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Singapore

Construction

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This country-specific Q&A provides an overview of construction laws and regulations applicable in Singapore.

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Singapore: Construction

1. Is your jurisdiction a common law or civil law jurisdiction?

Singapore is a common law jurisdiction.

2. What are the key statutory/legislative obligations relevant to construction and engineering projects?

The key statutory obligations relevant to construction and engineering projects in Singapore are set out in the following legislation:

- Building and Construction Industry Security of Payment Act 2004 (the “**SOP Act**”) – The SOP Act seeks to improve cash-flow in the built environment sector by giving parties who are carrying out work or supplying goods and services for construction projects in Singapore the right to seek monthly progress payment for work done. It also provides a fast and low-cost adjudication mechanism to resolve payment disputes.
- Building Control Act 1989 – This act seeks to ensure that building works comply with certain standards for safety, accessibility, environmental sustainability, and buildability. All building works, except those that are minor and exempted under the First Schedule of the Building Control Regulations, will require plan approval from the Commissioner of Building Control.
- Planning Act 1998 – This act regulates the development, conservation, and land use planning and controls in Singapore. It also imposes development charges on the development of land.
- Unfair Contract Terms Act 1977 – This act imposes further limits on the extent to which civil liability for breach of contract, or for negligence or other breach of duty, can be avoided by means of contract terms and otherwise.
- The Sale of Goods Act 1979 – This act sets out the obligations on parties to ensure that goods sold are fit for its purpose and are of satisfactory quality. For construction projects, a contractor providing goods under a

construction project will therefore generally be required to comply with such statutory obligations to ensure fitness for purpose / satisfactory quality of goods supplied.

3. Are there any specific requirements that parties should be aware of in relation to: (a) Health and safety; (b) Environmental; (c) Planning; (d) Employment; and (e) Anti-corruption and bribery.

(a) health and safety;

- Workplace Safety and Health Act 2006 – This is an act relating to the safety, health and welfare of persons at work in a workplace, which requires stakeholders to take reasonably practical steps for the safety and health of persons at the workplace.
- Work Injury Compensation Act 2019 (“WICA”) – WICA allows employees to make claims for work-related injuries or diseases without having to first file a civil suit at common law. This provides a low-cost and quicker alternative to common law for the settlement of compensation claims.

Under WICA, employers are required to purchase work injury compensation insurance for all employees carrying out manual work, regardless of their income level, and for all employees carrying out non-manual work earning an income of S\$2,600 or less per month (excluding overtime / bonus payment, annual wage supplement, productivity incentive payment and allowance), failure of which is an offence which may attract criminal prosecution or fines.

(b) environmental issues;

Existing buildings – Owners of existing buildings are required to comply with minimum environmental sustainability standards, submit periodic energy efficiency audits of the building’s cooling systems, and submit information in respect of energy consumption and other related information as required by the Commissioner of Building Control [Building Control Act 1989 (Part IIIB—Environmental Sustainability Measures for Existing Buildings), Building Control (Environmental Sustainability Measures for Existing Buildings)]

Regulations 2013]

Prior to installing or replacing a chiller, buildings owners must meet the requirements as specified in the Code on Environmental Sustainability Measures for Existing buildings.

New buildings – The Building Control (Environmental Sustainability) Regulations 2008 together with the Building Control (Environmental Sustainability) (Amendment) Regulations 2021 and 2022 require new buildings (and existing buildings that undergo major retrofitting) be constructed to a minimum environmental sustainability standard set out in the Code for Environmental Sustainability of Buildings.

(c) planning;

Planning Act 1998 – Planning permission is required for development of any land outside a conservation area. Conservation permission is required for development of any land within a conservation area.

(d) employment; and

Employment Act 1968 – This act provides the basic and minimum terms and working conditions at work for employees who are working under a contract of service in Singapore. However, it does not apply to seafarers, domestic workers, and statutory board employees or civil servants.

(e) anti-corruption and bribery.

Prevention of Corruption Act 1960 ("PCA") – Singapore adopts a zero-tolerance approach towards corruption. The PCA is the primary anti-corruption legislation in Singapore. The PCA provides the Corrupt Practices Investigation Bureau with the powers to investigate corruption and other arrestable offences which are disclosed in the course of a corruption investigation.

4. What permits/licences and other documents do parties need before starting work, during work and after completion? Are there any penalties for non-compliance?

Construction companies carrying on business as general builders or specialist builders will be required to procure the necessary licenses to operate. General builders holding a Class 1 General Builder License are allowed to take on projects of any value whereas general builders holding a Class 2 General Builder License may only take on projects of S\$6 million or less. Specialist builders carrying on any of the six specialist building works, which

are piling works, ground support and stabilisation works, site investigation work, structural steelwork, pre-cast concrete work and in-situ post-tensioning work, are required to procure a Specialist Builder License.

Under Part II of the Building Control Regulations 2003, relevant plans must be submitted to the Building and Construction Authority ("BCA") for approval through a Qualified Person ("QP") (as defined under the Building Contract Act 1989) before building works may commence (except for insignificant building works listed in the First Schedule of the Building Control Regulations).

After the structural plan approval is obtained, there must also be an application for a permit to commence works before the commencement of building works. Certain types of works, including works involving additions and alterations, fixings or claddings, alternative solutions and/or demolition works, may require additional certification / documents.

In certain cases, environmental permits are required (for example, in the discharge of trade effluent).

A failure to obtain the required approvals / permits in the above scenarios may lead to a range of penalties, from the removal of construction works to criminal prosecution and fines.

5. Is tort law or a law of extra contractual obligations recognised in your jurisdiction?

Yes, Singapore law recognises the right to bring an action for civil wrongs under tort law, which are separate from, and additional to, a party's rights under the construction contract.

