

I. INTRODUCTION

1. The COVID-19 (Temporary Measures) Act 2020 (the “**Act**”) has been passed into law on 7 April 2020, which amongst others, provides temporary relief for qualifying individuals and businesses who are unable to fulfill their contractual obligations due to the COVID-19 pandemic. The Act achieves this by suspending certain legal rights and actions between parties.

[*Click here to access the Act*](#)

II. WHO IS COVERED UNDER THE ACT

2. To qualify, the non-performing party must be able to show that:
 - a. The contract was entered into or renewed (but not automatically) **before 25 March 2020**.
 - b. The contractual obligation in question is one which performance falls due **on or after 1 February 2020**.
 - c. The contract falls within one of the following categories listed in the Schedule of the Act:
 - i. **Leases or licenses for non-residential immovable property** (e.g. lease for factory premises);
 - ii. **Construction contract, supply contract, or a performance bond or equivalent** for the construction or supply contract. Construction or supply contracts must fall within the definition of Section 2 of the Building and Construction Industry Security of Payment Act (Cap. 30B) (“**SOPA**”);

- iii. **Contracts for the provision of goods and services for events** (e.g. venue, transport, accommodation, catering etc. for business meetings, weddings, sales events etc);
- iv. **Tourism-related contract** (e.g. cruise, accommodation, entertainment for tourists);
- v. **Certain loan facilities granted by a bank or a finance company to small medium enterprises** with a turnover of not more than S\$100 million in the latest financial year; and
- vi. **Certain hire-purchase agreements** (e.g. hire of plant, machinery or fixed asset located in Singapore used for manufacturing, production or other business purposes; or hire of commercial vehicle).

3. The non-performing party must also show that the **non-performance is materially caused by the COVID-19 pandemic**, or compliance with any legal regulation (whether in Singapore or otherwise) made in connection with COVID-19

III. RELIEF OFFERED BY THE ACT

4. The Act prohibits a contracting party from taking certain legal actions or exercising certain rights against the non-performing party (or its guarantor / surety where applicable). This includes:-
 - a. **Commencing or continuing with court proceedings, insolvency proceedings, or arbitration** under the Arbitration Act (Cap. 10), but only to the extent that such proceedings (or part thereof) concern COVID-19 related issues;
 - b. **Enforcing a court judgment, arbitral award, or an adjudication determination;**

- c. **Enforcing any security** over immovable property as well as movable property used for the purposes of business or trade;
 - d. **Call on a performance bond** given pursuant to a construction contract;
 - e. **Termination of leases or licenses of non-residential premises** due to non-payment of rent or other moneys; and
 - f. **Exercising a right of re-entry or forfeiture** for a lease / license of immovable property.
5. Any non-compliance by the counterparty in relation to the above prohibited actions will be an offence.

IV. ADDITIONAL RELIEFS FOR THE CONSTRUCTION AND SUPPLY SECTOR

6. The Act provides additional reliefs for a construction or supply contract, such as:
- a. **Restrictions on call on performance bond:** The counterparty cannot call on a performance bond during a certain stipulated period, and the non-performing party may serve an application to both the issuer and the counterparty to extend the expiry date of the performance bond.
 - b. **No liquidated damages:** The non-performing party's delay will be disregarded for calculating liquidated damages or assessing liability in respect of the non-performance due to COVID-19, where such delays occurs on or after 1 February 2020 and before the expiry of the prescribed period.
 - c. **Defence to claim for breach of contract:** The non-performing party's inability to perform the contract materially caused by COVID-19 will be a substantive defence to a

claim for breach of contract in respect of the prescribed period.

V. SERVICE OF NOTICE TO GET RELIEF

7. Access to relief under the Act will only kick in when the non-performing party serves the requisite **relief notification** to the counterparty to the contract, and any other relevant parties.
8. At the time of this update, the Ministry of Law has yet to announce the regulations governing the notification and assessment procedure or requirements.

