

# **ADJUDICATION AS AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM: AN ANALYSIS OF THE ADJUDICATION STATISTICS IN SINGAPORE**

**Goh Ngan Hong**

*Senior Consultant (QS & Contracts Management), CPG Consultants Pte. Ltd., Singapore,  
goh.ngan.hong@cpgcorp.com.sg*

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The Building and Construction Industry Security of Payment Act (“SOP Act”) has been in force in Singapore for more than ten years now. This paper attempts to consider how the SOP Act has benefitted the industry so far and whether we can draw any lessons from the Singapore experience.

Looking at the statistics, the influence of the SOP Act has been remarkable. Between April 2005 and December 2013, the number of adjudication applications filed at Singapore Mediation Centre (SMC) is 999 cases. The number of review adjudication adjudications filed is quite small, with a total of 30 filed as at December 2013.

These statistics convey significant information. First, out of a total of 999 adjudication applications that have been filed as at December 2013, 240 were eventually withdrawn, representing 24% of all adjudication applications filed. Furthermore, out of 531 valid cases that were determined under the SOP Act, about 94% of these cases were resolved without further review of adjudication determination. In monetary terms, the value of claims adjudicated under the SOP Act as at December 2013 is about \$910 million.

But the statistics may not capture the full impact and influence of the SOP act. By providing a low cost and efficient adjudication mechanism, the SOP Act has effectively eliminated an avenue for delaying payments without justification. The regime has achieved considerable success in achieving its target of facilitating cash flow within the construction industry.

## **1. INTRODUCTION**

The construction industry is an important sector in developing countries including Singapore. Since 2006, the construction industry in Singapore has grown significantly. This is reflected in the amounts of progress payments certified. The total amount of certified progress payments has increased from S\$12 billion in 2005 to about S\$36 billion in 2014.

Before 2005, the construction industry in Singapore faced more difficult times given the shrinking size of the pie and increasing competition. The Building and Construction Industry

Security Payment Act (herein after referred to as the “SOP Act”) was enacted in 2004 and came into force on 1 April 2005.

The aim of the SOP Act was to facilitate cash flow by establishing a fast and low cost adjudication system to resolve payment disputes. However, it was observed (Chow, 2013) that the SOP Act’s overriding legislative objective was to reform payment behavior in the construction industry, such as the intractable problems caused by delay in certifications and payments and, more insidiously, unwarranted deductions and set-offs against payments due to contractors and subcontractors. Chow (2005) found that such opportunistic behavior, which was prevalent amongst certain players in the industry, introduced unnecessary layers of risk in taking on construction work, exacerbating a host of productivity and cost escalation issues that are not unique to Singapore.

The main focus of the SOP Act is on the procedure for adjudicating payment claim disputes. The main features of the adjudication procedure are as follows:

- a) The claimant serves a Payment Claim which must be in writing and contain specific information relating to the claim.
- b) The respondent has 7 to 21 days to serve his Payment Response.
- c) There is a 7 day dispute settlement period, during which parties explore a settlement or clarify any matter relating to the Payment Claim. The respondent is also entitled to provide or vary a payment response.
- d) If there is no settlement, the claimant has 7 days to lodge an Adjudication Application with an authorised nominating body in respect of any disputed amount.
- e) Upon receipt, the authorised nominating body serves a copy of the adjudication application on the respondent, and within 7 days, appoints an adjudicator.
- f) The respondent has 7 days after receiving a copy of the adjudication application to serve an Adjudication Response.
- g) The adjudication commences immediately after the time allowed to serve an Adjudication Response expires. The adjudicator has 14 days after commencement of an adjudication to make his determination, unless the parties agree to extend time.
- h) A respondent dissatisfied with an adjudication determination has 7 days to apply for a review if the adjudication amount exceeds the response amount by more than \$100,000.

The SOP Act has been in force in Singapore for a decade now. This paper attempt to consider how the SOP Act has benefitted the industry thus far and whether we can draw any lessons from the Singapore experience.

## 2. METHODOLOGY

This study is based mainly on the statistics on Adjudication Applications and Adjudication Review Applications from April 2005 to December 2013 collated and published by Building and Construction Authority (BCA) of Singapore in its website. Additional statistics from the findings of Lee (2011) and Chow (2011) are used to supplement the BCA statistics in the study.

## 3. FINDINGS

Based on the statistics, the following are the key findings and analyses:

### 3.1 Case Load

Between 2006 and 2009, the number of adjudication applications filed at the SMC doubled each year. It appears to have stabilised at around 170 from 2009 (see Table 3.1). Chow (2011) found that it is possible that the number of cases each year have now reached a steady volume state. In fact, it was dropped to about 135 cases in 2011 and 2012. In 2013, the case load again doubled to 228. The statistics in 2014 has not been published. It is estimated to be about 400.