In the construction context, tortious claims typically include claims for loss and damage suffered due to the tortfeasor's negligence (for example, in carrying out design negligently or for defective workmanship). In such cases, the claimant as the injured party must prove that: (i) the tortfeasor owed the claimant a duty of care; (ii) on a balance of probabilities the tortfeasor breached that duty of care, and (iii) the breach caused the damage suffered, legally and factually. The claimant is also required to show that the loss was a reasonably foreseeable consequence of the tortfeasor's negligent act.

6. Who are the typical parties to a construction and engineering project?

In a typical scenario which involves an

employer/developer entering into a construction contract with a contractor to carry out construction or engineering works, the typical parties involved are:

- i. The employer/developer, who is the owner of the Project;
- ii. The contractors, which include the sub-contractors the main contractor may engage, who are typically specialist contractors engaged to undertake specific packages of works;
- iii. The designers such as architects, civil & structural engineers, mechanical & electrical ("M&E") engineers, who are responsible for design; and
- iv. The professional consultants such as the contract administrator, quantity surveyor, cost consultant, architect and/or project manager to provide professional advice and support to the employer.

7. What are the most popular methods of procurement?

In Singapore, the public sector generally takes an open and competitive approach towards procurement, which is primarily governed by the Government Procurement Act 1997 (See Question 9 below).

Procurements of value not exceeding S\$6,000.00 are procured by way of **Small Value Purchases ("SVP")**, which are direct purchases from suitable service providers or off-the-shelf at fair market value, typically sourced by verbal or written quotations, off-the-shelf purchases, or catalogues published on the Government Electronic Business portal ("**GeBIZ**").

Procurements of value more than S\$6,000.00 but not exceeding S\$90,000.00 are procured by way of **quotations**, either by way of an "open quotation" – by which the quotation notice is published openly on GeBIZ inviting interested service providers to quote, or "limited quotation" – by which quotations would be issued only to selected service providers who are invited to quote.

Procurements of value exceeding S\$90,000.00 are procured by way of **tenders**, by way of:

- a. an "open tender" – by which the tender notice is published openly on GeBIZ inviting interested service providers to bid;
- b. "selective tender" – a 2-stage process in which interested service providers would be shortlisted via an open pre-qualification exercise, after which shortlisted service

providers would be invited to submit their bids; or

- c. "limited tender" – where only selected service providers are invited to tender.

There is no legislation governing the procurement approach of the private sector in Singapore. The private sector may adopt any of the procurement approach prescribed for the public sector as set out above, but typically procures by way of quotations or tenders.

8. What are the most popular standard forms of contract? Do parties commonly amend these standard forms?

In Singapore, the Public Sector Standard Conditions of Contract ("**PSSCOC**") is typically adopted as the form of contract for public sector construction projects, versions of which include the "PSSCOC for Construction Works", for build only projects, and the "PSSCOC for Design and Build", for design and build projects. To encourage greater collaboration and mutual trust between stakeholders in the built environment sector (i.e. collaborative contracting), a set of collaborative clauses has been introduced as an "Option Module" for both versions of the PSSCOC.

The more popular standard form of contracts used in private sector construction projects in Singapore are: (i) the Singapore Institute of Architects Building Contract ("**SIA Contract**") (versions of which include the "Lump Sum Contract" – for fixed sum pricing contracts, the "Measurement Contract" – for remeasurement contracts where the amount to be paid to the contractor is based on a remeasurement of the quantities of works carried out, and the "Minor Works Contract" – for smaller and less complex projects); and (ii) the Real Estate Developers' Association of Singapore ("**REDAS**") Design and Build Conditions of Contract ("**REDAS D&B Contract**") i.e. for D&B construction contracts.

The FIDIC standard form contracts is a popular standard form of contract used by parties for engineering, procurement and construction (EPC) works in Singapore. The predominant forms of FIDIC contract are:

- i. The "Red Book" – the Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer;
- ii. The "Yellow Book" – the Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant and for Building and Engineering Works Designed by the Contractor; and

- iii. The "Silver Book" – the Conditions of Contract for EPC/Turnkey Projects.

In Singapore, the 1999 edition of the FIDIC forms are still more commonly used than the 2017 edition FIDIC forms.

Amendments to these standard forms are not uncommon and are typically effected via a set of "particular conditions" to the contract.

9. Are there any restrictions or legislative regimes affecting procurement?

In Singapore, public procurement is primarily governed by the Government Procurement Act 1997, which includes the following subsidiary legislation:

- iv. Government Procurement (Application) Order, which outlines the authorities, procurement types and contract values that are either subject to or excluded from the GPA;
- v. Government Procurement Regulations 2014, which specifies the necessary principles and procedures of the procurement process itself; and
- vi. Government Procurement (Challenge Proceedings) Regulations, which outline the procedure for the Government Procurement Adjudication Tribunal to hear and determine challenges brought by a bidder whose owed duty was breached.

The Government Procurement Act 1997 does not apply to private sector entities.

As Singapore is a signatory to the World Trade Organization's 1994 Agreement on Government Procurement and several free trade agreements, Singapore's procurement regime is bound by its international commitments and internationally upheld standards.

Building upon the Government Procurement Act 1997 and its subsidiary legislation, the Ministry of Finance ("MOF") issues central procurement guidelines on the Government Electronic Business portal (i.e. **GeBIZ**), covering participation, registration, bidder debarment and other facets of the public procurement process. Although these guides do not have the force of law, they provide bidders with valuable insight into the procedural process in public procurement. As for public-private partnerships ("PPPs"), which are an alternative form of traditional procurement that bidders may wish to consider, these are covered in depth in the PPP Handbook, also published by the MOF.

10. Do parties typically engage consultants? What forms are used?

For most construction projects, the employer will typically engage a range of consultants to carry out a variety of roles, which include:

- i. designers such as architects, civil & structural engineers, M&E engineers;
- ii. quantity surveyors to value the works, both at the outset and during the execution of the works; and
- iii. project consultants / delay experts to monitor the cost impact to the project and/or progress of the works and/or analyse delays in the project.

