Contractual Support Measures for Built Environment (BE) Sector

Outreach Webinar
1 Nov 2021
Outline

1) Challenges faced by Built Environment (BE) sector stakeholders
   • Manpower-related Support

2) Support Measures for BE sector stakeholders
   • Relief from Legal and Enforcement Actions (COTMA Part 2)

3) Support Measures for Contractors
   • Extension of Time (COTMA Part 8A) [+ ex-gratia for public sector projects]
   • Prolongation Cost Sharing (COTMA Part 8B)
   • Adjustment of Contract Sum for WPHs (COTMA Part 10A)

4) Support Measures for Consultants (for public sector projects)
   • Ex-gratia Payment for Evaluating / Certifying Contractors’ Claims
   • Ex-gratia Payment to Consultants Due to Prolongation of Construction Period
   • Other Support for Consultants
### Challenges faced by Built Environment (BE) stakeholders

Current COVID-19 pandemic caused delay to construction contracts

<table>
<thead>
<tr>
<th>Developer</th>
<th>Consultants</th>
<th>Contractors</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Late handing over to homeowners</td>
<td>• Slow down in revenue as construction progress delayed</td>
<td>• No revenue during circuit breaker</td>
</tr>
<tr>
<td>• Unable to meet Project Completion Period (PCP)</td>
<td>• Additional work to manage time and cost claims / requests</td>
<td>• Incur prolongation costs</td>
</tr>
<tr>
<td>• Liable for Additional Buyer’s Stamp Duty (ABSD)</td>
<td></td>
<td>• Manpower cost increase due to shortage &amp; border restrictions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Material cost increase due to supply chain disruptions</td>
</tr>
</tbody>
</table>
1) More extensive manpower cost support provided to BE sector compared to many other sectors

2) Time-limited flexibility to recruit workers from PRC without having to enrol in Overseas Testing Centres for skill certification

3) Industry partners are piloting ways to resume inflow of construction WPHs in a safe manner and improve workers retention

4) COTMA Part 10A: Empowering Assessors to adjust foreign manpower cost increase

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Overview of COVID-19 (Temporary Measures) Act (“COTMA”)

**Part 2**
Temporary relief from legal and enforcement action

**Part 8A**
Universal extension of time (EOT) of 122 days (for 7 Apr to 6 Aug 2020)

**Part 8B**
Co-sharing of additional non-manpower-related prolongation costs

**Part 10A**
Empowering Assessors to adjust foreign manpower cost increase, if negotiation fails

Further support for public sector projects

- Simplified processing (flat rate 0.1% or $100K) of prolongation cost sharing for non-manpower items
- Additional 49-day EOT (7 Aug to 31 Dec 2020)
- Base 1.3% of monthly progress payment from 1 Oct 2020 to 30 Apr 2021 in respect of the manpower cost increase
Overview of COVID-19 (Temporary Measures) Act (“COTMA”)

Impact of COVID-19

Many individuals and businesses have been unable to perform contractual obligations because of COVID-19 and the resulting safe management measures

E.g. construction projects delayed due to circuit breakers and subsequent workers availability

Purpose of COTMA

✓ Provides temporary reliefs for those who are unable to perform certain types of contracts because of COVID-19

✓ Ensures that no single stakeholder bears an undue share of the burden imposed by COVID-19

Point to Note: COTMA likely covers construction contracts under your organizations if they were signed before 25 Mar 2020 (or before 1 Oct 2020 for Part 10A)

→ applies to both public and private sector projects, including subcontracts
COTMA Part 2

Temporary relief from legal and enforcement action

Relief period: between 1 Feb 2020 to 31 Dec 2021 (both dates inclusive)

Relief available only after parties have served a Notification for Relief (NFR) as a defence under COTMA Part 2. The other contract party cannot:

a) Claim for breach of contract, call on performance bond, start/continue court or insolvency proceedings arising from party’s inability to meet contractual obligations due to COVID-19, during the prescribed period (until 31 Dec 2021)

b) Impose liquidated damages (LD) for delay due to COVID-19, even after the end of the prescribed period (i.e. beyond 31 Dec 2021)

Point to Note:

Seek client’s understanding not to react to NFRs filed by contractors negatively, as contractors are exercising their rights to protect themselves from impact of COVID-19

COTMA Part 8A, 8B, 8C and 10A

**Part 8A**
- Universal Extension of Time (EOT) of 122 days

**Part 8B**
- Cost-sharing of non-manpower-related qualifying costs

**Part 10A**
- Assessor empowered to adjust the contract sum for cost increase in WPHs

**Part 8C**
- Extension to date of delivery of vacant possession in agreements for the sale and purchase of housing, commercial and industrial property
Extension of Time

