

COVID-19 (Temporary Measures)

Act 2020

Part 8A & 8B Guide

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(The Annex can be located at <https://go.gov.sg/bca-template-cotma-8a-8b>)

Disclaimer

These Guidelines outline the rights and obligations arising under Part 8A and Part 8B of the COVID-19 (Temporary Measures) Act 2020 (hereinafter referred to as the “**Act**”) and address the more commonly occurring contractual arrangements. These Guidelines do not purport to address all situations. The provisions of the Act shall prevail over these Guidelines. The reader should, for a full appreciation of his rights and obligations under the Act, refer to the Act and obtain advice from relevant professionals.

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1. INTRODUCTION

1.1 Background

The COVID-19 pandemic has resulted in delays and increased costs for construction projects, which have implications for all stakeholders along the value chain (i.e. contractors, suppliers, developers, purchasers), given the interconnected nature of the BE sector. Construction works were stopped for approximately two months due to the circuit breaker and extended circuit breaker period (i.e. from 7 April 2020 to 1 June 2020). After works could resume, projects faced challenges such as reduced operating capacity because of the implementation of Safe Management Measures.

To ensure the BE sector is able to preserve industry capacity, adjust to the new operating environment, and recover from the impact of the pandemic, additional relief measures have been introduced under the **COVID-19 (Temporary Measures) (Amendment No. 3) Act 2020** to provide more support and ensure that no single stakeholder bears an undue share of the burden imposed by the COVID-19 pandemic.

1.2 Types of Contracts Covered

All construction contracts where one party undertakes to carry out ‘construction works’ (as defined in section 3(1) of the Building and Construction Industry Security of Payment Act (“**SOPA**”)¹) for another party will be covered under Part 8A and Part 8B of the COVID-19 (Temporary Measures) Act (hereinafter referred to as the “**Act**”).

The Act is unlike the SOPA which excludes certain types of construction contracts from application. For example, residential renovation contracts, which do not require the approval of the Commissioner of Building Control, are also covered under Part 8A and Part 8B of the Act. This is in view that COVID-19 affected the ability of contractors to carry out their contractual obligations and the reliefs provided under Part 8A and Part 8B of the Act ought to be extended to these construction contracts.

The availability of the reliefs under Part 8A and Part 8B of the Act does not depend on whether the work requires regulatory submissions to the authorities, e.g. to URA for planning approval and BCA for building plans approval, in order to qualify for the reliefs. However, Part 8A and Part 8B of the Act do not apply to contracts for the supply of construction-related goods or services, for example supply of goods or consultancy services.

¹ “construction work” means —

- (a) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures (whether permanent or not) that form, or are to form, part of the land;
- (b) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works that form, or are to form, part of the land, including walls, roadworks, power-lines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for the purpose of land drainage, coast protection or defence;
- (c) the installation in any building, structure or works of fittings that form, or are to form, part of the land, including systems of heating, lighting, airconditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, and security or communications systems;
- (d) any operation which forms an integral part of, is preparatory to, or is for rendering complete, works of the kind referred to in paragraph (a), (b) or (c), including —
 - (i) land reclamation;
 - (ii) site clearance, earth-moving, excavation, tunnelling and boring;
 - (iii) the laying of foundations;
 - (iv) the erection, maintenance or dismantling of scaffolding;
 - (v) the prefabrication of components to form part of any building, structure or works, whether carried out at or on the construction site or elsewhere; and
 - (vi) site restoration, landscaping and the provision of roadways and other access works;
- (e) the external or internal cleaning of buildings, structures or works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension; or
- (f) the painting or decorating of the external or internal surfaces of any building, structure or works.

2. SCOPE OF RELIEF UNDER PART 8A OF THE ACT

2.1 Overview of Relief – Extension of Time (“EOT”) for Construction Contracts

For eligible construction contracts that meet the eligibility criteria below, any completion date for construction works will be extended for 122 days to address the delay occurring between 7 April 2020 and 6 August 2020 (both dates inclusive).

2.2 Eligibility Criteria

The EOT relief will be provided to all construction contracts (including subcontracts):

- (a) that were entered into before 25 March 2020, excluding construction contracts that were renewed other than automatically on or after 25 March 2020;
- (b) there were construction works that were not certified to be completed under the construction contracts as at 7 April 2020; and
- (c) that remained in force on 2 November 2020.

