

COVID-19 (Temporary Measures)

Act 2020

Part 10A Guide

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Disclaimer

These Guidelines outline the rights and obligations arising under Part 10A of the COVID-19 (Temporary Measures) Act 2020 (hereinafter referred to as the “**Act**”). These Guidelines do not purport to address all situations. The reader should, for a full appreciation of his rights and obligations under the Act, refer to the Act and obtain advice from relevant professionals.

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1. INTRODUCTION

1.1 Background

The COVID-19 pandemic has resulted in delays and increased costs for construction projects, especially for the Built Environment sector who are dependent on migrant workers. The tightened border control measures with several countries have made the shortage of manpower in the sector more severe.

For existing construction projects where parties may not have adequately priced in the unexpected increase in foreign manpower costs, additional relief measures have been introduced under the **COVID-19 (Temporary Measures) (Amendment No. 3) Act 2021** in May 2021 as part of a broader package of support measures to help the Built Environment sector to preserve industry capacity, adjust to the new operating environment, and recover from the impact of the pandemic.

1.2 Scope of Relief

Part 10A of the COVID-19 (Temporary Measures) Act 2020 (hereinafter referred to as the “**Act**”) is provided to facilitate sharing of the increase in foreign manpower salary costs between project parties to ensure that no single stakeholder bears a disproportionate share of the burden imposed by COVID-19.

An important feature of this relief is that contractors should **discuss or negotiate with their customers / clients (who procured their services) to reach a mutually agreeable arrangement to address the foreign manpower salary costs increase in respect of work permit holders** performing the project. This will be applicable to every tier of construction contracts (e.g. main contractors to negotiate with developers, subcontractors to negotiate with main contractors, etc). The relief covers the increase in foreign manpower salary costs incurred during the period be between **1 October 2020 and 30 June 2022** (or any extended date as prescribed).

Under Part 10A of the Act, a Part 10A Assessor (hereinafter referred to as the “**Assessor**”) may adjust the contract sum of an eligible construction contract to address the increase in foreign manpower salary costs (due to increase in wages of work permit holders arising from COVID-19) if parties to the contract are unable to reach a mutually agreeable arrangement. Contractors can apply to seek a determination from an Assessor on or before 31 August 2022.

Details on Part 10A of the Act and the relevant application forms are available at <https://go.gov.sg/cotma10a>.

