



ARTICLE

Prolongation and Disruption of Construction Projects in Hong Kong due to COVID-19

Despite Hong Kong not instituting a lockdown to anywhere near the same extent as other major hubs in the Asia Pacific region, during the past six months the construction industry in Hong Kong has been heavily affected as a consequence of COVID-19.

Some examples of how projects have been impacted include:

- Construction sites, as well as clients' and consultants' offices, have occasionally been closed as a result of a worker or workers having been infected with COVID-19. As a result, the site or office has been closed for at least 14 days;
- The procurement of materials, plant and equipment has been delayed due to the part or complete closure of factories and manufacturing plants (especially in Mainland China);
- The delivery and shipment of materials, plant and equipment from outside of Hong Kong has been delayed due to various restrictions on transportation, flights and shipping;
- Staff, labour and workers sourced from outside of Hong Kong, especially from Mainland China, have not been able to get into Hong Kong to work, or if they have managed to enter Hong Kong, they have had to go into quarantine for 14 days;
- The working methods and sequences on the site have had to be changed due to the introduction of social distancing rules and the need to be kept apart and in small groups; and

- Many of the day-to-day site operations have been disrupted due to the need to implement the various measures imposed by Government Authorities such as temperature checks, social distancing, regular cleaning of hands, disinfecting of tools and equipment and wearing masks/goggles/gloves.

These examples of the effect of COVID-19 will have resulted in delays and disruption to the regular progress of the works on construction projects in Hong Kong. As such, they should be the subject of notification under your contract.

The delay and slippage will, in many cases, be incremental, day by day, as the impact and effect of COVID-19 reduces efficiency and affects productivity. For example:

- The implementation of various protection measures (e.g. wearing of masks/ goggles/ gloves and temperature checks). Having to wear masks, goggles and gloves all day may affect productivity and slow down the progress of works. Actual progress needs to be recorded and, if possible, compared with productivity prior to the introduction of additional PPE;

- The general need to increase the level of personal hygiene and cleanliness (e.g. washing hands, cleaning work clothes). The requirement for workers to wash their hands every 2-3 hours will not be too disruptive, however if the washroom is a short walk away then the downtime can add up and if so, this needs to be recorded;
- If the workers are required to clean and disinfect their tools at the end of every day, then the time taken needs to be recorded;
- The lack of sufficient staff and labour (e.g. issues with outsourced workers) could potentially be the single biggest problem caused by COVID-19. Staff and workers sourced from outside of Hong Kong (especially from Mainland China) may not have been able to get into Hong Kong to work, or if they have managed to enter Hong Kong, they have had to quarantine for 14 days;
- Changes in methods and sequences of working (e.g. due to social distancing rules, small groups and working apart) could be very disruptive where workers are in close proximity. To avoid crowding, the works will have to be progressed on a sequential basis, which could incur significant downtime and will need to be recorded; and
- The shortage of materials (e.g. due to travel restrictions and factory lockdowns) will depend on where the materials are sourced. However, most will be sourced outside of Hong Kong and so even the local suppliers of materials could be affected by shortages. This also applies to the replacement of faulty equipment and the supply of spare parts from various vendors from around the world.

Other issues which also need to be considered include:

- The carrying out of temperature and health checks of all the staff and workers every day, whilst not overly disruptive, will likely require dedicated staff to take temperatures and to notify of any incidents. If and when an issue with someone's temperature occurs, the downtime as a result of this needs to be recorded, especially if the site is ultimately closed down for 14 days;
- Some staff may have worked from home, which again might not be too disruptive, but even so this needs to be recorded. Details should be kept of when, and for how long, the person worked from home, with reference to how this reduces their

efficiency in managing and organising the Works. In addition, where staff are working at home and an issue arises on site that needs their urgent attention, there could be a longer response time;

- The provision of additional PPE is mainly a cost issue (wearing additional PPE may only cause minor disruption) however the ability to procure the necessary PPE has been raised as an issue. This needs to be recorded, as well as the extent of the consequences of the shortage;
- As a consequence of COVID-19, it might have been necessary to arrange for dedicated transport for personnel attending the site, and this might have caused delays in getting the workers to and from the site, which subsequently reduces the working day; and
- A lack of specialist workers from overseas (e.g. commissioning engineers) may also be having a significant impact. If so, records need to be kept accordingly, with respect to flights, quarantine and travel restrictions.

Records

It goes without saying that, in general terms, it is important to keep good site records. This is somewhat magnified with respect to the impact and effects of COVID-19. These records should track progress contemporaneously and where delay and disruption is evident provide details of what, where, when, how and to what extent measures implemented due to COVID-19 have caused the impact. The aim of these records should be to identify and to provide detail of the causes of the delay and disruption. In this case, how COVID-19 is causing or has caused delay and disruption, and to what extent.

There will of course be challenges, such as establishing how much productivity has been lost every day for each worker, due to the implementation of various daily protection measures.

Whilst the impact of the shortage of materials should be relatively straightforward to quantify, it will still be necessary to link the shortage directly to COVID-19. It is imperative that detailed records are maintained of all the issues and delays with respect to the procurement and supply of all plant, materials and equipment to the project from within the country, or from overseas. The current situation may require, for example, that a change in supplier is necessary, with not only a higher cost, but also with a longer lead-in period and this will need to

be recorded and be directly attributable to the impact of the virus. Alternatively, it could be that the supply of equipment might be held up by issues with the shipping, either not being able to dock, being held up at the docks by authorities, or by closures of the docks. This will also need to be recorded in such a way that the direct causation is linked to the virus.

It may be the case that the impact of insufficient labour will be easier to demonstrate, however linking the cause to effect of lower labour levels onsite could be more difficult. Therefore, it is important to track the travel, movements and quarantine situation of staff and labour, to identify when they were able to work. If the level of site labour is reduced due to social distancing rules this also needs to be recorded, and the reduced capacity identified and notified.

Another issue that could potentially cause disruption and delay to the progress of the Works, is the availability of the Engineer to attend the site to witness a test, or to address an incident, or to resolve a problem. Therefore, it will be necessary to record all the issues and delays with respect to the attendance of the Engineer, either the lack of, or the late arrival, by recording when the Engineer was required onsite and when the Engineer actually arrived on site, if at all. Further records should then be maintained detailing the consequence of the Engineer's failings on the progress

of the Works, which activities/workers were affected and for how long.

Equally, this scenario could also apply to the failings of the Employer as well as the Engineer to attend the site and/or to respond to submissions. Therefore, it will be necessary to record all the issues and delays with respect to the response of the Employer and/or the Engineer to submissions, either the lack of response, or the late reply/approval by recording when a response/approval was required and when it was actually received.

Contract

With regards to the delay and disruption caused by COVID-19 and any entitlements to an extension of time (EOT) and to any additional associated costs, will be a matter for legal input, with respect to the interpretation of the relevant contract clauses.

It seems that Contractors have been looking at the force majeure and change in law provisions in their contracts to seek relief and compensation for the impact of COVID-19, but it may be possible to claim under the variation clauses, as the sites have had to change the way they operate by introducing revised methods and sequences of working, as noted above, or even find remedies outside of the Contract.

The views expressed herein are those of the author(s) and not necessarily the views of FTI Consulting, Inc., its management, its subsidiaries, its affiliates, or its other professionals.

FTI Consulting, Inc., including its subsidiaries and affiliates, is a consulting firm and is not a certified public accounting firm or a law firm.

CLIVE HOLLOWAY

Senior Director
+852 3768 4717
clive.holloway@fticonsulting.com



Learn more at [fticonsulting.com/covid19](https://www.fticonsulting.com/covid19)