

BRIEFING NOTE

Cliff Edge – What Happens after the Expiry of the Temporary Reliefs for the Construction Industry?

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Introduction

In our [last instalment](#), we discussed the extension of reliefs for the construction industry in Singapore pursuant to the COVID-19 (Temporary Measures) Act (“**C19TMA**”).

Whilst it is unclear whether further extensions will be granted after September 2021, what is clear is that at some point, the temporary reliefs will come to an end. At which point, issues that have been held back by the C19TMA would inevitably surface. What are some of the issues that may surface and how should the construction industry prepare for these issues?

Contributing Factors to Potential Issues

Given the restrictions brought about by the pandemic, contractors face two major challenges.

First, manpower crunch. The entry and work permit restrictions imposed upon countries that traditionally “supply” labour to the construction industry have contributed to a tightening of the labour supply in Singapore. This has resulted in a noticeable increase in labour cost.

Second, safe management measures. The new guidelines for how work is to be carried out at construction sites have changed the manner and pace for construction works. This has resulted in a slower rate of progress and has impacted what are already tight timelines.

Potential Issues *after* Temporary Relief Measures

In our view, the potential issues that may surface can be classified into two buckets: allocation of the additional cost of working and determination of liquidated damages. Potentially, there is a third bucket – the insurance issue – that may arise regardless of the measures.

Allocation of Additional Cost of Working. The C19TMA provides for the mandatory co-sharing of some cost. However, manpower cost and safe management cost are not subject to mandatory co-sharing. Given that such costs are not insignificant, it is likely that the party who has incurred such costs would seek to claim at least part of such costs from another party (for e.g., as between a subcontractor and a main contractor).

To prepare for such claims, parties are advised to review their construction contracts carefully. Force majeure clauses may provide that upon the occurrence of certain “force majeure” events, one party may seek the additional costs of working from the other party.

Additionally, change of laws, delay by public authorities and unforeseeable shortages clauses may provide that if these factors impact the cost of completing the project, then one party may be entitled to apply for additional costs for completing the project from the other party.

Determination of Liquidated Damages. The C19TMA provides for an automatic extension of time for completion of (both public and private) projects for the length of Singapore’s Circuit Breaker. Yet, there is no automatic extension of time for slower progress of works due to subsequent manpower crunch and safe management measures. Insofar as the late completion, and the liquidated damages imposed, are significant, it is likely that the party in delay will face quite a bit of liquidated damages.

Under the C19TMA, there is temporary relief against the imposition of liquidated damages to those under a “subject inability”. However, it is unclear whether the same relief is available for those who are able to perform albeit at a slower pace. Given the uncertainties with the C19TMA, it may be advisable to rely on contractual mechanisms (i.e., force majeure, change of laws, delay by public authorities and unforeseeable shortages clauses) for time extensions rather than depend on the relief against the imposition of liquidated damages.

Insurance. The insurance issue is independent of the C19TMA (or the expiry of the temporary relief measures). It relates to the financial loss suffered by the relevant insured party (likely, the owner) as a result of the delay in start-up caused by the delayed completion date. Depending on the extent of coverage purchased for the project, the relevant insured party may be able to seek indemnity from insurers for delay in project completion.

How We May Assist

We regularly assist with the review of construction contracts. We have advised employers and contractors with delay claims, as well as the avoidance and mitigation of such claims. To find out more about how we can assist you, please reach out to any member of our team.

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