VI. HOW LONG WILL THE RELIEF LAST

9. Relief under the Act is only meant to be temporary. Hence upon receipt of a relief notification, the relief will only last until (whichever is earlier):
- a. The expiry of the prescribed period (currently fixed at six (6) months, but which may be extended up to a year) where parties agree to the relief;
 - b. The withdrawal of the non-performing party's notification for relief; or
 - c. Where the counterparty disputes the relief notification and the matter is referred by either party for assessment, upon the assessor's determination that the non-performing party does not qualify for relief.
10. Once this relief period ends, the moratorium will be lifted and parties' rights and obligations against each other will resume in full force and effect.

VII. WHAT DOES THE ASSESSMENT ENTAIL

11. If parties cannot agree on the relief notification, either party can submit the dispute to the panel of assessors appointed by the Ministry of Law for determination. There will be 12 panels, each headed by a State Court judge. The assessors will have powers to grant relief that is just and equitable in the circumstances.
12. As the process is intended to be affordable, fast and simple, the parties will not be allowed to be represented by lawyers. No cost orders will be made and assessors' decisions will be final (and can be entered as a judgment with leave of court) and will not be appealable – save for the possibility of a judicial review if the rules of natural justice are not followed.
13. Details of the process will be released at a later date.

VIII. OTHER RELIEFS AND MEASURES

14. Other than the temporary relief for contractual obligations, the Act also provides other reliefs and measures, such as:-
 - a. **Bankruptcy and Insolvency Proceedings:** The monetary threshold will be raised to S\$100,000 for businesses, and to S\$60,000 for individuals. Statutory demand periods will be extended to 6 months.
 - b. **Meetings:** Alternative arrangements may be prescribed for conduct of meetings.
 - c. **Remission of Property Tax:** Any property remission under Section 6 of the Property Tax Act (Cap. 254) will have to be passed on (whether in full or pro-rated where applicable) to the tenant.

IX. SOME POINTS TO NOTE

No Automatic Relief

15. As noted above, the Act does not automatically grant the temporary relief, and it is therefore incumbent on the non-performing party seeking relief to issue a relief notification.

Preparing for the Relief Notification

16. Pending the publication of the regulations and the issuance of the relief notifications, it is important to start preparations – whether you may be seeking relief or possibly resisting this.

Assessing Your Options

17. The Act does not limit the operation of the doctrine of frustration or any force majeure clause. Regardless of whether you seek relief under the Act, your rights to take other actions as regards the non-performance is still preserved. It is therefore advisable for parties to review their contracts thoroughly and assess their preferred course of action whether under the Act, based on any force majeure provisions or the doctrine of frustration, or possibly a combination of them.
18. Where you have an applicable force majeure clause, **if you are the non-performing party**, do note the consequences of the force majeure event provided in your contract and ensure strict compliance with the necessary notice requirement and/or any other condition precedents that you may need to fulfill in order to invoke the clause. **If you are the counterparty** receiving such a notice, do check whether it complies with the relevant contract

requirements and where there are deficiencies, to object and/or reserve your rights so that you would not be taken to have waived such deficiencies.

Monitoring Any Potential Time Bar

19. If you have any rights or claims which are nearing time bar over the prescribed period (whether by law or contractually) which may qualify for relief, it is essential that you monitor for any relief notification issued for such rights or claims. Where they qualify for relief under the Act, the period of limitation will be extended starting on the date of service of the relief notification. Otherwise, you may need to commence action before the time bar sets in.

Potential Insolvency of Trading Partners

20. Given the increased insolvency threshold and longer statutory demand periods, there is a possibility that your commercial counterparty or trading partners may be allowed to continue business despite their potentially insolvent status. It is therefore important to be diligent and appraise such risks when dealing with issues of credit.

X. FINAL WORDS

21. In these uncertain and difficult times, please stay safe and take care of yourselves and loved ones. We need to look out for each other.

22. If you have any questions on the Act or if we can assist you on any particular issue concerning COVID-19, please feel free to reach out to us.

If you will like more information or wish to discuss any other area of law with us, please contact:



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