

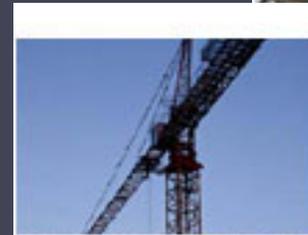
# ADJUDICATION – THE QUICK & CHEAP SOLUTION TO GETTING PAYMENT

Monica Neo

Partner, CHAN NEO LLP

CHAN NEO LLP

*No. 133 Cecil Street, Keck Seng Tower, #16-02 Singapore 069535  
Tel: +65 6223 1218 Fax: +65 6223 2585  
E-mail: [admin@channeo.sg](mailto:admin@channeo.sg) Web: [www.channeo.sg](http://www.channeo.sg)*



# Introduction

- Came into operation on 1 April 2005
- Supplemented by the Building and Construction Industry Security of Payment Regulations (2006 revised edition)
- Objectives – (a) to facilitate cash flow, and (b) to resolve payment disputes in the construction industry

# Scope

- Contracts must be made in writing
- Contract made on or after 1 April 2005 – sub-contracts made after 31 Oct 2005
- Work done in Singapore – does not matter whether or not contract is made in Singapore or governed by Singapore law
- For supply contracts – they must specify or identify the construction site or project in relation to which the goods are to be supplied

# Limitations

- Claim for work done or goods supplied only – not damages, eg loss & expense claim
- Does not apply to :
  - Residential properties that do not require BP approval
  - Employment contracts

# Key Features

- “pay when paid” provision – not enforceable
- Adjudication proceedings is independent of arbitration or court proceedings
- Parties cannot contract out of SOPA

S 36, SOPA - No contracting out

36(1) The provisions of this Act shall have effect notwithstanding any provision to the contrary in any contract or agreement.

36(2) The following provisions in any contract or agreement (whether in writing or not) shall be void:

(a) a provision under which the operation of this Act or any part thereof is, or is purported to be, excluded, modified, restricted or in any way prejudiced, or that has the effect of excluding, modifying, restricting or prejudicing the operation of this Act or any part thereof;

(b) a provision that may reasonably be construed as an attempt to deter a person from taking action under this Act.

# Key Features

- Provides strict timeline for submission of payment claim
  - According to contract
  - If contract silent – “*by last day of each month following the month in which the contract is made*”
- Claim must comply with certain strict requirements – payment claim precedent form

# Key Features

- Provides strict timeline for submission of response to a claim (7 days if silent, max of 21 days - construction contract)
  - Time extended by dispute settlement period – period of 7 days after the date on which or the period within which the payment response is required to be provided under section 11 (1)
- Response must comply with certain strict requirements – payment response [precedent form](#)
- Obliges respondent to provide payment response to the payment claim
  - Timely submission is critical – failure or late submission = judgment

# Implication of failure or late payment response

s 15(3), SOPA - The respondent shall not include in the adjudication response, and the adjudicator shall not consider, any reason for withholding any amount, including but not limited to any cross-claim, counterclaim and set-off, unless —

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

(b) where the adjudication relates to a supply contract, the reason was provided by the respondent to the claimant on or before the relevant due date.