The EOT relief will not apply to any completion date for construction works under construction contracts in any of the following situations:

- (a) construction works were carried out at any time between 20 April 2020 and 30 June 2020 (both dates inclusive);
- (b) proceedings before a court or arbitration have commenced before 2 November 2020 in relation to a failure to comply with the completion date (“**Proceedings**”); or
- (c) any judgment, award, compromise or settlement has been made before 2 November 2020 in the course or as a result of the Proceedings.

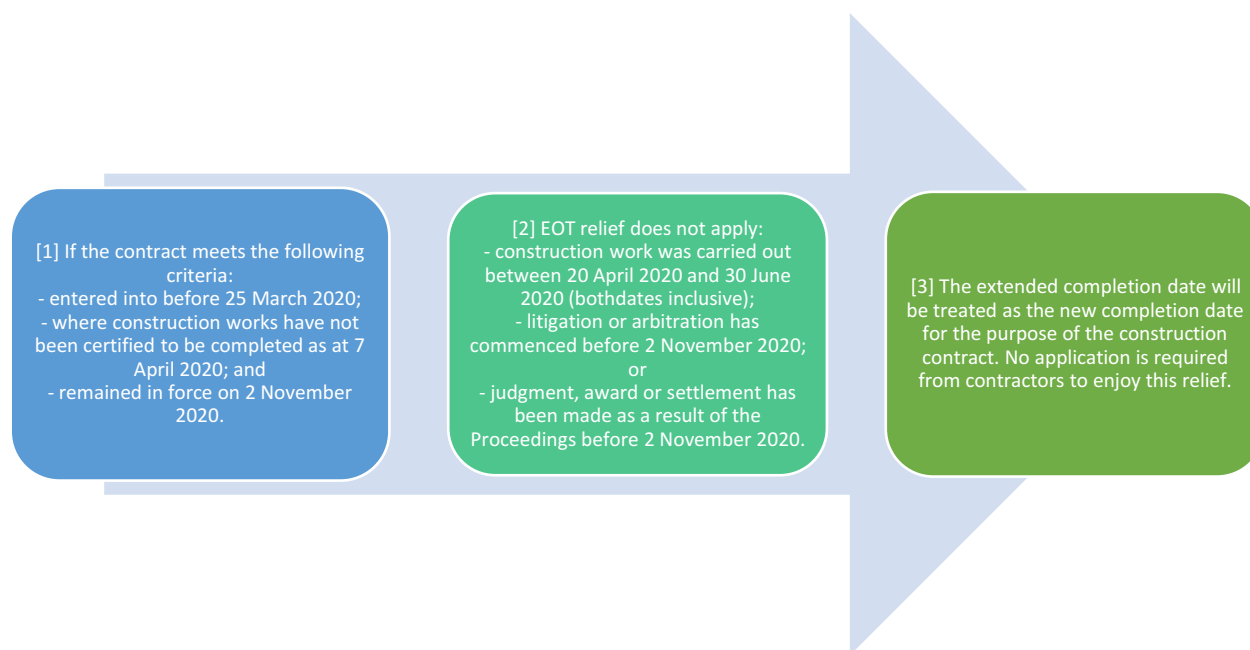
Example 1:

A party (Party A) is engaged to carry out construction works for another party (Party B). The construction contract was entered into on 15 January 2019 and construction works were expected to complete on 31 December 2020. As at 7 April 2020, the construction works were not certified to be completed (still 60% remaining) and the contract was in force on 2 November 2020. Construction works resumed on 2 June 2020.

Due to COVID-19 events, Party A have suffered about 2 months of delay from 7 April 2020 to 1 June 2020 due to the Circuit Breaker.

Since construction works resumed since 2 June 2020 (during the period between 20 April 2020 and 30 June 2020), the automatic universal EOT of 122 days will not apply. Party A should request for an extension of the completion date based on the actual number of days of delay (~2 months) from Party B under any applicable contract provisions.

