

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT COMMON QUESTIONS RELATING TO ADJUDICATION

General

1. Can Claimants claim for work done under more than one contract?

Under the SOP Act, Claimants can only make a claim for work done under one contract at a time. In this regard, a Claimant can only serve a Payment Claim for progress payment under one contract and can only apply for adjudication in respect of the work done under one Payment Claim at a time.

2. Sundays are included in the counting of “days”, but not public holidays. What if the public holiday falls on a Sunday?

Should a public holiday fall on a Sunday, the next day is also considered a public holiday. Therefore, 2 days will be excluded from the counting of “days” – i.e. the Sunday which is a public holiday, and the Monday thereafter which is also considered a public holiday.

Service

3. What are the ways in which the Payment Claim can be served under the SOP Act?

If your contract was made before 15 December 2019, the Payment Claim may be served:

- (a) by personal delivery to the person;
- (b) by leaving at the usual place of business of the person during normal business hours;
- (c) by post to the usual or last known place of business;
- (d) by fax transmission to the usual or last known place of business;

If your contract is made on or after 15 December 2019, the Payment Claim must be served:

- (a) by personal delivery to the person;
- (b) by leaving at the usual place of business of the person during normal business hours;
- (c) by post to the usual or last known place of business;
- (d) by fax transmission to the usual or last known place of business;
- (e) by email to the last email address of the addressee known to the person serving the document; or
- (f) to the person’s last known account on an instant messaging platform that the person has consented to for service of documents (and provided it is served in a file format agreed to by the parties).

4. What are the ways in which the Notice of Intention to Apply for Adjudication and the Payment Response can be served under the SOP Act?

If the Payment Claim is issued on or after 15 December 2019, the Notice of Intention to Apply for Adjudication and the Payment Response must be served:

- (a) by personal delivery to the person;
- (b) by leaving at the usual place of business of the person during normal business hours;

- (c) by post to the usual or last known place of business;
- (d) by fax transmission to the usual or last known place of business;
- (e) by email to the last email address of the addressee known to the person serving the document; or
- (f) to the person's last known account on an instant messaging platform that the person has consented to for service of documents (and provided it is served in a file format agreed to by the parties).

5. What if the last day for serving a document under the SOP Act falls on a Sunday or a public holiday?

The party serving the relevant document can still do so on a Sunday or public holiday if the recipient is able to receive the document on a Sunday or public holiday by the intended mode of service of the document. Otherwise, the relevant document may be served the next day which is not a Sunday or public holiday.

Payment Claim

6. How often can a Payment Claim be served?

The Payment Claim can be served as often as specified in the contract, e.g. weekly, monthly or by stages. Where the contract does not state how often the Payment Claim is to be served, then only one Payment Claim may be served in each calendar month.

7. Should the claimed amount include GST?

If the Claimant is entitled to claim, and intends to claim GST, then GST should be included in the Payment Claim.

8. Is there a long-stop date after which a Claimant cannot serve a Payment Claim under the Building and Construction Industry Security of Payment Act?

For contracts made on or after 15 December 2019, a Claimant cannot serve a Payment Claim more than 30 months after the latest of the following:

- (a) the date on which the goods and services to which the Payment Claim relates were last supplied;
- (b) the date on which the construction work to which the Payment Claim relates was last carried out;
- (c) the issuance date of the last document certifying completion of the construction work under the contract (e.g. certificate of practical/substantial completion); or
- (d) the issuance date of the last temporary occupation permit;

whichever is applicable.

For contracts made before 15 December 2019, a Claimant cannot serve a Payment Claim after 6 years after the construction work which is the subject matter of the claim was last carried out, or the goods or services which is the subject matter of the claim was last supplied.

Payment Response

9. When should the Payment Response be served?

The Payment Response should be served within the period set out in the contract, subject to a maximum of 21 days after the Payment Claim is served, whichever is earlier.

If the contract does not specify the period for service of the Payment Response, for Payment Claims received after 15 December 2019, the Payment Response should be served within 14 days after the Payment Claim is served.

Dispute Settlement Period

10. What is the Dispute Settlement Period?

This is the 7-day period immediately following the last day for the service of the Payment Response. This period is intended for either party to seek clarifications from the other on any matter in the Payment Claim and Payment Response, and to try to resolve any differences.

During this period, the Respondent may submit a Payment Response if he had not done so previously, or may vary the Payment Response that was previously submitted.

Notice of Intention to Apply for Adjudication

11. When should the Notice of Intention to Apply for Adjudication be served?

The Notice of Intention should be served after the expiry of the Dispute Settlement Period, but before the Adjudication Application is lodged.

Adjudication Application

12. When can the Claimant apply for adjudication?

If the Claimant disputes the Payment Response, or if no Payment Response is served, the Claimant may apply for adjudication within a 7-day period after the expiry of the Dispute Settlement Period.

If the Claimant accepts the Payment Response but does not receive payment by the due date for payment, the Claimant may apply for adjudication within a 7-day period after the due date for payment.

13. Who is the Owner referred to in the Adjudication Application form?

The Owner is typically the party who employs the main contractor to carry out construction work for the project.

14. Who is the Principal referred to in the Adjudication Application form?

The Principal is the party who is directly liable to make payment to the Respondent for the construction work carried out by the Respondent. For example, if the respondent is the main contractor, the Principal will be the Owner; if the Respondent is a sub-contractor, the Principal will be the main contractor who engaged the Respondent.

15. Can the Principal and the Owner be the same?

The Owner and the Principal can, but may not always be, the same. For example, if the Respondent is the main contractor, then the Principle will also be the Owner.

16. Should the claimed amount in the Adjudication Application include GST?

If the Claimant is entitled to claim, and intends to claim GST, then GST should be included in the claimed amount stated in the Adjudication Application.

17. Must the claimed amount set out in an Adjudication Application be the same as the amount claimed in the Payment Claim?

In general, the claimed amount set out in an Adjudication Application must be consistent with the amount claimed in the Payment Claim. Typically, this means that the claimed amount in an Adjudication Application should be the same as the amount claimed in the Payment Claim to which it relates.

There may be circumstances when the Claimant may submit a lower claimed amount in the Adjudication Application if there is a valid reason for the difference (e.g. the Respondent made some payment in the intervening period between service of the Payment Claim and the lodgement of the Adjudication Application), or if the Claimant wishes to withdraw some of his claims (e.g. after clarifications made during the Dispute Settlement Period). However, a Claimant may not add new claims to the Adjudication Application or submit claims that are inconsistent with the Payment Claim.