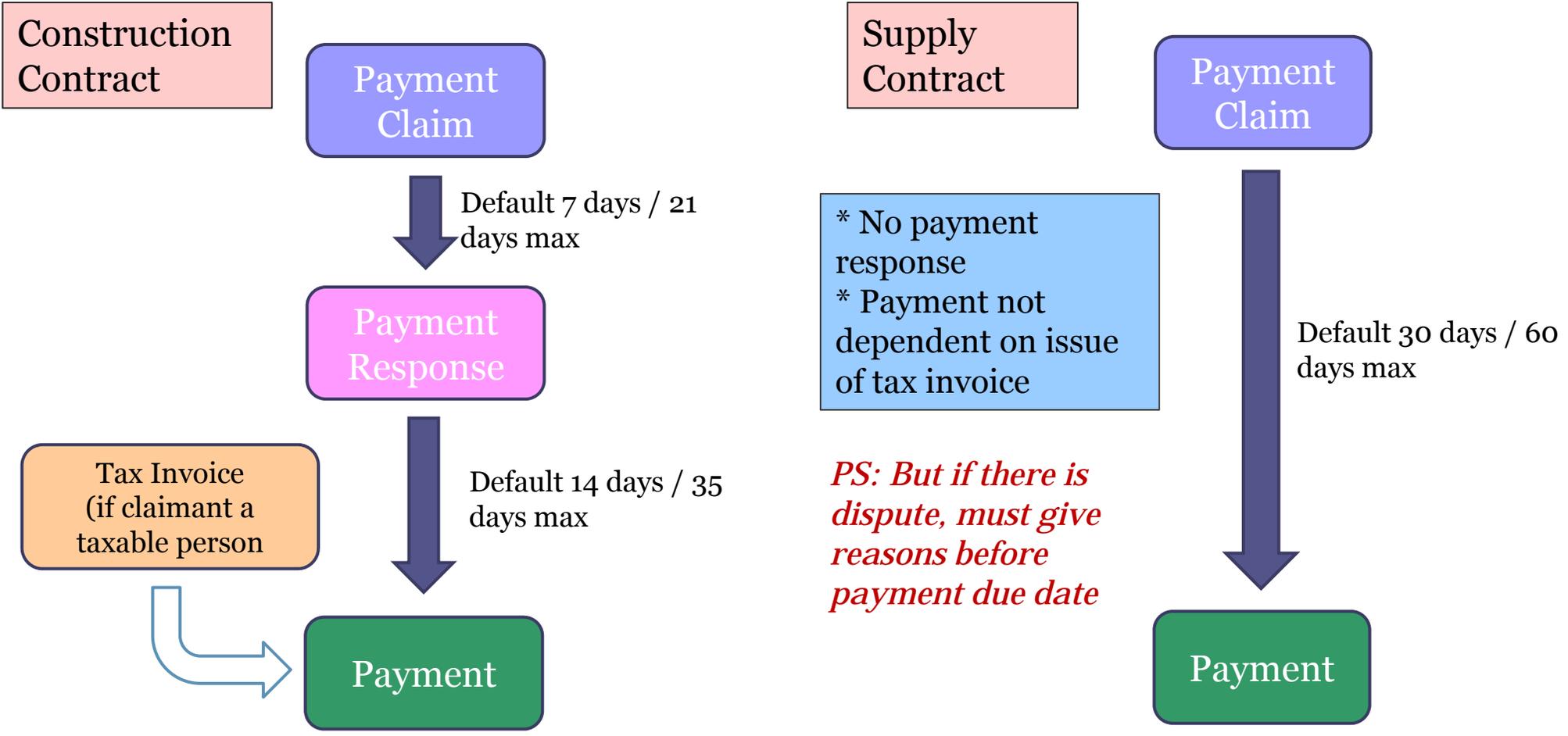
# Implication of failure or late payment response

s 18(a), SOPA - This section shall apply to a respondent who is a party to an adjudication if the adjudicated amount exceeds the relevant response amount by the prescribed amount or more.

# Key Features

- Restricts time for making payment
  - Construction contract - 14 days if silent, max of 35 days
  - Supply contract - 30 days if silent, max of 60 days
  - Interest for late payment

# Overview of claim & payment procedure



# Key Features

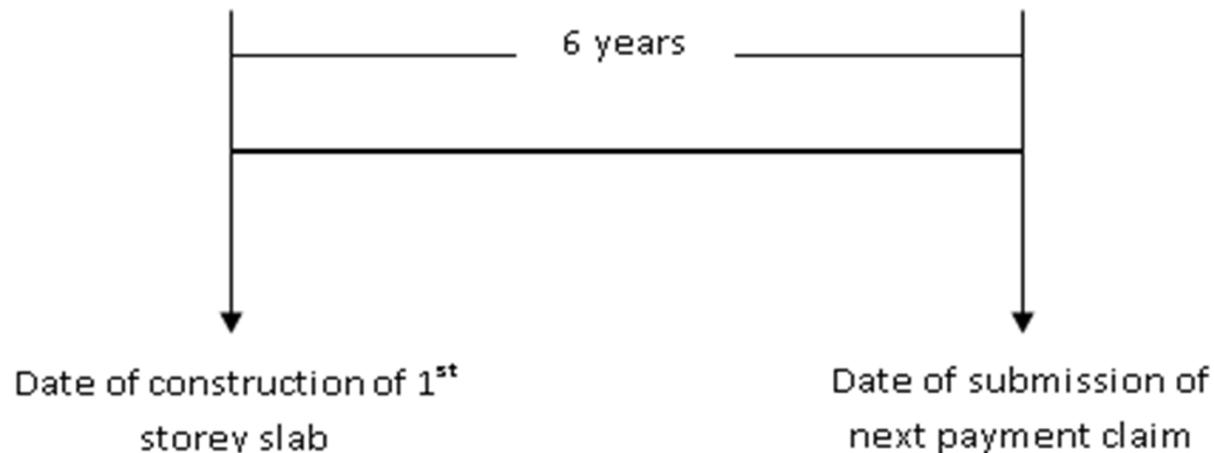
- Allow for claim to be accumulated subject to time bar of 6 years

s 10(4), SOPA - Nothing in subsection (1) shall prevent the claimant from including, in a payment claim in which a respondent is named, an amount that was the subject of a previous payment claim served in relation to the same contract which has not been paid by the respondent if, and only if, the first-mentioned payment claim is served within 6 years after the construction work to which the amount in the second-mentioned payment claim relates was last carried out, or the goods or services to which the amount in the second-mentioned payment claim relates were last supplied, as the case may be.