Construction works, which are not part of the original construction contract, performed at any time between 20 April 2020 and 30 June 2020 (both dates inclusive) to enable the project to resume safely would not come within the ‘exclusion’. For illustration, the construction of on-site dormitories for housing workers to prevent the spread of COVID-19 (not provided in the original construction contract) would not be construction works performed under the construction contract in question. As such, even if such construction works were performed during the period between 20 April 2020 and 30 June 2020 (both dates inclusive), such works would not cause the construction contract to be caught by the exclusion to prevent the EOT relief from applying to any completion date for construction works under the construction contract.



Basic Checklist on Eligibility Criteria under Part 8A:

- This is a construction contract where one party undertakes to carry out ‘construction works’ (as defined in section 3(1) of the Building and Construction Industry Security of Payment Act (“SOPA”)) for another party;
- This contract was entered into before 25 March 2020 (excluding construction contracts that were renewed other than automatically on or after 25 March 2020);
- There were construction works that were not certified to be completed under the construction contracts as at 7 April 2020;
- This contract remained in force on 2 November 2020;
- NO construction works were carried out at any time between 20 April 2020 and 30 June 2020 (both dates inclusive);
- NO proceedings before a court or arbitration have commenced before 2 November 2020 in relation to a failure to comply with the completion date (“Proceedings”); and
- NO judgment, award, compromise or settlement has been given or made before 2 November 2020 in the course or as a result of the Proceedings.

Note: This checklist is designed to assist the user in making a quick assessment as to whether the case is one to which Part 8A applies. It does not go into details and does not cover all situations.

2.3 Details of the EOT relief

A universal EOT of 122 days for the delay occurring in the period between 7 April 2020 and 6 August 2020 (both dates inclusive) will be granted to all eligible construction contracts. This is in consideration that construction works stopped for approximately 2 months due to the Circuit Breaker period and were further delayed as the foreign worker dormitories were progressively cleared by early August 2020.

The extended completion date will be treated as the new completion date for the purpose of the construction contract. **No application is required from contractors to enjoy this EOT relief. Notwithstanding the automatic extension of the completion date for performance of construction works, contract administrators** (e.g. Architects, Engineers, Superintending Officers) **or customers** (e.g. developers, contractors) **are encouraged to record and document the EOT accordingly.**

Should an EOT have earlier been granted under the construction contract for any delay occurring in the period between 7 April 2020 and 6 August 2020 (both dates inclusive), the universal EOT of 122 days will be reduced by the number of days for which an EOT had been granted under the construction contract. In other words, contractors will only get an EOT of 122 days regardless of the number of days of EOT that it has earlier been granted under the construction contract for delays occurring in the period between 7 April 2020 and 6 August 2020 (both dates inclusive). Where contractors wish to seek an EOT of completion date for delays occurring outside the period between 7 April 2020 and 6 August 2020, contractors should rely on existing contract provisions. The Act does not prevent the contract completion date from being further extended.

Contractors which wish to seek an EOT of completion date under construction contracts that are not covered under Part 8A of the Act (e.g. construction contracts that commenced after 25 March 2020) should rely on existing contract provisions, which may require the contractor to serve notice and accompany the request with proper justifications.

Contractors can also seek relief under Part 2 Section 6 of the Act by serving a Notification for Relief on their customers, for any liquidated damages payable under the construction contracts due to delays, materially caused by a COVID-19 event, during the period between 1 February 2020 and 28 February 2022 (both dates inclusive). The Notification for Relief can be filed through <<https://www.mlaw.gov.sg/covid19-relief/temporary-relief-from-inability-to-perform-contract>> **before 28 February 2022.**

2.4 Case illustrations

Example 2:

A party (Party C) is engaged to carry out construction works for another party (Party D). The construction contract was entered into on 15 January 2019 and construction works were expected to complete on 31 December 2020. As at 7 April 2020, the construction works were not certified to be completed (still 60% remaining) and the contract was in force on 2 November 2020. Construction works resumed on 7 August 2020.

Due to COVID-19 events, Party C suffered 15 days of delay due to delayed shipments from China before 7 April 2020, 122 days of delay from 7 April 2020 to 6 August 2020 due to Circuit Breaker and dormitory clearance, and another 30 days of delay due to lower productivity resulting from safe management measures implemented at site after construction work resumed.

