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COMPARATIVE STUDY ON LEGISLATION OF CONSTRUCTION EXPENSE PAYMENT BETWEEN CHINA AND TAIWAN REGION

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ABSTRACT: In China, the Reform-Open policy was executed in 1978. During the following 30 years, the economic regime in China had been changed to a socialist market economy from a socialist planned economy, and the construction industry in China has been achieved high economic growth. However, as the construction project increasing, a lot of problems which affect the construction expense payment occur. And it is a fact that the construction expense payment disputes have become a serious problem now. Therefore, it is necessary to discuss the problem of Chinese construction expense payment. In this paper, we would like to clarify the difference of the legislation of construction expense payment between China and Taiwan Region.

Keywords: Construction Expense Payment Legislation China Taiwan Region

1. INTRODUCTION

1.1 Background

The construction industry in China has been achieved high economic growth since the Reform-Open Policy. GDP of the Chinese construction industry in 2006 is 4,155 billion RMB, which increased 20.3% more than that in 2005¹⁾.

While internationalizing the construction market of China, the number of construction projects increases obviously. As the construction project increases, a lot of problems which affect the construction expense payment occur, such as flaw in legislation, deficiency in construction management and so on. By 2003, the unpaid construction expense in China is about 186 billion RMB. About 5% of the unpaid construction expense has been still unpaid by 2006²⁾. The Chinese government attaches great importance to these problems, and is taking measures to solve them. But these problems are still rather serious now.

Therefore, it is not appropriate to apply the focus only on the construction expense payment of China to clarify the feature of the construction expense payment of China. It is

necessary to see the situation in other countries or regions.

Moreover, to clarify the problem of construction expense payment, it is necessary to clarify the following things: the construction expense payment method, the content of construction quantity and quality confirmation, the process of construction expense payment, and so on.

Therefore, the authors have done the comparative study on the construction expense payment with other countries or regions to solve these problems.

1.2 Purpose

In this paper, we choose Taiwan as the region for the comparison.

Taiwan Region has the same background of history and culture as China. After the World War II, the construction industry of Taiwan Region has developed greatly by introducing the technology of United States and Japan.

Then, comparing the legislation of the construction expense payment, it will be clarified the difference and the similarity between China and Taiwan Region and it will be understood that how the difference of a social system influences the construction industry.

Frankly, the following two points are the purposes of this paper.

To clarify the legislation's difference and the similarity of the construction expense payment between China and Taiwan Region.

To clarify the individual problems and the common problems concerned with the legislation of the construction expense payment between China and Taiwan Region.

In the future, we will carry out the comparative study of the construction expense payment and the quality confirmation among China, Japan and Taiwan Region. This paper is in the location of a preceding research.

2. COMPARASION OF CONSTRUCTION EXPENSE PAYMENT OF CHINA AND TAIWAN REGION

2.1 Definition of the construction expense payment

In order to clarify the problems related to the construction expense payment, we have to clarify what is the construction expense payment and what are the elements related to it at first.

Unfortunately, in legislative extent, there is no standard definition about construction expense payment both in China and Taiwan Region. Also, there is no definition in the standard construction contract.

Moreover, the public projects and the private projects are not distinguished clearly in China. We can only find the regulation in CONSTRUCTION CONTRACT (GF1999-0201) as follows:

“The clients should confirm the construction quantity and quality according to the confirmation form which is propounded by the general contractors. If there is no problem, the clients should pay to the general contractor in 14 days.”

On the other hand, in public projects of Taiwan Region, it is provided in RELATED REGULATION ABOUT CONSTRUCTION MANAGEMENT (2006.11.06) as follows:

“The clients have to finish the assessments of construction quantity and quality in 5days since they received the payment application from the general contractors. If there is no problem, the clients have to pay to the general contractors on the end of the 5th day.”

But there is no regulation about private projects in Taiwan Region.