## Illustration of operation of s10(4)

Example :

1. 1<sup>st</sup> payment claim – contractor claims \$20,000 for construction of 1<sup>st</sup> storey slab.
2. Employer did not pay.
3. Next payment claim - contractor can include this amount if the claim is served within 6 years after the construction of the 1<sup>st</sup> storey slab.



# Key Features

- Provides for interim settlement of payment disputes through the adjudication process (ss 12 – 17, SOPA)
- Process is simpler, faster and less expensive than arbitration or litigation

s 12, SOPA - Costs of adjudication proceedings

12 For the purposes of section 30 (1) of the Act —

(a) the fee payable to an authorised nominating body shall not exceed —

(i) \$500 for each adjudication application; and

(ii) \$1,000 for each adjudication review application; and

(b) the fee payable to an adjudicator (including a review adjudicator or a panel of review adjudicators) shall be computed on the basis of a rate not exceeding \$2,000 per day or \$250 per hour, subject to —

(i) where the claimed amount exceeds \$20,000, a maximum of 10% of the claimed amount; or

(ii) in any other case, a maximum of \$2,000.



# Precedent forms

- Adjudication Application – precedent form
- Adjudication Response – precedent form
- Notice of Intention to Apply for Adjudication  
– precedent form

# Key Features

- Adjudication determination is temporarily binding & enforceable just like any judgment or arbitral award (s 21, SOPA)
- Confers other rights of enforcement of the adjudication determination(ss 23 – 27, SOPA)
  - Lien on goods that are unfixed and have not been paid for
  - Right to suspend works or supply
  - Principal may make direct payment

# Key Features

- Dis-satisfied parties can apply to the court for the adjudication determination to be set aside

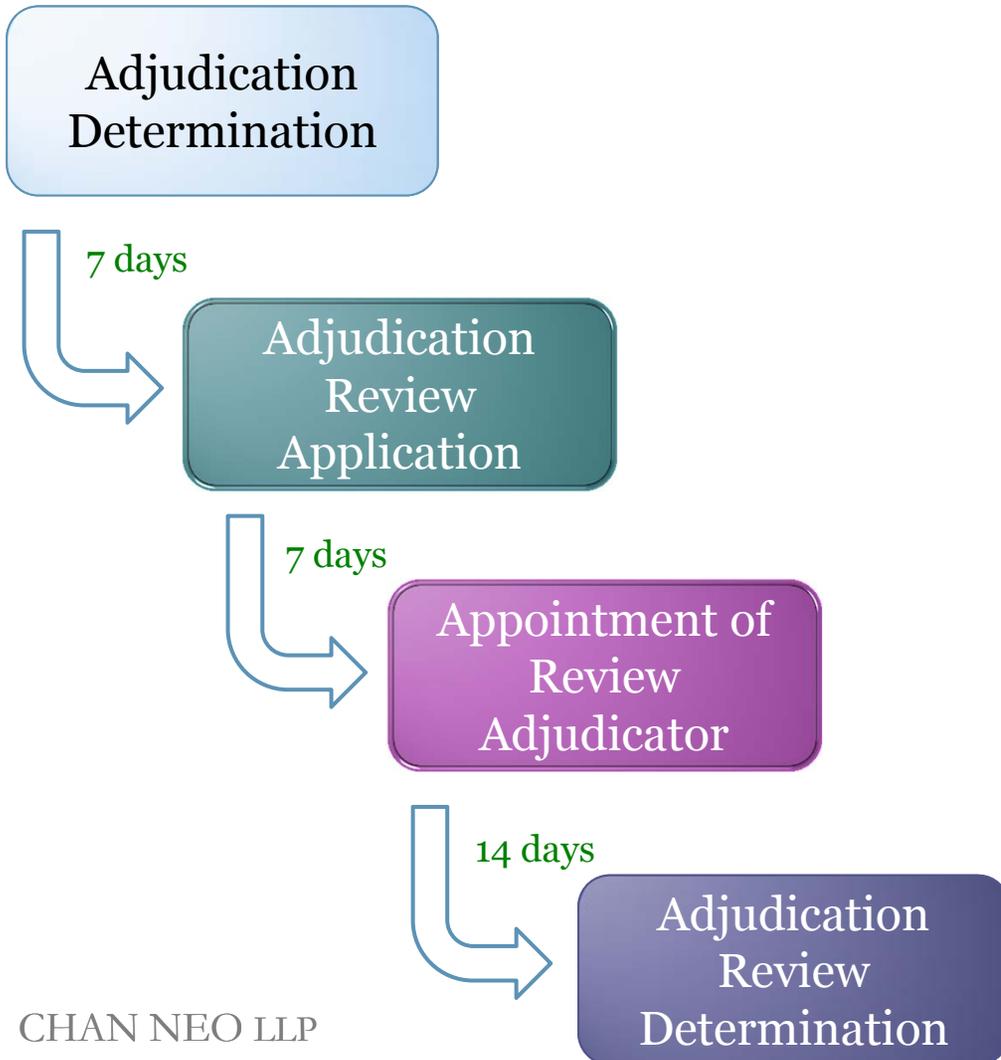
s 27(5), SOPA - Enforcement of adjudication determination as judgment debt etc

