

Contractual Support Measures for Built Environment (BE) Sector

Outreach Webinar

1 Nov 2021

Privileged/Confidential information
may be contained in this presentation.
Please do not circulate or reproduce
without the permission of BCA.



Presented By:
Procurement Policies Department,
Business Development Group



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



Developer

- Late handing over to homeowners
- Unable to meet Project Completion Period (PCP)
- Liable for Additional Buyer's Stamp Duty (ABSD)



Consultants

- Slow down in revenue as construction progress delayed
- Additional work to manage time and cost claims / requests



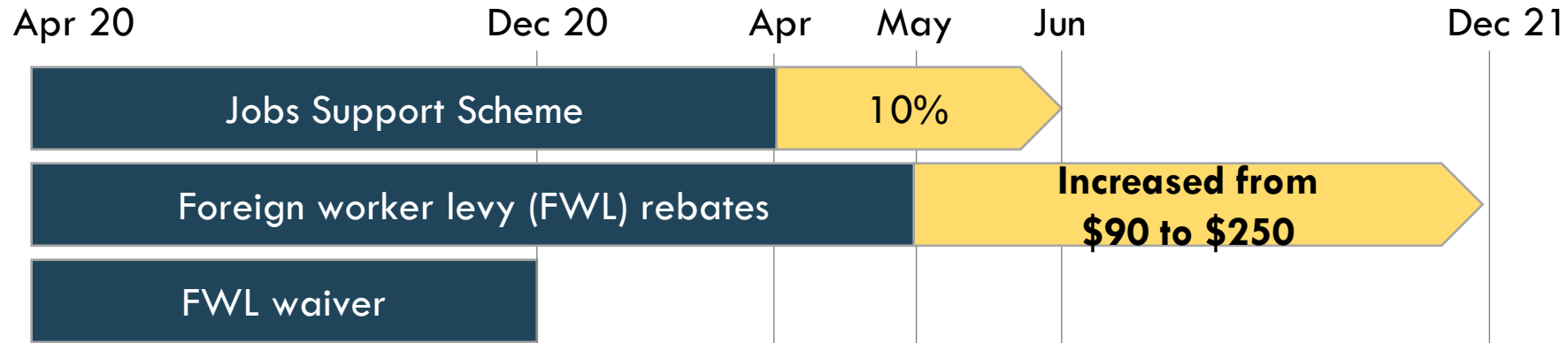
Contractors

- No revenue during circuit breaker
- Incur prolongation costs
- Manpower cost increase due to shortage & border restrictions
- Material cost increase due to supply chain disruptions

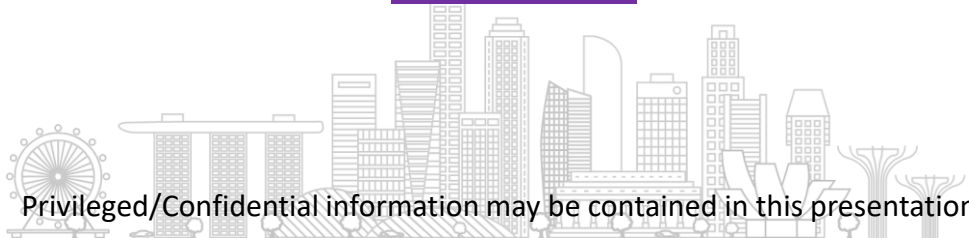


Manpower-Related Support

- 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



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

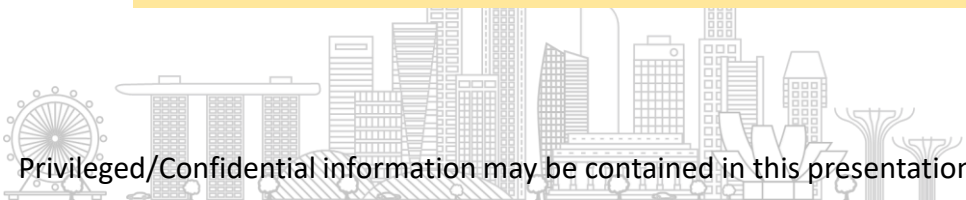
E.g. construction projects delayed due to circuit breakers and subsequent workers availability

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)

>1,500 cases
served NFR

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)