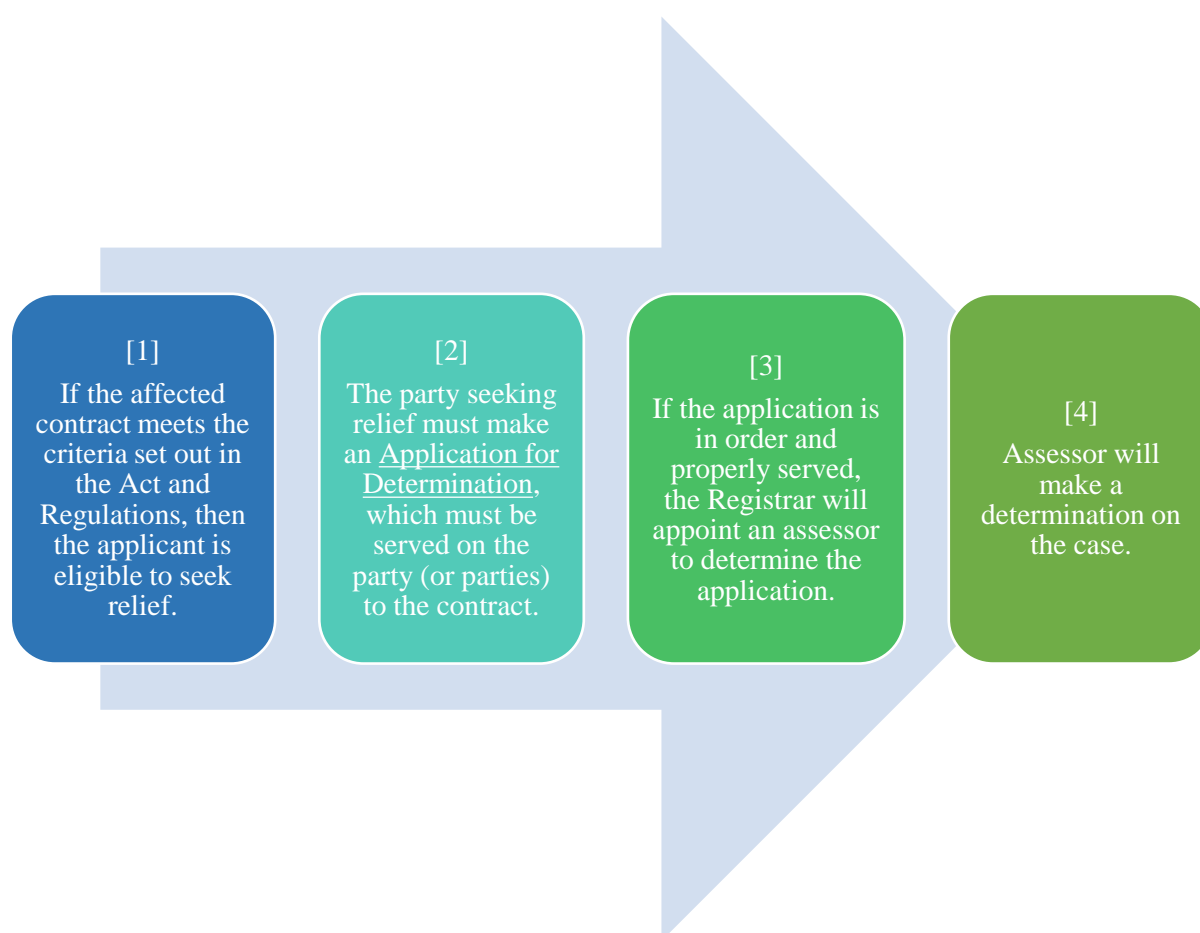
1.3 Insolvency

The provisions of Part 10A of the Act are not applicable if one party is insolvent, as the relief provided is not intended to override the provisions in the Companies Act and the Bankruptcy Act that address insolvency issues. It is important that parties seek legal advice where insolvency is involved.

2. APPLICATION TO SEEK AN ASSESSOR'S DETERMINATION

2.1 Overview of Relief

For eligible construction contracts that meet the eligibility criteria in section 2.2 below, the contractor (i.e. hereinafter referred to as the “**Applicant**”) may apply for a determination from an Assessor to adjust the contract sum against its customer / client (hereinafter referred to as the “**Respondent**”) on or before **31 August 2022**. The Assessor will consider the application and render an outcome which is just and equitable in the circumstances of the case.



2.2 Eligibility Criteria

An Applicant may apply for a determination if:

- (a) the construction contract was entered into before **1 October 2020**, including construction contract that was automatically renewed on or after 1 October 2020;
- (b) construction works under the construction contract have not been certified to be completed as at **10 May 2021**;
- (c) the construction contract remained in force on **10 May 2021** (i.e. construction contract has not been terminated before 10 May 2021 or the notice for the termination of the construction contract has not been given before 10 May 2021); and
- (d) the Applicant has made a **reasonable attempt to negotiate** with the customer / client (i.e. Respondent) for a cost adjustment.

Part 10A of the Act does not cover construction contracts for the carrying out of construction works at or on a residential property for which approval is not required under the Building Control Act. For example, a builder carrying out home renovation work for an HDB homeowner is not entitled to apply for an Assessor's determination under the Act as such work does not require approval under the Building Control Act.

Construction work

All construction contracts where one party undertakes to carry out 'construction work' (as defined in section 3(1) of the Building and Construction Industry Security of Payment Act ("SOPA")¹) for another party will be covered under Part 10A of the Act, regardless whether it is a lump sum or term contract.

However, Part 10A of the Act does not apply to contracts for the supply of construction-related 'goods' or 'services' (as defined in section 3(1) of the SOPA), for example supply of goods or consultancy services.

