

COVID-19 (TEMPORARY MEASURES) ACT 2020

Flowchart on Impact of Bill on Relief, EOT, L&E, Cost Claims

May 2020



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Entitles Contractors to <u>temporary relief</u> for "COVID-19 events".

Is your contract obligation to be performed on or after 1 February?

If yes, is your inability to a material extent caused by a COVID-19 event?

If yes, the Contractor may serve a Notification for Relief on Client.

Dispute on the applicability of the Act

Parties to negotiate to reach a compromise

Unless the matter has been settled before the issuance of the Notification for Relief, Contractor's entitlement to seek protection under the Act is not affected. Contracting parties are also not bounded by the Contract Administrator's EOT decision.

EOT

Outbreak of disease, epidemics/ pandemics are not an event of force majeure neither do the facts fall within the relevant events under most Clients' construction contracts

To check the PC to confirm no relevant amendments to the standard form CoC whether under PSSCOC, REDAS or SIA.

If rejected?

Relief measures under the Act prohibits the recovery of LD for the delay period caused, to a material extent, by a COVID-19 Event

EOT Claims should not be rejected outright.

BCA has advised government agencies to take a sympathetic view when considering request for EOT, for project delays due to COVID-19, subject to substantiation, mitigation and notification

Apply for Assessor to determine the issues

Such application must be made to the Registrar any time after the service of the notification for relief and before the end of 2 months after the end of the prescribed period.

Application for assessor's determination under the Act is free of charge.

Note that Assessor will not determine extent of delay attributable to COVID-19 or LD payable.

Such matters will be resolved through contractual dispute route.

LOSS AND EXPENSES

No L&E payable in any event, in absence of earlier contractual agreement.

To be sure, do check again Contract PC

Why?

L&E claims do not arise unless out of the breach or fault of the Employer in carrying out its contractual obligation

Assuming there is no acceleration issues if the Client were to consider and extend completion timeline giving due regards to the effect of COVID-19 Event

The new Act does not give the contractor any monetary entitlements (whether for prolongation costs, loss and expense or anything else).

Unless there are specific contractual provision permitting such loss and expenses and cost claims due to a COVID-19 Event, generally the Employer is not liable to compensate the Contractor for loss and damages caused by reasons other than act of prevention or breach of contract by the Employer.



ARCADIS RECOMMENDATIONS

EXISTING PROJECTS

The relief and prohibition of action under the Act would only be triggered after the Contractor served a compliance Notification for Relief.

Parties should strategise and consider if issues can be resolved through a commercial compromise / agreement between the parties and adopting a proactive and flexible approach

As there is for most contracts no L&E but EOT relief only, Employer should be careful in assessing Contractor's EOT applications and consider their merits fully.

Allowing EOT

Employers can write to Contractor and allow EOT for at least the period of the Circuit Breaker

Acknowledge receipt of notification

Assuming work progress is disrupted, invite the Contractor to provide proper and detailed documents and records to substantiate the impact on the progress of works and how their inability to carry out their works was caused by COVID-19 event to a material extent.

Ensure Contractor includes:

- 1) Mitigation efforts by a specified date
- 2) Clearly state how they will provide further updates by a certain date after each subsequent calendar month

COMMERCIALLY AGREE

Consider a holistic review of the time for completion and commercially agree, on an exgratia basis, a realistic revised Completion Date for all parties to focus and move the project towards completion.

For public projects, the Employer should take heed from BCA advisory to government agencies on considering request for EOT for project delays due to a COVID-19 Event and authorise the SO/contract administrator to evaluate such EOT claims accordingly

Rejecting EOT Contractor may well trigger the assessor determination process under the Act and assuming not withdrawn / amicably resolved, and assessor would have to determine

NEW PROJECTS

The Act is **not** relevant for new contracts or new projects entered into now.

It only provides temporary relief from the inability to perform contractual obligations under certain contracts entered before 25 Mar 2020 and for obligations to be performed on or after 1 Feb 2020.

CHECK WITH YOUR LEGAL TEAM

We advise that all clients discuss with your in house and external legal Counsel for good order on the implications of the Act. The Act is unique and reflected the urgent need for certain temporary measures and other matters relating to the COVID-19 pandemic and was passed by Parliament in some hurry with all 3 readings and assent by President all on the same date (7 Apr 2020).

CHALLENGE THE NOTIFICATION

Client may challenge the notification and the applicability of the Act to provide relief to the Contractor, e.g. the delay was not caused by COVID-19 event under the Act.

An Assessor will be appointed to determine whether the temporary relief measures apply, and if so, to make a further determination to achieve a just and equitable outcome in the circumstances of the case and he may agree with contractor.



