
The Singapore Institute of Architects (‘SIA’) released the 9th Edition of the SIA Conditions of Building Contract (‘Conditions of Contract’) last September 2010. The amendments introduced by the 9th Edition are applicable to both the Lump Sum Contract and the Measurement Contract of the SIA.

The SIA Conditions of Contract is widely accepted by construction and building professionals in Singapore and extensively used in various private sector projects. It has undergone several amendments throughout the years to address certain of the issues faced by Architects, Contractors and Employers alike under the previous editions as well as the rapid developments in the architectural landscape.

The amendments under the 9th Edition of the SIA Conditions of Contract are not as extensive as the changes introduced to the 8th Edition released back in December 2008. However, these amendments are nonetheless important since these changes provide additional clarity to, among others, the powers and duties exercised by the Architect and provide more definite timelines.

Removal of defective work or reduction of value

Clause 11.3 of the SIA Conditions of Contract provided that the sum to be paid under the construction contract shall be reduced by, whichever is greater, of the loss of value suffered by the Employer for the defective work by the Contractor or by any savings obtained by the Contractor in carrying out the defective work.

However, the 8th Edition failed to specify when the reduction of value for the defective work is to be made and thus may have resulted in some confusion on when to apply these reductions.

The 9th Edition clarifies this matter by specifying that the reduction may be effected in either the interim certificate under Clause 31 of the SIA Conditions of Contract or the Final Certificate issued by the Architect.

Additional powers of the architect

In the 8th Edition, the Architect is authorized to exercise the following powers during the maintenance period:

1. investigate defects (Clause 11.2);
2. order the removal of defective work or reduce the value of the Contract Sum (Clause 11.3);
3. or give directions for a variation of the work due to the defective work (Clause 11.4).

Under Clause 27.3 of the 9th Edition, in addition to the authority granted under Clause 11.2, 11.3 and 11.4 above, the Architect may now exercise the powers outlined under Clause 1.7 of the SIA Conditions of Contract in relation to the authority of the Employer, during or at the end of the Maintenance Period, to employ other contractors to remedy any defective work.

Clause 1.7 provides that if a Contractor is unable to comply with a written direction or instruction from the Architect, the Employer may employ other contractors to perform the work under the supervision of the Architect, and upon the certification of the Architect, deduct any additional cost from the sum to be paid under the construction contract or recover the sum directly from the defaulting Contractor.

The above amendment to Clause 27.3 introduced by the 9th Edition provides for an additional remedy for the Employer and the Architect in the event that the Contractor is unable and/or unwilling to remedy the defective works during the period for maintenance following completion.

Allowance for defect

Clause 27.4 of the SIA Conditions of Contract provided for the allowance for defect in the event that the Contractor fails to remedy any defect within 3 months from the date of the issue of the Schedule of Defects and the said failure is due to a breach committed by either the Contractor or its Sub-contractor.

Under the 8th Edition, the period within which the Architect shall direct that a defect need not be remedied was unclear. Further, the measure...
of damages was based on, whichever is greater of, the reduced value of the work to the Employer or any savings in cost obtained by the Contractor which the defective work may have involved.

The 9th Edition expressly indicates that the Architect must direct the Contractor, within 14 days from the expiry of 3 months from the issue of the Schedule of Defects (or within such other period stated in the Appendix), that a defect not be remedied. The 9th Edition also provides a different method for valuing damages. In the latest amendment, the Employer may deduct from the monies to be paid under the construction contract to the Contractor or recover from the Contractor a sum to be assessed by a Quantity Surveyor representing the cost it would take to make good the defects and all other costs in connection therewith which may be charged by other contractors.

Under the 9th Edition, the deduction may also be claimed in either the interim certificate under Clause 31 or the Final Certificate issued by the Architect regardless of whether the defective work has been remedied.

The amendments introduced by the 9th Edition further streamlines the process for claiming for the value of the defects which have not been remedied by the Contractor by providing clear guidelines on when the Architect may exercise its authority to give directions and the valuation of the sum to be deducted for the defective works of the Contractor or its Sub-contractor.

**Maintenance certificate**

The 9th Edition provides a definite time period within which the Architect must issue the Maintenance Certificate. Clause 27.5 of the 9th Edition states that, after the Maintenance Period, the Architect shall issue the Maintenance Certificate within 14 days from when the defects have either been made good by the Contractor in accordance with the Architect’s directions and instructions, or have been directed by the Architect as not to be remedied.

**Release of retention monies**

Finally, under the 8th Edition, Clause 31.10 stated that the second release of the retention monies shall be paid to the Contractor, whichever is later of the issuance of the interim certificate at the expiry of the Maintenance Period or the issuance of a Maintenance Certificate.

However, the 9th Edition now provides that the second release of the retention monies is from the issuance of the Final Certificate instead of the interim certificate.

It is important for construction and building professionals to take note of these amendments to the SIA Conditions of Contract since these will have an impact on the administration of construction projects where the SIA Conditions of Contract serve as the standard form. It is important to note that, during the Maintenance Period, Employers may now engage other contractors to rectify the defective works that have not been remedied. Further, upon the certification of the Architect, the Employer has the option to recover the costs for engaging additional contractors from the monies to be paid under the construction contract or directly from the contractor at fault.

If you wish to have further information on this update or wish to discuss how it may potentially have an impact on your business, please feel free to contact the following:

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