

Legal perspective for construction contracts on the risk of a cement shortage in Sweden

Background and general advice

On 6 July 2021, the Swedish Land and Environment Court of Appeal rejected Cementa's application for a renewed permit to mine limestone at the quarries at Slite on Gotland. The Swedish Construction Federation's [impact assessment](#) of the decision shows it entails the risk of a cement shortage that could lead to a widespread construction stoppage by as early as November this year.

A cement shortage could have a major impact on the ability to deliver cement and concrete for ongoing and planned projects. The effects of a shortage and the exact consequences remain difficult to assess. In regard to the impact on individual commercial contracts, it is not possible to draw general conclusions and apply them directly to individual business relationships. An assessment of how the current situation should be handled must be made on a case-by-case basis. An open dialogue between the parties is obviously the best solution. That would enable the parties to agree on what is appropriate and possible in the actual project in view of the current situation. Against this background, the Swedish Construction Federation provides the following general advice.

This advice may be updated.

Impact on ongoing projects

Impediments and time extensions

It may already be advisable to review your existing contracts in light of the risk that a cement shortage may arise. There may be scope in your contract to partially handle the effects of a shortage, as contracts often contain a force majeure clause, whereby a party is provided relief from its contractual obligations if events or circumstances have changed in ways that are beyond its reasonable control. Quite often, the contract will include a list of the situations to which this refers. Review your contract.

If you have used the AB 04 or ABT 06 standard contracts, Chapter 4, Section 3 contains a list of the circumstances that entitle the contractor to a time extension if said circumstances prevent the contractor from completing the contract work on time. For the current situation, items 2 and 5 may be appropriate. As soon as a party realises that the schedule is affected or that a delay may arise, the party should serve a notice of delay (Chapter 4, Section 4). While your counterparty may be aware of the risk of a cement shortage, it may not understand how this could affect the individual contractor or the actual project. This information should preferably be in writing, and while this is not a requirement under AB/ABT, it may be required by your contract.

AB 04 (Chapter 2, Section 9) and ABT 06 (Chapter 2, Section 10) also contain an obligation to notify the other party should either party discover that circumstances with relevance to the contract have changed or arisen. It may therefore be advisable to inform about the prevailing situation and that impediments may arise. This information should preferably be in writing, and while this is not a requirement under AB/ABT, it may be required by your contract.

Monitor the situation and maintain a continuous dialogue with your counterparty in order to find joint solutions if possible. As soon as you can make a better assessment of the possible impact on the actual project, you should once again notify your counterparty.

Following notification in accordance with AB 04/ABT 06, Chapter 4, Section 4, the parties shall, in accordance with AB 04/ABT 06 Chapter 4, Section 5, attempt to reach an agreement on a change to the contract deadline due to the circumstances. Should such delays lead to an indefinite suspension of the work, there is no possibility or reason, in many cases, to agree on a new commencement date. Once again, an open and clear dialogue is preferable and agreements should be documented.

Even if you haven't used AB 04 or ABT 06, it is advisable in most cases to notify your contract counterparty of any circumstances that could cause delays or otherwise affect your ability to meet the contract deadline. A majority of the most commonly used standard contracts in the industry contains such provisions, refer to ABK 09, Chapter 4, Section 3, ABM 07, Item 11, ABS 18, Item 17 and Hantverkarformuläret 17 General Conditions, Item 7. Refer to specific information about consumer construction contracts below.

Notification and notice of delay

If you have used the AB 04 or ABT 06 standard contracts, you may prefer to use our [template for notifications](#).

Regardless of whether you use our template for notifications or draft your own notification, you should ensure that it really answers the questions of where, when, how, who and why. Always check whether your contract contains any specific requirements regarding communication that may be of relevance. For example, that notifications must be sent to a specific person with your contract counterparty.

Risk of higher construction costs

AB 04 and ABT 06 contain provisions allowing contracted prices to be changed or renegotiated under certain circumstances. Under Chapter 6, Section 3, a contracted price may be changed under specific circumstances, provided the cost change was unforeseeable and has significantly affected the cost of the entire construction contract. For change orders, there may also be scope for renegotiation of unit prices according to Chapter 6, Section 6, provided the work is added or deleted from the original contract due to circumstances other than what the unit price is based on, and the costs of the work are impacted.

