

**BRIEFING NOTE**

**Post-COVID Trends – Recent Developments to Construction Contracts**

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**Introduction**

The pandemic, as well as the government responses to the pandemic, had been unprecedented. Commercial contracts, including those in the construction industry, were not fully equipped to deal with the effects of this extraordinary event.

In some jurisdictions, government intervened to reallocate the burden amongst employers, contractors and subcontractors, as well as suppliers. In other jurisdictions, parties have had to negotiate the allocation of burdens that were neither budgeted for in the tender stage nor provided for in the construction contract.

As we approach the one-year mark from the announcement of the pandemic, it is worth looking at how construction contracts have changed between pre- and post-pandemic times.

**Changes in Construction Contracts to Deal with Epidemics**

Post pandemic, an increasing number of construction contracts have provided for: (a) the occurrence of epidemics; (b) the impact of epidemics on labour, equipment, plant and materials; and (c) the government response to epidemics.

First, providing for the occurrence of epidemics. Previously, a number of standard form contracts did not provide for the occurrence of epidemics. For example, the Public Sector Standard Conditions Of Contract (PSSCOC) in Singapore did not provide for epidemics in the 2014 edition. Following the pandemic, the 2020 edition now provides for the occurrence of epidemic as a ground for seeking an extension of time.

Second, providing for the impact of epidemics. Some standard form contracts (e.g., the FIDIC suite of contracts) already provided for outbreak of epidemics. Although there have been no updates to these standard forms, we observed a number of developments to the particular conditions of contract for various projects. In the Middle East, for example, we observed that:

- Employers (especially those who are affiliated to a governmental authority) now include a provision mandating compliance with all requirements imposed by the authorities to combat the spread of an epidemic. Although the general conditions already require the compliance with laws, the new particular conditions require compliance even with non-legislated advisories and guidelines (insofar as these deal with the spread of epidemics). In some instances, the particular conditions even set

out the party responsible for bearing the costs of adhering to such requirements. Contractors are advised to review these conditions when preparing project tenders.

- Having borne the financial brunt of the impact for the current pandemic, employers have now started to remove provisions that benefit contractors in the event of epidemics. We have sighted particular conditions whereby unforeseeable shortages in labour, equipment, plant and materials caused by epidemics (or government actions in response) have been deleted entirely. As epidemics become more common in future, contractors should look out for such deletions and account for them when preparing project tenders.

Third, providing for government response to epidemics. The pandemic has brought about numerous new and amended legislation globally. In some construction contracts based on the FIDIC suite of contracts, some employers have started to eliminate provisions permitting adjustments to contract price pursuant to legislative changes. Perhaps having had to make unbudgeted increases to the contract price in light of the current pandemic, some employers now seek to avoid similar cost increases for future projects. For contractors operating in jurisdictions where changes in legislation are less predictable, it may be worthwhile to take into account the elimination of such provisions when preparing project tenders.

### **How We May Assist**

We have been assisting contractors and employers with the review of construction contracts in the post pandemic world. We have also been advising employers, contractors and suppliers in major construction and infrastructure projects. We pride ourselves with delivering prompt and top-quality advice that is in the best commercial interest for our clients.

To find out more about how we can assist you, please reach out to any member of our team.

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