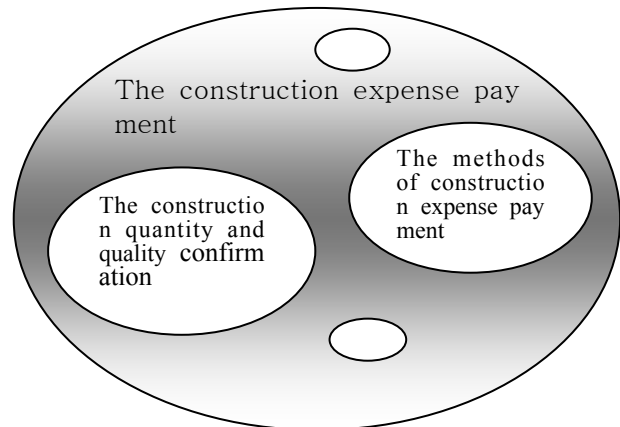
Based on these regulations above, the authors have done some questionnaire investigations and hearing investigations³⁾ in China and Taiwan Region. According to the investigative results, we would like to define the construction expense payment in this paper. And the construction expense payment is defined as following:

During the construction stage, at first, the general contractors propound the payment application to the

clients according to their finished construction quantity. Secondly, the supervisors who are belonging to the supervisor company should check the application and confirm the construction quantity and quality in the building site. Then, the supervisors report the results to the clients. Finally, if there is no problem in the confirmation, the clients pay to the general contractors. This process is called the construction expense payment.

That is to say, the construction expense payment which is used in this paper not only means pay the money, but also means the other things which related to the construction expense payment during the construction stage (Graph 1).

According to the definition above, there are two main elements related to the construction expense payment which are the methods of construction expense payment and the construction quantity and quality confirmation. We will clarify the two elements separately in this paper.



Graph 1 The elements related to the construction expense payment

2.2 The legislation of the methods of the construction expense payment

It is not provided by law about the methods of construction expense payment both in China and Taiwan. Then it is necessary to entrust to the legislation.

In China, the methods of construction expense payment are not clearly distinguished between public construction projects and private construction projects, and the construction contract stipulations are the same. The public construction projects here are the projects which are invested by the government, and the private construction projects here are the other constructions.

The methods of construction expense payment are provided in INTERIM METHOD OF CONSTRUCTION EXPENSE ([2004] No.369). Those are as follows.

About the advance payment, it is provided that “If there is no provision in the construction contract, the advance payment will be provided to 10~30% of the construction expense. On the other hand, if it is provided in the construction contract, the advance payment will be paid according to the contract”.

And there are two methods of the subsequent payment are provided, that is, “monthly construction quantity according payment method and milestone payment method”. In either method, it is provided that “60~90% of the completed construction quantity of the present term will be paid”.

Moreover, the reserve payment is provided to be “The reserve payment is about 5% of the construction expense, and the reserve period is one year”.

On the other hand, in Taiwan Region, the methods of construction expense payment are not provided detailed as China, and almost all of the methods are depended on the construction contract. Especially, there are no provisions of the methods of construction about the private construction project in Taiwan Region, all of the methods of construction expense payment in private construction projects are depended on the contract.

About the public construction project, according to the GOVERNMENT PROCUREMENT METHOD LAW,

the advance payment is provided to be “In some big public construction project, the advance payment is provided only when it is necessary to pay”.

There are no provisions of the subsequent payment in Taiwan. And the reserve payment is provided to be “Less than 5% of the construction expense”, but the reserve period is not provided.

The comparative on legislation of the methods of construction expense payment between China and Taiwan Region is illustrated in Table 1.

In China, because the advance payment is provided on legislation, the construction expense which is used on construction materials and equipments by the general contractor has been guaranteed. On the other hand, there are no regulations of the advance payment in Taiwan Region. Therefore, it is understood that the situation of the payment is advantageous to the client.

Table 1 The comparative on legislation of the methods of construction expense payment

	Public construction		Private construction	
	China	Taiwan Region	China	Taiwan Region
Advance payment	<input type="checkbox"/> 10 ~ 30% of the construction expense or according to the contract	<input type="checkbox"/> In some big public construction project, the advance payment is provided only when it is necessary	<input type="checkbox"/> 10 ~ 30% of the construction expense or according to the contract	none
Subsequent payment	<input type="checkbox"/> according to every month's construction expense <input type="checkbox"/> milestone In either method 60~90% of the completed construction quantity of the present term will be paid	<input type="checkbox"/> according to the contract	<input type="checkbox"/> monthly performance responding method <input type="checkbox"/> milestone method	<input type="checkbox"/> according to the contract
Reserve payment	<input type="checkbox"/> 5% of the construction expense, and the reserve period is one year	<input type="checkbox"/> less than 5% of the construction expense, and the reserve period is not provided	<input type="checkbox"/> 5% of the construction expense, and the reserve period is one year	<input type="checkbox"/> according to the contract

Note) The author made this table according to INTERIM METHOD OF CONSTRUCTION EXPENSE ([2004] No. 369) of China and GOVERNMENT PROCUREMENT METHOD LAW of Taiwan Region

Moreover, there are two methods of the subsequent payment provided in China. However, it is doubt that whether the two methods can suit all kinds of construction projects or not. On the other hand, in Taiwan Region, the methods of the subsequent payment are not provided detailed as China, but it is considered that the methods of the subsequent payment can be chosen according to the different characteristic of the construction projects. That is to say, the methods of subsequent payment in Taiwan Region are more flexible than those in China.

