



NEC4 Y(SG)1-4 Clauses

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The fourth edition of the NEC suite was produced by the Institution of Civil Engineers through its NEC4 Contract Board.

The NEC4 Contract Board is:

P. Higgins, BSc (Hons), CEng, FICE (Chair)
I. Heaphy, BSc (Hons), FRICS, FCIArb, FCInstCES, MACostE
S. Jackson, LLB, LLM, MSc, FCIArb, FCInstCES
M. Garratt, BSc (Hons), MRICS, FCIArb
D. Evans, BSc, FICE, CEng, MBA
E. J. Houghton, BA (Hons), MRICS, FICE

The Y(SG) drafting team consisted of:

Bernard Ang, Solicitor (Singapore, HK, England/Wales). Construction partner and Procurement specialist at Pinsent Masons
Isabelle Chan, Solicitor (HK, LLM). Legal Director and Procurement specialist at Pinsent Masons.
Chen Han Toh, Advocate & Solicitor (Singapore; BA (Hons) Jurisprudence (Oxon); FSIarb). Construction partner at MPillay Pinsent Masons

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Y(SG) Guidance Notes

OPTION Y(SG)1: THE BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2004

- 1 The Building and Construction Industry Security of Payment (SOP) Act came into operation on 1 April 2005. The Act aims to improve cash-flow in the built environment sector by giving parties the right to seek progress payment for work done. It also provides a fast and low-cost adjudication mechanism to resolve payment disputes.

Y1.1 and Y1.2 bring the payment provisions in line with the payment claim and payment response processes prescribed by the SOP Act and the SOP Regulations, so that the contractual payment regime under the NEC4 Engineering and Construction Contract (ECC) is made within the statutory regime.

The requirements for a payment claim under the SOP Act are set out in section 10 of the Act and regulation 5 of the SOP Regulations; requirements for a payment response under the SOP Act are set out in section 11 of the Act and regulation 6 of the SOP Regulations.

The full legislation of the SOP Act and SOP Regulations may be found at Singapore Statutes Online – <https://sso.agc.gov.sg>

- 2 The Goods and Services Tax or GST is a broad-based consumption tax levied on the import of goods, as well as supplies of goods and services in Singapore. In other countries, GST is known as the Value-Added Tax or VAT.

Y1.3 provides that if the *Contractor* is registered as a taxable person for GST, the invoice submitted to the *Client* should include a component for GST calculated at the prevailing rate. Similarly, if the *Contractor* is not registered as a taxable person, the invoice should not include a component for GST.

- 3 In certain situations, the *Client* may apply to the Comptroller of GST to approve an arrangement to allow it to issue to itself tax invoices in respect of certified payment amount. In such an event, Y1.4 provides that the *Contractor* does not issue tax invoices.
- 4 The timelines for certification, payment and final assessment stated under Y1.5 to Y1.10 are amended to align with current industry practices.
- 5 Y1.11 aligns the certification of final payment amount with the provisions under SOP Act.
- 6 Under SOP Act section 26, a *Contractor* has the right to suspend construction work, or the supply of goods or services, under the contract where the *Client* fails to pay the adjudicated amount under the Act.

Y1.12 provides for such suspension of performance under SOPA to be a compensation event.

OPTION Y(SG)2: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 2001

- 1 Y2.1 to 2.3 align with the position taken under the Public Sector Standard Conditions of Contract Clause 37.1(2) which states that *"Unless otherwise expressly stated in this Contract, a person who is not a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act to enforce any of its terms"*.

OPTION Y(SG)3: THE INSOLVENCY, RESTRUCTURING AND DISSOLUTION ACT 2018

- 1 Y3.1 amends clause 90.2 to ensure that termination of the *Contractor's* obligation to deliver the Works is subject to any prohibition under existing laws. This is to align with the Insolvency, Restructuring and Dissolution Act 2018 where, if a company is insolvent, or has commenced any scheme of arrangement or judicial management (JM) proceedings, the counter party to the contract cannot (unless exempted):

- a) terminate or amend, or claim for accelerated payment or forfeiture of the term under any agreement with the company; or
- b) terminate or modify any right or obligation under any agreement with the company.

The full legislation of the Act may be found at Singapore Statutes Online – <https://sso.agc.gov.sg>

OPTION Y(SG)4: THE PREVENTION OF CORRUPTION ACT 1960 AND THE PENAL CODE 1871

- 1 Y4.1 defines the interpretation of a Corrupt Act in accordance with the Prevention of Corruption Act 1960 and Penal Code 1871. The description of the activities is broad and reflects the commitment in eliminating corruption.

The full legislation of the Acts may be found at Singapore Statutes Online – <https://sso.agc.gov.sg>

Y(SG) Clauses

OPTION Y(SG)1: THE BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2004

The Building and Construction Industry Security of Payment Act 2004

Y(SG)1

Assessing the amount due

- Y1.1 An application for payment (including an application for final payment) submitted by the *Contractor*:
- must be made in compliance with the requirements applicable to a payment claim under the Building and Construction Industry Security of Payment Act 2004, and is a payment claim under such Act and
 - if the *Contractor* is a taxable person under the Goods and Services Tax Act 1993 ("GST Act"), must show the amount of GST chargeable by the *Contractor* on the amounts in such application.
- Y1.2 The *Project Manager's* certificate in response to an application for payment (including an application for final payment) submitted by the *Contractor* must be made in compliance with the requirements applicable to a payment response under the Building and Construction Industry Security of Payment Act 2004, and is a payment response under such Act.

