

Construction Contracts Act, 2013

In this article, Director of the Construction Contracts Adjudication Service at the Department of Jobs, Enterprise and Innovation, Loughlin Quinn sets out some of the changes which will apply to certain construction contracts entered into after 25th July 2016 and the introduction of the new statutory adjudication provision under the Construction Contracts Act, 2013.

July 2016 witnesses the long awaited Construction Contracts Act coming into effect. Senator Feargal Quinn was the visionary behind this legislation introduced in the Seanad in 2010 and supported by successive governments since. Minister for Employment and Small Business, Pat Breen T.D. signed and published a *Code of Practise Governing the Conduct of Adjudications* on 5th July, the last remaining function to be completed prior to commencement of the legislation, and in the week following assignment of formal responsibility for it to him by the Government.

The construction industry is a vital part of our economy and after a number of difficult years the sector is again seeing expansion. It is timely, therefore, for this important legislation to come into effect now; legislation that provides certainty in respect of payment between parties to applicable contracts and a statutory entitlement to adjudication as a remedy in payment disputes, previously the domain of arbitration and litigation only.

The purpose of the Act is to regulate payments, particularly the timing of payments, in respect of construction contracts covered by the legislation. The Act does not apply to all construction contracts. For example, it excludes contracts of a value of not more than €10,000 as it excludes too contracts which relates only to a dwelling of not greater than 200 square metres, where a party to that contract occupies or intends to occupy the dwelling as his/her residence. Certain other types of contracts are excluded from the scope of the legislation and the exclusions illustrate a pragmatic and flexible approach adopted during the passage of the legislation through the Oireachtas.

Construction contracts covered by the Act must provide for the amount of each interim and final payment or an adequate mechanism for determining those amounts; the payment claim date for each amount due or an adequate mechanism for determining it; and the period between the payment claim date and the date on which the amount is due. A primary aim of the legislation is to provide statutory payment protections for subcontractors. Therefore a subcontract must at least provide the following payment claim dates in accordance with the Schedule to the Act: 30 days after the commencement date of the construction contract; every 30 days up to the date of substantial completion; and 30 days after the date of final completion. The date on which payment is due in relation to an amount claimed under a subcontract may not be later than 30 days after the payment claim date.

For the first time a party to a construction contract will have the right to refer a payment dispute for adjudication. The parties may jointly agree to appoint an adjudicator of their own choice. However, if the parties cannot agree as to whom to appoint, an application may be made to the Chairperson of the Construction Contracts Adjudication Panel, Dr. Nael Bunni to appoint an adjudicator to the dispute from the Ministerial appointed Panel of Adjudicators.

An adjudicator is required to reach a decision within 28 days of the day the dispute is referred to him/her. This period may be extended to 42 days with the consent of the party referring the dispute to the adjudicator or such longer period as is agreed by all of the parties to the dispute.

The decision of an adjudicator is binding on the parties unless they reach a final settlement of their dispute or a different decision is reached in the event that the payment dispute is referred to arbitration or if proceedings are initiated in a court in relation to the adjudicator's decision.

The *Code of Practice Governing the Conduct of Adjudications* is binding on all adjudicators operating under the Act and is the product of a collaborative effort by the many stakeholder organisations most affected by the Act, working with the Construction Contracts Adjudication Service. I would like to thank the Construction Industry Federation for the valuable guidance and support provided throughout the period of consultation. As adjudication in payment disputes under the Act is new in Ireland the Code will likely benefit from revision based on experience over time. It is intended that a consultative forum will be convened in order to assess the impact of the implementation of the legislation on the construction sector in consultation with stakeholder organisations.

Adjudication in construction contract disputes has worked well in certain other jurisdictions, providing reduced cost, early dispute resolution interventions and we look forward to a similar positive experience in Ireland.

Information on the full provisions of the Construction Contracts Act, 2013 together with the *Code of Practice Governing the Conduct of Adjudications* is available on the website of the Department of Jobs, Enterprise and Innovation at www.djei.ie.

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