2.3 The Practicality of the methods of the construction expense payment

In 2.2, it is clarified the legislation of the methods of the construction expense payment. Then, how is the practicality of the methods of the construction expense payment like. According to the questionnaire investigations and hearing investigations³⁾ in China and Taiwan Region, we would like to clarify the situation of the methods of the construction expense payment in practical projects. Those are as follows:

China

Almost in public projects, the advance payment is provided to 10% of the construction expense. On the

other hand, there is no advance payment in the private projects.

About the subsequent payment, not only in public projects but also in private projects, it was only 30~50% of the completed construction quantity of the present term that has been paid.

Moreover, the reserve payment is about 3% of the construction expense, and the reserve period is one year or two years in both public projects and private projects.

Taiwan Region

There is advance payment in those public projects whose construction expense is over 1 billion Taiwan dollars (about 3.5 YEN). Although the amount of the money of advance payment is different from project to project, they all stays between 10~30% of the

construction expense. There is no advance payment in other public projects whose construction expense is less than 1 billion Taiwan dollars. And, there is no advance payment in private projects.

About the subsequent payment, it was 95% of the completed construction quantity of half month, one month or two month that has been paid in both public projects and private projects.

Moreover, the reserve payment is about 1~5% of the construction expense, and the reserve period is 1~3years in public projects. On the other hand, the reserve payment is about 5~10% of the construction expense, and the reserve period is 1 year in private projects.

The comparative in practicality of the methods of construction expense payment between China and Taiwan Region is illustrated in Table 2.

Table 2 The comparative in practicality of the methods of construction expense payment

	Public construction		Private construction	
	China	Taiwan Region	China	Taiwan Region
Advance payment	<input type="checkbox"/> 10% of the construction expense or according to the contract	<input type="checkbox"/> There is advance payment in those public projects whose construction expense is over 1 billion Taiwan dollars <input type="checkbox"/> 10~30% of the construction expense	none	none
Subsequent payment	<input type="checkbox"/> 30~50% of the completed construction quantity of that month would be paid	<input type="checkbox"/> 95% of the completed construction quantity of half month, one month or two month would be paid	<input type="checkbox"/> milestone <input type="checkbox"/> 30~50% of the completed construction quantity of the present term would be paid	<input type="checkbox"/> milestone <input type="checkbox"/> 95% of the completed construction quantity of the present term would be paid
Reserve payment	<input type="checkbox"/> 3% of the construction expense, and the reserve period is 1~2 years	<input type="checkbox"/> 1~5% of the construction expense, and the reserve period is 1~3 years	<input type="checkbox"/> 3% of the construction expense, and the reserve period is 1~ year	<input type="checkbox"/> 5~10% of the construction expense, and the reserve period is 1 year

Note) The author made the two tables according to the Reference 4)

In China, about the subsequent payment, it was only 30~50% of the completed construction quantity of the present term that has been paid both in public projects and in private projects practical. In contrast, it is provided on legislation that “60~90% of the completed construction quantity of the present term will be paid”.

What are the reasons that the subsequent payment is not paid according to legislation. And, whether the general contractors can operate the project well or not by using the little money which was paid by the client. Moreover, whether the construction quality problems which caused by lack of money can arise the troubles of construction expense payment or not. It is necessary to discuss these problems above in future.

On the other hand, the methods of construction expense payment are not provided detailed as China. However, it was 95% of the completed construction quantity of present term that has been paid in both public projects and private projects. Compare to China, it is cleared that the benefit of the general contractors is more protected in Taiwan Region. In addition, it is understood that there are less troubles of construction expense payment in Taiwan Region than in China.

2.4The executor of quantity and quality confirmation

From 2.2 and 2.3, it is learned that the construction expense will be paid responding to the completed construction quantity of the present term. The construction expense is not paid when there are some

problems in the quality. Therefore, it is thought that quantity and quality confirmation is an important factor in the construction expense payment.

