

Take early partial possession
(release of retention)

Ref. 2439.2

26th January 1999

By Fax & By Hand
(2513-1728)

Wong Tung & Partner Ltd.
5/F., Cityplaza 3
Taikoo Shing
Hong Kong

Attention : Mr. Vivian Cheng

Dear Sirs,

**Tsing Yi Station Development
Commercial Development - Main Contract**

Partial Possession of the Works by the Employer

We refer to Chun Wo's letter to you ref. CW/145/A1.1/1-546 dated 19th January 1999 applying for an early release of retention for those areas which they claimed to have been taken possession by the Employer.

In this respect, we would draw your particular attention to the following provision under Clause 16 of the Conditions of Contract and its amendment on page SCC/7 of the Supplementary Conditions of Contract in relation to sectional completion for your reference :-

(a) The Main Contract Works is scheduled for completion in three distinct Sections of A, B and C with their individual completion dates and rates of Liquidated and Ascertained Damages per day of delay specified in Clause 9 of the Letter of Intent ref. 798/M2/9708083 dated 22nd August 1997.

(b) In the event of different Certificates of Practical Completion having been issued for the three Sections of the Works, the Defects Liability Period for all Sections of the Works shall be deemed to commence from the relevant date of the last of such Certificate of Practical Completion. Similarly, the first half of the retention monies will be released to the Main Contractor after the issue of the last of such Certificate of Practical Completion.

Not the principle of CLB but can amend on SCC.

LLH/SHN/CKC/ay

Accordingly, the Contract has made no provision for any other partial possession of the Works other than those specified for the Section A, B and C. Unless, with consent of the Main Contractor, the Employer is not entitled to take possession of any part or parts of the Works at any time or times before the date of issue of the Certificate of Practical Completion by the Architect for the prescribed sections.

In case of the Employer with consent of the Main Contractor taking early partial possession of any part of the Section B of the Works, i.e. the relevant part, unless otherwise agreed with the Main Contractor, they are entitled to follow the mechanism set out in the unamended Clause 16 of the Standard Conditions of Contract for the following :-

1. Release of the first half retention for the relevant part;
2. Reduction to the rate of Liquidated and Ascertained Damages for Section B at \$400,000.00/day of delay for the remaining works in Section B;
3. The Defects Liability Period of the relevant part shall commence on the relevant date when the Employer took possession, and
4. The relevant part shall from the relevant date when the Employer took possession be at the sole risk of the Employer as regards loss or damage by fire, lightning, etc.

Based on Chun Wo's summary of the areas already possessed by the Employer, we have assessed the value of the retention and LAD for the relevant part by the proportion of the estimated value of the relevant parts possessed by the Employer to the estimated value of the whole of Section B of the Works. Detail calculation is shown on Appendix A for your information.

Yours faithfully,

Levett and Bailey

Encl.
LLH/SHN/CKC/ay

c.c. Shinta - Mr. David Mok (2845-1641))
Shinta - Mr. Anthony Kwan (2525-9230)) (w/encl.)
MTRC - Mr. Terence Chan (2750-1230))

LLH/SHN/CKC

Consequences of Sectional Completion

1. retention
2. LD
3. DLP
4. insurance

cannot rely on part

Not applicable to HKIA form. Should be individual DLP starts. Proportionate Retention L.D.

as stated on Clause 16.

CL 16

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