In such case, Party C would be able to obtain an automatic universal EOT of 122 days for delay occurring in the period from 7 April 2020 to 6 August 2020 under the Act. Party C will need to request for additional EOT under the contract for the remaining 15 days (before 7 April 2020) and 30 days (after 6 August 2020), in accordance with the contract requirements.

Example 3:

A party (Party E) is engaged to carry out home renovation works for another party (Party F). The construction contract was entered into on 15 March 2020 and construction works were expected to complete on 14 July 2020. As at 7 April 2020, the construction works were not certified to be completed (still 80% remaining) and contract was in force on 2 November 2020. Construction works resumed on 2 July 2020.

Due to COVID-19 events, Party E suffered about 3 months of delay from 7 April 2020 to 1 July 2020 due to Circuit Breaker and restriction of workers coming from Malaysia. The customer earlier agreed to grant the contractor 2 months of EOT (i.e. 60 days) under the contract.

In such case, Party E would be still be eligible for the EOT relief under Part 8A under the Act. The Act will provide an additional 62 days of EOT to address delays occurring during the period from 2 July 2020 to 6 August 2020.

Example 4:

A party (Party G) is engaged to carry out construction works for another party (Party H). The construction contract was entered into on 15 January 2019 and construction works were expected to complete on 30 March 2020. As at 7 April 2020, the construction works were not certified to be completed (still 10% remaining). Contract was in force on 2 November 2020, and Party G has entered into the Defects Liability Period / Rectification Period. Construction works resumed on 7 August 2020 and was eventually certified completed on 30 September 2020.

Due to COVID-19 events, Party G suffered 122 days of delay from 7 April 2020 to 6 August 2020 due to Circuit Breaker and dormitory clearance. Party G was not given EOT under the contract and did not apply for relief from liquidated damages under Part 2 of the Act. Upon the certified completion of work on 30 September 2020, Party H imposed liquidated damages for 184 days of delay on Party G, based on the delay calculated from 30 March 2020 to 30 September 2020.

As the automatic universal EOT of 122 days will apply to this scenario, the contract completion date would be extended by 122 days until 30 July 2020 by virtue of Part 8A. As such, the liquidated damages to be paid by Party G to Party H would be reduced by 122 days, from 184 days to 62 days.

2.5 Interaction with Part 2 on Temporary Relief for Inability

Contractors can concurrently tap on the reliefs available under Part 2 and Part 8A of the Act. Part 2 and Part 8A cover different reliefs, time periods, and are governed by different processes.

While Part 8A provides an automatic universal EOT of 122 days for delay occurring in the period between 7 April 2020 and 6 August 2020 (both dates inclusive), Part 2 requires contractors to show that it is or will be unable to complete the contract which is to a material extent caused by a COVID-19 event and to notify their customers so that any liquidated damages or other damages payable under the contract due to delays sustained in the period between 1 February 2020 and 28 February 2022 (both dates inclusive) can be disregarded. A defence against liquidated damages is not equivalent in effect to an entitlement for EOT. For instance, depending on the contract, an EOT may affect matters such as commencement of the defect liability / rectification period for a project.

Contractors seeking an EOT beyond the EOT relief of 122 days under Part 8A of the Act should negotiate with their customers or rely on contractual provisions. If the matter cannot be resolved, contractors can serve a Notification for Relief under Part 2 of the Act. Once the Notification for Relief is served under Part 2 of the Act, the contractor will be able to defend against any claims for liquidated damages payable under the contract in respect of delays that are materially caused by COVID-19, which occur within the period between 1 February 2020 and 28 February 2022 (both dates inclusive).

3. SCOPE OF RELIEF UNDER PART 8B OF THE ACT

3.1 Overview of Relief – Cost-Sharing in Construction Contracts

Contractors will be entitled to specified qualifying costs from their customers should they be or will be unable to complete the construction works by the completion date if the eligibility criteria below are satisfied.

