

**Contract Management:  
EOT & COST-SHARING  
(Under COTMA)**

**ELDAN LAW**<sup>LLP</sup>  
ADVOCATES & SOLICITORS

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# ROADMAP

01 COTMA 122 DAYS EOT vs CONTRACTUAL EOT

02 EOT FOR ACTIVITIES OUTSIDE OF 7 APRIL to 6 AUG 2020?

03 WHAT IF CONTRACTOR IS ALREADY IN DELAY?  
(CONCURRENT DELAY)

04 PROVING ENTITLEMENT TO COST-SHARING CLAIM

06 CLAIMING IN ADJUDICATION AND OTHER PROCEEDINGS

07 NOTIFICATION OF RELIEF TO AVOID LD



# PART 8A: 122 DAYS EOT

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# 122 DAYS OF EOT

- Completion date for “construction works” is extended by 122 days
- Extension covers the period 7 April 2020 to 6 August 2020

# No Overlap

- If Contract provides for grant of EOT, contractual grant of EOT takes precedence, i.e. 122 days will be less whatever has been granted under the contract
- Some contracts may have provisions for EOT - eg. SIA ("shortage of labour", "shortage of goods"), PSSOC ("compliance with requirements of law, regulations, or public authority")
- Claiming contractual EOT (which may have notification requirements) no longer so important for period 7 April 2020 to 6 August 2020
- But should claim for contractual EOT if delaying event entitles contractor to prolongation costs

# Period Outside 7 April-6 Aug

- If the delaying event falls outside 7 April - 6 August 2020, contractual EOT should be applied for

# Concurrent Delay:

- What if the contractor was already in delay, and would not have completed the works before 6 August 2020?
- Contractor would *still be entitled* to this 122 days of universal EOT



# PART 8B: COST-SHARING

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# PROVING ENTITLEMENT

## Pre-Conditions to entitlement to Cost-Sharing:

1. “unable to complete any of those construction works by the completion date”
2. “inability is to a material extent caused by a COVID-19 event”
3. “incurred or incurs any qualifying cost” in connection with the performance of the construction works

\* “COVID-19 event” includes compliance with SG law or that of another country that is made by reason of Covid-19: Section 2, COTMA.



## PERIOD OF CLAIM

- Prescribed period where cost-sharing may be claimed is 7 April 2020 to 31 March 2021 (>11 months)
- This is longer than the earlier ex-gratia cost sharing grant for public-sector contracts, under BCA Circular 25 Sept 2020 (which was for 9 months only)
- But note the pre-conditions highlighted earlier



## CLAIM IN ADJUDICATION

- Cost-sharing claim “**must**”<sup>\*</sup> be claimed in a payment claim
- May be submitted to adjudication under the SOP Act
- But may also be claimed as a “debt due” in arbitration or court proceedings

\* Section 39D(6)



# ADJUDICATION

- Overrides Section 17(2A) of the SOP Act preventing claims for loss or expense
- Adjudication Determination is interim and temporary only
- Cost-sharing entitlement and amount may be challenged in arbitration/ court proceedings

# WHAT ABOUT LIQUIDATED DAMAGES?

- Outside the 122 days of EOT
- If there is delay
- And no other entitlement to EOT
- Liquidated damages for delay will apply
  
- Eg. Contractor may claim cost-sharing up till 31 March 2021, but Employer may also seek to impose liquidated damages for delay during the same period.
  
- To avoid imposition of LD before 31 March 2021, Contractor should claim relief under Part 2, Section 6 of COTMA.
- To obtain relief, Notification for Relief under COTMA **must** be issued before 31 March 2021.



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THANK YOU