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Environment, Transport and Works Bureau
Technical Circular (Works) No. 4/99A

Construction Mediation Rules (1999 Edition) and
Administrative Guidelines

Background

This circular amends “The Government of the Hong Kong SAR Construction Mediation Rules (1999 Edition)”. The amendments were brought about by the promulgation of ETWB TC(W) 29/2003 - Confidentiality clauses in works contracts and consultancy agreements.

Effective Date

2. This circular takes immediate effect.

Amendments

3. Rule 12 shall be amended as follows:-

‘12.1 Mediation is a private and confidential process and every aspect of communication for the purpose of or related to the mediation process shall be without prejudice. Confidentiality also extends to the settlement agreement except where disclosures –

- (a) are necessary for implementation or enforcement;
- (b) are required by the parties' auditors or for some other legitimate business reason;
- (c) are required by any order of the courts of Hong Kong or other judicial tribunal;
- (d) which are necessary for the making of claims against any third party or to defend a claim brought by any third party.

12.2 Notwithstanding Rule 12.1 and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the the other party and the terms of the settlement agreement to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the settlement agreement without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the settlement agreement. The other party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration.'

12.3 The parties shall not rely on or introduce as evidence in any subsequent arbitral or judicial proceedings:

- (a) any oral or written exchanges within the mediation between either party and the mediator or between either party;
- (b) any views expressed or suggestions made within the mediation either by the mediator or either party in respect of a possible settlement of the dispute;

- (c) any admission made by a party within the mediation;
- (d) the fact that either party had or had not indicated a willingness to accept any suggestion or proposal for settlement by the mediator or by the other party; and
- (e) any documents brought into existence for the purpose of the mediation including any notes or records made in connection with the mediation by the mediator or either party.’

(W S Chan)
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Transport and Works (Works) 2