COTMA Part 8A
- Provides universal EOT of 122 days

Further support for public sector projects
- Additional common EOT of 49 days

7 Apr 2020
6 Aug 2020
31 Dec 2020

- Contract completion date is extended automatically
- No application / request or filing of Notice is required
- No supplementary agreement is required

Need longer EOT?
Rely on the existing contract provisions and amicable arrangement with client

Estimated loss of productivity using year-on-year comparison of Industry-level certified progress payment

Aug 14 days
Sep 14 days
Oct 9 days
Nov 6 days
Dec 6 days
Total 49 days

Point to Note:
Clients can make reference to public sector approach for evaluating EOT, and adjust based on specific project situation.

Eligible contracts for Part 8A must be (i) entered into before 25 Mar 2020, (ii) remained in force on 2 Nov 2020, and (iii) were ongoing (i.e. not certified completed) as at 7 Apr 2020
Scenario 1  Works certified completed on 15 Oct 2020

→ Pro-rated 32 days EOT (14 days in Aug, 14 days in Sep, 4 days in Oct) will be granted

<table>
<thead>
<tr>
<th>Mth</th>
<th>Aug</th>
<th>Sep</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Days</td>
<td>14</td>
<td>14</td>
<td>9</td>
<td>6</td>
<td>6</td>
<td>49</td>
</tr>
</tbody>
</table>

Scenario 2  Contractor intends to claim >49 days for same period (i.e. Aug to Dec 2021)

→ Contractor provides substantiation for total days delay due to COVID-19 for GPE’s evaluation

→ If unable to justify, 49 days will still be granted

Note: GPEs have the flexibility to reduce (or not to grant) common EOT if site works are not affected
Prolongation Costs

COTMA Part 8B

Cost-sharing of non-manpower-related qualifying costs due to delay
• 50% of qualifying costs incurred, capped at 0.2% per month of delay, with a total cap of 1.8% of contract sum, during the relief period from 7 Apr 2020 to 31 Dec 2021

For public sector Construction contracts,
Approaches to simplify claim process for cost-sharing

1) **Contracts up to $100mil** Base 0.1% of awarded contract sum per month of delay (without need for substantiation)

2) **Contracts > $100mil** Base $100k per month of delay (without need for substantiation)

3) **Common computation method for equipment-depreciation costs**
   Equipment purchase value
   - Up to $200k: Monthly rental market rate
   - >$200k: Either audited financial statement OR straight-line depreciation

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Point to Note:
Clients can make reference to public sector approach to simplify evaluation/substantiation of Part 8B claims

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Eligible contracts must be (i) **entered into before 25 Mar 2020**, (ii) **remained in force on 2 Nov 2020**, and (iii) **were ongoing (i.e. not certified completed) as at 7 Apr 2020**.

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For public sector **Construction** contracts,
Approaches to simplify claim process for cost-sharing

**Step 1**
GPE calculates amount based on formula and inform Contractor

Cost sharing amount for the calendar month = \(0.1\% \text{ of awarded contract sum} \times \frac{\text{No. of days of delay}}{\text{No. of calendar days in the month}}\)

For $100mil contract, period between 7 Apr to 6 Aug 2020

<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Apr</td>
<td>0.1%</td>
<td>$100m</td>
<td>24</td>
<td>30</td>
<td>$80,000</td>
</tr>
<tr>
<td>May</td>
<td>0.1%</td>
<td>$100m</td>
<td>31</td>
<td>31</td>
<td>$100,000</td>
</tr>
<tr>
<td>Jun</td>
<td>0.1%</td>
<td>$100m</td>
<td>30</td>
<td>30</td>
<td>$100,000</td>
</tr>
<tr>
<td>Jul</td>
<td>0.1%</td>
<td>$100m</td>
<td>31</td>
<td>31</td>
<td>$100,000</td>
</tr>
<tr>
<td>Aug</td>
<td>0.1%</td>
<td>$100m</td>
<td>6</td>
<td>31</td>
<td>$19,354.84</td>
</tr>
</tbody>
</table>

**Cost-Sharing Amount for Specified Period from 7 Apr 2020 to 6 Aug 2020** $399,354.84

**Step 2**
Contractor include $399,354.84 in next progress payment, made from their entitlement under COTMA Part 8B.

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**BCA and SCAL Co-developed Claim Template for relief under Part 8B**