27(5) Where **any party** to an adjudication commences proceedings to **set aside** the adjudication determination or the judgment obtained pursuant to this section, he **shall pay into the court as security the unpaid portion of the adjudicated amount that he is required to pay**, in such manner as the court directs or as provided in the Rules of Court (Cap. 322, R 5), pending the final determination of those proceedings.

# Key Features

- Respondent can also apply for the adjudication determination to be reviewed by another adjudicator (i.e. review adjudicator) – s 18 SOPA

# Overview of review process - ss 18 & 19, SOPA



- Only Respondent can apply – cf. setting aside procedure
- Adjudicated amount must exceed relevant response amount by \$100,000 or more
- Respondent must pay the adjudicated amount first – cf. setting aside procedure requiring payment into court as security

# Issues arising from SOPA

Pre-mature  
Submission

- *AA Pte Ltd v AB Pte Ltd* [2005] SGSOP 1

Repeat claim

- *Doo Ree Engineering & Trading Pte Ltd v Taisei Corp* [2009] 218 SGHC 218

Intention

- *Sungdo Engineering & Construction (S) Pte Ltd v Italco Pte Ltd* [2010] SGHC 105
- *Chua Say Eng (formerly trading as Weng Fatt Construction Engineering) v Lee Wee Lick Terence @ Li Weili Terence* [2011] SGHC 109

Service

- *Chua Say Eng (formerly trading as Weng Fatt Construction Engineering) v Lee Wee Lick Terence @ Li Weili Terence* [2010] SGHC 333

# ***AA V AB - PREMATURE SUBMISSION***

- Claimant (AA) – bored piling sub-contractor
- Respondent (AB) – main contractor
- Claimed amount - \$520,428.00
- Adjudicated amount - \$520,428.00

# AA V AB - PREMATURE SUBMISSION

- Sub-contract terms provides for submission of progress claim on 15<sup>th</sup> of each month
- SC submitted payment claim on 12 October 2005
- MC's objections – payment claim was made prematurely and not in accordance with the terms of the contract as required by s 10(2) of SOPA

# AA V AB - PREMATURE SUBMISSION

Adjudicator's  
Determination

- The submission by SC of the payment claim 3 days earlier than that stipulated in the contract **does not invalidate** the payment claim for the purpose of the SOPA
- Reading the contract as a whole, a contractual stipulation such as this (refer to the contract terms for payment) is intended to ensure that a payment claim is submitted on a date which allows the MC sufficient time to deal with the claim properly

# AA V AB - PREMATURE SUBMISSION

Adjudicator's  
Determination

- If a payment claim is submitted earlier than the stipulated date, MC is not obliged to deal with it earlier unless it chooses to do so
- However, if a claim is submitted late it is conceivable that it may be effectively met with an objection by the MC that this will not be processed in time for payment to be made according to the timeline which would normally apply

# AA V AB - PREMATURE SUBMISSION

Adjudicator's  
Determination

- At any rate, if the MC was troubled by the fact that the instant payment claim had been submitted 3 days earlier than expected, it would be reasonable to expect some protest or objection from them upon the receipt of the claim. However, nothing along these lines was raised.
- As the SC rightly pointed out, had the MC raised this issue, all that the claimant needed to do then was to re-submit the payment claim 3 days later

# *DOO REE V TAISEI - REPEAT CLAIM*

- Plaintiff (Doo Ree) – claimant - rc works sub-contractor to Bukit Brown MRT station
- Defendant (Taisei) – respondent - main contractor for several MRT stations
- Claimed amount - \$202,349.41, Adjudicated amount –Nil
- SC's application to court to set aside the adjudication determination

# *DOO REE V TAISEI - REPEAT CLAIM*

- 4 Oct 2008 – Taisei (MC) terminated Doo Ree's (SC) appointment under the sub-contract
- 29 Nov 2008 - Doo Ree submitted its payment claim for \$254,257.41 – claim was referred to adjudication in SOP AA/87 of 2008 but was dismissed on the ground that the adjudication application was pre-mature