In China, according to the CONSTRUCTION SUPERVISION ENTRUSTING CONTRACT (GF2002-0202) , it is provided to be “Not only in the public construction project, but also in the private construction project, the Supervisor (Jianli-gongchengshi) cannot start to work if he or she does not belong to the construction supervision company 1 (Jianli-danwei)^{Note 1)} ”, that is to say, if the Supervisor does not belong to the supervision company 1, he or she can not start to work although he or she has the qualification of supervision.

However, in Taiwan Region, according to ARCHITECT LAW (Jianzhu-shi Law) and TECHNICIAN LAW (Ji-shi Law), the Architects (Jianzhu-shi) or the Technicians (Ji-shi) can be the executor of quantity and quality confirmation. The Architects can be the executor of

architecting projects. On the other hand, the Technicians can be the executor of civil engineering projects. And, the Architects or the Technicians can do the job without belongs to the supervision company 2 (Jianzao-danwei). If the Architects and the Technicians belongs to the Architects office (Jianzhu-shi office) or Technicians office (Ji-shi office), he or she still can be the executor of the quantity and quality confirmation.

It is learned that the Architects or Technicians in Taiwan Region can do their jobs more flexible than the Supervisors can do in China.

According to the questionnaire investigations and hearing investigations³⁾ in China and Taiwan Region, it is illustrated the executor of construction quantity and quality confirmation and the comparative of executor of construction quantity and quality confirmation in Table 3 and Table 4 separately.

Table 3 The executor of construction quantity and quality confirmation

	China	Taiwan Region
Contractor	<input type="checkbox"/> Supervision Company 1 (Jianli-danwei)	<input type="checkbox"/> Supervision Company 2 (Jianzao-danwei), <input type="checkbox"/> Architects office (Jianzhu-shi office) <input type="checkbox"/> Technicians office (Ji-shi office)
Executor	<input type="checkbox"/> Supervisor (Jianli-gongchengshi)	<input type="checkbox"/> Architects (Jianzhu-shi) <input type="checkbox"/> Technicians (Ji-shi)

Table4 The comparative of executor of construction quantity and quality confirmation

	China	Taiwan Region
Business Monopoly	○ <input type="checkbox"/> Supervisor (Jianli-gongchengshi) is building business monopoly	○ <input type="checkbox"/> Architects (Jianzhu-shi) and Technicians (Ji-shi) are building business monopoly
Difference between public and private construction projects	×	×
Difference between business	×	×

○ yes × no

Note) The author made the two tables according to the Reference 4)

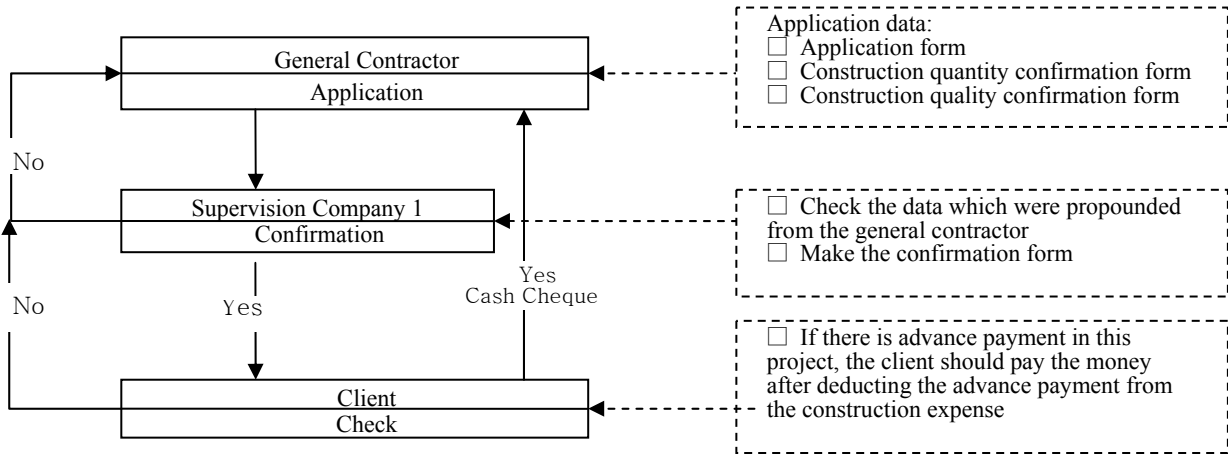
3. PROCESS OF THE CONSTRUCTION EXPENSE PAYMENT

In 2, it is clarified the legislation and practicality of the methods of the construction expense payment and the executor of quantity and quality confirmation. Then we would like to clarify the process of the construction expense in practical projects according to the questionnai

