

Direct Payment
to DSC

Ref. 2022.4

23rd April 1996

By Fax & By Post

Ma Leung & Associates
22/F., Asian House,
No. 1 Hennessy Road,
Wanchai,
Hong Kong

Attention : Mr. Patrick Chiu

Dear Sirs,

Redevelopment of Laws Industrial Plaza
at 786-788 Cheung Sha Wan Road, Hong Kong
Main Contract
Direct Payment to Domestic Sub-Contractors

We refer to the recent telephone discussion at several occasions with Mr. Ambrose Chan of Laws and Mr. Patrick Chiu of your office regarding direct payments to Pentad's domestic sub-contractors for the finishing works.

As requested, we would like to confirm our advice as follows :-

no contractual
obligation

- 1) The Employer has no contractual obligations in whatever circumstances under the Main Contract with Pentad to pay Pentad's domestic sub-contractors directly should Pentad be default in payment since the Employer is not supposed to be involved in the internal domestic affairs between the two parties of the domestic sub-contract to which the Employer has no privity.

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- 2) We understand that as advised by your office, there has been hearsay evidence that Pentad may be going to winding up in the near future. If the Employer is considering, on ex gratia grounds, direct payments to Pentad's domestic sub-contractors, there can be two options to follow :-

Opt 1: change to
direct contract

- a) With the consent of Pentad and the respective domestic sub-contractor, the original domestic sub-contract is changed to a direct contract between the Employer and the latter after the assignment of the benefits by Pentad to the Employer under the domestic sub-contract agreement. The respective sub-contract works shall then be excluded from the original main contract work scope.

This arrangement requires formal documentation and execution by all parties involved and is actually a retrospective agreement since in general, the domestic respective sub-contract works were already finished and practical completion of the Main Contract works has already been endorsed by the Architect. Moreover, the Employer has to deal with each domestic sub-contractor in concern as a separate direct contractor in future.

We opine that this is not a recommendable option to pursue.

Opt 2: direct payment
& SA with MC

- b) With the consent of Pentad, payment can be effected directly to the respective domestic sub-contractors as a supplemental agreement between the Employer and the Main Contractor under the original Main Contract.

This option is a simpler arrangement and requires less formal documentation. Moreover, the Main Contractor is still held liable for all the domestic sub-contract works.

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AS
ccy

b) (Cont'd)

~~The supplemental agreement can be in a form of undertaking letter from the Main Contractor agreeing to the direct payment arrangement to the respective domestic sub-contractors. Moreover, the following should also be expressly agreed between the Main Contractor and the respective domestic sub-contractor :-~~

- i) ~~the final total value of the respective sub-contract works~~
- ii) ~~the amount of outstanding payment for (i) above..~~

~~The written confirmation should also be sought from the respective domestic sub-contractor for (i) and (ii) above.~~

cost and claim

~~We reckon that the value in (i) above shall not be larger than the corresponding contract value of the respective works under the Main Contract. Moreover, the Main Contractor should confirm that any direct payment to the respective domestic sub-contractor shall be set off from their future payment account and no additional expenses shall be claimable pursuant to this direct payment arrangement.~~

Yours faithfully,

Levett and Bailey

HKY/AH/KS/mun

c.c. Kingdom Land Development Ltd.
c/o Laws Real Estate Agency Ltd.
- Mr. Raymond Law/Mr. Ambrose Chan