3.2 Eligibility Criteria

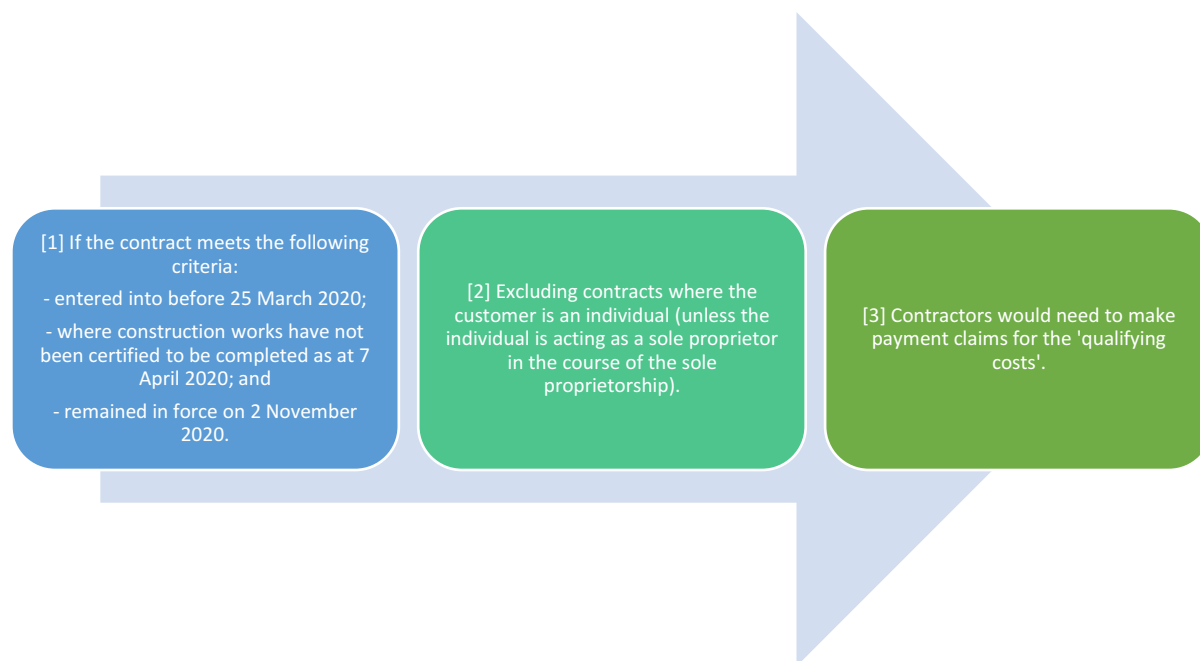
The cost-sharing relief will be provided to all construction contracts (including subcontracts):

- (a) that were entered into before 25 March 2020, excluding construction contracts that were renewed other than automatically on or after 25 March 2020;
- (b) there were construction works that were not certified to be completed under the construction contracts as at 7 April 2020; and
- (c) that remained in force on 2 November 2020.

The relief will not apply to construction contracts where customers are individuals, unless the individuals are acting as sole proprietors in the course of the business of the sole proprietorships.

Example 5:

A contractor engaged to carry out home renovation work for an HDB homeowner is not entitled to the costs-sharing relief under Part 8B of the Act as the owners of the HDB flat are individuals acting in their personal capacities.



3.3 Details of the cost-sharing relief

Contractors in construction contracts are entitled to claim cost-sharing for the specified qualifying costs from their customers who engaged their services (e.g. main contractors claiming from developers, subcontractors claiming from main contractors, etc). This is in consideration that contractors have been unable to perform construction works by the completion date caused materially by COVID-19. Eligible contractors will be entitled to 50% of the qualifying costs incurred between 7 April 2020 and 28 February 2022 (both dates inclusive),

subject to a cap of 0.2% of contract sum per specified period and overall 1.8% of the contract sum.

The qualifying costs must be incurred by the contractor arising from its inability to complete the construction works by the completion date, where such inability is to a material extent caused by a COVID-19 event. If an EOT due to COVID-19 has been granted under the Act for the period between 7 April 2020 and 6 August 2020 (both dates inclusive) or additional EOT due to COVID-19 has been granted under the contract, such grants of EOT can be used as a basis to support a contractor's claim for co-sharing of the specified qualifying costs.