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>TEMPLATE - Claim for co-sharing of qualifying costs in construction contracts under Part 8B of COVID-19 (Temporary Measures) Act 2020 (&quot;Act&quot;)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Disclaimer. The purpose of this template is to facilitate parties to submit and assess claims under Part 8B of the COVID-19 (Temporary Measures) Act. While every effort has been made to ensure the accuracy of the template, the developer cannot be held liable for any errors.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Inputs in blue fonts below are examples of inputs for illustration only. Users are free to amend/adjust based on their claims.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Act ref</td>
<td>Requirement under the Act</td>
<td>Project Info</td>
<td>Specified period 1</td>
<td>Specified period 2</td>
<td>Specified period 3</td>
</tr>
<tr>
<td>4</td>
<td>Unable to complete construction works by original completion date</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sect 39D(1)(a)</td>
<td>Party B is unable to complete construction works by completion date (the completion date refers to original completion date before applying the extension granted under Part 8A)</td>
<td>Input on eligibility (&quot;Latest estimated completion date&quot; has to be later than &quot;Original contract completion date&quot;)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Eligible</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Original contract completion date</td>
<td></td>
<td></td>
<td></td>
<td>15-May-22</td>
</tr>
<tr>
<td>7</td>
<td>Latest estimated completion date</td>
<td></td>
<td></td>
<td></td>
<td>30-Sep-22</td>
</tr>
<tr>
<td>8</td>
<td>Qualifying Costs</td>
<td>Start date of the period in which B’s inability to complete construction works by the completion date is to a material extent caused by a COVID-19 event</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sect 39D(1)(b)</td>
<td>B’s inability is to a material extent caused by a COVID-19 event</td>
<td></td>
<td>7-Apr-20</td>
<td></td>
<td>1-Jun-20</td>
</tr>
<tr>
<td>9</td>
<td>7-Apr-20</td>
<td>1-May-20</td>
<td>1-Jun-20</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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COTMA Part 10A  
Empowering Assessors to adjust foreign manpower cost increase if negotiation fails

**Scope**
Applies to *construction contracts* under the Security of Payment Act, including subcontracts

**Cut off date**
Contract entered into **before 1 Oct 2020**

**Supported costs**
Increase in *foreign manpower salary costs only* (work permit holders) i.e. wage differences due to COVID-19

**Relief period**
Relief covers foreign manpower cost increase incurred by the contractor between **1 Oct 2020 to 31 Dec 2021**

**Mechanism**
Parties are encouraged to negotiate between them and settle on cost-sharing of manpower cost increase

Contractors can seek a determination from an Assessors if negotiation fails

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Exclude: (i) construction contracts works at or on any residential property which do not require permit/approval from BCA; and (ii) consultancy contracts

Manpower cost started to increase in Oct when all projects restarted

Any application to assessors must be filed before 28 Feb 2022 (2 months after 31 Dec 2021)
COTMA Part 10A

Contract parties to negotiate and adjust contract sum to take into account of increased foreign manpower salary costs incurred between 1 Oct 2020 to 31 Dec 2021

**If successful**

No need to apply for this relief & Parties proceed to adjust contract sum as negotiated

**If unsuccessful**

Contractor can seek determination from Assessor

Contractor to show proof evidence of reasonable attempts to negotiate or negotiations that took place

Assessor’s determinations

a) Check eligibility
   • Whether contract is eligible for relief;
   • Whether the contractor has made reasonable attempt to negotiate

If eligible

b) Make a determination
   • Whether there is an increased foreign manpower salary costs during 1 Oct 2020 to 31 Dec 2021 due to COVID-19 event;
   • Whether it is just and equitable to adjust contract based on the facts of the case

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For public sector Construction contracts, Approaches to simplify process for negotiation

**Step 1** GPE calculates amount based on formula and inform Contractor

\[
\text{Cost sharing amount for the calendar month} = 1.3\% \times \text{Progress Payment for each month between 1 Oct 2020 and 30 Apr 2021}
\]

<table>
<thead>
<tr>
<th>Month</th>
<th>Total certified progress payment [A]</th>
<th>1.3% cost sharing [B]</th>
<th>Amount [=A*B]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct 2020 to Apr 2021</td>
<td>$3.5mil</td>
<td>1.3%</td>
<td>$45,500</td>
</tr>
</tbody>
</table>

**Step 2** Parties agree to the revised Contract Sum. Contractor include $45,500 in next progress payment, and client makes the payment making reference to COTMA Part 10A.

No cost-sharing is provided between 1 May and 30 Sep 2021, as the Government has already provided an additional $160 FWL rebate per month for each worker.

**Point to Note:**

Clients can start negotiating with contractors on cost-sharing, taking reference from 1.3% used in public sector contracts. Adjust based on actual project situation.

