

COVID-19 (Temporary Measures) (Amendment No. 3) Bill

Bill No. 12/2021 [Urgent Bill].

Read the first time on 10 May 2021.

A BILL

intituled

An Act to amend the COVID-19 (Temporary Measures) Act 2020.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the COVID-19 (Temporary Measures) (Amendment No. 3) Act 2021 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Amendment of section 2

2. Section 2 of the COVID-19 (Temporary Measures) Act 2020 is amended by deleting the words “and 8C” in paragraph (d) of the definition of “Minister” and substituting the words “, 8C and 10A”.

New Part 10A

10 3. The COVID-19 (Temporary Measures) Act 2020 is amended by inserting, immediately after section 79, the following Part:

“PART 10A

RELIEFS FOR CONSTRUCTION CONTRACTS AFFECTED BY INCREASE IN FOREIGN MANPOWER SALARY COSTS

Division 1 — General

Interpretation of this Part

79A. In this Part, unless the context otherwise requires —

20 “assignee”, in relation to a person, includes a successor in title of that person;

“construction works”, in relation to a construction contract, means the construction works (within the meaning given by section 3(1) of SOPA) to be carried out under the construction contract;

25 “contract sum” means the total sum payable for the construction works to which the construction contract relates, as at the time the construction contract was entered into, and includes such sum as adjusted by a determination under section 79G or a subsequent
30 determination under section 79H;

“foreign manpower salary costs” means the remuneration (including bonuses, allowances and overtime payments)

payable to individuals who are neither citizens nor permanent residents of Singapore and who hold a work permit, but excludes such matters as may be prescribed by regulations made under section 79K;

“Part 10A assessor” means a person appointed to the panel of Part 10A assessors under section 79E; 5

“Part 10A Registrar” means the Part 10A Registrar appointed under section 79D(1), and includes any Part 10A Deputy Registrar exercising the functions of the Part 10A Registrar; 10

“SOPA” means the Building and Construction Industry Security of Payment Act (Cap. 30B);

“work permit” means a work pass known as a work permit issued under the Employment of Foreign Manpower (Work Passes) Regulations 2012 (G.N. No. S 569/2012), and includes a training work permit issued under those Regulations. 15

Application of this Part

79B.—(1) This Part applies to a case where —

(a) parties entered into a construction contract (including one to which the Government is a party) before 1 October 2020, but not if the construction contract was renewed (other than automatically) on or after that date; and 20

(b) as at 10 May 2021, any construction works to be performed under the construction contract have not been certified in accordance with the construction contract as completed. 25

(2) The reference to a construction contract in subsection (1) excludes — 30

(a) any construction contract for the carrying out of construction works at or on any 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);

(b) any construction contract terminated before 10 May 2021, or where a notice for the termination of the construction contract was given in accordance with the construction contract before 10 May 2021, even if the period of the notice expires on or after that date; and

(c) any other construction contract that is prescribed by regulations made under section 79K.

(3) This Part does not apply to a case that comes within such circumstances as may be prescribed by regulations made under section 79K.

Relief under this Part

79C.—(1) A party to a construction contract who undertakes to carry out any construction works under that contract (called in this Part *A*) may apply, in accordance with section 79F, to the Part 10A Registrar to appoint a Part 10A assessor to adjust the contract sum for the purpose in subsection (2).

(2) The purpose of the adjustment is to take into account an increase in the amount of foreign manpower salary costs incurred by *A* at any time between 1 October 2020 and 30 September 2021 or such later date as may be prescribed by regulations made under section 79K (both dates inclusive), over what *A* would otherwise have incurred, because of a COVID-19 event.

(3) Subsection (1) only applies if *A* had made a reasonable attempt to negotiate with the other party to the construction contract (called in this Part *B*) for such adjustment.

(4) A reference in this Part to an increase in the amount of foreign manpower salary costs incurred by *A* in a period, over an amount which *A* would otherwise have incurred, because of a COVID-19 event, includes an increase in an amount paid by *A* to another person (called in this section *AI*) in that period under

any contract or other arrangement between *A* and *A1* in relation to the carrying out of the construction works, being payment for any foreign manpower salary costs incurred or paid for in that period (whether by *A1* or another person) in relation to the carrying out of those works, over an amount which would otherwise have been payable by *A* to *A1*, because of the COVID-19 event. 5

Illustration

The contract sum for a construction contract between *A* and *B* includes the following components (whether set out expressly in the contract or otherwise): 10

