

COVID-19 (Temporary Measures) Act

9 April 2020

Introduction

1. The COVID-19 pandemic, described as the most serious crisis Singapore has faced since independence, has brought about wide-ranging disruptions to different sectors of the economy. Both individuals and businesses alike have been faced with unexpected pressures in the fulfilling of their contractual obligations and in their carrying on of business.
2. On 1 April 2020, the Ministry of Law announced its intention to introduce the COVID-19 (Temporary Measures) Bill in Parliament in the second week of April 2020.
3. The Bill has since been passed by Parliament and enacted as the COVID-19 (Temporary Measures) Act 2020 (the "**Act**"). It will have retroactive effect, and the impact of altering obligations in private contracts.
4. This article sets out the key aspects of the Act, and the implications of the Act for individuals and businesses.

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Background

5. The Act seeks to provide temporary cash-flow relief to alleviate unexpected pressures caused by COVID-19.
6. The Act consists of the following 6 key parts: -
 - a. Temporary relief for inability to perform contracts;
 - b. Temporary relief for financially distressed individuals, firms and businesses;
 - c. Temporary measures for conduct of meetings;
 - d. Temporary measures for court proceedings;
 - e. Temporary measures concerning remission of property tax; and
 - f. COVID-19 control orders involving closure of premises and restrictions on movement and gatherings.

7. The measures set out in the Act will be in place for a prescribed period of 6 months from the Act's commencement at the first instance (referred to as the "**prescribed period**"), but may be shortened or extended up to a period of 1 year by the order of the Minister.

Temporary relief for inability to perform contracts

8. Part 2 of the Act sets out relief measures for a party's inability to perform his obligations under a scheduled contract.
9. The Act will only apply to scheduled contracts entered into or renewed before 25 March 2020, and contractual obligations that are to be performed on or after 1 February 2020, wherein inability to perform an obligation under the scheduled contract is caused to a material extent by a COVID-19 event (referred to as the "**subject inability**").
10. The above dates have been derived as follows: 1 February 2020 is believed to be the date after which the impact of COVID-19 was significantly felt in Singapore. On 24 March 2020, the Ministry of Health implemented enhanced measures such as safe distancing for the general population. Parties who entered into contracts thereafter with full knowledge of the circumstances, are therefore unable to seek relief from the Act.
11. The following are **scheduled contracts** under the Act: -
 - a. A hire-purchase or conditional sales agreement where the good in question is plant, machinery or fixed assets located in Singapore used for manufacturing, production or other business purposes, or a commercial vehicle.
 - b. An event contract, which includes a contract for the provision of a venue, accommodation, amenities, transport, entertainment or catering, for purposes such as business meetings, conferences, exhibitions, concerts and shows, weddings and parties, or other social gatherings.
 - c. A tourism-related contract, which includes a contract for the provision of transport, short-term accommodation, entertainment, dining, catering, tours or tourism-related goods or services. This would cover hotel and cruise bookings.
 - d. A construction contract or supply contract.
 - e. A performance bond or equivalent granted pursuant to a construction or supply contract.
 - f. A lease or license of non-residential immovable property.
 - g. Loan facilities by a bank or finance company granted to SMEs (i.e. businesses with a turnover of not more than \$100 million in the latest financial year), secured against commercial or industrial immovable property located in Singapore, or plant,

machinery or fixed assets located in Singapore used for manufacturing, production or other business purposes.

- h. Further categories of contracts which the Minister is empowered to add.
12. Under the Act, the party to a scheduled contract who is unable to perform his obligation (“A”) will have to serve a notification for relief on the other parties to the contract (“B”), and guarantors or sureties concerned, in the prescribed manner by the period to be prescribed in regulations which will follow.
13. Once the notification for relief has been sent, B will not be able to take, *inter alia*, the following actions against A in relation to the subject inability: -
 - a. Commencement or continuation of court or arbitration proceedings;
 - b. Enforcement of security over property used for a trade, business or profession;
 - c. Application for a scheme of arrangement, judicial management, winding up/bankruptcy, or appointment of a receiver or manager;
 - d. Repossession of goods used for purposes of a trade, business, or profession;
 - e. Termination of a lease or license for non-payment of rent or other moneys, or the exercise of the right of re-entry or forfeiture (landlords, however, can use the security deposit to offset rent payments due); and
 - f. Enforcement of a judgment, arbitral award, or adjudication decision.
14. Proceedings concerning the subject inability which are pending at the time of service of the notification for relief, must be stayed upon A’s lodgment of the notification for relief with the court or tribunal in question.
15. In line with the above, for instance, a tenant of a non-residential property can temporarily delay his payment of rent if he is unable to pay, for the prescribed period, without having to come up with cash to make the payment now. However, the Act merely suspends, rather than extinguishes rights of enforcement under existing contracts, and the landlord can still exercise his rights of termination or forfeiture in the event of the tenant’s non-payment of rent after the prescribed period.