Example

A party (Party A) is engaged to supply labour only to carry out construction work for another party (Party B). The contract was entered into based on agreed unit rates without pre-determined 'contract sum'.

Given that the provision of labour to carry out construction work is considered as 'services' rather than 'construction work', Party A is not entitled to apply for an Assessor's determination to adjust the contract sum.

Reasonable attempt to negotiate

The Applicant must show that he has attempted to negotiate with the Respondent on the cost increase of the foreign manpower salary costs of the Work Permit Holder, before he can apply for an Assessor to determine the adjustment.

Developers, main contractors and subcontractors are all part of the same Built Environment ecosystem and have long-term relationships. The objective of Part 10A is to encourage stakeholders to step up to help one another during these challenging times.

¹ "construction work" means —

- (a) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures (whether permanent or not) that form, or are to form, part of the land;
- (b) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works that form, or are to form, part of the land, including walls, roadworks, power-lines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for the purpose of land drainage, coast protection or defence;
- (c) the installation in any building, structure or works of fittings that form, or are to form, part of the land, including systems of heating, lighting, airconditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, and security or communications systems;
- (d) any operation which forms an integral part of, is preparatory to, or is for rendering complete, works of the kind referred to in paragraph (a), (b) or (c), including —
 - (i) land reclamation;
 - (ii) site clearance, earth-moving, excavation, tunnelling and boring;
 - (iii) the laying of foundations;
 - (iv) the erection, maintenance or dismantling of scaffolding;
 - (v) the prefabrication of components to form part of any building, structure or works, whether carried out at or on the construction site or elsewhere; and
 - (vi) site restoration, landscaping and the provision of roadways and other access works;
- (e) the external or internal cleaning of buildings, structures or works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension; or
- (f) the painting or decorating of the external or internal surfaces of any building, structure or works.

All parties should attempt to negotiate with each other in good faith, before triggering the assessment process. To facilitate the negotiation process, parties may consider adopting the templates in Annex A to conduct eligibility check and record a breakdown of the proposed adjustment to the contract sum. Examples of evidence that demonstrates a reasonable attempt to negotiate include documents such as minutes of meetings or correspondence that document negotiations between the parties to share the burden of the foreign manpower salary costs increase.

Basic Checklist on Eligibility Criteria to apply for an Assessor's determination under Part 10A

- This is a construction contract where one party undertakes to carry out 'construction works' (as defined in section 3(1) of the Building and Construction Industry Security of Payment Act ("SOPA")) for another party;
- This construction contract was entered into before 1 October 2020, including a construction contract that was renewed automatically on or after 1 October 2020;
- There were construction works that were not certified to be completed under the construction contract as at 10 May 2021;
- This construction contract was not terminated before 10 May 2021 or a notice for the termination of the construction contract has not been given before 10 May 2021;
- If the construction contract is for the carrying out of construction work for a residential property, approval is required to be obtained under the Building Control Act in respect of the construction works.
- The Applicant has made a reasonable attempt to negotiate the sharing of increase in the foreign manpower salary costs; and
- Application fee has been paid upon request by the Registry.

Note: This checklist is designed to assist the user in making a quick check as to whether the case is one to which Part 10A applies. It does not go into details and does not cover all situations.

2.3 Application for a determination from an Assessor

An Applicant must apply to the Part 10A Registrar (hereinafter referred to as the "**Registrar**") on or before 31 August 2022. The application for an Assessor's determination must be in **Form A** (accessible through <https://go.gov.sg/cotma10a>) containing:

- (a) the name, address, telephone number, and email address (if any) of the Applicant;
- (b) the name and address, and (if known to the Applicant) the telephone number and email address of each of the following:
 - i. the other party or parties to the construction contract (e.g. Respondent);