11. Is subcontracting permitted?

Generally, yes.

12. How are projects typically financed?

(i) Public project financing could be through loans or bonds.

Loans – In 2021, the Significant Infrastructure Government Loan Act 2021 ("**SIGLA**") was introduced to allow the Singapore Government to raise loans up to the limit of S\$90,000,000,000 and with the limit on interest payment of up to S\$5,000,000,000, to finance major, long-term infrastructure, such as new rail lines and coastal protection infrastructure to protect Singapore against rising sea levels [Section 5(1) of the SIGLA].

Bonds – Under the SIGLA, the Singapore Government may raise money through the issuance of securities (i.e. stock, bonds, notes, certificates, bill and similar instruments) through the Monetary Authority of Singapore with the limit up to S\$6,500,000,000 or a higher sum if specified by Parliament [Section 18 of the SIGLA]. One example is the issuance of the S\$2.4 billion sovereign green bond, Green SGS (Infrastructure) bond in August 2022.

(ii) Private project financing could be through loans, bonds or equity

Loan – Projects can be financed through debt financing provided by the commercial banks, investment banks and institutional investors. The loans may be structured in tiers with tranches of senior debt and mezzanine financing.

Bonds – Bonds may be issued with various terms of maturity and secured on the proceeds of the project.

Equity – The private sector may finance the project through the shareholding and capital injections into the Special Purpose Vehicle.

13. What kind of security is available for employers, e.g. performance bonds, advance payment bonds, parent company guarantees? How long are these typically held for?

(i) Bonds and Bank Guarantees

Typically, there are two types of bonds, which are:

- i. **Conditional** – Typically known as a “guarantee”, these types of bonds require a condition to be fulfilled upon a call on the bond.
- ii. **Unconditional** – Typically known as “on-demand” bond, these bonds impose a primary obligation on the issuer to make payment upon the demand of the beneficiary.

To distinguish between a **conditional bond** and an **unconditional bond**, the wording of the bond has to be examined.

Throughout the project, the following bonds are typically required by the owner/employer:

- i. **Advance payment bonds** – At the early stages of the project, the owner/employer may provide an advance payment to the contractor, and in exchange will require an advance payment bond to be provided by the contractor.
- ii. **Performance bonds** – During the execution of the project, the owner/employer will ordinarily require the contractor to provide a performance bond. In such circumstances, the contractor is required to maintain the validity of the bond throughout the project, failing which the contractor will be in default of the terms of the contract, entitling the owner/employer to make a call on the performance bond.
- iii. **Retention bonds** – As an alternative to the withholding of retention monies, the owner/employer may request the contractor to furnish a retention bond, which is typically in equivalent sum of the retention monies. The validity of the retention bond is usually

required to be maintained until the final completion of the project.

In Singapore, fraud and unconscionability are the two bases upon which a demand on a bond may be restrained by way of an interim injunction [*JBE Properties Pte Ltd v. Gammon Pte Ltd* [2011] 2 SLR 47 at [6]; *CKR Contract Services Pte Ltd v. Asplenium Land Pte Ltd* [2015] SGCA 24 at [15]]. In addition, the court is also willing to restrain part of the bond in case the demand was unjustified [*Eltraco International Pte Ltd v. CGH Development Pte Ltd* [2000] 3 SLR(R) 198 at [36]].

(ii) Guarantees

Besides bonds, guarantees are also a common form of security. A guarantee is a secondary obligation which arises only if the contractor fails to perform the guaranteed obligation. The liability under a guarantee is typically conditional on the beneficiary meeting certain conditions precedent, such as: giving the guarantor a notice of the breach within a specified period of time; requiring the guarantor to compensate the beneficiary for the loss; or establishing the relevant loss and damage resulting from the breach.

Guarantees may be provided by:

- i. Banks or insurers; or
- ii. The parent company of the contractor

Typically, guarantees may also be a condition precedent to the contractor's right to payment under the construction contract. To distinguish guarantees from an on-demand bond, it is necessary to examine the wording of the instrument and the undertakings, and not just the titles.

In Singapore, pursuant to the Civil Law Act 1909, guarantees need to be in writing, or evidenced in writing and signed by the guarantor or guarantor's agent.

(iii) Indemnity

An indemnity is a binding promise by the contractor to indemnify the owner/employer against loss and expense arising out the performance of works. It also may cover the loss resulting from the third party's claim against the owner/employer. An indemnity represents an independent undertaking that is not necessarily conditioned upon a third party having committed a breach of obligation.

In Singapore, an indemnity is created by contract and not by law, and there is no statutory requirement for an indemnity to be made in writing. In *Tan Juay Pah v. Kimly*

Construction Pte Ltd [2012] 2 SLR 549 at [42], the court found that the law is slow to imply an indemnity into a contract on the basis of the presumed intentions of the parties.

An indemnity would not apply to any wilful default of the indemnitee or losses resulting from the carelessness of the indemnitee or illegal acts committed by the indemnitee.

An indemnity clause is subject to strict interpretation under Singapore law, where the *contra proferentum* rule applies to construe the indemnity clause against the party who puts it forward [*Kay Lim Construction & Trading Pte. Ltd. v. Soon Douglas (Pte) Ltd and another* [2013] 1 SLR 1].

(iv) Insurance

See our further response to Question 22. Typically, before the commencement of the project, the owner/employer will require the contractor to effect and maintain relevant insurances throughout the project duration, which may continue for a certain period after practical completion.