The number of review adjudications filed is quite small, with a total of 30 filed up to December 2013 (see Table 1).

It is observed (Lee S.K., 2011) that the number of applications filed in the High Court to review the adjudication determination is also small; only 26 have been filed as at January 2012.

**Table 1: Case Load from 2005 to 2013**

Year	Number of Cases	No. of Review Cases
2005	1	0
2006	21	0
2007	50	1
2008	92	1
2009	169	3
2010	165	5
2011	135	5
2012	138	5
2013	228	10
Total	999	30

### 3.2 Status Breakdown

**Table 2: No of Applications with status breakdown**

Status	Number	%
(a) Applications (valid) determined	531	53
- in favour of the claimant*: 519 (98%)		
- in favour of the respondent: 12 (2%)		
<i>* include partial payment to claimant</i>		
(b) Applications determined as invalid	202	20
(c) Applications pending determination	26	3
(d) Applications withdrawn	240	24
Total	999	100

These statistics convey significant information. First, out of a total of 999 adjudication applications that have been filed as at December 2013 (see Table 2), 240 were eventually withdrawn, representing 24% of all adjudication applications filed. Furthermore, out of 531 cases that were determined under the SOP Act, at least 94% of these cases were resolved without further review of adjudication determination.

### 3.3 Value of claims adjudicated against total progress payments certified

It is observed (Lee S.K., 2011) that in monetary terms, the value of claims adjudicated under the SOP Act, measured against the total progress payments certified over the period from April 2005 to August 2011, stands at under 1% (see Table 3).

**Table 3: Value of claims adjudicated against total progress payments certified**

Year	No. of Claims filed	No. of Review Adjns	Total Value of Claims (\$m)	Average value of claims (\$m)	Total Progress Claims Certified (\$m)	Claim as a % of total progress claims certified
2005	1	0	0.42	0.42	12.221	0.0034%
2006	21	0	4.12	0.20	12.938	0.03%
2007	50	1	42.60	0.85	17.872	0.24%
2008	91	1	66.30	0.73	26.217	0.25%
2009	169	3	372.78	2.21	30.894	1.21%
2010	164	5	211.20	1.29	26.979	0.78%
2011	105	1	201.20	1.92	N.A.	Until Aug
Total	601	11	899.14	1.50		

Based on statistics published by BCA, from April 2005 to December 2013, the total value of claims for adjudication is \$910 million. For the same period, the total progress claims certified is \$221.932 billion. The value of claims adjudicated is about 0.4% of the total progress payments certified.

### 3.4 Number of Applications with and without Payment Response

Out of the 999 adjudication applications, about 71% are without payment response (see Table 4).

**Table 4: No of Applications with and without payment response**

Number of Applications	999	100%
- without payment response :	710	71%
- with payment response :	289	29%

### 3.5 Categories of Dispute Situations

It is observed (Lee E., 2011) that 65% of the cases remain situation where no payment response was furnished and 23% relate to disputed payment response (see Table 5).

**Table 5: Categories of Dispute Situations**

Categories of Dispute Situations	Percentage
Failure to issue payment response	65
Disputed payment response	23
Dispute over accepted response	9
Payments for Supply Contracts	3
Total	100

### 3.6 Categories of Claimants vs. Respondents

It is noted that 64% of the cases are subcontractors claiming against the main contractors (see Table 6). About 16% of the cases are main contractors claiming against developers/owners. About 14% of the cases are sub-subcontractors claiming against subcontractors. Only 5% are consultants/designers claiming against contractors/developers/owners.

**Table 6: No of Applications in terms of categories of claimants vs. respondents**

Categories of Claimants vs. Respondents (for valid applications)	Number	Percentage
(a) Main contractor claiming developer/owner	85	16%
(b) Subcontractor claiming main contractor	342	64%
(c) Sub-subcontractor claiming Subcontractor	75	14%
(d) Consultant/designer claiming contractor/developer/owner	24	5%

(e) Others (e.g. suppliers claiming contractor/developer/owner)	5	1%
Total	531	100.00%

### 3.7 Number of cases proceeding to merits

It is found (Chow, 2011) that only 15% of the cases proceeded to consideration of merits. 55% of the cases involved a non-compliant payment response. 30% of the cases were met with jurisdiction objections (see Table 7).

