

## PAYMENT OF COMMERCIAL BUILDING WORK

Are you involved in a commercial building project, and having difficulty being paid by the other party? You may be able to use provisions of the *Building & Construction Industry Payments Act 2004* to help you be paid more quickly. This *Act* sets up a regime for the speedy payment of bills, or alternatively for disputes to be resolved quickly.

### ***Building & Construction Industry Payments Act 2004***

The *Building & Construction Industry Payments Act 2004* applies, with certain exceptions, to all construction contracts apart from those where one of the parties is a resident owner of the property; in other words, not to domestic building contracts.

The *Act* provides a mechanism for builders to obtain payments quickly, and if disputes cannot be resolved, for an adjudication process.

Most large construction contracts work on the basis that the builder will be paid by instalments. The contract is likely to have what is known as a "reference date", which is a date by which a claim for payment for all work done up to that date needs to be submitted. There is no date in the contract, the reference date is the last day of each month under which work is performed. To take advantage of the *Act*, on the reference date, the builder must serve on the party who is or may be liable to make the payment, a payment claim. That claim must:-

- (a) identify the work to which the progress payment relates;
- (b) state the amount that is being claimed; and
- (c) state that it is made under the *Act*. An endorsement on the claim to the effect of "This is a payment claim pursuant to the *Building & Construction Industry Payments Act 2004*" is sufficient.

On receipt of the payment claim, the party liable for payment must, within the earlier of either the time specified in the contract, or ten (10) business days after the payment claim is received, serve a payment schedule on the other parties. The payment schedule must identify the payment claim to which it relates, and state how much is prepared to be paid. If this is not the full amount due, the schedule must itemise what items of work are not being paid in full, how much (if anything) is being paid for each of those items, and the reason (eg the work has not been done to a satisfactory standard).

These time limits are very important. If a payment schedule is not served within the stipulated time, the person entitled to payment can sue for the whole amount of the payment. The payer is prevented by the *Act* from raising any defence relating to the amount being claimed or the quality of the work. In other

words, unless it can be alleged that there is some defect in the payment claim itself or the way in which it was served, there is effectively no defence for such a claim.

Equally, if a payment schedule is served, and the amount agreed to be paid is not paid within the time stated in the contract, the payee can again bring a claim and the same bars on the defence apply.

Instead of bringing a claim, it is open for the payee to apply for an adjudication. This means that an independent adjudicator (who may or may not be nominated in the contract) will consider the payment claim and the schedule, and make a decision as to the amount due. In the absence of the agreement otherwise, the adjudicator must provide his adjudication within ten (10) days of receipt of a response to the adjudication claims.

Finally, it is not permitted to contract out of the terms of the *Act*.

If the *Act* is used properly, it can lead to a speedy resolution of disputes and, more importantly, speedy payment of amounts due.

If you want to know more about the *Act*, or need help in bringing or defending a claim under the *Act*, please contact our litigation solicitor, Nigel Collins.