- ii. any person who is the Applicant's guarantor or surety, or who has issued any performance bond or equivalent, in relation to the carrying out of the construction works under the construction contract;
 - iii. any assignee of any other party to the construction contract;
- (c) the following information about the construction contract in question:
- i. the parties to the construction contract;
 - ii. the date the construction contract was entered into;
 - iii. whether, as at 10 May 2021, there were any construction works to be performed under the construction contract that have not been certified in accordance with the construction contract as completed;
 - iv. whether the construction contract is for the carrying out of construction works at or on any residential property (within the meaning of the Residential Property Act (Cap. 274)) that do not require the approval under the Building Control Act;
 - v. whether the construction contract has been terminated before 10 May 2021, or whether a notice for the termination of the construction contract was given in accordance with the construction contract before 10 May 2021;
- (d) documentary proof of the increase in the amount of foreign manpower salary costs incurred by the Applicant between 1 October 2020 and 30 June 2022, over the amount which the Applicant would otherwise have incurred because of a COVID-19 event (i.e. cost increase);
- (e) a brief explanation of how the COVID-19 event had caused the manpower cost increase;
- (f) the steps taken by the Applicant to reduce the manpower cost increase; and
- (g) a copy of the construction contract in question.

The application for an Assessor's determination may also contain other relevant supporting documents (including workers time-sheets, payslips before and after COVID-19 and correspondences) which the Applicant wants to submit to the Assessor to, for example, support the cost increase and the position taken by the Respondent during the earlier negotiations.

Proper preparation and presentation of the Applicant's case to the Assessor may be a critical factor in the success or failure of one's case. To facilitate the submission to the Assessor, parties may consider adopting the templates in Annex A to break down the proposed adjustment to the contract sum. It is best to keep the submission simple so that the Assessor can quickly grasp the essential points to facilitate a fair and timely determination of the matter.

Service of documents & Declaration of service

After the application for an Assessor's determination has been received by the Registrar, the Registrar will inform the Applicant if he is satisfied that the application is in order. **Within 2 working days after the notification from the Registrar, the Applicant will have to serve through email** (or registered post if unable to send by email):

- (a) a copy of the application (accompanying with the relevant documents and supporting documentary proof);
- (b) the Registrar's notification acknowledging the receipt; and
- (c) a copy of the form of response in Form D

to each of the following:

- (a) the other party or parties to the construction contract (e.g. Respondent);
- (b) any person who is the Applicant's guarantor or surety, or who has issued any performance bond or equivalent, in relation to the carrying out of the construction works under the construction contract; and
- (c) any assignee of any other party to the construction contract.

Within **2 working days** after the Applicant has served the above documents to the other parties, the Applicant must declare such service to the Registrar using **Form C** (accessible through <https://go.gov.sg/cotma10a>).

2.4 Response to an application for determination

The Respondent may submit a response to an application for an Assessor's determination in **Form D** (accessible through <https://go.gov.sg/cotma10a>), any time within **5 working days** after being served with the documents by the Applicant, to each of the following:

- (a) the Registrar;
- (b) the other party or parties to the construction contract (e.g. Respondent);
- (c) any person who is the Applicant's guarantor or surety, or who has issued any performance bond or equivalent, in relation to the carrying out of the construction works under the construction contract; and
- (d) any assignee of any other party to the construction contract.

The Respondent may include other relevant supporting documents (including any proposals or adjustments in relation to the cost increase during the earlier negotiations) which the Respondent wants to submit to the Assessor in respect of the application.

Proper preparation and presentation of the Respondent's case to the Assessor may be a critical factor in the success or failure of one's case. It is best to keep the submission simple so that the Assessor can quickly grasp the essential points to facilitate a fair and timely determination of the matter.

2.5 Application fee

Once the Registrar is satisfied that the Applicant has served the documents to the Respondent and the other relevant parties to the contract, the Registrar will inform the Applicant on the application fees to be paid.

The application fee is a **one-time payment to be borne by the Applicant and is non-refundable** irrespective of the application result.