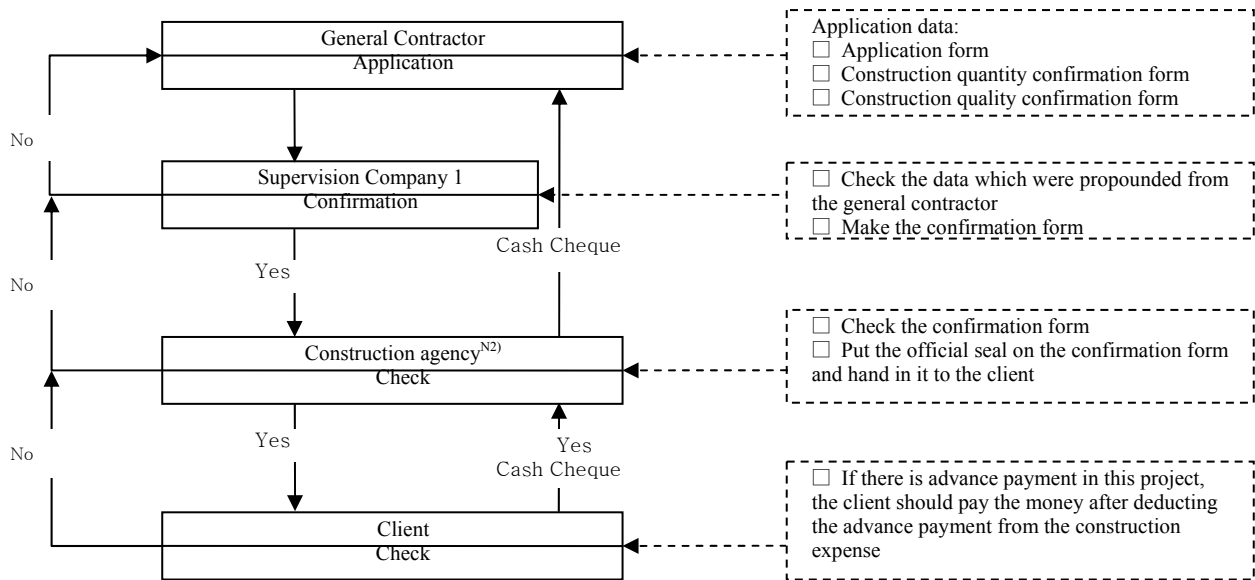
re investigations and hearing investigations³⁾ in China and Taiwan Region.

Maybe there are others processes outside the investigations. But we will not discuss the others which outside the investigations.

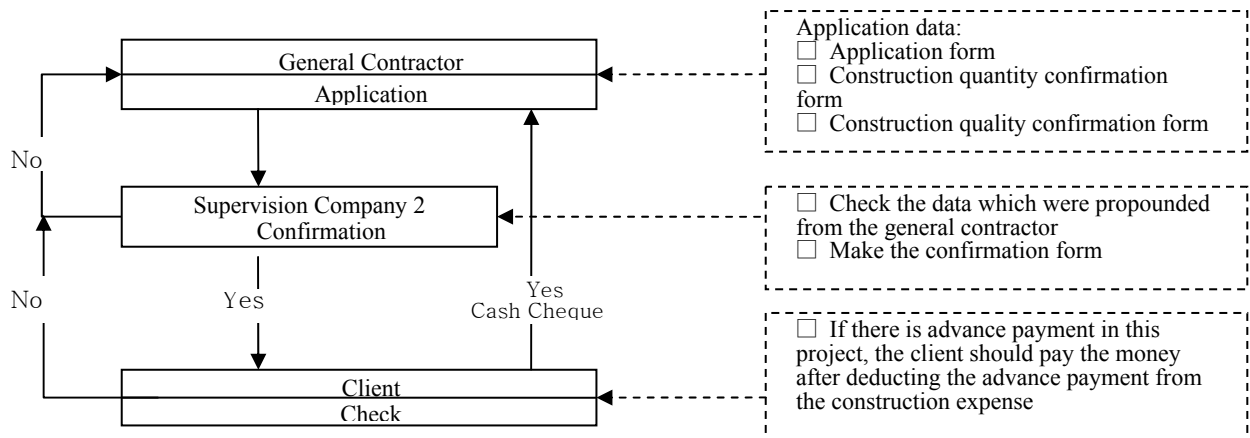
The process of the construction expense payment in China and Taiwan Region is showed in Graph 2 ,3 and Graph 4, 5.