## *DOO REE V TAISEI - REPEAT CLAIM*

- 30 Jan 2009 - Doo Ree submitted another payment claim for \$202,349.41 – Taisei responded that the claim was a repeat of the Nov claim and did not make any payment – Doo Ree did not apply for adjudication in respect of this claim
- 31 Mar 2009 - Doo Ree submitted another payment claim, also for the sum of \$202,349.41 – Taisei did not provide any payment response – claim was referred for adjudication in SOP AA/56 of 2009

# DOO REE V TAISEI - REPEAT CLAIM

- **Taisei's objections** in its adjudication response – claim was a repeat of the previous claim – application ought to be dismissed as the SOPA does not allow the submission of repeat and identical claim
- Adjudicator accepted Taisei's objections and dismissed Doo Ree's application
- Doo Ree applied to the court to have the adjudicator's determination set aside

# DOO REE V TAISEI - REPEAT CLAIM

- **Issue before the court** – Whether the SOPA permits the service of repeated claims?
- **Held (AR)** – **NO** – Doo Ree's application to set aside the adjudication determination was therefore disallowed and dismissed

## *DOO REE V TAISEI - REPEAT CLAIM*

- Under s 10(1), a claimant can serve “one” payment claim for a particular progress payment
- While s 10(4) allows an amount that was the subject of a previous payment claim to be included in a subsequent payment claim, it does not, on its face, allow the service of repeat claims – the word “include” would indicate that **the amount that was the subject of a previous claim, should form part, and not the whole, of the subsequent claim**

A claimant may serve one payment claim in respect of a progress payment on —

- (a) one or more other persons who, under the contract concerned, is or may be liable to make the payment; or
- (b) such other person as specified in or identified in accordance with the terms of the contract for this purpose.

s 10(1),  
SOPA

Nothing in subsection (1) shall prevent the claimant from including, in a payment claim in which a respondent is named, an amount that was the subject of a previous payment claim served in relation to the same contract which has not been paid by the respondent if, and only if, the first-mentioned payment claim is served within 6 years after the construction work to which the amount in the second-mentioned payment claim relates was last carried out, or the goods or services to which the amount in the second-mentioned payment claim relates were last supplied, as the case may be.

s 10(4),  
SOPA

# ***SUNGDO - INTENTION TO CLAIM***

- Plaintiff (Sungdo) – sub-contractor respondent
- Defendant (Italco) –sub-sub-contractor claimant for chilled water piping works
- Claimed amount - \$1,124,192.29, Adjudicated amount - \$354,588.37
- Sungdo's application to set aside the adjudication determination

# ***SUNGDO - INTENTION TO CLAIM***

- End Sep 2007 - Itarco terminated the contract and left the site due to some payment disputes
- Oct 2007 – Dec 2007 – Itarco submitted four invoices for balance works and variations that it had carried out – invoices not paid
- 30 Jul 2008 – Itarco sued Sungdo in court for payment of the invoices

# **SUNGDO - INTENTION TO CLAIM**

- 26 Dec 2008 – Itarco allegedly served a letter dated 23 Dec 2006 asking for payment of the invoices (“2008 letter”)
- 16 Jan 2009 – Itarco applied for adjudication – adjudicator determined in Itarco’s favour
- Sungdo applied to court to have the adjudication determination set aside
- **One of the issues before Court** – Was the 2008 letter a payment claim?

**Re: SSWP FAB300-3 PROJECT**

Italco's 2008  
letter to  
Sungdo

We refer to the above project, the contract of which (comprising the commercial contract, our quotation and your purchase order) is attached at Tab A.

With regard to your questioning of whether we have done the work, we wish to assure you that the work in respect of the following invoices have been done and we claim for payment for such work as follows:

<u>S/no</u>	<u>Invoice No</u>	<u>Date</u>	<u>Amount</u>	<u>Tab</u>
1.	Inv-IPL-2007-10-0061	26/10/07	\$321,000.00	B
2.	Inv-IPL-2007-10-0062	05/10/07	\$256,919.84	C
3.	Inv-IPL-2007-12-0079	01/12/07	\$ 97,668.53	D
4.	Inv-IPL-2007-12-0080	01/12/07	\$448,603.92	E

You have paid us for the following first 5 invoices for 80% of the work. Copies of these invoices may be seen [at] Tab F.

(a)	Inv-IPL-2007-04-0031	13/04/07	\$ 78,750.00
(b)	Inv-IPL-2007-05-0039	18/05/07	\$ 594.30
(c)	Inv-IPL-2007-05-0040	23/05/07	\$315,000.00
(d)	Inv-IPL-2007-06-0042	20/06/07	\$472,500.00
(e)	Inv-IPL-2007-07-0046	27/07/07	\$401,250.00

We have substantially completed the works under the original agreement (for which invoice (1) has been issued). We have also completed the works under the variation orders in respect of invoices (2) to (4). Therefore the invoices specified at (1) to (4) above are due and payable.

