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Covid-19 Act to help contractors avoid paying late charges

Legislators are debating the Covid-19 Bill, which, once approved by Parliament, will push back most of the liability claims from businesses across a wide spectrum of the Covid-19-embattled economy.

The Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (Covid-19) Bill 2020, tabled for first reading on Aug 12, is what contractors had wished for to avoid the unfair penalty of paying late delivery charges for their ongoing projects.

The Bill, likely to be passed during the current parliamentary sitting, will be effective from Feb 27, 2020 to Dec 31, 2022.

The Covid-19 pandemic has caused untold misery for everyone except suppliers of medical devices used in fighting the virus, and necessitated desperate measures that the government is currently undertaking to help the construction industry recover.

In the same vein, the Master Builders Association Malaysia (MBAM) feels the government should adopt radical measures and seriously look at addressing urgent labour shortage issues such as restructuring the rehiring of foreign workers programme.

Rehiring foreign workers a viable option

For rehiring to work effectively, the government must first streamline its processing procedure and introduce amnesty to encourage employers and both unemployed and undocumented foreign workers to apply.

The government should issue approval for foreign workers to start work first and allow a period of between six and nine



months for employers and workers to comply with legal requirements under the Employment Act and CIDB Act 520. This way, a larger number of workers can be injected into the construction industry in the shortest possible time.

At present, there is a ready pool of unemployed foreign workers to draw from: those held in Immigration detention camps, those left stranded when projects were forced to stop and undocumented foreign workers in the country.

MBAM believes the best option is to cut red tape and relax the strict criteria of compliance by opting for a single integrated online system managed by the Immigration Department. This will reduce costs and make it cheaper for contractors to hire workers during the recovery period.

From previous experience, contractors were concerned about having to make upfront payments with no money-back guarantee after failing to get approval for employing foreign workers.

Redeploying foreign workers not a walk in the park

On June 10, the government approved the "Transfer of Employers" regulation, which allows foreign workers to come under the employment of another contractor with-

out having to return to their home country first, with the condition that they have to communicate directly with Construction Labour Exchange Centre Bhd (CLAB).

While the by-law is a boon, contractors are still in the dark about:

- The foreign worker levy that a new employer has to pay;
- Any additional charges in processing fees and other incidental costs;
- The time taken to complete the transfer of workers; and
- The criteria for the quota of workers allowed.

Certificate of completion and compliance

The Covid-19 pandemic has almost shut down the civil service, and that has delayed the issuance of a huge number of certificates for completed projects that are ready to be handed over.

Without them, contractors are unable to collect the monies due to them. MBAM hopes the government will look into this matter urgently, as prompt settlement will ease contractors' cash flow.

Urgent need to resume CIPAA adjudication

Another issue is that industrial claim disputes that have been referred to arbitration are further delayed, as the position of the director of the Asian International Arbitration Centre has been vacant since March.

The delay in appointing a replacement has paralysed the operations of arbitration proceedings and Construction Industry Payment and Adjudication Act 2012 (CIPAA)

adjudication during this period.

MBAM hopes the government will consider allowing the Construction Industry Development Board to appoint adjudicators, as the backlog of adjudication cases in connection with payment disputes is piling up and they have to be resolved soon.

Force majeure

The Ministry of Works has disallowed contractors from making claims in the event of a delay caused by an incident considered as an act of God or unforeseen circumstances that prevented a contractor from fulfilling his contract, especially during the Covid-19 pandemic.

During this recovery period, contractors have had to restart with a change in their original tendered scope of work and bear extra compliance costs in adhering to the Health Ministry's Covid-19 standard operating procedure, which means incurring higher operating costs with low output as they restart work.

Although 80% of contractors have restarted work, SOP compliance means they are unable to operate with optimum productivity, unlike before.

The government/project owner must empathise with contractors caught in this dire situation, as their companies are not charitable organisations that must be made to bear all the extra costs in this trying time. ■

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