

BRIEFING NOTE

Further Reliefs for the Construction Industry – What about the Recent BCA Updates and Legislative Developments?

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Introduction

The construction industry has been hard hit by the pandemic. Before the Circuit Breaker, contractors were affected by regional lockdown measures. During and after the Circuit Breaker, contractors were faced with work stoppages, reduced productivity and additional safe restart measures. Progress of construction works has been, for the most part, stuttering.

Recognising these difficulties: (a) the Building and Construction Authority (“**BCA**”) issued guidance to provide further relief to contractors; and (b) the lawmakers made amendments to the COVID-19 (Temporary Measures) Act (the “**C19TMA**”) to provide additional relief for those in the construction industry. We discuss both reliefs in this briefing note.

Further Cost & Time Reliefs Circulated by BCA

In a recent circular issued by BCA,¹ adjustments were made to the maximum claimable amounts for contractors on public sector projects. We shared in an [earlier briefing note](#) that the ex-gratia payment was previously limited to two separate maximum caps:

- (a) five months from the start of the Circuit Breaker (unless approval for restart was granted prior to the end of this five months’ period); and
- (b) four months from the granting of approval for restart.

For contractors who received approval for restart soon after Phase 2 was announced (i.e., in July), the maximum claimable amount they could receive was roughly three months (for (a)) and four months (for (b)). In total, roughly seven months’ worth of ex gratia payment.

Now, there will be only one overall cap. The new overall cap (of nine months), instead of the previous effective cap (of roughly seven months), provides an opportunity for contractors to claim up to $0.2\% * 9 = 1.8\%$ (instead of $0.2\% * 7 = 1.4\%$) of the contract value.

Separately, BCA announced in the same circular that contractors on public sector projects will be granted a default four months’ extension of time (between 7 April 2020 and 6 August 2020), without the need to submit and substantiate this claim for default extension.

¹ BCA Circular on Treatment of Claims arising from COVID-19 in Public Sector Construction Contracts dated 25 September 2020.

The potential to recover additional cost and the certainty to obtain extended time for completion reduce the current financial pressure and future (liquidated damages) burden for contractors on public sector projects.

Additional Cost Reliefs Legislated in Part 8 of the C19TMA

Previously, we shared in [another earlier briefing note](#) that reliefs for the rental of construction equipment was being contemplated by lawmakers.

From 30 September 2020, Part 8 of the C19TMA comes into effect to crystallise the rental relief for construction equipment. To qualify, contractors need to fulfil these conditions:

- the contractor entered into a rental agreement for construction equipment;
- the rental agreement was made before 25 March 2020 (and is/was in effect at any time between 1 February 2020 and 31 March 2021);
- the rental agreement specifies for a fixed rental period or a fixed rental rate;
- the contractor is liable for additional amounts because of construction delays (and such delays are attributed to the pandemic);
- the contractor could not have reasonably avoided the additional amounts; and
- the contractor makes an application for relief before 31 May 2021.

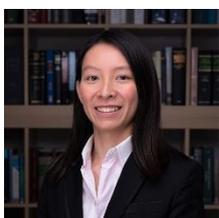
Unless there are on-going (or resolved) arbitration, adjudication or litigation proceedings, affected contractors may apply to adjust the rental period or the rental rate, so as to achieve a just and equitable sharing of the financial burden brought about by pandemic disruption.

Whilst this is positive news for contractors working with rental construction equipment, it is worth noting that contractors who own such equipment would not qualify for this relief.

How We May Assist

Our construction team has been assisting public sector contractors on cost and time reliefs. We are familiar with the reliefs available and the requirements for obtaining such reliefs pursuant to contractual, legislative or regulatory grounds. We pride ourselves in achieving the most optimal results that best advances our clients' commercial interests.

To find out how we may be of assistance to you, feel free to contact any member of our team.



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