



LEGAL ALERT

Construction and Infrastructure

25th of August 2017

Preservation of entitlements and Claims in Cases of Natural Disaster

Now that Hato's climatic effects have abated and Macau slowly recovers from the strongest typhoon in its recorded history, reports of substantial havoc and damage to infrastructures and worksites begin to arise, with a number of public and private construction projects assessing extensive damage to the works that will doubtless have impact in time for completion and need for substitutive/ additional works.

It is of vital importance that contractors – both public and private – be mindful of their entitlements in these cases and aware of the requirements they must meet to be able to recover their losses. To that end, we provide below some useful and summary notes on this topic, contemplating scenarios of private and public construction contracts:

Private Contracts:

Be sure to review the contract terms and ensure that there are no specific formalities for assessment and claim of damages in these cases. As a matter of caution, contractors are advised to inform owners at once of the damages, their extent and impact – financial and in completion time – as opposed to deferring these matters to final account stage.

Public Contracts:

Construction Contracts for execution of works for public entities are regulated by Decree-Law No. 74/99/M, which sets out a clearly defined regime (Articles 169 to 172) for assessment and recovery of damages in these cases. While extension of time should be granted automatically, this would not be the case regarding losses and damages, which must be claimed in a timely fashion in order to be recoverable.

As such, and under this regime, contractors are advised in the strongest possible terms to notify the owner within 5 days – counting from the date on which the damage occurred, i.e., August 23rd – for the owner to come to the work site and inspect it for assessment of, inter alia:

- (a) At the cause of the damage;
- (b) The state of the site after the fact causing the damage and the extent of the impact of the event;
- (c) If the correct rules of the trade and orders of the owner have been complied;
- (d) If the contractor failed to take any care or precaution, which, under normal rules of prudence and experience, should have been taken to prevent or mitigate the event;
- (e) If the work have to be partially or wholly suspended, with indication of the portion of the suspended and likely period of suspension;
- (f) The probable amount of the damages sustained.

The owner's representative should prepare a report with its findings regarding the above, and the contractor is entitled to file its request for compensation immediately with this report, or 10 days thereafter, and should present in this claim its basis for compensation and financial requests – to the extent that they can be determined at the time, and may also dispute the owner's findings as set out in this report. Once the owner receives this claim, it will revert with a decision within 15 days.

If the owner refuses to carry out this inspection, the contractor may carry it out itself, within the same time period and with the assistance of two witnesses, and prepare a report for submission to the owner.

Failure to follow this procedure will result in forfeiture of any rights to claim of these damages, and the Macau Government has been increasingly strict in its enforcement of this provision and denial of claims that are not compliant with these proceedings.

Should you have any queries, please do not hesitate to contact us at employment@mdme.com.mo or:



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