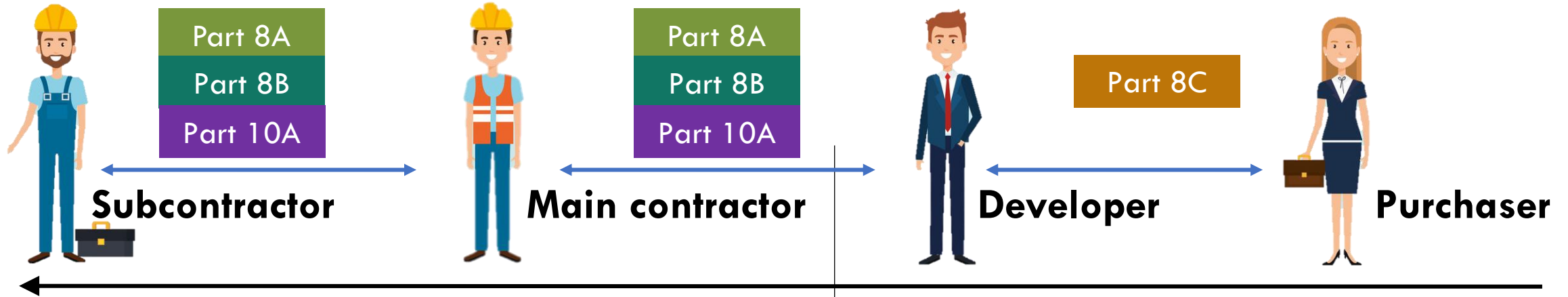
Point to Note:

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

More info at <http://www.mlaw.gov.sg/covid19-relief>



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

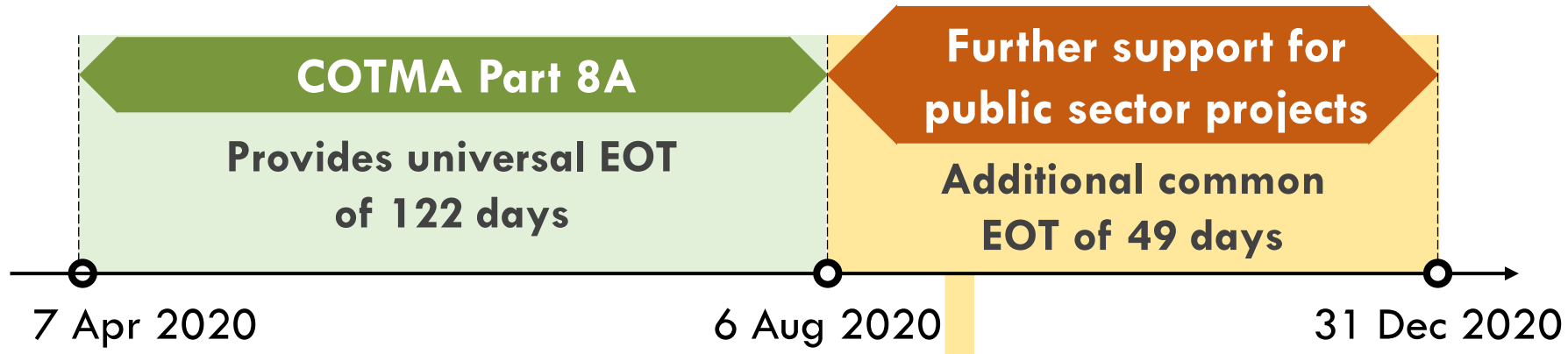
Assessor empowered to adjust the contract sum for cost increase in WPHs

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



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

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

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

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

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

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

Further support for public sector projects

Scenarios for Additional 49 days common EOT

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

Mth	Aug	Sep	Oct	Nov	Dec	Total
Days	14	14	9	6	6	49

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

Point to Note:

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

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.

Privileged/Confidential information may be contained in this presentation. Please do not circulate or reproduce without the permission of BCA.