The qualifying costs are limited to the following: -

- (a) any rent or hire-purchase instalment for any plant or equipment required to perform the construction works that contractors are or will be unable to complete;
- (b) any costs for maintaining the construction site at which those construction works are performed (including for vector and pest control, site security, provision of utilities and cleaning of the construction site) by any person engaged by contractors other than the contractors' employees;
- (c) any costs to extend the validity period of any insurance obtained and any performance bond issued in respect of the construction contract because of contractors' inability; and
- (d) any rent or other fee for the use of premises in Singapore to store any materials or equipment required to perform those construction works.

The qualifying costs specifically exclude those costs which have been supported under existing support schemes (e.g. rebates and waivers on foreign workers' levy, Jobs Support Scheme, Construction Restart Booster) or costs that should be addressed under contract provisions: -

- (a) manpower costs (including salaries, accommodation and transport costs, and any foreign worker levy payable);
- (b) any costs to accelerate the performance of the construction works so that they may be completed by the completion date;
- (c) any costs incurred in adopting any measures to prevent, protect against or otherwise control the incidence or transmission of COVID-19; and
- (d) costs for which the contractor has received —
 - (i) relief from the Government or any public authority; or
 - (ii) relief under Part 2A or 8 of the Act;to the extent of the relief.

How does it work?

Contractors need to include the cost-sharing claims in their regular payment claims to their customers that engaged their services (e.g. main contractors claiming from developers, subcontractors claiming from main contractors). **Suggested templates to be used by the contractors for the cost-sharing claims can be found in the Annex.**

For every specified period between 7 April 2020 and 28 February 2022 (both dates inclusive), contractors have to determine the period within each specified period in which the contractor was unable to meet the completion date, and include the corresponding qualifying costs incurred for such inability in that particular specified period in the payment claim. A specified period is essentially a calendar month, except for the month of April 2020 which starts on 7 April 2020 and ending on 30 April 2020.

The specific days affected by the COVID-19 event should be properly substantiated by contractors, such as by a comparison of the programme before and after the COVID-19 event on a critical path or referring to the specific days certified under an EOT due to COVID-19. The customers are entitled to respond accordingly in their payment responses in relation to the payment claims.

Contractors are advised to include all information and documents that are relevant to the claim for qualifying costs in their payment claim, such as: -

- (a) an extract of the terms of any contract that relate to the qualifying costs and the contract sum;
- (b) information and documents (including invoices and receipts) showing the amount of qualifying costs and the date the qualifying costs were incurred; and
- (c) information and documents showing the amount of relief obtained from the Government or any public authority or under the Act.

Contractors can include qualifying costs paid to their sub-contractors in their own payment claims to their customers.

Goods and Services Tax (GST) will not apply to the cost-sharing relief. The qualifying costs which contractors claim from their customers should be based on actual incurred qualifying costs excluding GST, and contractors should not charge and collect GST from customers. As a good practice, contract administrators (e.g. Architects, Engineers, Superintending Officers) or customers (e.g. developers, contractors) are encouraged to record and document the qualifying costs that are co-shared accordingly.

Any disputes on cost-sharing shall be treated in a similar manner as a payment dispute under the SOPA. Contractors can submit an adjudication application under the SOPA (whether the claim for cost-sharing under Part 8B forms a part or as a whole of the payment claim) and the SOPA adjudicators will determine whether the cost-sharing relief applies and the quantum of co-sharing between the parties.

3.4 Case illustrations

Example 6:

A sub-contractor (Party I) is engaged to carry out construction works for a contractor (Party J). The construction contract was entered into on 15 January 2020 and construction works were expected to complete on 15 November 2020. As at 7 April 2020, the construction works were not certified to be completed (still 60% remaining) and contract was in force on 2 November 2020.

Due to COVID-19 events, Party I was unable to complete the construction works by the completion date. Party I suffered 122 days of delay from 7 April 2020 to 6 August 2020 due to Circuit Breaker and dormitory clearance, and another 15 days of delay due to lower productivity resulting from safe management measures implemented at site after resuming work in the month of August 2020. This is evident from the EOT issued by the Architect to Party J (137 days of EOT from 7 April 2020 to 21 August 2020), which in turn Party J issued to Party I under the contract between Party I and Party J.

Party I was unable to meet the completion date, and Party I incurred costs for the rental of scissors lift meant for the construction works.

In such case, Party I would be able to make a claim for qualifying costs from Party J for the equipment rental costs incurred from 7 April 2020 to 6 August 2020, plus 15 days after resuming work in August 2020.