- (a) an amount of foreign manpower salary costs to be incurred by *A* for work permit holders employed by *A* to carry out the construction works;
- (b) cost for a part of the construction works to be carried out by a contractor engaged by *A* (*A1*) under a construction contract between *A* and *A1*, which includes (whether set out expressly in the contract or otherwise) — 15
 - (i) an amount of foreign manpower salary costs to be incurred by *A1* for work permit holders employed by *A1* to carry out that part of the works; and 20
 - (ii) an amount of foreign manpower salary costs to be incurred by a contractor engaged by *A1* (*A2*) and payable by *A1* to *A2* under a contract between *A1* and *A2* for construction works to be carried out by work permit holders employed by *A2*. 25

Each of these amounts of foreign manpower salary costs may be included for determining the amount of foreign manpower salary costs incurred or which would otherwise have been incurred by *A*.

Division 2 — Part 10A assessor's determination 30

Part 10A Registrar

79D.—(1) The Minister is to appoint a Part 10A Registrar for the purposes of this Part.

(2) The Minister may in addition appoint Part 10A Deputy Registrars. 35

(3) Subject to regulations made under section 79K, all the powers and duties conferred and imposed on the Part 10A Registrar may be exercised by a Part 10A Deputy Registrar.

(4) The Part 10A Registrar may, in any particular case, extend the time for service of any document under this Part or any regulations made under section 79K.

Panel of Part 10A assessors

79E. The Minister must appoint a panel of Part 10A assessors comprising such number of persons who satisfy the requirements prescribed for the purposes of this section, for the purpose of making the determinations in sections 79G and 79H.

Application for determination

79F.—(1) *A* may, within the prescribed time, apply in the prescribed form and manner to the Part 10A Registrar to appoint a Part 10A assessor to adjust the contract sum for the purpose mentioned in section 79C(2).

(2) An application under subsection (1) must be accompanied by —

- (a) evidence that *A* had made a reasonable attempt to negotiate with *B* for the adjustment;
- (b) any other information that may be prescribed by regulations made under section 79K; and
- (c) the prescribed fee.

(3) A copy of the application under subsection (1) must be served by *A* within the period specified in the regulations made under section 79K on —

- (a) *B* and any other party to the construction contract;
- (b) any person who is *A*'s guarantor or surety, or who has issued any performance bond or equivalent, in relation to the carrying out of the construction works under the construction contract; and

(c) any assignee of any other party to the construction contract.

(4) The Part 10A Registrar may, for the purposes of deciding whether to appoint a Part 10A assessor to determine an application, request *A* to provide further information within the time specified by the Part 10A Registrar.

(5) The Part 10A Registrar may reject an application if —

(a) the application is incomplete or otherwise not made in accordance with subsections (1) and (2);

(b) *A* fails to satisfy the Part 10A Registrar that subsection (3) is complied with;

(c) *A* fails to comply with the Part 10A Registrar's request under subsection (4);

(d) the Part 10A Registrar reasonably suspects that any information provided by *A* to the Part 10A Registrar is false or misleading in a material particular; or

(e) it appears to the Part 10A Registrar, from the application or any information provided by *A* in subsection (4), that —

(i) the case is not one to which this Part applies; or

(ii) the application is frivolous or an abuse of process.

(6) Unless the Part 10A Registrar rejects an application under subsection (5), the Part 10A Registrar must appoint a Part 10A assessor to determine the application and must serve a notice of the appointment on *A* and on all the parties mentioned in subsection (3).

Part 10A assessor's determinations

79G.—(1) On the application of *A* under section 79F for an adjustment of the contract sum, the Part 10A assessor must —

(a) make a determination —

(i) whether the case is one to which this Part applies; and

(ii) whether *A* had made a reasonable attempt to negotiate with *B* for the adjustment; and

(b) if each determination in paragraph (a) is in the affirmative, also make a determination —

(i) whether there has been an increase in the amount of the foreign manpower salary costs incurred by *A* at any time between 1 October 2020 and 30 September 2021 or such later date as may be prescribed by regulations made under section 79K (both dates inclusive), over what *A* would otherwise have incurred, because of a COVID-19 event; and

(ii) whether it is just and equitable in the circumstances of the case to adjust the contract sum to take into account such increase, and (if so) of the adjusted amount.

(2) When making a determination, the Part 10A assessor —

(a) must take into account prescribed matters and prescribed principles; and

(b) must seek to achieve an outcome that is just and equitable in the circumstances of the case.

(3) A determination under subsection (1) may, with the leave of the court, be enforced in the same manner as a judgment or an order of the court to the same effect.

(4) Where leave of the court is granted, judgment may be entered in the terms of the determination.