- i. Contractor All Risk Insurance – This insurance will usually be provided by the contractor to the owner/employer to cover material damage and third-party liability during construction and maintenance period.
- ii. Professional Indemnity Insurance – This insurance is suitable when design work is part of the contractor's scope of work. It covers against the risk of loss or liability resulting from any neglect, error, or omission in the design and/or construction of a structure. This insurance does not necessarily cover the failure to satisfy a "*fitness of purpose*" obligation, and it is only limited to the failure to exercise due skill and care.

(v) Deposits and Escrow Accounts – a deposit is a common form of security for tender submission or works execution where the contractor has to pay the money "*on deposit*", and in the event of default, the owner/employer is entitled to keep the monies paid.

An escrow account is usually relied upon by contractors where there is uncertainty as to the financial condition of the owner/employer. Under such arrangement, the owner/employer is required to deposit monies for the project into an escrow account, which is released to the contractor progressively upon the completion of its works. This is to ensure that funds will be available for the project.

(vi) Charge, Mortgage, and Pledge

These forms of security will usually be required from the inception of the project.

i. Charge

Fixed charge – a fixed charge is similar to a charge over the land which can be created over permanent goods, such as plant, machinery and equipment which constitute fixtures to a piece of land.

Floating charge – a floating charge is created on movable goods, such as chattels, plant, machinery, equipment, receivables, and intellectual property rights. There is no need to transfer the possession of the goods to the charge.

i. Mortgage

Security can be taken over all real property by either a legal mortgage or an equitable mortgage. However, consent will be required before such security can be taken out over real property where the lessor is a governmental authority in Singapore.

ii. Pledge (legal and equitable)

A pledge can be created to the tangible and intangible movable goods which require the physical transfer of possession of the goods, and it is non-registrable.

There are some formalities that need to be followed:

- a. A charge requires registration with the Accounting and Corporate Regulatory Authority of Singapore ("**ACRA**") within 30 days (if executed in Singapore) or 37 days (if executed outside Singapore) of the date of creation of the charge [Section 131 of the Companies Act];
- b. A legal mortgage of registered land requires registration with the Singapore Land Authority ("**SLA**") Land Titles Registry; and
- c. A charge over intellectual property requires registration with the Intellectual Property Office Singapore ("**IPOS**").

(vii) Vesting, Forfeiture and User Clauses

These clauses provide the owner/employer with security for performance of the contractor throughout the project duration.

- i. Vesting Clauses – Under a vesting clause, the ownership of plant, equipment and unfixed

material will automatically pass to the owner/employer when the contractor brings them onto the site, and it will be re-vested to the contractor upon completion of its works. Clause 16(1) of SIA Building Contract 2016 Without Quantities, 1st Edition, is one such example of a vesting clause:

"16(1)(a) All plant and temporary buildings brought onto the Site by the Contractor until completion of the Works under clause 22(2) shall be deemed to be the property of the Employer

...

16(1)(c) Upon completion of the Works, or removal with consent, the property in the plant temporary building shall be deemed to be re-vested in the Contractor."

- ii. **Forfeiture Clause** – a forfeiture clause enables the owner/employer to seize the contractor's plant, equipment and material in the event the contractor's employment is lawfully terminated by the owner/employer. It provides the owner/employer with the right to sell the forfeited plant, equipment and material so as to offset against the financial liability of the contractor to the owner/employer.
- iii. **User Clause** – This clause is similar to a forfeiture clause. However, under a user clause, the ownership does not pass to the owner/employer when the contractor's employment is terminated. It only enables the owner/employer to use the plant, equipment and material to complete the works.

(viii) Collateral Warranty

A collateral warranty is an additional contract between the contractor, consultant and the subcontractor (the warrantor) and the third party (the warrantee) where the warrantor warrants to the warrantee that it will fulfil its obligations under the underlying agreement. This is relevant when the owner/employer intends to have a direct contractual relationship with the subcontractor or the supplier. Therefore, the owner/employer would immediately be able exercise their rights against them by entering into a collateral warranty.

Typically, a collateral warranty comprises:

- i. **Principal Covenant**: a covenant given by the warrantor that it will satisfy its obligations under the underlying contract.
- ii. **Insurance**: warrantor is obliged to provide and

maintain insurance.

- iii. **Intellectual Property License**: the warrantor shall grant to the warrantee the right to use and reproduce all intellectual properties in the works (including the third party's intellectual properties).
- iv. **Assignment**: this is related to the ability to transfer the benefit of the warranty to the third party.
- v. **Materials**: the warrantor shall ensure that the materials used are fit for purpose.
- vi. **Step-in rights**: this provides the right for the warrantee to step-in to the underlying contract for the replacement of the contractor/main contractor.

14. Is there any specific legislation relating to payment in the industry?

Yes, the following legislations are relevant to payment in the industry:

- a. The SOP Act (the Building and Construction Industry Security of Payment Act 2004).
- b. Building and Construction Industry Security of Payment Regulations (the "**SOP Regulations**").

15. Are pay-when-paid clauses (i.e clauses permitting payment to be made by a contractor only when it has been paid by the employer) permitted? Are they commonly used?

No, pay-when-paid clauses are not permitted pursuant to Section 9 (1) of the SOP Act which states that:

9. –(1) A pay when paid provision of a contract is unenforceable and has no effect in relation to any payment for construction work carried out or undertaken to be carried out, or for goods or services supplied or undertaken to be supplied, under the contract.

This is also confirmed by the Singapore courts in the case of *Shimizu Corp v Stargood Construction Pte Ltd* [2020] 1 SLR 1338, which held that Section 9 of the SOP Act "*limits the parties' freedom to contract*" and rendered "pay when paid provisions" completely unenforceable.

Section 9(2) of the SOP Act defines the meaning of "pay-when-paid" clauses, which are clauses:

- a. *that makes the liability of one party (called in this definition the first party) to pay money owing to another party (called in this definition the second party) contingent or conditional on*

- payment to the first party by a further party (called in this definition the third party) of the whole or any part of that money;
- b. that makes the due date for payment of money owing by the first party to the second party contingent or conditional on the date on which payment of the whole or any part of that money is made to the first party by the third party;
 - c. that otherwise makes the liability to pay money owing, or the due date for payment of money owing, contingent or conditional on the operation of any other contract or agreement; or
 - d. that is of such kind as may be prescribed.