[Note: Please refer to Example 8 should Party I wish to claim for reliefs under Part 8 of the Act.]

Example 7:

The main contractor (Party J) is engaged to carry out construction works for a developer (Party K). The construction contract was entered into on 15 July 2019 and construction works were expected to complete on 31 December 2020. As at 7 April 2020, the construction works were not certified to be completed (still 40% remaining) and the contract was in force on 2 November 2020.

Due to COVID-19 events, Party J was unable to complete the construction works by the completion date. Party J suffered 122 days of delay occurring in the period from 7 April 2020 to 6 August 2020 due to Circuit Breaker and dormitory clearance.

Construction works resumed on 7 August 2020. However due to further confirmed COVID-19 cases in dormitories on 15 August 2020, more than half of the construction workers performing work under the contract were placed on 14-days Stay Home Notice (“SHN”) as they stayed in the same dormitory block with workers diagnosed with COVID-19. The contractor was unable to perform a substantial part of the construction works under the contract during the 14-day period from 16 August 2020 to 29 August 2020, such that the contractor will be unable to complete the construction works by the completion date.

During the period from 7 April 2020 to 29 August 2020 when Party J was unable to perform construction works, Party J incurred rental costs for the tower crane and will be required to extend the insurance coverage for the project in due course. Party J also needed to pay qualifying costs of \$X to their sub-contractors.

In this case, Party J is entitled to claim for qualifying costs from Party K incurred for the rental of tower crane and additional insurance premium arising from the inability to perform construction works during the period from 7 April 2020 to 6 August 2020, and the 14-day period after resuming work in August 2020. Party J will also be able to claim \$0.5X from Party K for the qualifying costs paid to its sub-contractors.

3.5 Interaction with Part 2A Rental Relief and/or Part 8 on Rental of Construction Goods

Part 2A of the Act provides for a property rental relief framework for mandated co-sharing of rental costs among the Government, landlords and tenants. Part 8 of the Act allows an Assessor to vary the rental date / rate for construction goods, if it is just and equitable in the circumstances.

Contractors can concurrently seek reliefs available under Part 2A, Part 8 and Part 8B of the Act. The cost-sharing relief under Part 8B does not apply to those costs which the contractor has received support under Part 2A and Part 8 of the Act.

While contractors are advised to seek reliefs under Part 2A and Part 8 prior to seeking cost-sharing relief under Part 8B, it is not mandatory to do so. Contractors which obtain reliefs under Part 2A and Part 8 should claim for such amount of qualifying costs under Part 8B after deducting the reliefs obtained under Part 2A and Part 8.

Example 8:

A sub-contractor (Party I) is engaged to carry out construction works for a contractor (Party J). The construction contract was entered into on 15 January 2020 and construction works were expected to complete on 15 November 2020. As at 7 April 2020, the construction works were not certified to be completed (still 60% remaining) and the contract was in force on 2 November 2020.

Due to COVID-19 events, Party I is unable to complete the construction works by the completion date. Party I suffered 122 days of delay from 7 April 2020 to 6 August 2020 due to Circuit Breaker and dormitory clearance, and another 15 days of delay due to an inability to perform work at the same rate in the month of August 2020 due to safe management measures implemented at site. This is evident from the EOT issued by the Architect.

During the period from 7 April 2020 to end August 2020 when Party I was unable to perform the construction work and will be unable to meet the completion date, Party I incurred costs for the rental of scissors lift meant for the construction works (a total of \$10,000 over the period from 7 April 2020 to end August). Party I obtained relief under Part 8 for an Assessor to reduce the rental costs charged by the supplier of the scissors lift to \$4,000.

In such case, Party I is entitled to claim for qualifying costs from Party J in the sum of the reduced equipment rental cost (i.e. \$4,000 after deducting the relief obtained under Part 8) incurred for Party I's inability during the period from 7 April 2020 to 6 August 2020, plus 15 days after restarting work in August 2020. Party J would be obliged to co-share \$2,000.

***** The End *****

Annex – Suggested Template for Cost-Sharing



Claim template for
cost-sharing under I

(The Annex can be manually located at <https://go.gov.sg/bca-template-cotma-8a-8b>)