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COVID-19 Relief Framework for Construction Firms Facing Higher Foreign Manpower Costs Comes into Operation

Introduction

Part 10A of the COVID-19 (Temporary Measures) Act ("**Part 10A**") has come into operation on 6 August 2021. Part 10A provides a framework for parties to construction contracts to apply for relief from their contractual counterparties if they are affected by an increase in cost for work permit holders as a result of a COVID-19 event, such as border control quotas set by the Government limiting the inflow of foreign workers.

Part 10A was introduced in the COVID-19 (Temporary Measures) (Amendment No. 3) Act 2021 ("**Amendment Act**"), which was passed in Parliament on 11 May 2021. The Amendment Act has since come into force on 6 August 2021, along with the COVID-19 (Temporary Measures) (Part 10A Relief) Regulations 2021 ("**Part 10A Regulations**"), which provides further details on the operation of the Part 10A framework.

For more information on Part 10A, including the eligibility criteria, application procedure, and determination process, please see our earlier Client Update on "Relief for Construction Firms Facing Higher Manpower Costs Due to COVID-19", available [here](#).

In this Update, we recap the key features of the Part 10A framework and highlight the Part 10A Regulations.

Part 10A Criteria

Under the Part 10A relief framework, a party to a construction contract ("**Party A**") facing an increase in foreign manpower costs may apply to the Part 10A Registrar to appoint an Assessor to adjust the contract sum. This is provided that Party A has attempted and failed to re-negotiate with the other party to the contract ("**Party B**") to share the burden of the increased manpower costs.

The Assessor is empowered to adjust the contract sum to take into account an increase in the amount of foreign manpower salary costs incurred by Party A between 1 October 2020 and 30 September 2021 (or such later date as may be prescribed) because of a COVID-19 event.

It should be noted that Part 10A only applies to construction contracts entered into before 1 October 2020. Further, the contract must not have been terminated (or notice of termination given) before 10



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May 2021, and the construction works under the contract must not have been certified as completed as at 10 May 2021.

Part 10A Procedure

The Part 10A Regulations sets out the prescribed forms and timelines to be complied with in a Part 10A application.

Application to Registrar

Party A must first apply to the Registrar for the appointment of an Assessor.

- (a) The prescribed application period is from 6 August 2021 to 14 October 2021.
- (b) The application must be made via Form A (available [here](#)).

Response from Registrar

If the Registrar is satisfied that the application is in order, he or she will send to Party A the following (collectively referred to here as the "**Registrar Response**"):

- (a) An acknowledgment of receipt of the application; and
- (b) A response to the application via Form D (available [here](#)) or the electronic location at which the Form D may be obtained.

Notifying respondents

Party A must then serve a copy of the application and the Registrar Response to the following parties within two working days after the date Party A receives the Registrar Response:

- (a) Party B and any other party to the contract, and any assignee thereof; and
- (b) Any person who is Party A's guarantor or surety, or who has issued any performance bond or equivalent.

Party A must then, within two working days after the service of the copy of the application and the Registrar Response to the above parties, submit to the Registrar a declaration in Form C (available [here](#)) of such service.

Application fee

Once the relevant parties have been notified and the Form C declaration has been submitted, the Registrar will inform Party A of the application fee and the payment procedure. The application fee is based on the increase in the amount of foreign manpower salary costs incurred (the amount of foreign

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manpower salary costs incurred because of a COVID-19 event minus the amount of foreign manpower salary costs that would have been incurred in a circumstance without such a COVID-19 event).

Please refer to this [table](#) to ascertain the fee payable for an application.

Once the prescribed application fee is paid, the Registrar will send a notice of the appointment of an Assessor to Party A and inform the date and place for the hearing if applicable.

Response from respondents

If Party B wishes to contest an application, they must submit to the Registrar a response to the application via Form D (available [here](#)) no later than five working days after being served the copy of the application and the Registrar Response by Party A.

The response must also be served on:

- (a) Party A and any other party to the contract, and any assignee thereof; and
- (b) Any person who is Party A's guarantor or surety, or who has issued any performance bond or equivalent.