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

Step 1 GPE calculates amount based on formula and inform Contractor

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

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

Month	Rate [A]	Contract sum [B]	Delay [C]	Calendar days [D]	Amount [A*B*C/D]
Apr	0.1%	\$100m	24	30	\$80,000
May	0.1%	\$100m	31	31	\$100,000
Jun	0.1%	\$100m	30	30	\$100,000
Jul	0.1%	\$100m	31	31	\$100,000
Aug	0.1%	\$100m	6	31	\$19,354.84
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

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

	A	B	C	D	E		
1	TEMPLATE - Claim for co-sharing of qualifying costs in construction contracts under Part 8B of COVID-19 (Temporary Measures) Act 2020 ("Act")						
2	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						
3	Inputs in blue fonts below are examples of inputs for illustration only. Users are free to amend/adjust based on their claims.						
4	Act ref	Project Info	Specified period 1	Specified period 2	Specified period 3	Specified pe	
4	Requirement under the Act		7 Apr 2020 to 30 Apr 2020	1 May 2020 to 31 May 2020	1 Jun 2020 to 30 Jun 2020	1 Jul 2020 to	
5	Unable to complete construction works by original completion date						
6	Sect 39D(1)(a) 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)	Input on eligibility ("Latest estimated completion date" has to be later than "Original contract completion date")					Eligible
7		Original contract completion date					15-May-22
8		Latest estimated completion date					30-Sep-22
9	Qualifying Costs						
10	Sect 39D(1)(b) B's inability is to a material extent caused by a COVID-19 event	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	7-Apr-20	1-May-20	1-Jun-20		



Template available in the Part 8A and 8B guide at <https://go.gov.sg/bca-guide-cotma-8a-8b>



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

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

Cut off date

Contract entered into **before 1 Oct 2020**

Manpower cost started to increase in Oct when all projects restarted

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**

Any application to assessors must be filed before 28 Feb 2022 (2 months after 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



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

If unsuccessful

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

Mechanism under COTMA

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



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

Step 1 GPE calculates amount based on formula and inform Contractor

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

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.

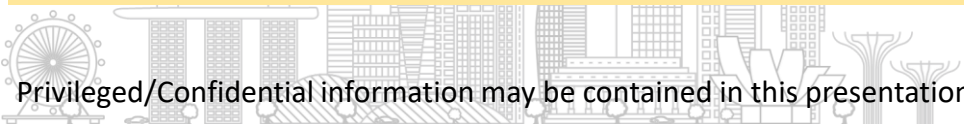
Month	Total certified progress payment [A]	1.3% cost sharing [B]	Amount [=A*B]
Oct 2020 to Apr 2021	\$3.5mil	1.3%	\$45,500

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.

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



Ex-gratia Payment for Evaluating / Certifying Contractors' COVID-related Claims

➤ **Intent:** Remunerate consultants for additional work scopes, which were beyond the provisions of existing construction contracts taken on by consultants due to COVID-19

➤ **Applicable work-scopes:** Evaluation / Certification of contractors' COVID-related claims:

Advance Payment (AP)

Prolongation Cost (PC)

Extension of Time (EOT)

➤ **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:**

Role	Construction Project Value	Component – Evaluation / Certification of COVID-related:		
		(a) AP Claims	(b) PC Claims	(c) EOT Claims
QS	≤\$100mil	\$1,000	\$3,450	NA
SO	>\$100mil		\$6,150	NA
QS	≤\$100mil		\$3,450	\$2,300
SO	>\$100mil		\$6,150	\$4,100

Consultants not required to substantiate claim

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:

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

$$\begin{array}{l} \text{Estimated Monthly Payment} \\ \text{Received by Consultant During} \\ \text{Construction Stage} \end{array} \times \left(\begin{array}{l} \text{Approved Extension of Time (EOT)} \\ \text{Duration Granted to Contractor for} \\ \text{Delay Arising from COVID-19} \end{array} - \begin{array}{l} \text{Months of Pro-} \\ \text{rated Support} \\ \text{from JSS*} \end{array} \right)$$

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

**Consultants not
required to
substantiate or
put up claim**

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

Period for which the construction works covered and EOT already certified	Months of Pro-rated Support from JSS	Illustration – Scenario: Construction Works completed on 31 Oct 2020
Tranche 1 (EOT period from Apr – Dec 2020)		
7 Apr 2020 – 6 Aug 2020	2.5 months	2.5 months
7 Aug 2020 – 31 Dec 2020	1.5 months	$(86 \text{ days} / 147 \text{ days}) \times 1.5 \text{ months} = 0.88 \text{ months}$ <p style="text-align: center;"><i>(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)</i></p>
Subsequent Tranches (EOT period from 1 Jan 2021)		
1 Jan 2021 – 30 Jun 2021	1 month	Not applicable
From 1 Jul 2021 onwards	No deduction	
		Total = 2.5 + 0.88 = 3.38 months



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



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> scan the QR Code below:

Thank you



@BCASingapore

