

Hong Kong's Construction Industry Security of Payment Ordinance – Features and Steps to Mitigate Risks

Key features

- **Application and scope:** The Ordinance applies, with some exceptions, to public and private construction contracts and subcontracts valued at least HKD 5,000,000 (for construction work) or HKD 500,000 (for related goods and services).
- **Right to progress payments claimed through payment claims:** Those performing construction work or supplying related goods/services under a construction contract are entitled to claim progress payments via payment claims.
- **Consequences for late payment responses:** If the paying party fails to respond to a payment claim by the deadline, they are considered to dispute the claim and cannot raise set-offs in adjudication.
- **Payment disputes and the statutory adjudication regime:** Only the claiming party can start adjudication proceedings when a payment dispute arises.
- **No contracting out:** Any contract terms that conflict with the Ordinance or try to limit its effect are void.
- **Contingent payment provisions:** "Paid when paid" or similar conditional payment clauses are unenforceable for construction work or related goods and services.
- **No contested extensions of time to be determined for main private contracts or subcontracts – only public contracts:** Adjudication for time-related disputes based on extension of time claims is not allowed for private main contracts or subcontracts (only for public contracts).
- **Right to delay work or supply:** If a claimed or adjudicated amount is not paid on time, the claiming party may give notice and delay work or supply of goods/services.

Steps to take

Those in the construction sector in Hong Kong should consider taking the following key steps with the Ordinance coming into effect:

- **Reviewing and if necessary amending their standard construction contracts** to ensure that they comply with the Ordinance.
- **Reviewing their payment claim and payment response processes** to ensure that they comply with, and can be completed, within the timeframes required by the Ordinance.
- **Ensuring that they are mindful of the payment claim, payment response and payment dispute processes and their timeframes** under the Ordinance in the administration of their construction contracts.
- **Training their project, commercial and legal teams** on the significant implications of the Ordinance.
- **Implementing enhanced communication and evidence gathering processes between their project, commercial and legal teams** to assist with payment disputes.
- **Considering the strategic implications of the Ordinance** for the resolution of construction contract disputes.

Key contacts



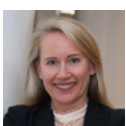
Sylvia Tee
Partner, Hong Kong
T +852 2846 8913
sylvia.tee
@ashurst.com



Luke Carbon
Partner, Sydney
T +61 2 9258 5908
luke.carbon
@ashurst.com



Michael Weatherley
Partner, Singapore
T +65 6416 9509
michael.weatherley
@ashurst.com



Georgia Quick
Partner, Sydney
T +61 2 9258 6141
georgia.quick
@ashurst.com



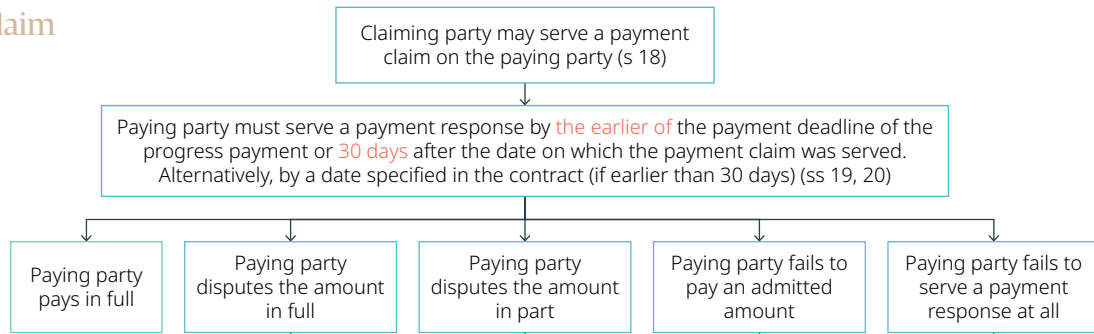
Jeremy Chenoweth
Partner, Brisbane
T +61 7 3259 7028
jeremy.chenoweth
@ashurst.com



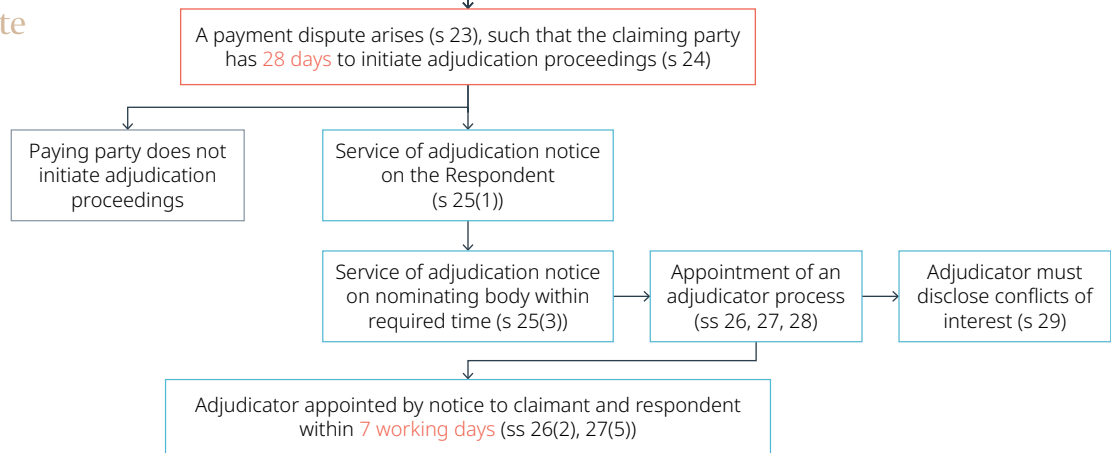
Tom Duncan
Partner, London
T +44 20 7859 3262
tom.duncan
@ashurst.com

Flowchart of Hong Kong's Construction Industry Security of Payment Ordinance

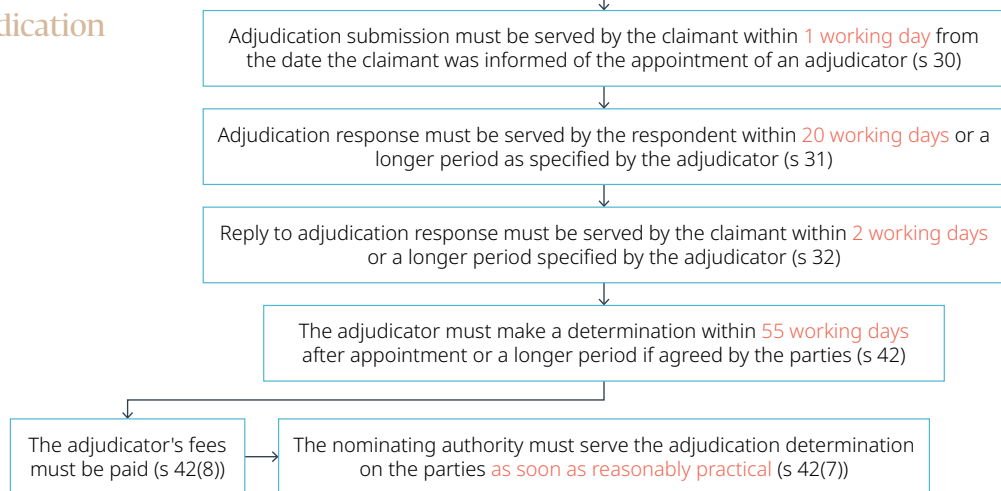
Payment claim



Payment dispute



Adjudication



Post-adjudication