Assessor's determination

The Assessor will then determine whether:

- (a) Part 10A is applicable to the case;
- (b) Party A had made a reasonable attempt to negotiate with Party B;
- (c) There has been an increase in the amount of eligible foreign manpower salary costs;
- (d) It is just and equitable in the circumstances to adjust the contract sum; and
- (e) The quantum of the adjusted amount.

Concluding Words

Whilst Part 10A provides welcome relief for construction firms encountering increased foreign manpower salary costs due to COVID-19, it bears noting that contract parties are encouraged to discuss and arrive at an amicable outcome, and that proof of reasonable attempts at negotiation must be shown before an application under Part 10A can be made.

Parties to construction contracts wishing to utilise the Part 10A relief should ensure that their application meets the qualifying criteria set out in the Part 10A provisions. Parties should also ensure that they strictly comply with the procedures and timelines set out in the Part 10A Regulations so as to avoid having their application rejected.

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For more information, the full Building and Construction Authority COVID-19 (Temporary Measures) Act 2020 Part 10A Guide is available [here](#).

Visit our [COVID-19 Resource Centre](#) for views from our lawyers across the region on common issues and legal implications brought about by COVID-19. For specific inquiries, please reach out to your relationship partner or send an email to our [COVID-19 Legal Team](#).

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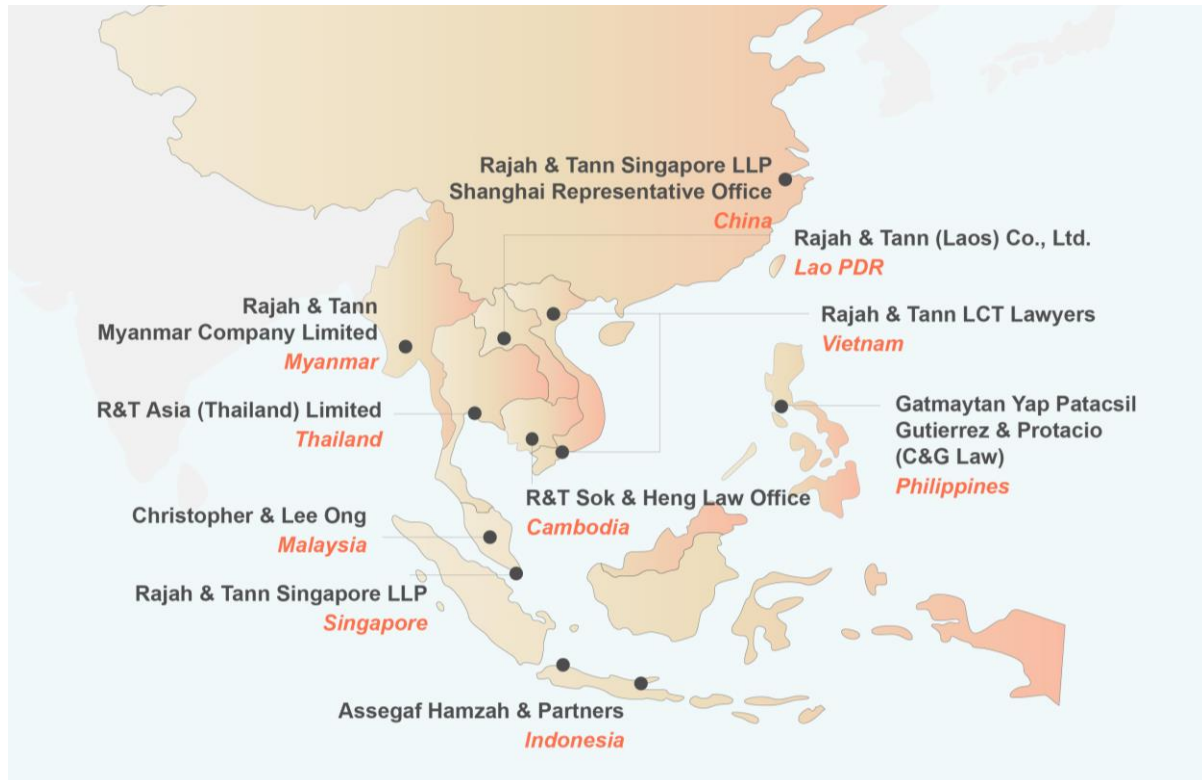
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