For claimed costs increase up to:	Application fees	For claimed costs increase up to:	Application fees
\$100,000	\$4,000	\$3,250,000	\$16,500
\$150,000	\$4,500	\$3,500,000	\$17,000
\$200,000	\$5,000	\$3,750,000	\$17,500
\$250,000	\$5,500	\$4,000,000	\$18,000

For claimed costs increase up to:	Application fees	For claimed costs increase up to:	Application fees
\$300,000	\$6,000	\$4,250,000	\$18,500
\$350,000	\$6,500	\$4,500,000	\$19,000
\$400,000	\$7,000	\$4,750,000	\$19,500
\$450,000	\$7,500	\$5,000,000	\$20,000
\$500,000	\$8,000	\$5,500,000	\$20,500
\$600,000	\$8,500	\$6,000,000	\$21,000
\$700,000	\$9,000	\$6,500,000	\$21,500
\$800,000	\$9,500	\$7,000,000	\$22,000
\$900,000	\$10,000	\$7,500,000	\$22,500
\$1,000,000	\$10,500	\$8,000,000	\$23,000
\$1,100,000	\$11,000	\$8,500,000	\$23,500
\$1,200,000	\$11,500	\$9,000,000	\$24,000
\$1,300,000	\$12,000	\$9,500,000	\$24,500
\$1,400,000	\$12,500	\$10,000,000	\$25,000
\$1,500,000	\$13,000	\$10,500,000	\$25,500
\$1,750,000	\$13,500	\$11,000,000	\$26,000
\$2,000,000	\$14,000	\$11,500,000	\$26,500
\$2,250,000	\$14,500	\$12,000,000	\$27,000
\$2,500,000	\$15,000	\$12,500,000	\$27,500
\$2,750,000	\$15,500	\$13,000,000 and beyond	\$28,000
\$3,000,000	\$16,000		

The application fee is based on the claimed cost increase, between 1 October 2020 and 30 June 2022, which can be computed based on the formula below:

Claimed cost increase = the amount of foreign manpower salary costs incurred because of a COVID-19 event – the amount of foreign manpower salary costs that would have been incurred without such a COVID-19 event.

The claimed cost increase has to be clearly indicated in Form A when making an application for a determination.

The application fee is intended to be commensurate with the work done and expenses incurred by an independent Assessor to determine a case, based on the potential time to be spent by the Assessor corresponding to the complexity of the case.

Any other related cost and professional expenses that each party (i.e. the Applicant or the Respondent) may incur, e.g. cost of obtaining professional assistance from consultants or other specialist, are to be borne by the parties themselves. The Assessor will not award costs due to any other related professional expenses that a party has incurred.

2.6 Other procedures

Extension of Time

If the Applicant or Respondent wishes to extend the period within which they are required to serve or submit any form or document, they may make a request to the Registrar, or the Assessor if one has been appointed, by way of email as provided in the acknowledgement of receipt of the application. The parties should cite the Application No. (if any) in their email requests.

Amendment of Application / Response

If, before the Assessor's determination is made, the Applicant wishes to amend the application in Form A or the Respondent wishes to amend the response in Form D, they may submit a request to the Registrar by way of email as provided in the acknowledgement of receipt of the application. The parties should cite the Application No. (if any) in their email requests.

Withdrawal of Application

If the Applicant wishes to withdraw the application before the Assessor's determination is made, they may submit a request to the Registrar using **Form B** (accessible through <https://go.gov.sg/cotma10a>).

3. DETERMINATION PROCESS

3.1 Appointment of Assessor

After the application fee has been paid by the Applicant (and the time for the Respondent to submit a response has passed), the Registrar will appoint an Assessor to determine the application and inform all the relevant parties to the construction contract on such appointment.

The Assessors are experienced professionals who have the relevant qualifications related to the Built Environment sector and at least 10 years of working experience in or relating to the building and construction industry in Singapore.

Generally, the Assessor decides on the procedure to be adopted, for example a document-only procedure, a hearing or both. The starting point is for a hearing to be conducted by way of **exchange of emails**. The Assessor may request for clarifications or further documents by email.

