

Construction Contracts Act 2013

The Construction Contracts Act 2013 (the "Act") was enacted on the 29 July 2013. The Act will come into effect and apply to relevant contracts (as discussed below) on a date yet to be fixed.

The aim of the Act is to improve cash flow in the construction industry, particularly, for sub-contractors. There has been a history of late and non-payment in the Irish construction industry. The economic downturn of recent years has exacerbated the problem in the construction sector.

The concept of a "*construction contract*" is very broadly defined and relates to virtually every conceivable form of construction operation (including construction, alteration, repair, maintenance, extensions and demolition or dismantling). The Act specifically applies to:

- (a) architectural, design, archaeological or surveying work;
- (b) engineering or project management services;
- (c) advice on building, engineering, interior or exterior decoration or on the laying-out of landscape;

This is not an exhaustive list.

The Act will not apply to any of the following activities in the construction area:

- Construction contracts with a value of less than €10,000;
- Construction contracts for a private dwelling with a floor area of less than 200m² where the person intending to live in the dwelling is party to the contract;
- A contract between a State authority and its partner in a public private partnership arrangement, is not a construction contract;
- Contracts for the supply of materials, plant or machinery;

It is important to note that you cannot opt out of the legislation. If the contract meets the criteria in the Act then it automatically applies.

The two main changes brought about by the Act are:

- the introduction of statutory requirements regarding payments; and
- providing for adjudication as a forum for the resolution of payment disputes.

Interim Payments

The Act will require that all construction contracts to include adequate arrangements for determining both the amounts of, and periods for, interim payments. Whilst most standard form construction contracts allow for such arrangements, the Act provides for default arrangements

where these are absent. In the case of sub-contracts, these default provisions will apply unless the sub-contract provides for more favourable terms for the sub-contractor.

'Pay when paid' clauses, whereby contractors pay their sub-contractors only when they themselves have been paid, are prohibited, except in exceptional circumstances relating to the insolvency of the employer or contractor further up the supply chain.

A procedure is set out in the Act for dealing with payment claims. Where a payment claim notice is delivered and the amount is contested by the paying party, then it must respond within a 21-day period with certain minimum information. Any undisputed amount must be paid by the due date for payment.

The Act gives contractors a right to suspend work in the event of non-payment. A party who does not receive payment on the date that it falls due, will be allowed, under the Act, to suspend work, provided that party has delivered a written notice to the paying party at least 7 days before the proposed suspension is due to begin.

Adjudication

The Act introduces an entitlement for parties to refer disputes regarding payment to adjudication. An adjudicator is required to reach a decision concerning the dispute within 28 days of referral, which may be extended by up to 14 days, with the consent of the aggrieved party. Adjudication has been in place in the UK for some years now, although it is not confined to disputes solely relating to payment. This has proven to be a very effective and swift means of resolving disputes in the construction sector in the UK and has been strongly supported by the judiciary. The Act provides that the Minister will establish a panel of adjudicators and publish a code of practice governing the conduct of adjudications. Importantly, an adjudicator's decision will be binding on the parties until the parties finally settle the dispute or a different decision is reached following arbitration or court proceedings.