With regard to the invoices at (2) to (4) above, your approval for the variation works and the breakdown of the works and prices are attached to the respective invoices at Tabs C to E above.

Please therefore let us have your payment.

Finally, we wish you greetings of the season!

[Unintelligible signature] 23/12/08

# **SUNGDO - INTENTION TO CLAIM**

Court's  
Findings

22 I would therefore hold that for any document to amount to a Payment Claim, not only must it comply with the prescribed requirements for a Payment Claim, it must be intended to be such by the party submitting it and, importantly, such intention must be communicated to the recipient. Whether or not this communication has taken place in each case would be a question of fact to be determined according to the circumstances of that case. Evidence of such communication may come from covering letters, email exchange referring to the document in question or even oral communication. Evidence could well come from the manner in which the respondent had dealt with the document, *eg* he gives a payment response. It would not be possible to set out all the circumstances under which a court would hold that such intention has been communicated and each case would have to be determined on the basis of its unique facts. But certainly a statement in the document that it is a payment claim under the Act would be the most effective manner of communicating this intention.

# SUNGDO - INTENTION TO CLAIM

Held – 2008 letter was not a payment claim under the SOPA

Italco did not communicate its intention to Sungdo that it was a payment claim under the SOPA

- There was no mention in the covering letter of it being a payment claim under the SOPA.
- There was no prior or subsequent communication as to the nature of this letter - Italco's representative merely handed the letter to Sungdo's representative

Sungdo did not treat it as a payment claim

- Sungdo did not provide a payment response at all

# SUNGDO - INTENTION TO CLAIM

Held – 2008 letter was not a payment claim under the SOPA

Events prior to the service of the 2008 letter suggested that it was not a payment claim

- 2008 letter was not the first time Itarco had submitted a claim to Sungdo – Itarco had through its solicitors written a letter of demand to Sungdo claiming payment
- Parties have proceeded with court proceedings with pleadings being submitted

The contents of the 2008 letter did not suggest it was a payment claim

- Overall appearance of the 2008 letter is that it is of an informal nature
- Although it is on Itarco's letterhead, the proper name of Sungdo was not stated as the addressee
- The person signing the letter was not identified and the date is handwritten
- The letter concludes with a cheerful greeting for the Christmas and New Year season, the levity of which is enhanced by the exclamation mark

# CHUA SAY ENG - INTENTION TO CLAIM

- Appeal against AR's decision dismissing defendant's application to set aside the adjudication determination
- Plaintiff – main contractor for renovation works
- Defendant – private individual owner
- **One of the issues before Court** – whether the payment claim was a valid payment claim under the SOPA?

Covering Letter of  
Payment Claim

*Two pages of itemised  
cost breakdown of work  
were attached to the  
letter*

[Plaintiff's Letterhead]

Date: 2<sup>nd</sup> June 2010

To:

[Defendant at his residential address]

[Defendant at his construction address]

Dear Sir

**PAYMENT CLAIM NO. 6**

**CONSTRUCTION WORKS TO NO. 1 PASIR RIS HEIGHT SINGAPORE**

**QUOTATION REF: WFCE/1022/08 ACCEPTED ON 16 AUGUST 2008**

**ADDITIONAL WORKS FOR 2<sup>ND</sup> FLOOR**

**QUOTATION DATED 5 NOV 2008 ACCEPTED ON 3 DECEMBER 2008**

We submit our payment claim number 6 for work done from June 2009 to 26 April 2010:

Amount claimed: \$350,450.40

Less payment: \$210,000.00

Amount due/claimed: \$140,450.40

Details of the amount claimed are attached (2 pages).

Yours Sincerely

# CHUA SAY ENG - INTENTION TO CLAIM

Payment claim no 6 falls within the meaning of a payment claim under the SOPA

- Unlike the 2008 letter in *Sungdo*, payment claim no 6 here specified clearly on its face that it was a payment claim
- It was a business-like document - From its contents, there could have been no doubt that it was claiming that a sum of money was due

## *Court's findings*

Payment claims do not need to expressly refer to the SOPA to be valid

- The requirement that a claimant must communicate his intention that a claim is a payment claim under the SOPA was a mere state of best practice and not a requirement of validity under the SOPA
- The SOPA does not distinguish between laypersons and members of the construction industry – immaterial that the defendant owner is a private individual

# CHUA SAY ENG - SERVICE

- Decisions of the AR
- **One of the issues before Court** – What constitutes effective service of a payment claim on a private individual in the context of the SOPA?
- Payment claim was delivered to the owner's residential address and was slid under the door when the courier found that nobody was home

No mention of  
service on  
individual with no  
business address

s 37(1), SOPA - Service of documents

(1) Where this Act authorises or requires a document to be served on a person, whether the expression “serve”, “lodge”, “provide” or “submit” or any other expression is used, the document may be served on the person —

(a) by delivering it to the person personally;

(b) by leaving it during normal business hours at the usual place of business of the person; or

(c) by sending it by post or facsimile transmission to the usual or last known place of business of the person.

