

30 November 2020

Dear Sir/Madam,

**COMMENCEMENT OF THE COVID-19 (TEMPORARY MEASURES) ACT 2020 -
(A) PART 8A (EXTENSION OF TIME FOR CONSTRUCTION CONTRACTS); AND
(B) PART 8B (TEMPORARY MEASURES FOR COST-SHARING IN CONSTRUCTION
CONTRACTS)**

Objective

This circular informs the built environment (“BE”) sector on the commencement of Part 8A and Part 8B under the COVID-19 (Temporary Measures) Act 2020 (“COVID-19 Act”) **from 30 November 2020**.

Reliefs under Part 8A and Part 8B of COVID-19 Act

2 The COVID-19 (Temporary Measures) (Amendment No. 3) Bill¹ was passed in Parliament on 3 November 2020. Part 8A and Part 8B under the COVID-19 Act support stakeholders in the BE sector affected by disruptions to construction timelines resulting from the COVID-19 pandemic and ensure that no single stakeholder bears an undue share of the burden imposed by COVID-19.

- a) Part 8A provides a universal Extension of Time (“EOT”) of 122 days, to address delays that arose during the period between 7 April 2020 and 6 August 2020 (both dates inclusive) for construction contracts; and
- b) Part 8B requires the co-sharing of additional non-manpower-related qualifying costs between contracting parties due to delays caused by COVID-19 during the period between 7 April 2020 and 31 March 2021 (both dates inclusive) (subject to any extension of the prescribed period).

3 To facilitate the understanding of the reliefs and processes under Part 8A and Part 8B of the COVID-19 Act, BE firms can refer to the “COVID-19 (Temporary Measures) Act 2020 - Part 8A & 8B Guide” available at <https://go.gov.sg/bca-guide-cotma-8a-8b>.

¹ Refer to BCA circular ref BCA ID 86.10.18 dated 3 November 2020 for the additional relief measures.

Support measures for Public Sector Construction Contracts

4 The reliefs under Part 8A and Part 8B of the COVID-19 Act apply to all construction contracts, including construction contracts to which the Government is a party. The earlier circulars/advisories² relating to 'ex-gratia co-sharing of the prolongation costs in public sector construction contracts due to COVID-19' will be superseded, with exception to the following, with effect from 30 November 2020:

- a) Providing equivalent EOT and cost-sharing on ex-gratia basis - Notwithstanding Part 8A and Part 8B of the COVID-19 Act only apply to contracts awarded before 25 March 2020, Government Procuring Entities ("GPEs") shall continue to provide equivalent reliefs of EOT and co-sharing of prolongation costs to construction contracts which were entered into on or after 25 March 2020 but with tenders closed on or before 1 June 2020. For construction contracts in which it has been assessed that works have been carried out between 20 April 2020 and 30 June 2020 (both dates inclusive), notwithstanding that such contracts are not eligible for relief under Part 8A, GPEs shall continue to assess and provide appropriate EOT for any delay in works between 7 April 2020 and 6 August 2020 (both dates inclusive); and
- b) Co-sharing of contractor-owned equipment costs - GPEs shall continue to co-share contractor-owned equipment costs as part of the prolongation costs, notwithstanding that costs incurred in respect of contractor-owned equipment is not part of qualifying costs under Part 8B.

Please refer to Annex A for more details on the key differences between Part 8A & Part 8B under the COVID-19 Act and the previous guidelines issued for public sector construction contracts. Recommended approaches for public sector construction contracts are also included in Annex A.

Clarifications

5 For enquiries or feedback on the above, please contact BCA at <https://www.bca.gov.sg/feedbackform/>.

Thank you.

Yours faithfully

TAN CHEE KIAT
GROUP DIRECTOR
BUSINESS DEVELOPMENT GROUP
for CHIEF EXECUTIVE OFFICER
BUILDING AND CONSTRUCTION AUTHORITY

² Refer to BCA advisory to government agencies and industry circular on "Ex-Gratia Co-Sharing of Prolongation Costs due to COVID-19" dated 29 June 2020 and subsequent circular on "Treatment of Claims Arising from COVID-19 in Public Sector Construction Contracts" dated 25 September 2020.

