

LAW UPDATE



26 May 2020

AMENDMENTS TO THE COVID-19 (TEMPORARY MEASURES) ACT TO COVER ADDITIONAL CONTRACTS AND PROHIBIT UNILATERAL INCREASES IN CHARGES

Introduction

1. The COVID-19 (Temporary Measures) Act (“the **Act**”) was passed on 7 April 2020. Among other things, the Act gives temporary relief from legal action for those who are unable to perform certain types of contracts because of COVID-19. The relief period is 6 months, from 20 April 2020 until 19 October 2020 (“the **Relief Period**”).
2. In addition, the COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (“the **Regulations**”) were published. The Regulations set out the procedures for obtaining temporary relief and the resolution of disputes regarding relief applications.
3. On 13 May 2020, the Government amended the Act and the Regulations to:-
 - (a) include additional contracts relating to the sale and purchase of housing accommodation; and
 - (b) prohibit the unilateral increase of interest rates, imposition of additional charges and other types of actions.

Inclusion of additional contracts relating to sale and purchase of housing accommodation

4. The Act was amended to include the following contracts:-
 - (a) an Option to Purchase (“**OTP**”) given by a housing developer to an intending purchaser for purchase of housing accommodation;¹and
 - (b) a Sale and Purchase Agreement (“**SPA**”) between a housing developer and a purchaser for the sale and purchase of housing accommodation².

“Housing accommodation” is defined as including a building or tenement wholly or principally constructed, adapted or intended for human habitation, or for human habitation and as business premises.³

5. The Ministry of Law has (“**Minlaw**”) clarified that:-
 - (a) the new provisions apply to contracts (i.e. OTPs, SPAs and Agreements for Lease (“**AFL**”) involving residential property sold by housing developers, namely, private housing developers and the Housing and Development Board. Non-residential properties (i.e. commercial and industrial properties) are not covered;⁴ and

¹ Paragraph 1(i) of The Schedule to the Act.

² Paragraph 1(j) of The Schedule to the Act.

³ Paragraph 2 of The Schedule to the Act.

⁴ Answer (a) of Minlaw’s list of Frequently Asked Questions on Options to Purchase and sale and purchase agreements with housing developers (<https://www.mlaw.gov.sg/covid19-relief/faq/otps-and-s-and-p-agreements>) (“the **Minlaw**”).

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(b) housing developers can also seek relief under the amended Act, if they cannot comply with their contractual obligations under the SPA or AFL (e.g. to deliver possession or rectify defects in time) due to COVID-19.⁵

6. In addition, the amended Act does not cover the following:-⁶

- (a) OTPs / SPAs / AFLs made on or after 25 March 2020;
- (b) contractual obligations (e.g. payment of progress instalments) to be performed before 1 February 2020;
- (c) expired OTPs, or SPAs / AFLs which have been terminated before 13 May 2020;
- (d) contracts terminated before 13 May 2020; and
- (e) cases where the housing developer forfeited monies (paid by the purchaser or intending purchaser) before 13 May 2020.

Prohibition of unilateral increase of interest rates, charges and other types of actions

7. A party seeking relief under the amended Act ("**Non-performing Party**") must serve a Notification for Relief ("**NFR**") on the other contracting party, following the procedure under the Act and the Regulations. Once the NFR is served, the other contracting party ("**Recipient**") cannot take certain kinds of legal action, which are listed in the Act and the Regulations.⁷

8. For a contract involving housing accommodation, the Recipient cannot (among other things) impose new charges,⁸ increase charges or increase interest rates, beyond what is permitted under the OTP, SPA or AFL, unless the Non-performing Party agrees to such imposition or increase.⁹

If the Recipient is a housing developer, they cannot:-

- (a) withhold or forfeit during the Relief Period any part of the booking fee paid for an OTP, if the intending purchaser does not exercise the OTP on time;¹⁰
- (b) terminate the SPA or AFL during the Relief Period if the purchaser fails to make payment.¹¹

9. The Non-performing Party is not excused from performing their contractual obligations under the OTP, SPA or AFL. Among other things:-

- (a) the Non-performing Party must pay any late payment interest required under the SPA or AFL; and

FAQs") and Paragraph 2 of the Minlaw Press Release dated 13 May 2020 (<https://www.mlaw.gov.sg/news/press-releases/enhancements-to-the-covid-19-temporary-measures-act-to-cover-two-new-contracts>) ("the **Minlaw Press Release**").

⁵ Answer (v) of the Minlaw FAQs.

⁶ Sections 4(1), 5(1)(a) of the Act, and Rule 3A(3) of the Regulations. See also Answer (d) of the Minlaw FAQs.

⁷ Section 5(3) of the Act, and Parts 2 and 3 of the Regulations.

⁸ Rule 3A(1)(b) of the Regulations.

⁹ Rule 3A(1)(a) of the Regulations.

¹⁰ Rule 3A(1)(d) of the Regulations.

¹¹ Rule 3A(1)(e) of the Regulations.

- (b) if the outstanding instalments remain unpaid, the Recipient can exercise their legal rights against the Non-performing Party (e.g. termination of the SPA / AFL) once the Relief Period ends.¹²
10. If a dispute arises (e.g. whether the Non-Performing Party is entitled to relief), either party can apply to have such dispute decided by an Assessor, whose decision is final and binding on the parties. The Assessor will consider both parties' arguments and try to reach a fair outcome. Lawyers are not allowed to appear before the Assessor.¹³
11. Despite the new provisions, the Government has stressed that the parties should first negotiate and find a mutually acceptable solution (e.g. asking a housing developer for an extension of time to exercise an OTP or to pay progress instalments), before resorting to the legal process under the Act.¹⁴

Conclusion

12. The amendments help clarify the position for contracts involving residential property. It gives much needed relief to not just purchasers facing cashflow problems, but also housing developers who cannot complete construction or deliver possession due to stoppage of works or supply problems caused by the COVID-19 outbreak.
13. However, the legal position involving contracts for sale and purchase of non-residential property is still unclear. Such contracts should also be covered, as purchasers and developers of non-residential property arguably face the same problems as their residential property counterparts. Extending the coverage of the Act to non-residential sale agreements would also help achieve the Government's aim behind the Act, and in particular, helping reduce the economic devastation caused by the pandemic on people and businesses alike, and ensuring a fair and just outcome between purchasers and property developers.¹⁵

About Lee & Lee

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¹² Answer (p) of the Minlaw's list of Frequently Asked Questions on Options to Purchase and sale and purchase agreements with housing developers (<https://www.mlaw.gov.sg/covid19-relief/faq/otps-and-s-and-p-agreements>).

¹³ Division 4 of Part 2 of the Act, and Part 4 of the Regulations.

¹⁴ Paragraph 6 of the Minlaw Press Release.

¹⁵ Interview between the Minister for Law and CNBC on 7 April 2020, a relevant excerpt of which can be found at (<https://www.mlaw.gov.sg/covid19-relief/>).