(5) The determination is binding on all the parties to the construction contract and all parties claiming under or through them.

(6) Beginning on the date the contract sum is last adjusted by a determination of a Part 10A assessor, the last adjusted contract sum is considered the contract sum for all purposes under the construction contract.

(7) There is no appeal from a determination. 5

(8) Sections 14, 15 and 15A apply, with the necessary modifications, to proceedings before a Part 10A assessor under this section as if —

(a) a reference to an assessor in those sections is a reference to a Part 10A assessor; and 10

(b) a reference to an assessor's determination in section 15A is a reference to a determination.

(9) Sections 16 and 17 apply to the Part 10A Registrar or a Part 10A assessor when carrying out his or her functions and duties under this Part as they apply to the Registrar or an assessor mentioned in Part 2 when carrying out his or her functions and duties under Part 2. 15

Subsequent determinations

79H.—(1) After a Part 10A assessor has made a determination under this section or section 79G (called in this section the initial determination), the Part 10A assessor or another Part 10A assessor may, either on his or her own motion or on the application of one or both of the parties to the initial determination — 20

(a) vary or replace the initial determination if there has been a material change in circumstances after it has been made and it is just and equitable for the variation or replacement to be made; or 25

(b) require the parties to attend before the Part 10A assessor after a specified time for a further review of the matter and to make any additional determination as is appropriate. 30

(2) In considering whether it is just and equitable for a variation or replacement of the initial determination to be made

under subsection (1)(a), or whether to make any additional determination under subsection (1)(b), the Part 10A assessor must take into account the following factors:

- 5 (a) whether there has been any undue delay by the applicant in making the application for a subsequent determination under subsection (1);
- (b) whether any party to the construction contract has taken any action in reliance on the initial determination;
- 10 (c) whether, in relation to the contract sum as adjusted by the initial determination —
- (i) proceedings before a court have commenced;
- (ii) arbitral proceedings under the Arbitration Act (Cap. 10) have commenced; or
- 15 (iii) an adjudication application has been made under section 13(1) of SOPA,
- and if so, the stage of the proceedings or application mentioned in sub-paragraph (i), (ii) or (iii).
- (3) No action may be taken under subsection (1) if a judgment, an arbitral award or a determination has been given or made in relation to any proceedings or application mentioned in subsection (2)(c)(i), (ii) or (iii).
- (4) Section 79G applies, with the necessary modifications, to any determination made under subsection (1).

25 **Effect of determination on operation of Building and Construction Industry Security of Payment Act**

79I. Section 38B applies to an action under SOPA in relation to a construction contract the contract sum of which is adjusted by a determination under section 79G or 79H, as it applies to an action under SOPA in relation to a supply contract adjusted by a determination under section 38 or 38A, with the necessary modifications and the following additional modifications:

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- (a) section 38B(3), (5) and (6) is omitted;

- (b) a reference to a Part 8 determination is to a determination under section 79G or 79H;
- (c) a reference to the modification of the manner in which an obligation or a right under a supply contract is to be performed or exercised is to the adjustment of the contract sum. 5

Effect of determination on court or tribunal proceedings

79J. In any proceedings before a court or an arbitral tribunal in relation to any matter arising under or by virtue of a contract in relation to a determination under section 79G or a subsequent determination under section 79H, the court or arbitral tribunal may make such orders as it considers appropriate, having regard to the determination and any action taken by a party to the contract in good faith and in reliance on the determination. 10

Division 3 — Miscellaneous 15

Regulations for this Part

79K.—(1) The Minister may make regulations for or with respect to any matter that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part. 20

(2) Without limiting subsection (1), the regulations may provide for the use of an alternative method of dispute resolution, such as mediation, to manage and resolve any dispute between parties to a construction contract.

(3) Regulations made under this section may make provision for or in relation to a matter by applying, adopting or incorporating by reference, with or without modification, any regulations made under section 19 or 39, or a part of any such regulations, as in force at a particular time or from time to time.”. 25

EXPLANATORY STATEMENT

This Bill seeks to amend the COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) to provide for relief for persons undertaking construction works under construction contracts affected by an increase in the remuneration payable to work permit holders as a result of a COVID-19 event.

Such increase may be driven by (for example) border control quotas set by the Government that limited the inflow of foreign workers from a particular country as a result of a spike in COVID-19 cases there, or by a particular country imposing travel restrictions on their citizens and residents due to COVID-19 that prevent them from travelling to Singapore.

Clause 1 relates to the short title and commencement.

Clause 2 amends the definition of “Minister” in section 2 to provide that the relevant Minister for the purposes of the new Part 10A is the Minister charged with the responsibility for national development.