Annex A – For public sector construction contracts only: recommended approaches under Part 8A & Part 8B of the COVID-19 Act

	Reliefs under Part 8A & 8B of COVID-19 Act	Previous approach for public sector projects	Recommended approach for public sector projects to align with Part 8A & 8B from 30 November 2020
[Part 8A]	Extension of Time (EOT) for Construction Contracts		
Eligibility	<p>Construction contracts that:</p> <ul style="list-style-type: none"> were entered into before 25 March 2020; remained in force on 2 November 2020; and were ongoing as at 7 April 2020 (i.e. construction works not certified completed), and <p>Excludes construction contracts where:</p> <ul style="list-style-type: none"> construction works were carried out between 20 April 2020 and 30 June 2020 (both dates inclusive). 	<p>On-going construction contracts:</p> <ul style="list-style-type: none"> with tenders closed on or before 1 June 2020, and <p>Exclude construction contracts that:</p> <ul style="list-style-type: none"> did not stop or have substantially restarted before 6 August 2020. For such contracts, GPEs can adjust the EOT to be granted accordingly. 	<p>For public sector projects, GPEs shall continue to provide reliefs to construction contracts entered into on or after 25 March 2020 but with their tenders closed on or before 1 June 2020.</p> <p>For construction contracts in which it has been assessed that works have been carried out between 20 April 2020 and 30 June 2020 (both dates inclusive), GPEs shall continue to assess and provide appropriate EOT for any delay in works occurring between 7 April 2020 and 6 August 2020 (both dates inclusive).</p> <p>For illustration</p> <p><u>Scenario 1:</u> The Superintending Officer (SO) assessed that works substantially restarted on 25 June 2020.</p> <p>Under Part 8A, the contractor will not be eligible for the EOT relief as works were carried out between 20 April 2020 and 30 June 2020. Nonetheless, the project SO can grant EOT for period between 7 April 2020 and 25 June 2020 on an ex-gratia basis.</p> <p><u>Scenario 2:</u> Work restarted on 1 July 2020.</p> <p>The contractor will be eligible for the full EOT of 122 days under Part 8A of the COVID-19 Act.</p> <p><u>Scenario 3:</u> Tender closed on 30 April 2020 and contract commencement date was 1 July 2020. The contract was only able to start work on site on 15 July 2020 due to unavailability of workers earlier.</p> <p>Under Part 8A, the contractor will not be eligible since contract was entered into after 25 March 2020. For public sector, the SO can grant EOT for period between 1 July 2020 and 15 July 2020 on an ex-gratia basis.</p>
Duration	<ul style="list-style-type: none"> 122 days in relation to delays occurring in the period between 7 April 2020 and 6 August 2020 (both dates inclusive) 	<ul style="list-style-type: none"> 4-month universal Extension of Time (EOT) in relation to delays occurring in the period between 7 April 2020 and 6 August 2020 (both dates inclusive) 	The previous approach is consistent with Part 8A of the COVID-19 Act i.e. 122 days.
Process	<ul style="list-style-type: none"> Automatic entitlement 	<ul style="list-style-type: none"> Automatic entitlement unless project did not stop or has substantially restarted before 6 August 2020 Waive the requirement for contractors to submit the notice and/or substantiate the EOT claims under the Public Sector Standard Conditions of Contract (“PSSCOC”) Clause 14.3(1) 	<p>The previous approach is consistent with Part 8A.</p> <p>For contractor’s inability to complete construction works by completion date outside the period between 7 April 2020 and 6 August 2020 (both dates inclusive), to a material extent caused by a COVID-19 event, GPEs can still grant EOT on an ex-gratia basis.</p> <p>For avoidance of doubt, any EOT granted due to COVID-19 is <u>not an</u> automatic entitlement to cost-sharing under Part 8B. Refer to approach for Part 8B below.</p>

Annex A – For public sector construction contracts only: recommended approaches under Part 8A & Part 8B of the COVID-19 Act

