

War in Ukraine: Local construction sector bracing for possible massive price hikes

MDA Attorneys has said that South African construction contractors need to factor in the risk of massive price hikes following the war in Ukraine and resultant sanctions against Russia. Contractors may need to now mitigate risks by including a clause in contracts to make provision for exceptional international events, as there is no such appropriate clause in standard form contracts.



MDA Attorneys associate Tamlynn Caelers-Avis

Tamlynn Caelers-Avis, MDA Attorneys associate, says, “There is no reasonable way for contractors to factor the effects of exceptional international events into their contract prices, neither would it be reasonable to expect a contractor to do so. Without clarity, contractors run the risk of being unable to complete the works or completing them at a loss.”

Force majeure clauses are applicable to events which are unforeseeable and could therefore not have been provided for at the time of entering into the contract. These clauses in standard form contracts would not assist contractors currently negotiating and entering into contracts with Ukraine-related issues. In addition, force majeure clauses generally deal with the time implications of an unforeseeable event; it is only certain contracts which provide for payment of the associated costs and in specific circumstances.

Price spikes and shortages are already being reported in the South African construction industry – personnel, goods, supplies and materials - and the situation is unlikely to be immediately resolved.

Adds Caelers-Avis, “Exactly what the next exceptional international event may be is unpredictable and so are the ripple effects of these type of events. To mitigate this risk for contractors, MDA Attorneys has drafted a clause to deal with exceptional international events.



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Michael Hogan 14 Mar 2022



Addressing how cost spikes will be dealt with

“An exceptional international event clause creates a mechanism for the parties to discuss how cost spikes will be dealt with. Contractors notify the commissioning party (employer) of price fluctuations to find an appropriate and reasonable way forward which does not unfairly skew the risk allocation.”

Construction contracts require parties to cooperate to achieve completion of the works and Caelers-Avis says this implies that employers should be cognisant of the possibility of impacts. Should there be a dispute related to increased costs, the general dispute process outlined in the contract applies.

“Since we focus specifically on the construction sector, we are engaging with clients and parties to find a workable way forward,” she says.

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