Jurisdiction objections involve one of the following issues:

- a) Appointment: The adjudicator has to be appointed through the authorised nominating body which is itself regulated by the Act.
- b) Contract in writing: Existence of contract in accordance with principles of contract formation and definition of “contract made in writing” in the SOP Act.
- c) Nature of Contract: The meaning of a “construction contract” or a “supply contract” as defined under the SOP Act.
- d) Territorial Reach: The contract relates to work carried out in Singapore or goods or services supplied in relation to work carried out in Singapore.
- e) Procedural Compliance: Whether the payment claim was served prematurely, compliance with DSP and

**Table 7: Number of cases proceeding to merits**

	Percentage
Non-compliant Payment Responses	55%
Jurisdictional Objections	30%
Matters proceeding to Merits	15%

### 3.8 Disputed and Adjudicated Amounts

#### 3.8.1 Disputed Amounts

The disputed amounts for valid applications range from S\$4,900.00 to S\$116 million (see Table 8).

**Table 8: Disputed Amounts (for valid applications)**

	Amount S\$
Total disputed amount	\$909,999,862.23
Maximum disputed amount for a case	\$116,251,933.51

Minimum disputed amount for a case	\$4,900.00
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### 3.8.2 Adjudicated Amounts

The adjudicated amounts for valid applications range from S\$0 to S\$30.0 million (see Table 9).

**Table 9: Adjudicated Amounts (for valid applications)**

	Amount S\$
Total adjudicated amount	\$391,810,475.27
Maximum adjudicated amount for a case	\$30,071,968.64
Minimum adjudicated amount for a case	\$0.00

### 3.8.3 Adjudicated Amounts as a % of Claimed Amounts

In about 57% of the valid applications, the adjudicated amounts are between 90% and 100% of the claimed amounts (see Table 10).

**Table 10: Adjudicated amount as a % of claimed amount**

Adjudicated amount as a % of claimed amount	Number	Percentage (%)
90% to 100%	302	57
80% to 89%	39	7
70% to 79%	28	5
60% to 69%	21	4
50% to 59%	22	4
40% to 49%	26	5
30% to 39%	25	5
20% to 29%	22	4
0% to 19%	46	9
	531	100

## 3.9 Review Adjudications

A respondent who is aggrieved by an adjudication determination may lodge an adjudication review application with the authorised nominating body. There is no equivalent of the adjudication review procedure in the United Kingdom, Australia or New Zealand. It is therefore unique to the Singapore regime. Under the Act, an adjudication review is essentially an adjudication of the extent to which ‘the adjudicated amount exceeds the relevant response amount’. It allows the substantive merits of the original determination to be reconsidered. At the conclusion of the review, if the review adjudicator agrees with the conclusion of the first instance adjudicator, they are expected to ‘refuse the adjudication review application’. If the review tribunal arrives at a different result, the Act provides for the tribunal to substitute the original determination with their determination.

### 3.9.1 Status of Review Adjudications

The total number of review adjudication up to December 2013 is only 30 (see Table 11). Out of this, 9 (30%) were determined as invalid. Out of the 17 valid review applications, 7 (41%) were determined in favour of the claimant and 10 (59%) were determined in favour of the respondent.

**Table 11: Status of Review Adjudication**

Number of Review Applications	30	100%
<u>Status</u>		
(a) Review Applications (valid) determined	17	57%
- in favour of the claimant * : 7 (41%)		
- in favour of the respondent : 10 (59%)		
<i>* include partial payment to claimant</i>		
(b) Review Applications determined as invalid	9	30%
(c) Review Applications pending determination	0	0%
(d) Review Applications withdrawn	4	13%

### 3.9.2 No of Review Applications in terms of categories of claimants vs. respondents

Out of the 26 review applications which were not withdrawn, 16 (62%) were subcontractor claiming against main contractor, 2 (8%) were sub-subcontractor claiming against subcontractor and 2 (8%) were consultant/designer claiming against contractor/developer/owner (see Table 12),

**Table 12: No of Applications in terms of categories of claimants vs. respondents**

Categories of Claimants vs. Respondents (for review applications not withdrawn)	Number	%
(a) Main contractor claiming developer/owner	6	23
(b) Subcontractor claiming main contractor	16	62
(c) Sub-subcontractor claiming Subcontractor	2	8
(d) Consultant/designer claiming contractor/developer/owner	2	8
Total	26	100

### 3.9.3 Adjudicated review amount as a % of Adjudicated amount

Out of the 26 adjudication review which were not withdrawn, 18 (69%) were with adjudicated review amount being 90% to 100% of the adjudicated amount and 7 (27%) were with adjudicated amount being 0%.to 19% of the adjudicated amount (see Table 13).

**Table 13: No of Applications in terms of categories of claimants vs. respondents**

Adjudicated review amount as a % of Adjudicated amount (for Review Applications not withdrawn)	Number	Percentage (%)
90% to 100%	18	69
80% to 89%	0	0
70% to 79%	0	0
60% to 69%	0	0
50% to 59%	1	4
40% to 49%	0	0
30% to 39%	0	0
20% to 29%	0	0
0% to 19%	7	27
Total	26	100

**3.10 Adjudicator's Fees, Time Spent and Composition by Professions****3.10.1 Range of Adjudication fees**

The adjudication fees (excluding GST) for all applications range from \$1,000/- to \$95,041.50/- (see Table 14).