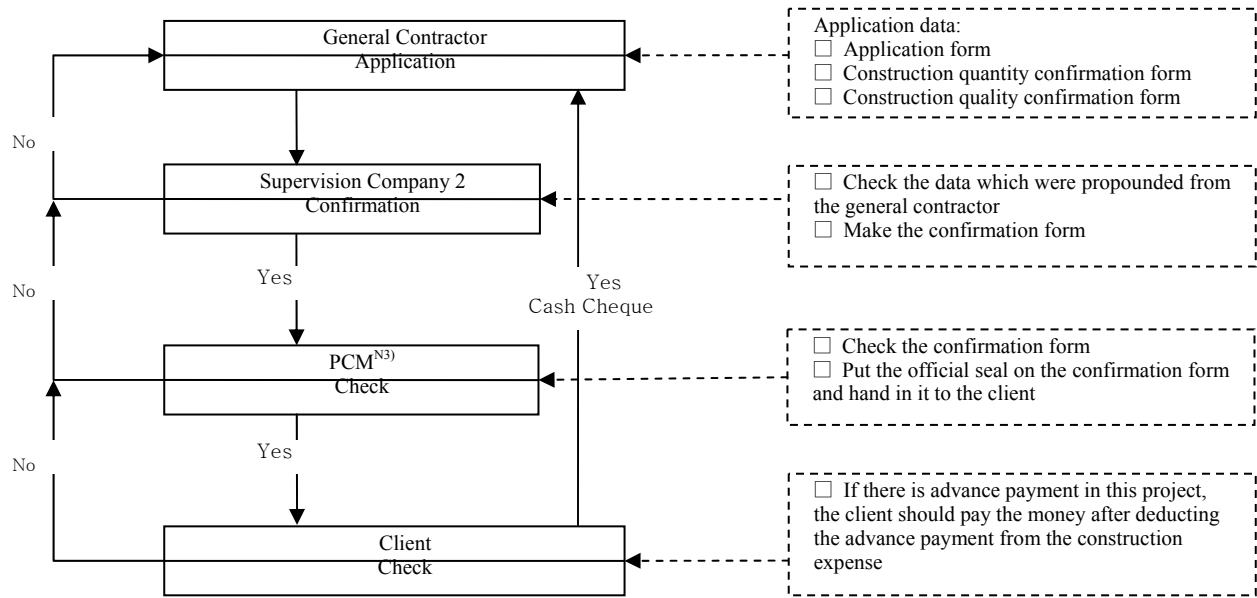
Graph 2 The process of construction expense payment in general projects in China



Graph 3 The process of construction expense payment in a part of public projects in China



Graph 4 The process of construction expense payment in general projects in Taiwan Region



Graph 5 The process of construction expense payment in a part of public projects in Taiwan Region

□ China

In general projects (Graph 2), Supervision Company 1 make the confirmation of construction quantity and quality. If there is no problem, the clients will pay to the general contractors without through the Supervision Company 1.

In a part of public projects (Graph 3), the Construction Agency is entrusted by the clients and almost has the same responsibility as the clients. If there is no problem, the clients should give the money to the Construction Agency at first, and the Construction Agency will pay the money to the general contractors.

□ Taiwan Region

In a part of public projects (Graph 5), the PCM occurs. However, it is not certain whether the PCM can play its role or not by now. The author will do some researches about these in a future time.

We can see in Graph 5 that, the PCM is on the location of a consultant of the clients. This point is different from the Construction Agency of China.

In general projects (Graph 4), the process is the same as China.

4. CONCLUSION

In this paper, it was clarified the legislation and practicality of the construction expense payment and the process of construction expense payment. By comparing the legislation and practicality of the construction expense payment, the difference of the methods of construction expense payment between China and Taiwan Region has been found, and the executer of construction quantity and quality confirmation has been clarified. From these, it was cleared that the rights and the responsibilities among client, supervisor and general contractor is ambiguous in

China. In addition, the construction market is still immature by now.

In the future, the author will investigate some construction project in China, Taiwan Region and Japan, and clarify their state of art of construction expense payment. And by comparing the difference between the legislation and the state of art, the problem of construction expense payment can be clarified. Then the author will focus on the rights and responsibilities of client.

ACKNOWLEDGEMENT

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NOTE

- 1) The construction project which not entrust the supervisor will not be discussed in this paper.
- 2) Construction agency: professional construction consultative company who can do all jobs for the client
- 3) PCM: Professional construction management

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