

ALLEN & GLEDHILL

COVID-19

CONSIDERATIONS OF COVID-19 (TEMPORARY MEASURES) ACT: A LEGAL PERSPECTIVE

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OVERVIEW

- **CASE STUDY**
- **ASSESSOR DETERMINATION PROCESS**
- **CONSTRUCTION CONTRACTS POST COVID-19**

CASE STUDY

- Contract between Employer and Contractor for civil works based on PSSCOC Design & Build 2014
- Contractor's progress behind schedule prior to Covid-19
- Contractor submitted claims for time (EOT) and cost relief (loss and expense) on account of Covid-19
- Contractor submitted notification for relief under COTMA

CASE STUDY

- **Employer's concerns:**

- Is Contractor “preparing for war”?
- Is Contractor trying to “escape” from historical delays?
- Is Contractor claiming more than contractually entitled?
- Is Contractor entitled to the claims based on COTMA?

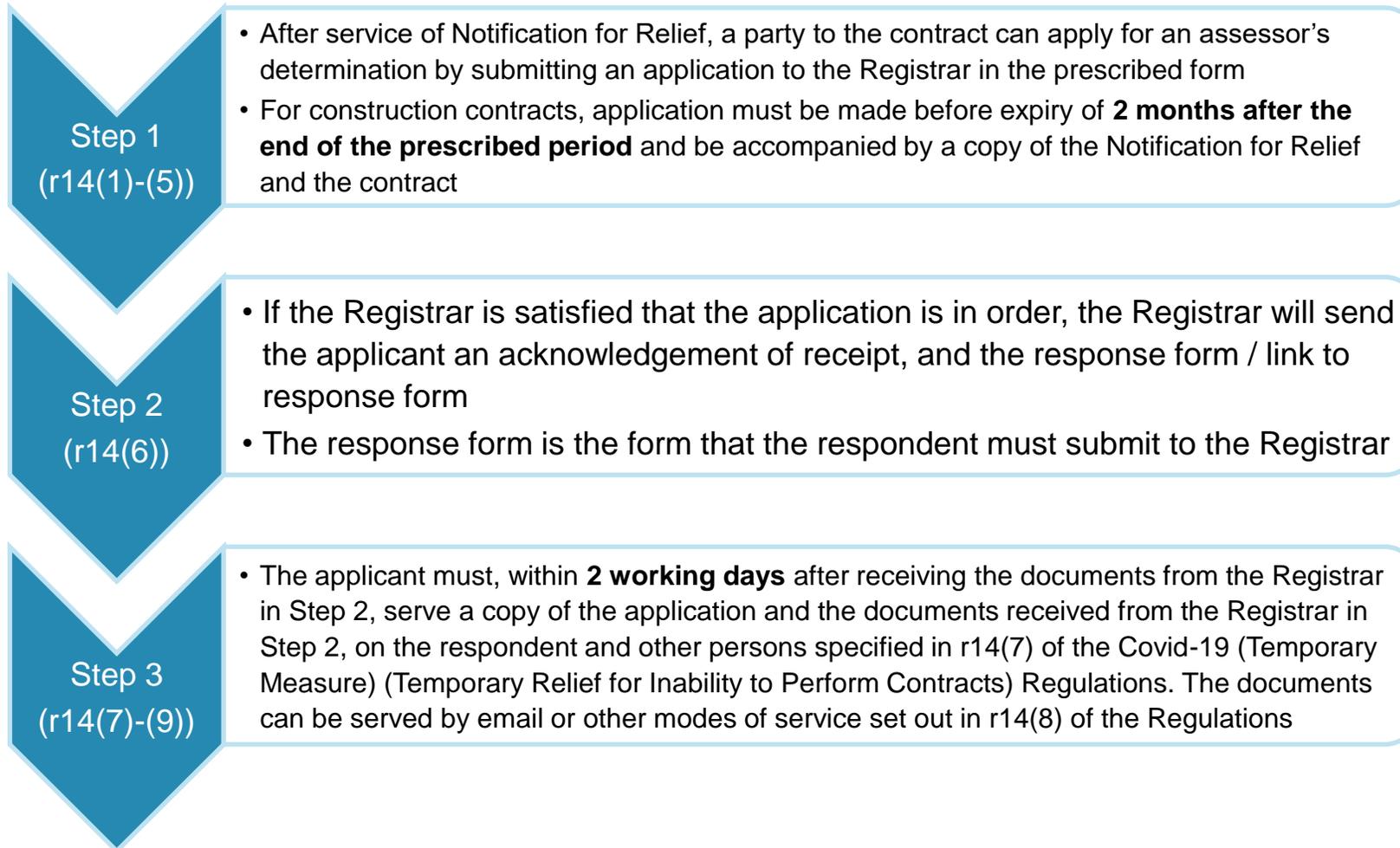
- **Contractor's concerns:**

- How can I bear the adverse impact of Covid-19, which I have not priced and planned for at tender?
- How can I finish the project without more time and money?