**Table 14: Adjudication Fees (ex GST) (for all applications)**

Range of adjudication fees for a case	Amount S\$
Maximum adjudication fees for a case	\$95,041.50
Minimum adjudication fees for a case	\$1,000.00

**3.10.2 Distribution of Adjudication fees**

In 54% of the cases, the adjudication fees (excluding GST) fall within the range from \$2,000/- to \$5,999/- (see Table 15 for fees distribution).

**Table 15: Distribution of Adjudication Fees**

Distribution of adjudication fees	Number	Percentage (%)
\$750 to \$1,999	26	4
\$2,000 to \$3,999	222	30
\$4,000 to \$5,999	175	24
\$6,000 to \$7,999	103	14
\$8,000 to \$9,999	61	8
\$10,000 to \$11,999	31	4

\$12,000 to \$13,999	32	4
\$14,000 to \$15,999	20	3
\$16,000 to \$17,999	16	2
\$18,000 to \$19,999	10	1
\$20,000 to \$21,999	4	1
\$22,000 to \$23,999	5	1
\$24,000 to \$25,999	5	1
above \$26,000	23	3
Total	733	100

### 3.10.3: Range of Adjudication Review fees

The adjudication review fees (excluding GST) for all applications range from \$3,562.50 to \$32,312.50 (see Table 16).

**Table 16: Adjudication Review Fees (ex GST) (for all Review Applications)**

Range of adjudication review fees for a case	Amount S\$
Maximum adjudication review fees for a case	\$32,312.50
Minimum adjudication review fees for a case	\$3,562.50

### 3.10.4 Distribution of Adjudication Review fees

In 54% of the cases, the adjudication fees (excluding GST) fall within the range from \$2,000/- to \$11,999/- (see Table 17 for fees distribution).

**Table 17: Distribution of adjudication review fees**

Distribution of adjudication review fees	Number	Percentage (%)
\$1,250 to \$1,999	0	0
\$2,000 to \$3,999	5	19
\$4,000 to \$5,999	2	8
\$6,000 to \$7,999	1	4
\$8,000 to \$9,999	4	15
\$10,000 to \$11,999	2	8
\$12,000 to \$13,999	2	8
\$14,000 to \$15,999	2	8
\$16,000 to \$17,999	1	4
\$18,000 to \$19,999	0	0
above \$20,000	7	27
Total	26	100

### 3.10.5 Time Spent by Adjudicators

Chow (2011) observed that with the exception of one instance, all determinations have been delivered within the stipulated time or extended time. The average time spent by adjudicators is 19.5 hours and the most number of hours spent in a case is 98.7 hours (see Table 18).

**Table 18: Time Spent by Adjudicators**

	Time Spent
Average	19.5 hours
Most Hours	98.7 hours

### 3.10.6 Composition of Adjudicators by Professions

It is observed (Chow, 2011) that after the 2009 batch, there were 134 adjudicators. The three main professions of adjudicators are Lawyers (27%), Engineers (27%) and quantity Surveyors (26%) (see Table 19).

**Table 19: Composition of Adjudicators by Professions**

Professions	Percentage
Lawyers	27%
Engineers	27%
Quantity Surveyors	26%
Architects	10%
Contractors	9%
Others	1%

## 4. CONCLUSIONS

Looking at the statistics, the influence of the SOP Act has been remarkable. The number of adjudication applications filed at Singapore Mediation Centre (SMC) increased from 21 in 2006 to 228 in 2013. The number of review adjudication adjudications filed is quite small, with a total of 30 filed as at December 2013. The number of applications filed in the high court to review the adjudication determination is also small; only 26 have been filed as at Oct 2011.

These statistics convey significant information. First, out of a total of 999 adjudication applications that have been filed as at December 2013, 240 were eventually withdrawn, representing 24% of all adjudication applications filed. Furthermore, out of 531 cases that were determined under the SOP Act, at least 94% of these cases were resolved without further review of adjudication w determination. In monetary terms, the value of claims adjudicated under the SOP Act measured against the total progress payment certified over the past six years stands at less than 1%.

But the statistics may not capture the full impact and influence of the SOP act. By providing a low cost and efficient adjudication mechanism, the SOP Act has effectively eliminated an avenue for delaying payments without justification. The regime has achieved considerable success in achieving its target of facilitating cash flow within the construction industry.

The SOP Act also encourages parties to negotiate their differences before commencing adjudication proceedings. The provision of the seven-day dispute settlement period provides disputing parties an opportunity to converge on their positions, to minimise the cost of resolving the dispute.

## **5. REFERENCES**

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