Generally, "pay-when-paid" arrangements fall within the meaning of "pay-when-paid" set out in section 9(2) of the SOP Act if such arrangements render the obligation to make payment to the subcontractor contingent upon the operation of other contracts.

In *Frontbuild Engineering & Construction Pte Ltd v JHJ Construction Pte Ltd* [2021] SGHC 72, the "pay-when-paid" clause was held to be unenforceable even when the contract was terminated.

In this case, the Plaintiff made an application to set aside the Adjudication Determination on the basis that the Adjudicator failed to consider the application of Section 4(2)(c) of the SOP Act where the suspension of payment under the terminated contract was permissible "*until a date or the occurrence of an event specified in the contract; and that date has not passed or that even has not occurred.*" The High Court rejected the Plaintiff's submission and found that Section 4(2)(c) of the SOP Act does not take precedence over Section 9 of the SOP Act.

However, despite being unenforceable under the SOP Act, it is not uncommon for such clauses to be included in construction contracts in practice.

16. Do your contracts contain retention provisions and, if so, how do they operate?

Yes, construction contracts typically contain retention clauses. The retention is usually set at 3 – 5% of the value of the work carried out by the contractor. The owner/employer is entitled to retain the retention against any progress payment "*pending full rectification of defects*". The retention monies are typically released in 2 instalments, the first instalment being released on practical completion of the works and the second instalment being released at the end of the defects

liability period and on final completion of the works (See SIA Lump Sum Contract, 9th Edition 2010, Clause 31 (9) and Clause 31 (10)).

Retention of payment is not a general or implied right in the construction contract and has to be contractually agreed between the parties.

In addition, the owner/employer may have recourse to the retention money if the owner/employer has a liquidated claim against the contractor.

In order to protect the contractor from the risk of the owner/employer's insolvency, retention monies are usually held in trust for the contractor or segregated for the duration of the project or at the contractor's request. Retention monies do not form part of the owner/employer's assets [*Nam Fang Electrical Co Pte Ltd v City Developments Ltd* [1996] 3 SLR (R) 298].

17. Do contracts commonly contain delay liquidated damages provisions and are these upheld by the courts?

Many projects in Singapore incorporate common standard form articles and conditions of contract which contain provisions for a non-performing party to pay liquidated damages for delay to completion of contractual milestones such as phased completion dates or the completion of contract works.

Such liquidated delay damage provisions are generally intended to put the innocent party back in the same position as if the contract had been performed. Penalty clauses are generally unenforceable at law, and a liquidated damages provision which imposes a monetary sum that goes beyond compensating the innocent party for its loss will be unenforceable. In this regard, the courts' focus will be on whether the clause provided a genuine pre-estimate of the likely loss at the time of contracting.

18. Are the parties able to exclude or limit liability?

Parties are generally able to contractually exclude or limit liability, save as prohibited under the Unfair Contract Terms Act 1977.

A person cannot restrict liability for death or personal injury resulting from negligence under the Unfair Contract Terms Act 1977. In the case of other loss or damage, such exclusion of liability must satisfy the requirement of

reasonableness.

19. Are there any restrictions on termination? Can parties terminate for convenience? Force majeure?

There are restrictions at law on a party's ability to terminate a validly formed contract without complete performance of parties' mutual rights and obligations under the contract – for instance a contracting party's right to release itself from its outstanding contractual obligations upon its counterparty's prior repudiatory breach of contract.

These restrictions are subject always to any express terms of the contract entered into that further restricts or otherwise provides for a party's right to termination in specified circumstances, for example, a clause granting one or more parties the power to terminate a contract on condition of giving prior written notice to the other contracting party or parties.

Whether one or more parties to a contract can terminate the contract for convenience or due to the operation of *force majeure* will be subject to and governed by the terms of the contract. Events of *force majeure* must be stated in the contract. It is also possible to contractually limit or exclude certain circumstances from being defined as *force majeure*, especially if such circumstances have the quality of foreseeability.

20. What rights are commonly granted to third parties (e.g. funders, purchasers, renters) and, if so, how is this achieved?

The general rule is that a non-party to a contract cannot enforce any rights or obligations under that contract, subject to certain exceptions at law including but not limited to exceptions under the law of agency (where one party enters into a contract as agent for its principal), land law, and statute.

One of these exceptions with a broad scope of application is statutory in nature and as embodied in the Contracts (Rights of Third Parties) Act 2001. A third party may rely on a term of the contract if the contract expressly provides that the third party may do so, or a contract term purports to confer a benefit on the third party, under the Contracts (Rights of Third Parties) Act 2001.

Whether a contract term purports to confer a benefit on the third party will depend on whether the contracting parties intended the term to be enforceable by the third

party. All such third parties must be expressly identified in the contract by name or as a member of a class or answering a particular description.

A third party may have a right to claims in tort against a contracting party, subject to any duty of care that the contracting party is shown to have assumed vis-à-vis the third party. Even if this is shown, policy considerations may militate against the finding of a duty of care.

21. Do contracts typically contain strict provisions governing notices of claims for additional time and money which act as conditions precedent to bringing claims? Does your jurisdiction recognise such notices as conditions precedent?

Many projects in Singapore incorporate common standard form articles and conditions of contract that contain provisions governing notification of claims for additional time and money as condition precedents to bringing of claims.

Whether a notice provision in a contract operates as a condition precedent is a matter of contractual construction and dependant on the express terms of that contract. As a general principle, clear words are necessary to create a condition precedent. If a notice provision is found to be a condition precedent, it will be enforceable at law.