However, if the Assessor is of the opinion that justice would be better served by an online or physical hearing, **no party may be represented by an advocate and solicitor** (including an in-house counsel who is admitted as an advocate and solicitor of the Supreme Court) **unless the Assessor permits otherwise**. The Assessor may permit an interpreter at the hearing if any party has difficulty in communicating in English, but the party will be responsible for sourcing for their own interpreter.

3.2 Assessor's determination

The Assessor will determine:

- (a) whether the case is one to which Part 10A applies; and
- (b) whether the Applicant has made a reasonable attempt to negotiate with the Respondent for adjustment on the increase in the foreign manpower salary costs.

Foreign manpower salary costs

The term has been defined as “the remuneration (including bonuses, allowances and overtime payments) payable to individuals who are neither citizens nor permanent residents of Singapore and who hold a work permit”.

The relief was meant to cover the increase in salary of the work permit holders due to a COVID-19 event, as compared to the salary of the same group of workers if COVID-19 did not happen. As such, costs for additional manpower for contractor to catch up on the delay is not covered by this relief.

The relief also covers an increase in an amount paid by the Applicant to its contractor, in relation to the carrying out of the construction work, being payment for any foreign manpower salary costs incurred by the Applicant.

Accordingly, the cost increase must have been incurred by the contractor prior to the application for the relief under Part 10A of the Act.

If the above two conditions are met, the Assessor will subsequently determine:

- (a) whether **there has been an increase in the amount of the foreign manpower salary costs** incurred by the Applicant at any time between 1 October 2020 and 30 June 2022, over what the Applicant would otherwise have incurred, because of a COVID-19 event; and
- (b) whether **it is just and equitable in the circumstances of the case to adjust the contract sum** to take into account such increase, and (if so) **the adjusted amount**.

The Assessor will make a determination that is just and equitable in the circumstances of the case after taking into account the following matters and principles:

- (a) whether **any party is entitled to obtain or has obtained relevant relief in respect of the manpower cost increase**;
- (b) the **loss suffered or benefit obtained by any party** in relation to the manpower cost increase;
- (c) any **adjustment of the contract sum proposed by the Respondent** during the negotiation;
- (d) the **impact that any proposed adjustment of the contract sum may have on another contract** that any party has with a third party; and
- (e) any **agreement between the parties** in relation to the manpower cost increase.

Example – Foreign Worker Levy rebate

The Government has been providing the Foreign Worker Levy (FWL) rebate to support the sector with its increased manpower costs. The FWL rebate is given for each Work Permit Holder (WPH) in the construction sector, increased from \$90 per month (introduced before the enactment of Part 10A for firms to adjust to much more stringent Safe Management Measures (SMM)) to \$250 per month from May 2021 to March 2022 (= nett \$160 per month to address significant manpower shortages due to tighter border restrictions). Even with the streamlining of SMM in March 2022, the FWL rebate was extended at \$250 per month for April and May 2022, and \$200 for June 2022.

As the FWL rebate is a relief in respect of the manpower cost increase, an Assessor will need to consider and offset the Government's rebate in the computation for the adjustment of the contract sum. Also, the Assessor will also need to consider the apportionment of the FWL rebate provided to the firm that offsets manpower cost increase incurred under the construction contract in question.

Suggested templates for Applicant's use to conduct eligibility-check and breakdown of the proposed adjustment to the contract sum is appended in [Annex A](#).

After the Assessor has made a determination, the Registrar will inform the Applicant, the Respondent, and all other parties who were served the application for an Assessor's determination. The Registrar may publish the facts of the case, the arguments and the determination without disclosing the names of the parties concerned or any information that may disclose their identities.

There is no appeal against an Assessor's determination, and it will be binding on all parties to the application. The mechanism is intended to provide for quick and effective practical solutions. Hence, neither the Registry nor the Assessor is required to give detailed grounds for the determination.

Considerations for determination

As any adjustment to the contract sum should be made on a **just and equitable basis**, an Assessor will attempt to ensure that the increase in the amount of the foreign manpower salary costs incurred by the Applicant is co-shared by the Respondent. Hence, parties should expect an Assessor to make a just and equitable adjustment of the contract sum to cover the claimed cost increase. Depending on the nature and circumstances of the particular case, the Assessor is further empowered to adjust the co-sharing quantum as the justice of the case requires, e.g. with due consideration of the parties' financial positions.

