



CCA Amendment 2015 Regulations

A series of questions was posed by the MBIE inviting stakeholders to respond before the 30th May 2016.

Question 1

Should there be a minimum amount of retention money to which the trust obligation applies, and if so, how much? Currently there is no minimum, and the trust obligation will apply to all retention money. This current approach is consistent with the aim of protecting retention money withheld from small subcontracting businesses.

Answer

- **There should be no minimum set for retention values before the on trust requirement is triggered. By setting the value in Regulation at zero all retentions held become transparent within the 'holders' financial accounts and whilst retaining the ability to use the funds as liquid assets the value will remain as a liability in their financials.**
- **The CCAA is applicable to all businesses both large and small operating in the commercial space by not setting a de minimis amount it will be consistent with the Act in that it protects all retention amounts being held**

Other thoughts/comments/thinking/background

- Setting a de minimis amount may remove retentions from some smaller commercial contracts
- If a figure is set this will require far greater administration requirements on the holder and create difficulties in transparency for any third party review.
- Should a figure be set there are likely to be attempts to circumvent or negate the requirements of the Act such as:
 - 1/ Contracts being awarded in separable portions.
 - 2/ Is the minimal value based on the individual contract or the accumulated value of the retentions held against a sub-contractor across multiple contracts.
 - 3/ If an initial contract does not meet the threshold and variations during the works take it over the threshold is the total then held on trust or none held on trust..
 - 4/ Will the minimum level set become a deduction value of the total retention with only the overrun value held on trust.

Question 2 and 3 relate to methods of accounting. The questions seek to describe methods of accounting and may confuse the existing requirements of the amendment Act situation, ME believe it is better to focus on the outcomes.

Question 2

- What (if any) methods of accounting should be included in regulations to describe 'liquid assets'?

Answer

- **ME believe that Accounts Receivable should be specifically excluded from any method of accounting included in regulation to describe a liquid asset. ME believe GAAP principles should be applied and that the outcomes of the legislation should be the focus. Simply at the end of the retention period Party A owes Party B his money. There are provisions in the Act that 18A through to 18I which cover the outcomes re payments or failure to pay.**

Similarly within the construction arena any claims made and brought into the Party A's accounts as Receivables are contestable and therefore can distort the solvency position of the holder of the retention money to the detriment of Party B when the funds fall due for payment.

- Other thoughts/comments/thinking/background

A retention payment held by the developer (Party A) on a main contractor (Party B) should not be allowed to be shown in the main contractor accounts (B) as receivables as due to the sub contractor (Party C), because if the main contractor (B) were to fold then it is almost certain the developer (A) will not pay retentions due to the main contractor (B) and therefore the money would not be available to pay out of trust to the sub contractor (C).

Question 3

What (if any) methods of accounting should be included in regulations to cater for situations where retention money is mixed with other money?

Answer

- **The ability for mixing or co-mingling of retention monies is allowed however the Act is clear in 18H that when the time comes for payment Party A must pay Party B with Party B money. Retentions must be clearly identified, whether in a separate trust ledger or tagged to whom it is owed, 18C, as a current liability and should be aged against the payable date.**

Question 4

- Interest rate for monies outstanding?

Answer

AS/NZS3910:2013 Clause 12 has an interest on late payment section clearly outlining the basis of applicable interest rates and the factoring of the published value. It is recommended that the following be the basis of the CCAA regulation for interest owing on late payment:

- (i) The rate of interest shall be equal to one and half times the monthly Small to Medium Sized Enterprise (SME) overdraft rate published by the Reserve Bank of New Zealand over the relevant period compounding daily.
- (ii) The right to interest shall be additional to any other remedy to which the Payee may be entitled at law.