Consequences of non-compliance

16. Where B takes any action against A in relation to the subject inability in contravention of the specified provisions above, B will be guilty of an offence and liable on conviction to a fine not exceeding \$1,000.

17. Proceedings commenced in breach of the provisions will be dismissed. Actions such as enforcement of security and forfeiture of deposit are rendered void, while other actions such as repossession of goods or termination of leases/licenses shall be invalid.

Additional relief for construction or supply contracts

18. The construction sector has been hard-hit by supply chain disruptions and manpower shortages due to the pandemic. The Act thus also seeks to provide further relief in respect of construction or supply contracts. For instance, for the purposes of calculating liquidated or other damages payable, the period for which the subject inability exists shall be disregarded in determining the period of A's delay in performing his obligations. Subject inability will also be a defence to a claim for breach of contract.

Additional relief for event or tourism-related contracts

19. In respect of event or tourism-related contracts, B will not be able to forfeit deposit taken under the contract on the basis of the subject inability. Where the deposit has already been forfeited on the basis of the subject inability at any time between 1 February 2020 to the date of commencement of the Act, B must restore the deposit on receipt of A's notification for relief. Subject inability will also be a defence to a claim for payment of a cancellation fee under the contract.
20. In the second reading of the Act in Parliament, the Minister has clarified that for events, this does not mean that deposits have to be refunded immediately. Some solutions proposed include postponing the event and retaining the deposit, or cancelling the event and refunding the deposit in full or in part (depending on expenses incurred and work done).

Assessors

21. In line with the measures above, the Act also introduces assessors whose roles are to resolve disputes arising from application of the Act, although parties are encouraged to come to a common understanding as far as possible. A party may make an application for an assessor's determination on the following: -
 - a. Whether the case in question is one to which the measures for temporary relief applies, for instance, whether a tenant is genuinely unable to pay rent. Where the measures apply, the assessor may make further determinations such as requiring a party to the contract to do anything or pay any sum of money to discharge his contractual obligations, or requiring a party to return goods or give possession to the immovable property in question;
 - b. Whether it is just and reasonable in the circumstances to forfeit deposit or a part of it.
22. The assessor may take into account A's ability and financial capacity to perform the obligation and must seek to achieve a just and equitable outcome, in making his determination.

23. Parties will not be able to be represented by lawyers in proceedings before an assessor, and must bear their own costs for such proceedings. An assessor's determination is not appealable, and is binding on all the parties to the application. An assessor's further determination as described above may, with the leave of court, be enforced as a judgment/order of the court.

Temporary measures concerning remission of property tax

24. In the Budget announcements of February and March 2020, a property tax rebate of up to 100% was declared for non-residential properties in respect of tax payable in 2020.
25. Part 6 of the Act introduces an obligation on property owners to pass the full amount of such property tax rebates attributable to rented properties to their tenants, for instance, in the form of payment of money, or an off-set against or reduction of rent or fees payable. The owners will have to do so either by July or December 2020. Property owners are also prohibited from imposing any conditions when passing the rebates, and such conditions will be void.
26. Under the Act, property owners must keep records for a period of 3 years after the prescribed period to evidence that they have passed on the benefit to the tenants, and the time at which the benefit was passed on. It has been clarified that these records can be either in soft copy or hard copy, and owners are encouraged to have their tenants acknowledge the property tax rebates received, to minimise potential disputes.
27. It shall be an offence if the owner fails to pass on the benefit to the tenant without reasonable excuse, or to keep proper records, and the owner can be fined up to \$5,000 on conviction.

Avenue of redress

28. Disputes between owners and tenants on the following issues, can be referred to a Valuation Review Panel by 31 December 2021 (in respect of property tax rebates granted in 2020): -
- a. Whether the owner is required to pass any benefit to the tenant.
 - b. The manner, amount, extent or time for the passing of such benefit.
 - c. Non-compliance of the owner on the above.
29. The Panel will make a determination on the dispute, and may make further directions where necessary to give effect to its determination.
30. Determinations or any further directions by the Panel are appealable to the High Court, if they involve questions of law, or of mixed law and fact. These determinations or further directions may, with the leave of court, be enforced like any judgment or order of the court.

CLIENT NOTE



Where an appeal is brought, such enforcement is stayed pending the High Court's decision on the appeal or withdrawal of the appeal.

Conclusion

31. The Act forms part of the concerted efforts and measures rolled out in the recent months for individuals and businesses alike to tide through the COVID-19 fallout. The measures under the Act have been described as targeted and temporary.
32. It is hoped that the Act, while providing temporary reprieve to individuals and businesses genuinely in distress during this difficult period, will present a just, equitable and reasonable solution for all parties concerned.

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