Example

Assuming a WPH is getting a remuneration of \$1,000 per month in January 2020. However, his remuneration has increased to \$1,300 per month since December 2020 due to the tight manpower supply arising from COVID-19. Hence, the cost increase will be $\$300 \times 19 \text{ months} = \$5,700$ (from Dec 2020 to Jun 2022). On a simple just and equitable basis, the Respondent is only liable to the Applicant for 50% of the cost increase, i.e. \$2,850.

With the FWL rebate, the cost increase 'suffered' by the Applicant will be reduced, resulting in a cost increase of only \$390, i.e. $\$2,850 - (\$160 \times 11 \text{ months})$ [May 2021 to March 2022 = 11 months] $- (\$250 \times 2 \text{ months})$ [April & May 2022] $- \$200$ [June 2022]. In that respect, the Assessor should consider adjusting the contract sum upwards by \$390 for every WPH.

3.3 Subsequent determination

The Act provides that the Assessor or another Assessor may vary or replace the determination if there has been a material change in the circumstances after it has been made, and if it is just and equitable for the variation or replacement to be made.

Parties who wish to apply for a variation or replacement of the determination should apply to the Registrar using **Form H** (accessible through <https://go.gov.sg/cotma10a>), and provide supporting documents on the material change in circumstances after the determination was made.

3.4 Error in Assessor's determination

If there is a clerical mistake, or error arising from an accidental slip or omission, in the Assessor's determination, the Applicant or Respondent may submit an application to correct error in determination using Form G (accessible through <https://go.gov.sg/cotma10a>).

3.5 Setting aside a dismissal or determination

If a party to a determination is absent from the hearing, the Assessor may dismiss the application or make a determination on the case. The determination will be made on the basis of the information and documents available to the Assessor.

If the party had a **good reason for being absent** and wishes to set aside the Assessor's decision (i.e. dismissal or determination), the party may make an application to set aside the Assessor's decision made in their absence. The application to set aside the Assessor's

decision must be made using **Form E** (accessible through <https://go.gov.sg/cotma10a>), any time within **5 working days** after the Assessor's decision is sent to the parties. The other party to the case, who wish to oppose the application for setting aside, may submit a reply in **Form F** (accessible through <https://go.gov.sg/cotma10a>).

3.6 Confidentiality of proceedings

The statements or documents submitted, created or made for the purposes of an assessment proceeding (including the application, response, and any other forms), or any information (whether written or oral) that is disclosed in the course of an assessment proceedings remain confidential. A party cannot disclose such information to a third party except:

- (a) with the consent of the other party to whom the information relates;
- (b) when the information is in the public domain; or
- (c) when the disclosure is necessary for the proceedings, the enforcement of an Assessor's determination or any proceeding before a court or arbitral tribunal.

Any party who contravenes the above is guilty of a criminal offence.

3.7 Enforceability of an Assessor's determination

An Assessor's determination is binding on all parties to the application. The contract sum as adjusted by an Assessor's determination may be enforced in the same manner as a judgment or an order of the court.

Nonetheless, the Applicant should make the necessary payment claims based on the adjusted contract sum. Dispute on the payment claims should be resolved in a separate tribunal, such as adjudication under the SOPA, arbitration or litigation.

***** The End *****

Annex A – Suggested templates for Part 10A claims:

- a) **Suggested template for eligibility checks and negotiation:** download template by clicking [Here](#) (or visit <https://go.gov.sg/cotma10a-negotiation>)
- b) **Suggested template for claimed cost breakdown form for application for Part 10A Assessor's determination,** download template by clicking [Here](#) (or visit <https://go.gov.sg/cotma10a-costs-breakdown>)

(The templates under Annex A can be manually located at <https://go.gov.sg/cotma10a>)

Annex B – COTMA Part 10A Workflow

