

**BRIEFING NOTE**

**Upcoming Provisions to the COVID-19 (Temporary Measures) Act 2020 – What this Entails for Construction Industry & Real Estate Players?**

**Sinyee Ong**  
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**Introduction**

On 3 November 2020, Singapore’s Parliament passed the COVID-19 (Temporary Measures) (Amendment No. 3) Bill (the “**Bill**”). Amongst other things, the Bill introduces further reliefs for the construction industry. This is expected to have significant impact on both the construction industry and the real estate players.

The Bill is now awaiting presidential assent, before it is gazetted into law sometime in late November 2020. Whilst we await the provisions to take effect, we explore the implications of the Bill (after it becomes law) in this briefing note.

**Automatic Extension of Time**

The Bill introduces an automatic extension of time (“**Automatic Extension**”) for all construction projects (both public and private projects) that were affected by the work stoppage due to the dormitory situation and Singapore’s Circuit Breaker. The length of extension is 122 days (calculated for the period between 7 April 2020 and 6 August 2020).

There are three points to note for this Automatic Extension:

- Insofar as any extension of time has already been granted for the delays attributed to the period between 7 April 2020 and 6 August 2020, this Automatic Extension will be reduced accordingly. For example, if 80 days’ worth of extension was already granted for this period, then only 42 days would be granted by the Automatic Extension.
- Insofar as construction works had in fact been carried out during Singapore’s Circuit Breaker, this Automatic Extension will not apply.
- Insofar as any dispute resolution proceeding – relating to the failure to adhere to the completion date – has been commenced, decided or settled, this Automatic Extension will not apply.

It is worth noting that unlike previous relief measures, which have been provided to main contractors (and silent on the passing down of such relief to subcontractors), the lack of reference to main contractors this time round seems to indicate that both main contractors and subcontractors would be able to enjoy this Automatic Extension.

### **Mandatory Co-Sharing of Costs**

The Bill introduces a mandatory cost sharing of the pandemic-related costs (“**Mandatory Cost-Sharing**”) expended between 7 April 2020 and 31 March 2021. The sharing of costs is subject to: (a) a monthly maximum of 50% of the cost incurred or 0.2% of the contract sum, whichever is lower; and (b) an overall maximum of 1.8% of the contract sum.

There are two points to note for the Mandatory Cost-Sharing:

- For the time being, the qualifying costs are limited to plant/equipment rental cost, site maintenance cost, insurance extension cost and material/equipment storage cost.
- For the time being, manpower cost, acceleration cost, safe management cost and other cost where relief has been provided by the authorities, are excluded.

Affected contractors are required to submit their claims for cost-sharing in the same manner as how payment claims are submitted. Where there are any disputes arising from this cost-sharing, such disputes may be determined in adjudication proceedings.

Similar to the Automatic Extension, it is worth noting that the Mandatory Cost-Sharing does not appear to be limited to main contractors only. This seems to indicate that the cost-sharing is mandatory not just between employers and main contractors, but also between main contractors and subcontractors.

### **Extension of Delivery Date for, and Cost Reimbursement by, Real Estate Developers**

The Bill introduces an extension of time of 122 days for the delivery of residential and commercial property by real estate developers (“**Extended Delivery Date**”).

The Bill also introduces the mandatory reimbursement of cost (“**Mandatory Cost Reimbursement**”) for the following costs incurred by residential and commercial property purchasers as a result of the Extended Delivery Date:

- rental cost for alternative premises as a result of the time period between the initial delivery date and the Extended Delivery Date; and
- estate agent cost and moving cost for securing and moving into the alternative premises during the time period between the initial delivery date and the Extended Delivery Date.

It is worth noting that real estate developers are likely to find themselves in a tight spot between contractors and property purchasers. On one hand, real estate developers are to honour the Automatic Extension (thereby depriving them of potential liquidated damages

that may be imposed on contractors). On the other hand, real estate developers are to grant Mandatory Cost Reimbursement to commercial and residential purchasers (despite not being able to recoup such costs from liquidated damages imposed on contractors).

### **How We May Assist**

Our construction team has been advising and assisting contractors on cost and time reliefs as a result of the delays brought about by the pandemic. We have also been advising real estate conglomerates with managing business losses attributable to the pandemic.

We are familiar with the scope of the available contractual, legislative or regulatory reliefs. 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.

### **Sinyee Ong**



[sinyee.ong@sjlaw.com.sg](mailto:sinyee.ong@sjlaw.com.sg)

65 6694 7281 | 65 9148 5059