22. What insurances are the parties required to hold? And how long for?

See our response to Question 13, item (iv). Obligations to obtain project or party-specific insurance coverage for risks associated with material or property damage in a construction project – commonly under contractors' all risks policies – and/or for third party claims, and the duration of such insurance coverage, are typically provided for under express terms of contract. Such policies are usually procured by the employer or main contractor for the whole project.

Employers are required by law to take out compulsory work injury compensation ("WIC") insurance for all employees doing manual work, and all employees doing non-manual work below a specified salary threshold. Mandatory WIC insurance coverage applies to both local and foreign employees.

Typically, WIC insurance and insurance for plant and equipment are procured by the relevant contracting party

for their own workers and equipment.

23. How are construction and engineering disputes typically resolved in your jurisdiction (e.g. arbitration, litigation, adjudication)? What alternatives are available?

How contracting parties refer construction and engineering disputes for resolution is primarily governed by any express terms of contract that set out agreed dispute resolution procedures between them.

It is common for public sector construction contracts to provide for referral of disputes or differences to arbitration. It is also common to see multi-tiered dispute resolution clauses which provide for parties to attempt alternative modes of dispute resolution, such as through mediation or dispute adjudication boards ("DABs"), either as optional modalities or as pre-conditions to the commencement of arbitration or litigation.

Under the courts' civil procedure rules, all parties to litigation have an obligation to consider whether some form of alternative dispute resolution, including mediation, might enable them to settle the matter without commencing or continuing court proceedings. The court may consider the parties' conduct in attempting or refusing offers of amicable resolution in determining any issue of costs.

Contractual payment claim disputes in specified construction and supply contracts are additionally subject to the statutory adjudication regime embodied in the SOP Act. Downstream parties of every tier can apply for statutory payment claim adjudication – the regime is mandatory and cannot be contracted out of.

24. How supportive are the local courts of arbitration (domestic and international)? How long does it typically take to enforce an award?

Singapore law and courts are generally supportive of the rule of law and pro-arbitration, with minimal interference in arbitration proceedings unless there is good reason.

Singapore is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Arbitration Awards. The Singapore courts will recognise and enforce an award rendered by a tribunal in the territory of another contracting state.

Generally, domestic arbitrations are governed by the Arbitration Act 2001 ("AA"), and international arbitrations

are governed by the International Arbitration Act 1994 ("IAA"). Subject to the IAA, the UNCITRAL Model Law on International Commercial Arbitration substantially has force of law in Singapore.

Applications to the Singapore courts for permission to enforce arbitral awards made under the AA or the IAA are governed by procedures set out in the applicable rules of court. An application for permission to enforce an arbitral award may be made without notice and must be supported by an affidavit. Whether the application is granted and how long it takes for an order giving permission for enforcement of the arbitral award to be obtained is subject to the Courts' determination.

25. Are there any limitation periods for commencing disputes in your jurisdiction?

Yes. The Limitation Act 1959 governs limitation periods for different causes of action, including but not limited to:

- actions founded on a contract or on tort;
- actions to enforce a recognizance;
- actions to enforce an award;
- actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or sum by way of penalty or forfeiture;
- action for an account;
- action upon any judgment;
- action to recover any penalty or forfeiture;
- action to recover contribution.

Generally, claims founded on a breach of contract or tort have a statutory limitation period of six years from the date on which the cause of action occurred. Where the damage suffered is a latent defect, the statutory limitation period is three years from the earliest date on which the plaintiff first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such action (if this three-year duration expires later than the six-year limitation period for actions founded on a breach of contract or tort). This limitation period of three years is subject to a longstop limitation period of fifteen years from the date on which there occurred any act or omission that is alleged to constitute negligence, nuisance or breach of duty; and to which the injury or damage in respect of which damages are claimed is alleged to be attributable (in whole or in part).

26. How common are multi-party disputes? How is liability apportioned between multiple defendants? Does your jurisdiction recognise net contribution clauses (which limit the liability of a defaulting party to a "fair and reasonable" proportion of the innocent party's losses), and are these commonly used?

Whether a dispute involves multiple parties is subject to the factual matrix of the dispute in question.

Whether and how liability is apportioned between multiple defendants for claims arising out of breach of contract or tort will be subject to determination of relevant issues such as factual and legal causation, mitigation, and remoteness between the acts of wrongdoing and the claimed loss and damages suffered. The terms of contract between the parties in the dispute may also be relevant to the apportionment of liability, for example, contractual provisions for indemnity and guarantee, joint and several liability between identified parties, and apportionment or limitation of liability that apply to the dispute in question.

Clauses that limit liability – such as net contribution clauses – are generally enforceable at law save as prohibited under the Unfair Contract Terms Act 1977. Whether net contribution clauses are used in contracts is a matter for parties' choice at time of contracting.

27. What are the biggest challenges and opportunities facing the construction sector in your jurisdiction?

In January 2024, Singapore's Building and Construction Authority ("BCA") projected that the total construction demand in 2024, in terms of the value of construction contracts to be awarded, would be between S\$32 billion and S\$38 billion in nominal terms, i.e. without taking into account inflation.¹ This will come from a healthy mix of public and private sector projects. The forecast in the medium term between 2025 and 2028 is equally healthy, with the public sector continuing to lead the demand through public housing developments, public transport projects, hospital projects, integrated development projects and school redevelopment projects.

However, amidst the opportunities provided by this steady demand are challenges brought about by the global and regional geopolitical and economic uncertainties.

Challenges

Singapore's construction sector continues to grapple with the aftermath of the Covid-19 pandemic. The measures implemented during the pandemic highlighted the inherent issues and weak points of the sector, such as the heavy reliance on foreign workers (causing manpower shortages); and the weak domestic manufacturing sector (amplifying the global supply chain issue).

Manpower Shortage

The Covid-19 pandemic exposed the cracks in the Singapore construction sector's heavy reliance on foreign workers. In 2019, the number of Singapore residents involved in construction stood at around 115,500, while the foreign component of the construction workforce was around 341,200.² The travel restrictions imposed in 2020 during the pandemic resulted in a major shortage of foreign workers. Workers who returned home during this period were unable to re-enter Singapore, and new workers were unable to enter and join the workforce. This reduction was acute – in the construction sector, 52.8% less foreign workers were employed when compared to 2019 figures.³

Even as travel restrictions were lifted, the manpower shortage issue remained unresolved. The skilled and experienced workers who had not left the country during the pandemic took the opportunity to return home. The new intake of foreign workers were generally inexperienced and needed training. Therefore, even though it was possible to hire foreign workers on construction projects, a majority of these workers were unable to immediately contribute to ongoing projects.⁴

The Singapore government has since implemented a number of initiatives designed to address the over-reliance on foreign labour in the construction industry – which left Singapore exposed to manpower shortages. With effect from 1 January 2024, Singapore's Ministry of Manpower ("MOM") together with various other agencies had removed the Man-Year Entitlement ("MYE")⁵ framework in the construction sector,⁶ and reduced the Dependency Ratio Ceiling ("DRC"),⁷ or the foreign worker quota, that a company can employ at any given time.

The MYE was a work permit allocation system for foreign workers from countries such as the People's Republic of China, India, Philippines, Myanmar, Bangladesh, Thailand, and Sri Lanka. It signified the total number of such workers from these countries that a primary contractor is entitled to employ per year. From 1 January 2024, companies with contracts that were awarded or had tender called after 18 February 2022 do not need MYEs or prior approvals to hire migrant workers from these

countries. Companies can hire these workers as long as it is within their quota, or the DRC, which is the ratio of the maximum number of local workers to foreign workers. However, as mentioned above, the DRC has now been reduced – from 1:7 to 1:5: i.e. 1 local employee to 5 Work Permit Holders or S Pass holders.

These measures aim to reduce the total number of foreign workers employed in the construction sector and to encourage the employment of local workers, with a view to address the concerns and problems brought about by an over-reliance of foreign labour.

However, in view of the fact that the construction sector in Singapore is still labour-intensive, the restriction on the employment of low-cost foreign labour is a double-edged sword. As the supply of foreign labour shrinks, with employers having to look to the domestic market for labour, there will be an increase in the short-term costs of construction. Unless and until there is an appropriate adoption of technology and more efficient delivery methods to off-set the need for labour, these rising costs will pose a challenge to the sector.

Rising Interest Rates and Supply Chain Costs

While there appeared to be a decrease in tender pricing from 2021 to 2023,⁸ suggesting that the costs of material prices were stabilising, the uncertain and unstable market still poses a challenge to the Singapore construction sector.

In addition to the labour concerns discussed above, elevated interest rates and the on-going global supply chain issues continue to plague the Singapore construction sector. Elevated interest rates contribute to the rising wages and higher pass-through costs from suppliers, impacting project costs. In addition, the on-going challenges facing the global supply chain puts Singapore's construction sector in a vulnerable position.

Not having an established manufacturing sector for construction and being heavily dependent on the imports of building materials leaves Singapore exposed to the market volatility, instability and uncertainty caused by the ongoing global geopolitical tensions.

Rise in legal disputes

The impact of the measures implemented to control the spread of the Covid-19 pandemic are now being observed, as disrupted projects are coming to completion in 2024. As Final Accounts are being closed, we note that parties are beginning to claim for liquidated damages, prolongation costs and acceleration costs in respect of

these delayed projects.

Further, we also observe an increase in loss and expense claims emerging as a result of changes in building material prices that were not accounted for during the tender stage. The supply chain issues discussed above caused prices for core building materials such as copper, steel, concrete, cement, and bricks to rise beyond what was anticipated for during the tender stage. For example, the Steel Rebar Price Index has seen a 16% increase between December 2019 to September 2023, while the Concrete Price Index has increased 23% between December 2019 and September 2023.⁹

Additionally, there has been an uptake in claims for unforeseen construction costs as a result of the manpower shortage and mobilisation issues discussed above. The measures implemented during the pandemic and the periods of lockdowns gave rise to additional charges such as dormitory charges and workers' expense at a time when work was halted. Even when restrictions were lifted, the construction sector struggled with a shortage of skilled manpower; all of which gave rise to unforeseen dormitory costs, training costs and delays in completion of projects.

Opportunities:

Singapore's construction sector continues to operate on a labour-intensive basis. As Singapore continues to tighten its requirements for foreign workers in a bid to reduce reliance, the construction industry will have to look into other methods to maintain productivity and increase profitability.

This is an opportunity for the industry and technology sector to pivot and implement advanced technology to compensate for this loss of human productivity.¹⁰

Footnote(s):

¹ [Construction demand to rise to \\$38 billion in 2024: BCA – Singapore Property News \(edgeprop.sg\)](#)

² [mrsd-Labour-Market-Report-4Q-2019.pdf \(mom.gov.sg\)](#), page 25

³ [mrsd-Labour-Market-Report-4Q-2020.pdf \(mom.gov.sg\)](#), page 12

⁴ [Labour shortage, elevated interest rates still plague Asia-Pacific construction sector \(businesstimes.com.sg\)](#)

⁵ [What is Man-year entitlement \(MYE\)? \(singaporeemploymentagency.com\)](#)

⁶ [advisory-on-foreign-worker-quota-compliance.pdf \(bca.gov.sg\)](#)

⁷ [Foreign worker quota and levy requirements \(mom.gov.sg\)](#)

⁸ [AIS \(asiainfrasolutions.com\)](#), page 1

⁹ [AIS \(asiainfrasolutions.com\)](#), page 2

¹⁰ ["The 2024 Vision": Navigating Singapore's Construction Industry Future Through Regulatory Agility and Emerging Trends \(viact.ai\)](#)

28. What types of project are currently attracting the most investment in your jurisdiction (e.g. infrastructure, power, commercial property, offshore)?

The public sector construction demand is projected to contribute to 55% of the total construction demand in 2024, ranging between S\$18 billion and S\$21 billion, while the private sector construction demand will make up for the remainder of the construction demand, ranging between S\$14 billion and S\$17 billion.

Some of the upcoming major public sector projects to be awarded in 2024 includes: new public housing developments (Built-to-Order flats), new underground train system (Cross Island MRT Line contracts (Phase 2)), the development of a fifth airport terminal (Changi Terminal 5), continuing development to the maritime infrastructure (Tuas Port), as well as road enhancement and drainage improvement works. Within the public sector, BCA projects civil engineering construction projects to make up the majority of the work, with contracts to be awarded ranging between S\$7.9 billion and S\$9 billion.

Looking to 2025 to 2028, BCA forecasts public sector construction projects to continue to lead overall construction projects in Singapore, with building projects and civil infrastructure construction projects to make up 70% and 30% respectively. Major developments during this period include further developments of the underground train system (Cross Island Line (Phase 3) and Downtown Line extension), developments in new public infrastructure (Alexandra Hospital and a new integrated hospital in Bedok), the construction of new integrated developments (in Siglap South and Toa Payoh), as well as the redevelopment of educational institutions (various Junior Colleges).¹¹ Private sector construction projects have been forecasted to remain stable in the

period of 2025 to 2028 between S\$12 billion and S\$15 billion per year.

In this regard, we see that public sector construction projects will continue to take the limelight in the coming years, with civil infrastructure construction projects to make up the majority of works within the sector.

Footnote(s):

¹¹ [Steady Demand for the Construction Sector Projected for 2024 \(bca.gov.sg\)](#)

29. How do you envisage technology affecting the construction and engineering industry in your jurisdiction over the next five years?

Singapore's construction sector is bound to undergo a massive technological transition, not least as a necessary measure to address the increased cost of labour discussed above. In a bid to remain competitive in the region, Singapore's Minister for National Development, during the International Built Environment Week 2023, set out Singapore's plans to transform "*the entire building lifecycle by harnessing emerging technologies and innovations to drive collaboration across various project parties.*"

We set out some examples of technologies the industry may expect to see in the next five years:

CORENET X

CORENET X is the successor of CORENET, a technology that revolutionised regulatory submissions for building works when it was launched more than 20 years ago. It essentially allows electronic plan submissions. CORENET X aims to cut down more than twenty approval touchpoints across agencies to three key submission gateways. At each gateway, Qualified Persons (as defined in the Building Control Regulations)¹² will make a coordinated submission. Agencies will then provide a consolidated response. This upfront coordination will help minimise costly abortive works downstream.

Ultimately, CORENET X seeks to reduce the reliance on manpower for regulatory issues in the construction industry.

Building Information Modelling (BIM)

The Minister for National Development foresees that the benefits of BIM will be "*turbocharged*" when used in conjunction with CORENET X. Architects can make use of BIM to speed up and help the design process while

quantity surveyors can use those same digital models to estimate their material needs easier via BIM's simulation of the construction processes. BIM will help reduce design conflicts and miscommunication between consultants, streamlining processes to save time and costs during construction projects.

Internet of Things (IoT)

Singapore is currently ranked as one of the world's leading digital cities with its IoT market generating a total revenue of 5.47 billion US dollars in 2022.¹³ With the Singaporean government's plan to digitalise the construction sector (see above), it is expected that the adoption of IoT (the interconnection of devices that collect and exchange data over the internet, which essentially allows monitoring of the entire construction site) will pick up in the near future. This allows for the early identification of potential safety issues resulting in improved safety, increased efficiency, and lower costs.

Footnote(s):

¹² [MEDIA RELEASE \(bca.gov.sg\)](#) at page 1 and [Building Plan Submission | Building and Construction Authority \(BCA\)](#)

¹³ [Internet of Things \(IoT\) in Singapore – statistics & facts | Statista](#) and [Global digital cities index ranking 2022 | Statista](#)

30. What do you anticipate to be the impact from ongoing supply chain issues and the escalation of material costs over the coming year?

It had seemed that the global supply chain was starting to stabilise since the volatile period between 2020 and 2023. In 2023 the price of cement and lumber have remained the same while the price of steel saw a

marginal increase of 1%.¹⁴ However, the recent geopolitical conflicts in the Middle East are giving rise to further periods of uncertainty. It would not be surprising if global supply chain issues will arise again, with the cost of materials rising in tandem.

However, with the Singapore Government's push for digitalisation in the sector, it is anticipated that there will be an uptake in the usage of technology in the construction process to circumvent or reduce the ills of the ongoing supply chain issues and rising material costs. This push for digitalisation can be seen from Singapore's Built Environment Industry Transformation Map. It is "*a product of extensive tripartite engagement and crystallises the collective vision and strategies to transform the built environment sector*".¹⁵ This initiative seeks to integrate planning and designing of projects with the use of BIM and to advance manufacturing and assembly by investing in automated fabrication in factories to improve productivity, and quality.

The Singapore Government is also rolling out generous grants with an expanded scope for construction companies, to co-fund up to 50% of the qualifying costs of new technology such as BIM software and the training required for CORENET X.

The main anticipation in the coming year is the way technology will be leveraged to combat potential supply chain issues and the rising costs of materials tied with greater investment in technology by construction companies.

Footnote(s):

¹⁴ [Country Commodity Reports Q2 2023 \(ctfassets.net\)](#), at page 48

¹⁵ [Built Environment Industry Transformation Map \(ITM\) | Building and Construction Authority \(BCA\)](#)

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