	Reliefs under Part 8A & 8B of COVID-19 Act	Previous approach for public sector projects	Recommended approach for public sector projects to align with Part 8A & 8B from 30 November 2020
[Part 8B]	Temporary Measures for Cost-sharing in Construction Contracts		
Eligibility	<p>Construction contracts that:</p> <ul style="list-style-type: none"> were entered into before 25 March 2020; remained in force on 2 November 2020; were ongoing as at 7 April 2020 (i.e. construction works were not certified completed), and <p>Excludes construction contracts where:</p> <ul style="list-style-type: none"> party procuring construction works is an individual. 	<p>On-going construction contracts:</p> <ul style="list-style-type: none"> with tenders closed on or before 1 June 2020, and <p>Exclude contracts that:</p> <ul style="list-style-type: none"> did not stop or have substantially restarted before 6 August 2020. For such contracts, GPEs can adjust the EOT to be granted accordingly. 	<p>For public sector projects, GPEs shall continue to provide reliefs to construction contracts entered into on or after 25 March 2020 but with their tenders closed on or before 1 June 2020.</p>
Criteria for 50% cost-sharing	<ul style="list-style-type: none"> Unable to complete construction works by completion date Inability is to a material extent due to a COVID-19 event As a result of the inability, the contractor has incurred qualifying costs during the period between 7 April 2020 and 31 March 2021 (both dates inclusive) (subject to any extension of prescribed period) 	<ul style="list-style-type: none"> Based on EOT due to COVID-19 certified by project Superintending Officer (SO) 	<p>To align with Part 8B for consistency across public and private sector projects i.e. to establish contractor's inability to complete "the construction works by the completion date". The Employer or project SO has the flexibility to consider certified EOT or other documentary evidence (e.g. critical path analysis, comparison of workforce deployed on site, certified progress payment, etc) to establish that the contractor's inability to complete the construction works by the completion date was materially caused by a COVID-19 event. Stakeholders can refer to the template for claims under Part 8B relief, available at https://go.gov.sg/bca-template-cotma-8a-8b.</p>
Application of 0.2% monthly cap	<ul style="list-style-type: none"> For each specified period (i.e. between first and last day of each calendar month, except for April 2020 for which the specified period will be between 7 April 2020 and 30 April 2020) For period between 7 April 2020 and 31 March 2021 (both dates inclusive) (subject to any extension of prescribed period) 	<ul style="list-style-type: none"> Per month of prolongation, subjected to an overall cap of 9 months From 7 April 2020 onwards 	<p>To align with Part 8B for consistency across public and private sector projects i.e. based on a specified period, which is a calendar month other than for the month of April 2020, and the cost-sharing relief applies to qualifying costs incurred between 7 April 2020 and 31 March 2021 (both dates inclusive).</p>
Qualifying costs	<ul style="list-style-type: none"> Includes costs incurred in respect of rented plant and equipment only 	<ul style="list-style-type: none"> Includes rented plant and equipment Includes owned equipment 	<p>For public sector projects, GPEs shall continue to allow co-sharing of contractor-owned equipment costs.</p>
	<p>For all construction contracts (including subcontracts) where one party undertakes to carry out 'construction works' for another party. Hence, the main contract and subcontracts' qualifying costs should be assessed independently based on the actual costs incurred under each contract.</p>	<p>Contractors can include the breakdown of additional costs incurred, including costs incurred by their subcontractors and/or suppliers under their claims to GPEs.</p>	<p>To align with Part 8B for consistency across public and private sector projects i.e. based on actual qualifying costs incurred under each contract.</p>

Annex A - Key differences between Part 8A and Part 8B under the COVID-19 Act and recommended approach for public sector construction projects

	Reliefs under Part 8A & 8B of COVID-19 Act	Previous approach for public sector projects	Recommended approach for public sector projects to align with Part 8A & 8B from 30 November 2020
[Part 8B]	Temporary Measures for Cost-sharing in Construction Contracts		
Supplementary agreement / separate letter of agreement	No requirement	To make the ex-gratia payment, GPEs have the flexibility to assess and determine the most suitable mechanism.	GPEs can continue to assess and determine the most suitable mechanism.
Goods and services tax (GST)	No mention	<ul style="list-style-type: none"> • GST is not applicable to ex-gratia payment and contractors are not required to charge GST to GPEs. Contractors, if GST registered, must not issue tax invoices to the GPEs for this ex-gratia payment. • GST incurred by the main contractor in the expenses shall be excluded from the co-payment. 	GST will be excluded.