(2) Service of a document that is sent to the usual or last known place of business of a person under subsection (1) (c) shall be deemed to have been effected when the document is received at that place.

(3) The provisions of this section are in addition to, and do not limit or exclude, the provisions of any other law with respect to the service of documents.

HELD to be  
effective service  
- No need for  
personal service

48A(1), Interpretation Act

Where a written law authorises or requires a document to be served on a person, whether the expression “serve”, “give” or “send” or any other expression is used, then, unless the contrary intention appears, the document may be served —

(a) in the case of an individual —

(i) by delivering it to the individual personally; or

(ii) by leaving it at, or by sending it by pre-paid post to, the usual or last known address of the place of residence or business of the individual;

...

(2) Nothing in subsection (1) —

(a) affects the operation of any written law that authorises the service of a document otherwise than as provided in that subsection...

# Other issues arising from SOPA

- Does the SOPA apply when the contract is terminated?
- Does the SOPA apply to final payment claim?
- Does the SOPA apply to retention monies

# Other issues arising from SOPA

- Does the architect's / contractor's certification constitute the payment response?
- Can the respondent be excused from providing a payment response due to lack of information or details in the payment claim?
- Can the claim and payment response be served by email?

s 37(1), SOPA – Service of documents

(1) Where this Act authorises or requires a document to be served on a person, whether the expression “serve”, “lodge”, “provide” or “submit” or any other expression is used, the document may be served on the person —

(a) by delivering it to the person personally;

(b) by leaving it during normal business hours at the usual place of business of the person;  
or

(c) by sending it by post or facsimile transmission to the usual or last known place of business of the person.

(2) Service of a document that is sent to the usual or last known place of business of a person under subsection (1) (c) shall be deemed to have been effected when the document is received at that place.

(3) The provisions of this section are in addition to, and do not limit or exclude, the provisions of any other law with respect to the service of documents.

# Decisions concerning scope of court's power on review

Narrow Approach

VS

Liberal Approach

*SEF Construction Pte Ltd v Skoy Connected Pte Ltd*  
[2010] 1 SLR 733 – Judith Prakash J.

*Chua Say Eng v Lee Wee Lick Terence* [2011] SGHC 109 – Tay Yong Kwong J.

*Sungdo Engineering & Construction (S) Pte Ltd v Italcor Pte Ltd* [2010] 3 SLR 459 – Lee Seiu Kin J.

# *SEF v Skoy*

Decisions of  
Justice Judith  
Prakash

45 Thus, I consider that an application to the court under s 27(5) must concern itself with, and the court's role must be limited to, determining the existence of the following basic requirements:

- (a) the existence of a contract between the claimant and the respondent, to which the SOP Act applies (s 4);
- (b) the service by the claimant on the respondent of a payment claim (s 10);

# *SEF v Skoy*

- (c) the making of an adjudication application by the claimant to an authorised nominating body (s 13);
- (d) the reference of the application to an eligible adjudicator who agrees to determine the adjudication application (s 14);
- (e) the determination by the adjudicator of the application within the specified period by determining the adjudicated amount (if any) to be paid by the respondent to the claimant; the date on which the adjudicated amount is payable; the interest payable on the adjudicated amount and the proportion of the costs payable by each party to the adjudication (ss 17(1) and (2));
- (f) whether the adjudicator acted independently and impartially and in a timely manner and complied with the principles of natural justice in accordance with s 16(3); and
- (g) in the case where a review adjudicator or panel of adjudicators has been appointed, whether the same conditions existed, *mutandis mutandi*, as under (a) to (f) above.

# *SEF v Skoy*

46 If the court finds that the answer to any of those questions is in the negative, then the adjudication determination and any judgment arising therefrom must be set aside. Whilst I note that s 16(3)(b) requires the adjudicator to avoid incurring unnecessary expense, I do not consider that a failure to comply with that requirement should result in the setting aside of the adjudication determination since, even if unnecessary expense is incurred in connection with the adjudication, that is unlikely to affect the correctness of the determination as long as the adjudicator was independent and impartial and afforded the parties natural justice. I should add that whilst s 16(2) directs an adjudicator to reject any adjudication application that is not made in accordance with s 13(3)(a), (b) or (c) and also to reject any adjudication response that is not lodged within the time limit prescribed in s 15(1), it must be for the adjudicator to decide whether the adjudication application or adjudication response before him meets those requirements. It would not be for the court to overturn the adjudication determination later on the basis that the adjudicator should have rejected either of those documents because if the court took that course, it would have delved into the merits of the dispute. Similarly, although the SOP Act requires a payment claim to be served, whether or not the document purporting to be a payment claim which has been served by a claimant is actually a payment claim is an issue for the adjudicator and not the court. In this respect, I agree entirely with Hodgson JA's reasoning