Due to the higher cost of materials in 2021, the Swedish Construction Federation has produced a [guide](#) outlining the possibility to change prices, which may prove useful in this situation.

Specific information about consumer construction contracts

If you perform work for private individuals, your contract is subject to the provisions of the Consumer Services Act. Under Section 31 of the Consumer Services Act, if a contractor can show that a delay is due to an impediment beyond its control which it could not reasonably have foreseen when the contract was concluded, and the effects of which it could not reasonably have avoided or overcome, the contractor is not obligated to compensate the consumer for damages caused by the delay. In addition, under Section 4 of the Consumer Services Act, a contractor shall pay due regard to the interests of the consumer and consult with the consumer to the extent necessary and possible.

If Hantverkarformuläret 17 is included in a contract, under Item 7 of the Hantverkarformuläret's General Conditions, the contractor is entitled to a necessary extension of the contract deadline if the

contractor is prevented from completing the contract work by the contract deadline due to circumstances beyond the contractor's control, which it could not reasonably have foreseen when the contract was concluded, and the adverse effects of which it could not reasonably have avoided or overcome. A party shall notify the other party without delay of any circumstances that the party has realised may cause a delay.

If ABS 18 is included in your contract, under Item 17 of ABS 18, the contractor is entitled to a necessary extension of the contract deadline if it is prevented from completing the contract work by the contract deadline due to circumstances beyond its control, which it could not reasonably have foreseen when the contract was concluded, and the adverse effects of which it could not reasonably have avoided or overcome. According to Item 18, a party shall notify the other party without undue delay of any circumstances that the party has realised or should have realised may cause a delay. In addition, under Item 8, the parties shall notify each other of circumstances that either party has realised or should realise may be of relevance to the construction contract.

How should you handle the relationship with your client?

From a legal perspective, compliance with the formalities of the contract you have concluded is essential, such as providing written notices of delay without undue delay. But in addition to this, maintaining a constructive dialogue with your client is also important. Against this background, the Swedish Construction Federation has drafted an open letter with information about the current situation that you can send to your client. Please note that the letter is not a notice of delay, which must always be sent as soon as you realise that the schedule is affected or a delay may arise.

Submitting tenders and concluding new construction contracts

The risk of an acute cement shortage arising by the end of the year is creating a great deal of uncertainty for the submission of tenders and conclusion of new contracts. Uncertainty is high both for clients and for contractors. Before submitting tenders or concluding contracts, you should consider the possible effects of the situation and whether you should already take preventive measures in the tendering stage. Many clients are probably aware of the situation. The open letter drafted by the Swedish Construction Federation may also be used to inform potential clients. Wherever possible, it may be useful to engage in dialogue with the client to inform them about the current situation and the possible impact on the actual project. It may be possible to find joint solutions for managing and sharing the risk, thereby making it easier to submit tenders and conclude contracts despite the prevailing uncertainty. If any specific agreements are made, they should be documented.

Notifications in accordance with AB 04 and ABT 06

If you have used the AB 04 or ABT 06 standard contracts, you may prefer to use our template for notifications. Regardless of whether you use our template for notifications or draft your own notification, you should ensure that it really answers the questions of where, when, how, who and why. Always check whether your contract contains any specific requirements regarding communication that may be of relevance. For example, that notifications must be sent to a specific person with your contract counterparty.

[The Swedish Construction Federation's template for notifications.](#)

Open letter

The Swedish Construction Federation has drafted an open letter that you can send to your client. The letter is intended to provide information about the difficult situation and to encourage dialogue. Please note that the letter is not a notice of delay, which must always be sent as soon as you realise that the schedule is affected or a delay may arise.

[Download.](#)

Do you need more support?

If you require further support, contact the Swedish Construction Federation's advisory service.

[https://byggaforetagen.se/foretagsservice/radgivningen/.](https://byggaforetagen.se/foretagsservice/radgivningen/)