Clause 3 inserts a new Part 10A (comprising new sections 79A to 79K) which enables persons carrying out construction works under construction contracts that are affected by an increase in the remuneration payable to work permit holders because of a COVID-19 event, to apply for an adjustment of the contract sum.

The new section 79A defines various terms used in the new Part 10A.

The new section 79B specifies the case to which the new Part 10A applies. The new Part 10A applies to a construction contract entered into before 1 October 2020, where the construction works under the contract have still not been certified as completed as at 10 May 2021. The new section 79B also provides that the new Part 10A does not apply to certain construction contracts, and to prescribed circumstances.

The new section 79C provides that a party to a construction contract who undertakes construction works under that contract (called *A*) may apply to the Part 10A Registrar to appoint a Part 10A assessor to adjust the contract sum of that contract to take into account an increase in the amount of foreign manpower salary costs that *A* has incurred at any time between 1 October 2020 and 30 September 2021 (or a later prescribed date) over what *A* would otherwise have incurred, because of a COVID-19 event. This includes an increase in an amount paid by *A* to another person (called *AI*) in that period under any contract or other arrangement between *A* and *AI* in relation to the carrying out of the construction works, being payment for any foreign manpower salary costs incurred or paid in that period (whether by *AI* or another person), over an amount which would otherwise have been payable by *A* to *AI*, because of the COVID-19 event. However, *A* may only make the application for an adjustment of the contract sum if *A* had made a reasonable attempt to negotiate with the other party to the construction contract (called *B*) for such adjustment.

The new section 79D requires the Minister to appoint a Part 10A Registrar. The Minister may also appoint one or more Part 10A Deputy Registrars. The Part 10A Registrar has the power to extend the time for the service of documents.

The new section 79E requires the Minister to appoint a panel of Part 10A assessors.

The new section 79F provides that *A* may apply to the Part 10A Registrar to appoint a Part 10A assessor to adjust the contract sum. An application must be accompanied by, among other things, evidence that *A* had made a reasonable attempt to negotiate with *B* for such adjustment. The new section 79F also requires *A* to serve a copy of the application on certain persons, and sets out circumstances under which the Part 10A Registrar may reject the application.

The new section 79G provides that on an application under section 79F, the Part 10A assessor must make a determination —

- (a) whether the case is one to which the new Part 10A applies; and
- (b) whether *A* had made a reasonable attempt to negotiate with *B* for such adjustment.

If each determination is in the affirmative, the Part 10A assessor is to also determine —

- (a) whether there has been an increase in the amount of the foreign manpower salary costs incurred by *A* between 1 October 2020 and 30 September 2021 (or a later prescribed date) over what *A* would otherwise have incurred, because of a COVID-19 event; and
- (b) whether it is just and equitable in the circumstances of the case to adjust the contract sum to take into account such increase, and (if so) the adjusted amount.

The new section 79G also provides the following:

- (a) a determination of a Part 10A assessor may, with the leave of a court, be enforced in the same manner as a judgment or order of the court;
- (b) a determination of a Part 10A assessor is binding on all the parties to the construction contract;
- (c) beginning on the date the contract sum is last adjusted by a determination of a Part 10A assessor, the last adjusted contract sum is considered the contract sum for all purposes under the construction contract. The contract sum in a construction contract may be adjusted more than once (under the new section 79G and then under the new section 79H, or under either of those sections).

The new section 79H enables a Part 10A assessor to make a subsequent determination after a determination under the new section 79G, or after a

subsequent determination under the new section 79H itself, has been made. A subsequent determination may vary or replace the earlier determination only if there has been a material change in circumstances after the earlier determination, and it is just and equitable for the variation or replacement to be made. A Part 10A assessor may also require parties to attend before the Part 10A assessor for a further review of the matter and to make any additional determination as is appropriate.

The new section 79I provides that section 38B (Effect of Part 8 determination on operation of Building and Construction Industry Security of Payment Act) applies with modifications to an action under the Building and Construction Industry Security of Payment Act (called SOPA) to a construction contract adjusted by a determination under the new section 79G or 79H. In effect, the contract with the adjusted contract sum is treated as the contract for the purposes of an action under SOPA.

The new section 79J provides that in any proceedings in relation to a matter concerning a contract in relation to which a determination under the new section 79G or 79H has been made, the court or arbitral tribunal may make orders having regard to the determination and any action taken in good faith and in reliance on the determination.

The new section 79K enables the Minister to make regulations for carrying out the purposes and provisions of the new Part 10A.

EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.