Invoicing

- Y1.3 Unless the *Client* issues to itself tax invoices, within one week after the *Project Manager* issues a payment or final payment certificate,
- if the *Contractor* is a taxable person under the GST Act, it submits to the *Client* a tax invoice under the GST Act in respect of such certified payment amount or
 - if the *Contractor* is not a taxable person under the GST Act, it submits to the *Client* an invoice in respect of such certified payment amount.
- Y1.4 If the *Contractor* is a taxable person under the Goods and Services Tax Act 1993 and the *Client* notifies the *Contractor* that it has obtained approval from the Comptroller of Goods and Services Tax to issue to itself tax invoices in respect of certified payment amounts, the *Contractor* does not issue tax invoices in respect of such certified payment amounts, and no payment is made in respect of any tax invoices that the *Contractor* may issue.
- The *Client* may at any time notify the *Contractor* that it does not intend to issue to itself tax invoices in respect of any certified payment amount, in which case the *Contractor* issues tax invoices in respect of such certified payment amounts.

Payment

- Y1.5 The first sentence of clause 51.1 is deleted and replaced by the following.
- The *Project Manager* certifies a payment within two weeks of each assessment date.
- Y1.6 The first sentence of clause 51.2 is deleted and replaced by the following.
- Unless a different period is stated in the Contract Data, the *Client* makes payment within:
- three weeks after the *Contractor* submits to the *Client* the invoice or tax invoice or
 - three weeks after the *Client* issues to itself a tax invoice.

Final assessment	Y1.7	Clause 53 is deleted.
	Y1.8	The <i>Contractor</i> submits an application for a final payment in the form of an application for payment stated in the Scope to the <i>Project Manager</i> giving details of how the final amount due has been assessed within - four weeks after the <i>Supervisor</i> issues the Defects Certificate or - ten weeks after the <i>Project Manager</i> issues a termination certificate.
	Y1.9	The <i>Project Manager</i> makes an assessment of the final amount due and certifies a final payment, if any is due, no later than - three weeks after the <i>Contractor</i> submits an application for a final payment, - seven weeks after the <i>Supervisor</i> issues the Defects Certificate, if the <i>Contractor</i> fails to submit an application for a final payment within the time allowed or - thirteen weeks after the <i>Project Manager</i> issues a termination certificate. The <i>Project Manager</i> gives the <i>Contractor</i> details of how the amount due has been assessed.
	Y1.10	Unless a different period is stated in the Contract Data, the <i>Client</i> makes payment of the certified final payment amount within - three weeks after the <i>Contractor</i> submits to the <i>Client</i> the invoice or tax invoice in respect of the certified final payment amount or - three weeks after the <i>Client</i> issues to itself a tax invoice in respect of the certified final payment amount.
	Y1.11	The certification of the final payment amount within the time stated in the contract is conclusive evidence of the final payment due under or in connection with the contract, unless the <i>Contractor</i> refers a dispute in relation to the final payment amount to an adjudicator in accordance with the Building and Construction Industry Security of Payment Act 2004 within the timeline prescribed under such Act.
Suspension of performance	Y1.12	If the <i>Contractor</i> exercises its right under the Building and Construction Industry Security of Payment Act 2004 to suspend performance, it is a compensation event.
Set-off	Y1.13	Where under the contract any sum of money (including any damages) is recoverable from or payable by the <i>Contractor</i> , the same may be deducted from any sum then due or which at any time thereafter may become due to the <i>Contractor</i> under the contract or in any other way.

OPTION Y(SG)2: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 2001

Third party rights	Y(SG)2	
	Y2.1	A <i>beneficiary</i> may enforce the terms of the contract stated in the Contract Data under the Contracts (Rights of Third Parties) Act 2001.
	Y2.2	Other than the Parties or a <i>beneficiary</i> , no person can enforce any of the terms of the contract under the Contracts (Rights of Third Parties) Act 2001.
	Y2.3	A <i>beneficiary</i> may be identified by class or description and not as a named person or organisation.

OPTION Y(SG)3: THE INSOLVENCY, RESTRUCTURING AND DISSOLUTION ACT 2018

Termination Y(SG)3

Reasons for Termination	Y3.1	The first sentence of clause 90.2 is deleted and replaced by the following. To the extent permitted by law, a Party may terminate for a reason identified in the Termination Table.
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OPTION Y(SG)4: THE PREVENTION OF CORRUPTION ACT 1960 AND THE PENAL CODE 1871

Corrupt Acts Y(SG)4

Definition	Y4.1	Clause 11.2(5) is deleted and replaced by the following. 11.2(5) A Corrupt Act is • the offering, promising, giving, receiving, agreeing to receive, or soliciting of a gratification as defined in the Prevention of Corruption Act 1960 or • engaging in any activity or conduct that has resulted or will result in a violation of (a) Chapter 9 of the Penal Code 1871 or any section of the Penal Code 1871 prohibiting bribery, (b) the Prevention of Corruption Act 1960 or (c) any other applicable law including any foreign law which (i) prohibits the conferring of any gift, payment or other benefit on any person or any personnel or adviser of such person or (ii) is broadly equivalent to the laws set out in paragraphs (a) or (b) or which has as its objective the prevention of corruption.
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