

# Universal Extension of Time and Co-sharing of Costs for Contractors Under COVID-19 (Temporary Measures) Act

On 3 November 2020, the *COVID-19 (Temporary Measures) (Amendment No. 3) Bill* ("Bill") was passed in Parliament, providing further reliefs for the construction industry which has been affected by the COVID-19 pandemic.<sup>1</sup> The provisions introduced by the Bill will come into force in end-November 2020.

Significantly, two major additional relief measures have been introduced with respect to both public and private sector construction projects, as follows:

- (a) Universal extension of time of 122 days, to address delays that arose during the period between 7 April 2020 and 6 August 2020 for construction contracts;<sup>2</sup> and
- (b) Co-sharing of additional non-manpower-related costs between contracting parties due to project delays caused by the COVID-19 pandemic.<sup>3</sup>

This update sets out the salient features of the Bill where they relate to the construction industry. For ease of reference, sections of the COVID-19 (Temporary Measures) Act ("COTMA") highlighted in this update refer to sections of the COTMA as introduced by the Bill.

## Universal Extension of Time to Complete Construction Projects

The new Sections 39A and 39B of the COTMA provide for a universal extension of time for contractors to complete their works under a construction contract. To qualify for this universal extension of time, the construction contract in question:

- (a) Must be entered into before 25 March 2020, but not if it was renewed (other than automatically) on or after that date;
- (b) Remains in force on 2 November 2020; and
- (c) As at 7 April 2020, any construction works to be performed under it have not been certified as completed in accordance with its terms.<sup>4</sup>

**Eligible construction contracts will be given a universal extension of time of 122 days for projects to be completed.** This is to address delays that arose for the period between 7 April 2020 and 6 August 2020. The extended completion date will be treated as the new completion date for the purpose of the construction contracts and no application is required from contractors to enjoy this relief.

<sup>1</sup> Singapore Statutes Online, *COVID-19 (Temporary Measures) (Amendment No. 3) Bill*, <https://sso.agc.gov.sg/Bills-Supp/43-2020/Published/20201102?DocDate=20201102>.

<sup>2</sup> Section 39B of the COTMA.

<sup>3</sup> Section 39D of the COTMA.

<sup>4</sup> Section 39A of the COTMA.

Contractors who wish to seek a longer extension of time will need to rely on the relevant contractual provisions under their respective construction contracts. They may also serve a Notification for Relief on the upstream contracting party (e.g., the main contractor, developer, or employer), to avail themselves of any defences in respect of claims for liquidated damages payable under the construction contracts due to delays sustained during the period of 1 February 2020 to 31 March 2021.

That said, contractors should note that this extension does not apply to completion dates in certain circumstances, e.g., if the construction works were performed at any time between 20 April 2020 and 30 June 2020 (both dates inclusive),<sup>5</sup> or if court, arbitral or other proceedings have been commenced before 2 November 2020 in respect of the failure to comply with the completion dates.<sup>6</sup>

### Co-sharing of Additional Costs Due to Delays

The new Sections 39C and 39D of the COTMA provide for the co-sharing of non-manpower-related additional costs between contracting parties. To qualify, the following requirements must be met:

- (a) The construction contract must have been entered into before 25 March 2020, but not if the construction contract was renewed (other than automatically) on or after that date;
- (b) The construction contract must remain in force on 2 November 2020;
- (c) The party for whom the construction works are performed under the construction contract must not be an individual (e.g., homeowner) other than an individual acting as a sole proprietor in the course of the business; and
- (d) As at 7 April 2020, there are construction works required to be performed under the construction contract that have not been certified as completed in accordance with its terms.<sup>7</sup>

Section 39D of the COTMA introduces cost-sharing measures for additional costs, such as equipment rental, site maintenance, insurance payment and storage of materials, to be shared between contracting parties.<sup>8</sup> **The co-sharing percentage is 50% of the qualifying costs, subject to a monthly cap of 0.2% of contract sum per month, and a total 1.8% of the contract sum until 31 March 2021.**<sup>9</sup>

This relief measure will help ensure that downstream contractors do not bear an undue share of the burden caused by the pandemic, and minimise the risk of downstream contractors going under, which could in turn have knock-on impact on the entire value chain. However, it should be noted that manpower costs and additional costs incurred to implement safe management measures to control the transmission of the COVID-19 pandemic are excluded under this relief.<sup>10</sup>

<sup>5</sup> Section 39B(3)(a) of the COTMA.

<sup>6</sup> Section 39B(3)(b) of the COTMA.

<sup>7</sup> Section 39C of the COTMA and see meaning of "construction works" under Section 3(1) of the Building and Construction Industry Security of Payment Act.

<sup>8</sup> Section 39D(9) of the COTMA.

<sup>9</sup> Section 39D(2)-(3) of the COTMA.

<sup>10</sup> Section 39D(9)(f)-(i) of the COTMA.

To enjoy this relief, contractors would need to make payment claims to the clients who engaged their services, as is done under the current payment claim process. In the event of disputes between the contracting parties regarding the co-sharing of additional costs, an adjudication application under the Building and Construction Industry Security of Payment Act may be submitted.<sup>11</sup> The appointed adjudicator will be able to determine whether the relief applies and if so, the appropriate co-sharing between the parties.

## Concluding Remarks

Since the onset of the COVID-19 pandemic, the construction industry has suffered significant supply chain disruptions, manpower shortages, work stoppages and cash flow issues. As the industry seeks to resume business, the latest set of relief measures would give contractors much needed breathing space to ramp up work quickly.

While the latest set of reliefs do not cover co-sharing of manpower costs, contractors are nevertheless encouraged to keep detailed records relating to all costs (manpower or otherwise), project delays and disruptions etc. so that they can substantiate their claims under the COTMA and/or their contractual provisions.

This update is accurate as of 18 November 2020.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:



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<sup>11</sup> Section 39E of the COTMA.

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