP Act does not recognise a dual railroad track system. A claimant must first establish a contractual entitlement to payment before invoking the SOP Act's adjudication procedures.

33 By contrast, Hong Kong's SOPO may be more susceptible to dual-track interpretations.<sup>31</sup> Section 13 of the SOPO provides that a person is entitled to a progress payment if the person has carried out construction work or supplied related goods and services under a construction contract. Unlike the SOP Act, the SOPO does not expressly tether this entitlement to the terms of the contract, nor does it clarify whether the statutory entitlement is contingent on contractual provisions.

34 Such ambiguity is likely to give rise to early interpretive challenges, particularly around whether the SOPO creates a standalone statutory right to payment. As with the SOP Act, judicial clarification is necessary.

## **V. Conclusion**

35 The comparison between the SOP Act and SOPO highlights how statutory adjudication is shaped by legislative philosophy, institutional maturity and market dynamics. Singapore's model favours procedural discipline and speed within a cohesive alternative dispute resolution system, while Hong Kong's framework adopts a more cautious, transitional position with room for interpretation.

36 With other jurisdictions like Thailand beginning to implement their own security of payment frameworks, the SOP Act–SOPO comparison underscores the importance of institutional clarity and stakeholder engagement. Ultimately, the effective functioning of statutory adjudication (or any legislation for that matter) depends not only on legislative text, but on how courts, practitioners and industry actors engage with it and evolve its application in practice.

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31 England and Wales: *Ferson Contractors Ltd v Levolux AT Ltd* [2003] EWCA Civ 11; New South Wales: *Transgrid v Siemens* [2004] NSWSC 87.