

Coronavirus hits construction sector with indefinitely delayed shipments

With shipments of construction material from China being indefinitely delayed due to the outbreak of Coronavirus in that country, South African contractors are having to sharpen up on the terms of their contract and the financial impact that the virus could have on projects here.



Natalie Reyneke, director at MDA Attorneys

This is according to Natalie Reyneke, director at local construction and technology law firm MDA Attorneys who says that contracts typically place the risk of material delivery and the resultant delays on contractual completion times squarely on the shoulders of contractors.

“However, contractors may have a reprieve if their contracts have adequate provisions to allow for time extensions. The impact of the virus may be a force majeure event (an unforeseen circumstance that prevents either of the parties from fulfilling their obligations under the contract). Two of the standard form construction contracts also allow for time extensions when contractors cannot obtain materials or there is a shortage as a result of an unforeseeable epidemic,” she says.

Significant cost implications

Project delays have significant cost implications. When an event occurs that is beyond the control of the parties, they usually share the risk. What this means is that a contractor would bear the monthly expense of being on site for longer than expected if there are delays, and the project owner would take the risk of other costs and expenses incurred due to late project completion. In other words, if the contractor has to be granted an extension of time to complete the project, the project owner cannot levy delay damages against the contractor for that extended time.

To avoid delay damages, contractors must ensure that they quickly identify possible contractual remedies

and submit required notices in terms of their contracts, or they could find themselves losing millions due to the viral outbreak.

“Our clients are receiving delayed shipment notices that indicate cancellation of shipments, with calls for patience from customers as China does its best to fight the epidemic. In times of such uncertainty, we advise our clients to ensure that they proactively mitigate possible damages,” says Reyneke.

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