# *Chua Say Eng*

- Latest and recent decision on SOPA – presiding judge - Justice Tay Yong Kwang
- Basically adopted and followed the decision of Justice Lee Seiu Kin in *Sungdo*, which was decided shortly after Justice Prakash's decisions in *SEF v Skoy* and another case of *AM Associates*

# Chua Say Eng

## Justice Tay's findings

27 To what extent should the court interfere with an adjudicator's determinations? A liberal approach would invite more setting aside applications and undermine the statutory purpose of creating a speedy and low cost adjudication process (see *Sungdo Engineering* at [10]) while turning away from putting right erroneous adjudication determinations could create the impression that the court countenances injustice.

28 Returning to the case at hand, I answer the preliminary question in the positive. First, I agree with Lee J's statements at [32] of *Sungdo Engineering* (see [20] above) that in principle, the court may review an adjudicator's decision in respect of whether a document properly constitutes a payment claim under the SOPA and that where a document purports to be a payment claim under the SOPA, the court should only review an adjudicator's decision that it was indeed a valid payment claim under the SOPA on the basis of *Wednesbury* unreasonableness (see [21] above).

# Chua Say Eng

## Justice Tay's findings

29 Second, I note that in *Sungdo Engineering*, Lee J took the view (also at [32]) that the service of a payment claim should be reviewable by a court:

... While I agree that the jurisdiction of the adjudicator is not vested until his appointment by an ("authorised nominating body"), *I am, with respect, unable to agree that jurisdiction is not affected by an invalid Payment Claim **or service** thereof. ...*

[emphasis added]

I also agree with this. The review of the adjudicator's decision as to whether a payment claim was properly served includes reviewing his decision as to whether a payment claim was served within the prescribed time. In so holding, I have regard to Spigelman CJ's views on the importance of time limits

# Chua Say Eng

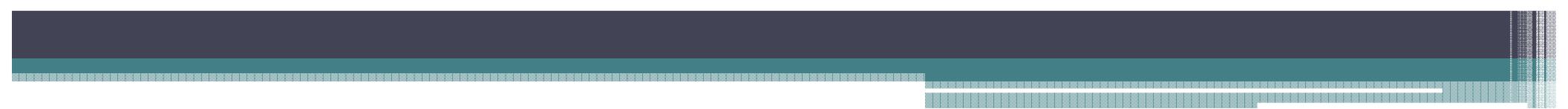
## Justice Tay's findings

judgment in *Chase Oyster*, the judge held at [47]:

47 This detailed series of time provisions is carefully calibrated to ensure expeditious resolution of any dispute with respect to payments in the building industry. *The time limits are a critical aspect of the scheme's purpose to ensure prompt resolution of disputes about payment. It is commercially important that each party knows precisely where they stand at any point of time. Such certainty is of considerable commercial value.*

[emphasis added]

In line with those views, I think it would be helpful for the court to clarify issues regarding time limits so as to provide certainty for parties proceeding under the SOPA.



# Conclusions

## **Speaker's Profile (MONICA NEO)**

Partner, Chan Neo LLP

Advocate & Solicitor, Commissioner for Oaths

Email: [mneo@channeo.sg](mailto:mneo@channeo.sg), Tel: 6223 1218

### **Academic and Professional Qualifications**

LLB Hons - University of London (Aug 1990)

Barrister at Law, Lincoln's Inn (Nov 1991)

Member of the Civil Practice Committee, Law Society of Singapore (2002)

Fellow Member, Singapore Institute of Arbitrators

Member, Chartered Institute of Arbitrators

Legal Adviser, Institutions of Engineers Singapore

Legal Adviser, Singapore Contractors Association Limited

Panel of Arbitrators under the Law Society Arbitration Scheme

Panel of Arbitrators of the Singapore Institute of Arbitrators

Member, Society of Construction Law

### **Major Publications (author, co-author or editor):**

Chapter on "Construction Contracts" in Law Relating to Specific Contracts in Singapore

"Construction Defects: Your Rights and Remedies" title of the Sweet & Maxwell's Law for Layman Series

Real Estate Developers' Association of Singapore's (REDAS) Design and Build Standard form contract

"The Singapore Standard Form of Building Contract – An Annotation"

Singapore Civil Procedure 2003 (White Book)

"The Singapore Court Forms"

Chapters I to LI of "Atkin's Court Forms – Singapore"