Contractors can apply for determination from Assessors if negotiation fails.
Fluctuation Clauses

To better manage uncertain Material Costs

Increase in key construction material costs since 2020

✓ Steel Rebar price increased by 54%
✓ Ready Mixed Concrete by more than 20%
✓ Aluminium – 59% increase, Copper – 81% increase

For public sector Construction contracts,
Clause 33 current allows fluctuation for Concrete and Steel Rebars

Fluctuations
• Contract Sum shall be adjusted up or down to account for changes in material prices of 1) Concrete and 2) Steel Rebar.
• Adjustments based on price indices published by BCA

Point to Note:
Clients can make reference to PSSCOC Fluctuation clause and BCA material indices to provide contractors cost sharing on increase in concrete, rebar and other key construction materials
Support Measures for Consultants

a) Ex-gratia Payment for Evaluating / Certifying Contractors’ COVID-related Claims

b) Ex-gratia Payment to Consultants Due to Prolongation of Construction Period

c) Other Support for Consultants
Eligibility:

a. Consultants entitled to one-off ex-gratia payment as long as services were rendered
b. Superintending Officer (SO) and Quantity Surveyor (QS) are eligible by default
c. Gov agencies have discretion to assess which other consultants (apart from SO & QS) have rendered additional services

Remuneration Quantum:

<table>
<thead>
<tr>
<th>Role</th>
<th>Construction Project Value</th>
<th>Component – Evaluation / Certification of COVID-related:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(a) AP Claims</td>
</tr>
<tr>
<td>QS</td>
<td>≤$100mil</td>
<td>$1,000</td>
</tr>
<tr>
<td>SO</td>
<td>&gt;$100mil</td>
<td>$6,150</td>
</tr>
<tr>
<td>QS</td>
<td>≤$100mil</td>
<td>$3,450</td>
</tr>
<tr>
<td>SO</td>
<td>&gt;$100mil</td>
<td>$6,150</td>
</tr>
</tbody>
</table>
Ex-gratia Payment to Consultants Due to Prolongation of Construction Period

➢ **Applicable work-scopes:**

Standard additional services - i.e. work scope typically performed by the consultant on a monthly basis during the construction stage

(E.g. Supervision of works on site, maintaining site records of the works, evaluating and issuing monthly progress payments, attending regular project meetings)

➢ **Eligibility:**

a. Construction-related consultancy contracts **called on or before 1 Oct 2020**

b. For consultancy contracts based on %-fee, with corresponding construction contract awarded on or after 1 Oct 2020, clients may assess whether ex-gratia payment is needed as consultancy fees would have increased due to rising construction tender prices

➢ **Remuneration Approach:**

\[
\text{Estimated Monthly Payment Received by Consultant During Construction Stage} \times \left( \frac{\text{Approved Extension of Time (EOT) Duration Granted to Contractor for Delay Arising from COVID-19}}{\text{Months of Prorated Support from JSS*}} \right)
\]

* See next slide for details and illustration on proration of JSS support, if required

**Point to Note:**

Though not legislated, clients can provide support to consultants through the simplified approach above as consultants face additional operating costs due to project prolongations
## Ex-gratia Payment to Consultants Due to Prolongation of Construction Period

<table>
<thead>
<tr>
<th>Period for which the construction works covered and EOT already certified</th>
<th>Months of Pro-rated Support from JSS</th>
<th>Illustration – Scenario: Construction Works completed on 31 Oct 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tranche 1 (EOT period from Apr – Dec 2020)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7 Apr 2020 – 6 Aug 2020</td>
<td>2.5 months</td>
<td></td>
</tr>
<tr>
<td>7 Aug 2020 – 31 Dec 2020</td>
<td>1.5 months</td>
<td>(86 days / 147 days) x 1.5 months = 0.88 months</td>
</tr>
<tr>
<td>(Note: 86 days = no. of days from 7 Aug 2020 – 31 Oct 2020, 147 days = no. of days from 7 Aug 2020 – 31 Dec 2020)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Subsequent Tranches (EOT period from 1 Jan 2021)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Jan 2021 – 30 Jun 2021</td>
<td>1 month</td>
<td>Not applicable</td>
</tr>
<tr>
<td>From 1 Jul 2021 onwards</td>
<td>No deduction</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong> = 2.5 + 0.88 = 3.38 months</td>
<td></td>
<td></td>
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</tbody>
</table>
Other Support for Consultants

**Exercising Greater Flexibility in Facilitating Consultants’ Cashflow:**

1. *Providing interim payments*, where possible, especially when duration between payment milestones is long; and

2. Employer to *not reduce original equal monthly payments or to recover any monthly payments already paid out* to the consultants despite the lengthening of project duration.
Thank you

@BCASingapore

For the full list and details of available support measures that may be available to your firm, head over to https://go.gov.sg/bca-built-environment-support-measures or scan the QR Code below: