

MahWengKwai & Associates

ADVOCATES AND SOLICITORS

MWKA Online Talks

How should Contractors in the Construction Industry manage the problems arising from the COVID-19 MCO? (Part 2) : An interview with John Wong from Charlton Martin Consultants

BY CHRISTINE TOH and JOHN WONG

2 April 2020



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About Us

- Trusted by small medium enterprises (SMEs), family businesses and individuals.
- Established in 1985 by Dato' Mah Weng Kwai, now a consultant with the firm.
- Medium-sized law firm with 22 lawyers and 24 staff.

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Our Services

- Full-service law firm with 4 Departments:
 - Corporate
 - Dispute Resolution
 - Employment
 - Individuals & Families

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Our Practice Groups

- 5 Practice Groups:
 - ASEAN-China Desk
 - Construction
 - Foreign Direct Investment
 - Real Estate
 - Sports & eSports

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MWKA Online Talks

- To share knowledge, raise awareness, encourage networking
- For clients, potential clients, in-house counsel
- Yesterday was Part 1 of today's talk.
- 2 parts:
 - Answers to yesterday's questions
 - 10 Questions on how to protect your interests from the effects of MCO

Christine Toh



- Partner in Dispute Resolution department in MahWengKwai & Associates
- Bachelor of Commerce / Bachelor of Business System (Monash University)
- Bachelor of Law (University of London) (Honours Second Class Upper Division)
- Called to the Malaysian Bar in 2014

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Christine Toh



- Association of Chartered Certified Accountants, certified Adjudicator and empanelled with the Asian International Arbitration Centre
- Construction adjudication, arbitration and litigation, taxation, family law, and contractual disputes.

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John Wong



- Director at Charlton Martin Consultants, a construction contracts consultant
- Degree in quantity surveying and in law
- Member of the Royal Institution of Surveyors Malaysia, Certified Adjudicator and empanelled with the Asian International Arbitration Centre and a fellow of the Chartered Institute of Arbitrators

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John Wong



- Experienced in the oil & gas, commercial residential, utilities, infrastructure, power and transportation sectors
- Experienced expert witness in Court and arbitration proceedings, presided over numerous arbitrations and adjudications and speaker and trainer

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Q&A from Part 1

What does the IEM form of contract say about EOT and claims for loss and expense due to force majeure?

Q&A from Part 1

What does a SPA between developer and purchaser say about force majeure? How will it affect the developer?

Q&A from Part 1

What sector do items (l) and (m) of critical works fall under?

Q&A from Part 1

If the construction works are under the purview of the Solid Waste and Public Cleansing Management Act 2007, can the contractor claim force majeure?

Q&A from Part 1

Ministry of Housing and Local Government has not issued any FAQ on construction works. Can the contractor rely on the Ministry of Works' FAQ instead?

Q&A from Part 1

Can the notice of force majeure and notice of EOT be combined or must it be issued separately / stand-alone?

Q&A from Part 1

What happens if parties only signed a purchase order without force majeure clause or any other clause which deals with the current situation?

Q&A from Part 1

Would main contractors be allowed to claim for EOT and loss and expense if they delayed work on-site due to MCO?

Q&A from Part 1

Would a contractor be allowed to claim loss and expenses, following the examples of claims you have given in the slides?

Q&A from Part 1

As a contractor, our main contractor instructed us to proceed with some critical works as listed in the waiver given by JKR/DOSH. How do we address EOT and L&E claim?

Q&A from Part 1

Does force majeure give employer reason to delay payment for our (contractor's) claim and invoice?

Q&A from Part 1

Can the contractors claim for EOT under 23.8(w) of PAM “suspension of works” instead of 23.8(a) of PAM “Force Majeure” which will entitle them to L&E?

Q&A from Part 1

Referring to the intention to claim for EOT within 28 days, when is the starting date to write in intention to claim for EOT? 18th March or 25th March (the day the extension of MCO was announced)?

Q&A from Part 1

The Employer insists that all workers perform the COVID-19 test at the Contractor's cost, what should the Contractor do?

Interview Questions

When a contractor gives a notice of delay after the announcement of the MCO for 14 days from 18-31 Mar 2020, what should the notice state?

Interview Questions

What practical site operations should an employer insist the contractor do before it closes the site premise pursuant to the MCO?

Interview Questions

Should the contractor notify the insurer of the suspension of the Works during the MCO period?

Interview Questions

Does the existing insurance policy cover the Works during the MCO period?

Interview Questions

Who should pay for the contractor's site overheads (e.g. site management salaries and rental of site cabin) incurred during the period of MCO?

Interview Questions

Who should pay for the contractor's demobilisation cost incurred prior to the MCO period and remobilisation cost incurred after the MCO period?

Interview Questions

Should the contractors give another notice of delay following the extension of the expiry of the MCO from 31 March to 14 April 2020?

Interview Questions

Are the contractors entitled to an Extension of Time (EOT) of more than 28 days since the MCO period is only 28 days, i.e. from 18 March to 14 April 2020?

Interview Questions

What are the supporting documents that the contractors should submit together with his application for EOT of more than 28 days?

Interview Questions

Can a contractor claim for an EOT without a critical path analysis?

Questions?

Fill in our contact form at <https://mahwengkwai.com/contact-us/>

Email us at lawyers@mahwengkwai.com

Call us at **+60178872702**

Upcoming topics

Date (Day)	Topic Title	Speaker(s)
6 April 2020 (Mon)	Rescue Mechanisms For Distressed Companies - Corporate Voluntary Arrangement	Cassandra Thomazios, Tommy Wong and Felicia Tang
8 April 2020 (Wed)	Business Continuity: The Show Must Go On	Lum Ying Mei (MWKA Tech)
10 April 2020 (Fri)	Estate Planning under Syariah Law : Wasiah and Hibah	Sarah Kambali

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Thank you!