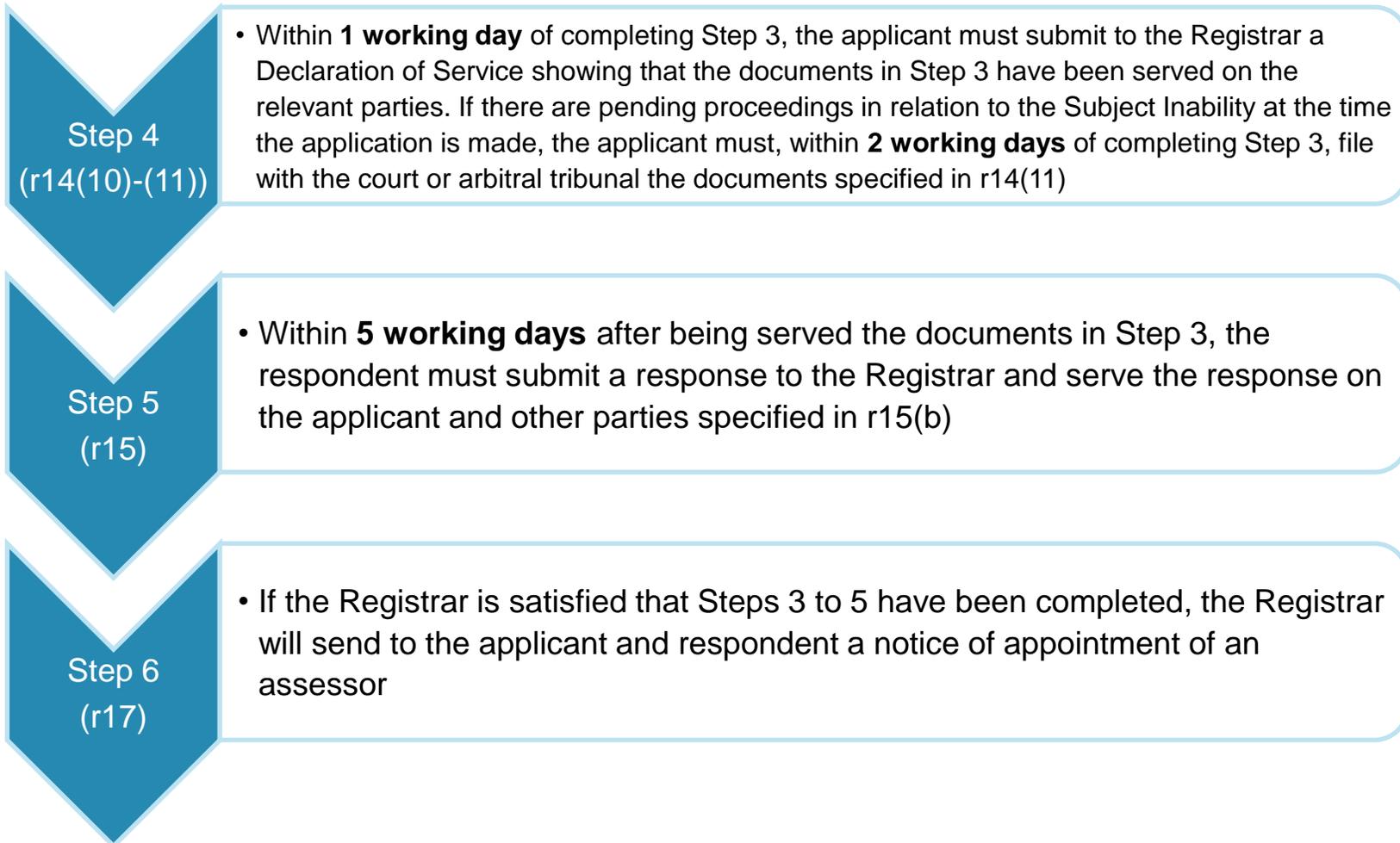
CASE STUDY

- **Shared concerns** – NOT in either party's interest:
 - to turn relationship into an adversarial one
 - for Contractor to go into financial difficulties
 - for quality of deliverables to be compromised
 - to take on the risk / uncertainty of formal legal proceedings
- **Supplemental agreement:**
 - Agreed time and cost adjustments
 - Contractor's committed deliverables
 - Enhanced project monitoring and reporting

APPLICATION FOR ASSESSOR'S DETERMINATION



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Step 7 (r18)

- The hearing will generally be conducted by an exchange of emails. Assessor may dispense with a hearing and determine based solely on the documents submitted
- If the assessor is of the opinion that the interest of justice would be better served by an online or physical hearing, the assessor may direct the hearing to be held via electronic means, or for the parties to attend before the assessor at a physical hearing

Step 8

- After the assessor has made a determination, the Registrar will inform the applicant, the respondent, and other parties served with the application
- The assessor's determination is binding on all parties to the application and there is no appeal from an assessor's determination

CONSTRUCTION CONTRACTS POST COVID-19

- Shift from traditional contracting to collaborative contracting?
- Force majeure is not a defined term and epidemic / pandemic is not a ground for EOT under PSSCOC 2014
- New grounds for EOT under Clause 14.2 of PSSCOC 2020
 - (a) **An event which is beyond the Contractor's reasonable control (a force majeure event).**
...
 - (q) **Epidemics or pandemics resulting in shortages of the labour, goods, materials or Construction Equipment required for the Works or inability to proceed with any part of the Works.**

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THANK YOU

Notes

This presentation does not necessarily deal with every important topic nor cover every aspect of the topics with which it deals. This presentation is intended to provide general information only and does not contain or convey any legal or other advice.

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