

Our ref: BCA ID 86.10.18

Procurement Policies Department
Business Development Group

6 August 2021

Dear Sir/Madam,

COMMENCEMENT OF THE COVID-19 (TEMPORARY MEASURES) ACT 2020 – PART 10A (RELIEFS FOR CONSTRUCTION CONTRACTS AFFECTED BY INCREASE IN FOREIGN MANPOWER SALARY COSTS)

Objective

This circular informs the Built Environment (“BE”) sector on the commencement of Part 10A under the COVID-19 (Temporary Measures) Act 2020 (“COTMA”) **from 6 August 2021**.

Background

2 While construction works have resumed after end of Circuit Breaker, firms in the BE sector continue to face challenges due to the COVID-19 pandemic. These include foreign manpower shortages and higher manpower cost due to tightened border control measures. In view of these challenges, an additional legislative relief under Part 10A of the COTMA was passed in the Parliament on 11 May 2021 to ensure that everyone along the value chain steps up to co-share the increased costs.

Commencement of Part 10A

3 **Part 10A will commence on 6 August 2021.** Part 10A provides a relief framework to allow contract parties to adjust the contract sum to address the increase in foreign manpower salary costs in respect of Work Permit Holders (WPHs) due to the COVID-19 pandemic. The intent of Part 10A is for parties to negotiate and reach a mutually agreeable arrangement to address the increase in foreign manpower salary costs, failing which parties can seek an Assessor’s determination to adjust the contract sum of eligible construction contracts. When making a determination, the Part 10A Assessor is required to take into account the prescribed matters and prescribed principles to seek an outcome that is just and equitable in the circumstances of the case. The Assessor would also take into account all the facts, including the loss suffered or benefit obtained by any contractual party in respect of the increase in foreign manpower salary costs such as Foreign Worker Levy (FWL) rebates received.

Eligible contracts

- 4 COTMA Part 10A is applicable to a construction contract that satisfies the following criteria:
- ✓ Construction contract entered into before 1 October 2020, including construction contract that was automatically renewed on or after 1 October 2020;
 - ✓ Construction works under the construction contract have not been certified as completed as at 10 May 2021; and
 - ✓ 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).

However, COTMA Part 10A does not cover construction contracts for the carrying out of construction works at or on a residential property (within the meaning of the Residential Property Act (Cap. 274)) that do not require the approval of the Commissioner of Building Control under the Building Control Act (Cap. 29).

Action required from contract parties (e.g. clients, main contractors, subcontractors)

- 5 With the commencement of COTMA Part 10A:
- a) There is further incentive for parties to discuss a mutually agreeable cost-sharing arrangement to address the increase in foreign manpower salary costs - Contractors are encouraged to discuss with their customers/clients (who procured their services) to reach a mutually agreeable arrangement to address the increase in foreign manpower salary costs in respect of Work Permit Holders performing the project. This will be applicable to every tier of eligible construction contracts (e.g. main contractors to negotiate with developers, subcontractors to negotiate with main contractors, etc).
 - b) Application for a Part 10A Assessor determination - Should the discussion be unsuccessful, contractors can seek a determination by a Part 10A Assessor to adjust the contract sum to address the increase in foreign manpower salary costs at the following link: <https://go.gov.sg/cotma10a>.

6 For public sector construction contracts, BCA will provide details on the approach to address the cost-sharing of increase in foreign manpower salary costs shortly, with the aim of minimising the time and efforts spent by all parties in negotiating the cost sharing.

7 More details on COTMA Part 10A, including application forms for determination from an Assessor, suggested cost-sharing templates and guides are available at <https://go.gov.sg/cotma10a>.

Clarification

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

Thank you.

Yours faithfully

ANG LIAN AIK
GROUP DIRECTOR
BUSINESS DEVELOPMENT GROUP
for CHIEF EXECUTIVE OFFICER
BUILDING AND CONSTRUCTION AUTHORITY

COTMA Part 10A

Reliefs for construction contracts affected by increase in foreign manpower salary costs

#BEStrongSG

Contract parties to **negotiate** and **adjust** contract sum to take into account of increased foreign manpower salary costs incurred between 1 Oct 2020 to 30 Sep 2021.



If successful

If unsuccessful

NO NEED to apply for this relief & Parties proceed to adjust contract sum as negotiated



Contractor can seek determination from Assessor

NEW

Contractor to show proof 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 30 Sep 2021 due to COVID-19
- Whether it is just and equitable to adjust the contract sum based on the facts of the case



This infographic is for reference only. For a full appreciation of rights and obligations, please refer to the COTMA and seek legal advice. Further details of the relief, together with the subsidiary legislation, will be announced later.

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All companies registered or listed in BCA's Builders Licensing Scheme (BLS) and Contractors Registration System (CRS)

All Government Procuring Entities (GPEs)