



**TILE ASSOCIATION (SINGAPORE)
SETSCO SERVICES
TALK ON WARRANTIES AND INDEMNITIES**



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TILE ASSOCIATION (SINGAPORE) SETSCO SERVICES TALK ON WARRANTIES AND INDEMNITIES

Programme

- **Introduction to the Engineering and Construction Practice Group.**
- **The Core Issues on Warranties and Indemnities.**
- **Common Features of Warranties and Indemnities.**
- **Development of the Law in this area.**
- **The Current Position in Singapore.**
- **Practical Concerns on Risk Exposure based on Specimen form.**
- **Questions**



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The Core Issues on Warranties and Indemnities

- **Question of Terms – What does it Cover?**
- **Question of Terms – When is Coverage activated?**
- **Question of Enforceability – Can a Supplier resist demand?**
- **Question of Exposure – Can a Supplier draft himself out of liability?**
- **Question of Exposure – Can a Supplier Manage Risk through drafting?**



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Common Features of Warranties and Indemnities

- **Activating Condition or Event** – When does the Supplier become obliged to perform or provide relief?
- **Notice Procedures** – How does the Employer activate the warranty?
- **Prescribed Relief** – What form of relief and to what extent does the Supplier perform the relief?
- **Qualification of Relief** – At what point does the Supplier “stop” performance or provision of relief?



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Common Features of Warranties and Indemnities (Cont'd)

- **Assignability of warranty** – Can the warranty be passed on to another beneficiary?
- **Natural Term Expiry of warranty** – When is the Supplier no longer obliged to the Employer (barring any vitiating event)?
- **Termination of warranty** - When and under what circumstances can the Supplier consider his obligations discharged?
- **Dispute Settlement and Governance of Law** – What happens when there is a dispute and how will the dispute be dealt with?



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Development of the Law in this area

- Traditionally, there was a difference between the remedies for enforcing a contract at law and in equity.
- At law, the aggrieved party seeking indemnity had to first suffer the damage or loss occasioned by the other party's default.
- Only then is liability under the indemnity established.
- Relief under the Indemnity sounds in compensatory damages.





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Development of the Law in this area (Cont'd)

- In Equity, an aggrieved party seeking the indemnity may, in the appropriate circumstances, be given relief without having to "*...pay and perhaps ruin himself before seeking relief*".

Johnston v Salvage Association (1887)

Firma C-Trade SA v Newcastle Protection and Indemnity Association [1991]





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Development of the Law in this area (Cont'd)

- Supreme Court of Judicature Acts 1873 and 1875 in the UK.
- The **equitable remedy** has **prevailed** over the remedy at law.
- In the case of an indemnity for 3rd party liability, unless the terms of the contract expressly prohibit it, a person entitled to an indemnity may obtain relief as soon as his liability to the third person has arisen and before he has made payment. [Halsbury's Laws of England Vol 20: Guarantee and Indemnity para 357].
- In the case of an express indemnity e.g against product defect or failure, the activating event permitting a claim depends on the relevant **terms of the warranty** and the **construction of such terms**.
[Management Corporation Strata Title Plan No 1933 v Liang Huat Aluminium Ltd (fka Liang Huat Aluminium Pte Ltd) [2001].



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The Current Position in Singapore

- **No Holding Law - No Fixed or Standard Form for warranty prescribed as a matter of law.**
- **Guidance to Court's trend of thinking found as *dicta* in Management Corporation Strata Title Plan No 1933 v Liang Huat Aluminium Ltd (fka Liang Huat Aluminium Pte Ltd) [2001].**

Wording of the Deed in the above case = Wording in the Specimen ("In the event.....determined by the Employer.....absolute satisfaction of the Employer.")

- **Equitable remedy** appears to be the **dominant approach** here.



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- **Questions still remain as to means of defining the activating event or condition to claim, subject to terms**

E.g “*In the event*”

For 1st party indemnity; “*event*” means discovery and complaint of defect or must suffer damage caused by defect?

For 3rd party liability, must the party seeing the indemnity first be sued by the 3rd Party?

Or still alternatively; does “*in the event of defect*” refer to “*proven*” defect ?



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Practical Concerns on Risk Exposure based on Specimen form

- Activating event entitling demand **wholly determined by the Employer.**
- Relief = Remedial or Replacement work or money value in damages + 1st and 3rd Party Indemnity for loss, damage, expenses, legal costs for claims, actions, proceedings.
- Remedial work carried out to **absolute satisfaction of the Employer.**
 - Consider endorsing national codes/ standards with manufacturer specs.





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Practical Concerns on Risk Exposure based on Specimen form (Cont'd)

- **Unilateral assignability** without need for supplier's consent.
 - Should provide for supplier's consent; alt: notice to supplier and opportunity to comment; failing which unilateral assignment in lieu of supplier's input.
 - Should expressly **exclude** operation of the Contracts (Rights of Third Parties) Act 2001.
- **Open ended obligations** under warranty notwithstanding:-
 - **discharge of responsibilities** under the Contract,
 - **termination of employment** under the Contract; or
 - **lapse of limitation period** for Employer claims against supplier under the Contract.



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Question and Answer Session



THE END

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