

BRIEFING NOTE

Limitation Periods for Construction Claims – Key Pointers for Contractors when Dealing with Claims for Defective Works

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Introduction

Most construction contracts provide for a ‘defects liability period’, during which contractors are obliged to make good any defects in the construction works. Can contractors be liable for defects after this period?

The answer is: most likely, yes. We discuss the key issues in below.

What is the Defect?

When launching or receiving with a claim for defective works, contractors are advised to identify the defect first. Specifically, does the defect lie in the design or the construction?

There are two reasons for this:

- Insofar as a contractor was responsible for only the construction, a defective design claim will lie against the designer (not the contractor). A contractor could consider this defence when responding to such a claim.
- The date for accrual of the cause of action will be different: a defective design claim usually accrues when the design was issued (or when subsequent revisions were made) whereas a defective construction claim usually accrues on the completion date (or phasal completion date, insofar as works were completed in phases).

Alternatively, if the defect lies in the failure to rectify defects during the ‘defects liability period’, the cause of action accrues from the expiry of the period to rectify defective works.

How Long is the Limitation Period?

Having identified the defect, the next issue is the limitation period. Singapore’s Limitation Act (Chapter 163) provides that actions for breach of contract or tort must be brought within six years from the accrual of the cause of action.

In some circumstances, the limitation period may be extended.

- If there was negligence in causing the defect and the defect was not apparent when the design was issued or construction was completed (for e.g., a latent defect), the

Limitation Act provides the counterparty with three years from the discoverability of the defect (and a maximum of 15 years from the accrual of the cause of action) to bring an action against the party responsible for the design or construction.

- Contractors receiving such claims ought to pay attention to the discoverability date of the defect and the date of accrual of the claim. If the statutory limitation period has lapsed, there is the option of raising the limitation defence to bar such claims.

Separately, parties may agree to reduced limitation periods. To avoid the uncertainty of latent defect claims, contractors may specify for shorter limitation periods in construction contracts.

How to “Extend” Time to Bring a Claim?

Contractors should also be aware that a counterparty may “extend” time to commence proceedings for defective works in two ways:

- Protective proceedings. If taken out on the last day of the limitation period, the counterparty has an additional six to twelve months to serve proceedings.
- Standstill agreements. Both parties may agree that the party with the right to assert the limitation defence (i.e., the contractor) refrains from doing so during proceedings.

In this regard, contractors may find themselves at the receiving end of claims for defective works many years after the event. Again, to avoid the uncertainty of long tail claims, contractors could consider making provisions for shorter limitation periods.

How We May Assist

We have assisted contractors with a range of disputes. We pride ourselves with delivering top quality advice that best advances our clients’ commercial interest in a cost-effective manner. To find out more about how we can assist you, please reach out to any member of our team.

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