

COVID '19 Implications on Construction Contracts in Oman

GENERALLY

The conditions of contract do not operate in isolation but are subject to the overriding Laws of Oman and this may be relevant.

Similarly changes in the Law means genuine legal changes to the laws of Oman, not just recommendations or suggestions.

FIDIC CONTRACTS

Force Majeure:

Oman Standard Conditions does not have a stated “force majeure” clause, many FIDIC based contracts do have such clause. However, most FIDIC contracts in Oman are modified in the particular conditions to limit “Force Majeure” to events which occur within Oman. In this case, events which occur outside Oman are not force majeure but need to be dealt with under other clauses of the contract.

FIDIC Red Book Clause 19 - Force Majeure:

In this Clause, “Force Majeure” means an exceptional event or circumstance:

- (a) Which is beyond a Party’s control,
- (b) Which such Party could not reasonably have provided against before entering into the Contract,
- (c) Which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) Which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

FIDIC Clause 8.4 Extension of Time:

The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor’s Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works and Sections] is or will be delayed by any of the following causes:

- (d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub Clause 20.1 [Contractor’s Claims].

Clause 20.1 Contractor’s Claims:

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

OMAN CONDITIONS

Clause 26 Compliance with the Laws and Regulations:

The Contractor shall conform in all respects with the Laws of the Sultanate of Oman

Clause 34.(6) LABOUR Epidemics:

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, order and requirements as may be made by the Government, or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.

Clause 44 Extension of Time:

Should the amount of extra or additional work of any kind or any cause of delay referred to in these conditions, or exceptional adverse climatic conditions, or other **special circumstances of any kind whatsoever which may occur**, other than through a default of the Contractor; be such as fairly to entitle the Contractor to an extension of time for the completion of the Works, the Engineer shall determine the amount of such extension and the Engineer shall consult with and provide to the Employer a detailed written report giving the reasons for his decision to extend the completion date prior to notifying the Contractor Provided that the Engineer is not bound to take into account any extra or additional work or other special circumstances unless the Contractor has within twenty – eight days after such work has been commenced, or such circumstances have arisen, or as soon thereafter as is practicable, submitted to the Engineer’s Representative full and detailed particulars of any extension of time to which he may consider himself entitled

So, it is reasonable that, subject to compliance with the notice provisions, Contractor’s may be allowed extension of time without costs so long as they can demonstrate that special circumstances caused an actual delay to the critical path and eventually completion. This would require detailed records to be kept and proper delay analysis

CONCLUSIONS

Supply of Labour, Plant and Materials is generally a Contractor risk item unless specifically affected otherwise by some form of legal or contractual obligation.

As always:

- Submit notices,
- Keep detailed records and record when the Event is concluded
- Extension of time is applicable only when events are proven to affect the critical path and almost certainly, will be granted without costs

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