

Construction & Projects

Updated Public Sector Standard Conditions of Contract (or "PSSCOC", 8th Edition, July 2020)

Introduction

The PSSCOC is a standard contract form commonly used for public sector construction contracts in Singapore. It was first published in 1995 by the Building and Construction Authority ("**BCA**") and had undergone updates throughout the years. Recently, the BCA published the latest edition of the PSSCOC ("**8th Edition**") which serves as an update of the previous edition published in July 2014 ("**7th Edition**").

There are two forms of the PSSCOC - namely for (i) construction works and (ii) design and build. The changes are largely consistent between the two forms and for ease of reference, we will be referring to the PSSCOC (construction works).

In this update, we highlight a number of differences between the 7th and 8th Editions of the PSSCOC. All capitalised terms used in this update shall have the same meanings as ascribed to them in the PSSCOC.

Expansion of "Loss and Expense" – Clause 1.1(q)

In the 7th Edition, the first limb of the definition of "Loss and Expense" is "the direct relevant costs of labour, Plant, materials, or goods actually incurred".

The 8th Edition expands on the first limb of the definition of "Loss and Expense" by including "Construction Equipment", which is all equipment required for the execution and completion of Works but not intended to form part of the Works. This effectively widens the scope of Loss and Expense which the Contractor can claim for as it now includes equipment not intended to form part of the Works, which was absent from the 7th Edition.

Superintending Officer's Representative – Clause 2.2

The 8th Edition makes it clear that the Superintending Officer ("**SO**") may appoint and delegate duties to more than one Superintending Officer's Representative. Although this has been the common industry practice, this was not expressly stated in the 7th Edition.

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Instructions by Superintending Officer – Clause 2.5

In the 7th Edition, the Contractor may within 7 days from receiving any oral instruction from the SO write to the SO to confirm the oral instruction and if the oral instruction is not contradicted in writing within 7 days by the SO, the oral instruction is deemed an instruction of the SO.

The 8th Edition shortens the response time for both the SO and Contractor from 7 days to 3 working days and further clarifies that "working days" exclude Sundays and public holidays.

The 8th Edition also provides that if the SO withdraws any oral instruction within the aforementioned 6 working days, the SO may certify pursuant to Clause 32 (Progress Payments and Final Account) such sum as may be reasonable in respect of the Loss and Expense incurred by the Contractor in its compliance with the oral instruction that has been withdrawn. This new amendment protects the Contractor's interests as previously it may have been harder for the Contractor to claim Loss and Expense since it was not expressly provided for under any of the limbs in Clause 22.1 (Reasons for Loss and Expense).

Order of Precedence for Drawings - Clause 3.1

The 8th Edition introduces a specific order of precedence for drawings to avoid any uncertainty in the event of any inconsistency between drawings. Parties may now prescribe a specific order of precedence for drawings in the Appendix. The burden remains on parties to ensure that documents are properly incorporated.

Responsibility for Identifying Ambiguities, Discrepancies, etc - Clauses 4.4

In the 7th Edition, Clause 10.4 provided that the Contractor is to notify the SO of any ambiguity or inconsistency in any Contract documents that may be found at any time. In the 8th Edition, the clause has been made reciprocal and if the SO is aware of any ambiguity or inconsistency in any Contract documents, the SO shall likewise notify the Contractor in writing.

In the 7th Edition, where an inconsistency could arguably have been found prior to the date of the Letter of Acceptance, the Contractor is deemed to have accepted that risk, entered into the Contract with full knowledge of it and that there is no entitlement to extension of time or Loss and Expense in relation thereto. This has been deleted in the 8th Edition. The question raised for the industry is whether this represents a new normal where the Contractor may present claims for ambiguities / discrepancies.

Inspection of the Site and Geotechnical Information – Clause 5.1

In the 7th Edition, the Employer may provide geotechnical information concerning the Site to the Contractor. The 8th Edition has now made it an obligation of the Employer to provide geotechnical information concerning the Site upon request by the Contractor, save for any confidential or sensitive

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information. It should be noted however that there is no shift of risk here since the Employer's obligation to provide geotechnical information does not relieve the Contractor from its obligations to carry out his own investigations at the Site.

Definition of Force Majeure and New Ground for Extension of Time - Clause 14.2

In the 7th Edition, the term "force majeure" is not defined, thus creating ambiguity on the type of force majeure events that may be used as a ground for a claim for extension of time by the Contractor.

The 8th Edition addresses this gap by defining "force majeure" as "an event which is beyond the Contractor's reasonable control". Furthermore, in view of recent global events, the 8th Edition introduces "epidemics or pandemics resulting in shortages of labour, goods, materials or Construction Equipment required for the Works or inability to proceed with any part of the Works" as a new ground for an extension of time (Sub-Clause 14.2(q)) under the PSSCOC.

Mediation - Clause 35.6

The 7th Edition designated the Singapore Mediation Centre as the mediation centre for the resolution of disputes or differences. The 8th Edition has amended it to give parties the flexibility to agree on the chosen mediation centre and specify this in the Appendix.

Electronic Mail and Facsimile – Clause 37.2

The 8th Edition introduced electronic mail and facsimile as new forms of communication in the PSSCOC and its respective deemed delivery provisions which reflect the current industry norm of utilising electronic mail and facsimile as accepted means of communication. This is also consistent with the recent amendment to the Building and Construction Industry Security of Payment Act (Cap. 30B) which recognises service of documents by email as a valid mode of service.

Conclusion

Generally, the 8th Edition does not make fundamental changes to the allocation of risks and responsibilities between the Employer and the Contractor but serves to provide greater clarity and certainty to parties by introducing several points of clarification.

The position taken on force majeure and inclusion of epidemic/pandemic as an event leading to extension of time provides welcome clarity in light of the current COVID-19 pandemic. It remains to be seen how stakeholders in each project will further modify the risks and rewards by way of particular conditions of contract.

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The changes discussed above are not intended to be exhaustive and legal advice should be obtained before using the forms (or adding particular conditions). If you have any queries or wish to understand any or all the changes made, please reach out to us at our contact below.

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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