

Effects of the COVID-19 (Temporary Measures) Act 2020 on Commercial Contracts

Background

In light of the unprecedented economic impact caused by the Covid-19 pandemic, the Singapore government has introduced the COVID-19 (Temporary Measures) Act 2020¹ ("the Act") which seeks to offer temporary relief to businesses and individuals who are unable to fulfil their contractual obligations as a result of COVID-19. These temporary measures are intended to last from 7 April 2020 to 7 October 2020 (6 months) but may be extended up to 7 April 2021 (12 months).

The Act has retrospective effect and covers contractual obligations that are to be performed on or after 1 February 2020. However, the Act will not apply to contracts that are entered into on or after 25 March 2020.

The contracts covered under the Act

The contracts ("Scheduled Contracts") that are covered under the Act include:-

- A loan or finance contract where the facility is secured either, by any commercial or industrial immovable property located in Singapore, or by plant, machinery or fixed assets located in Singapore which are used for business purposes, and:
 - The borrower or "enterprise" carries on business in Singapore;
 - At least 30% of its shares or interests are held by citizens or permanent residents of Singapore; and
 - the turnover of the group to which it belongs does not exceed \$100 million in the latest financial year
- A performance bond or equivalent for construction and supply contracts
- Hire-purchase agreements for:
 - commercial vehicles, or
 - plant, machinery or fixed assets located in Singapore which are used for business purposes
- An "event contract", which is defined to mean a contract for the provision of a venue, accommodation, amenities, transport, entertainment, catering or other goods or services for:
 - business meeting, incentive travel, conference, exhibition, sales event, concert, show, wedding, party or other social gathering, or sporting event; or
 - the participants, attendees, guests, patrons or spectators of any of such events
- A "tourism-related" contract, which is defined to mean:
 - a contract for the international carriage of passengers by sea or land;
 - a contract for the provision of transport, short-term accommodation, entertainment, dining, catering, tours or other tourism-related goods or services for visitors to Singapore, domestic tourists or outbound tourists; or
 - a contract for the promotion of tourism in Singapore or the distribution for the purposes of trade or retail of products related to such tourism.

¹ <https://sso.agc.gov.sg/Acts-Supp/14-2020/Published/20200407?DocDate=20200407>

- A construction contract or supply contract, defined by reference to section 2 of the Building and Construction Industry Security of Payment Act ("Security of Payment Act")
- A lease or licence of non-residential immovable property.

Relief provided by the Act

A party to the Scheduled Contracts is entitled to relief if it is unable to perform its contractual obligation(s); the inability to perform the obligation(s) must be due to the COVID-19 pandemic or any law made because of COVID-19, including those made by other national government. The party must serve a notice for relief on all counterparties as well as any surety or guarantor.

If served with such a notice, the counterparty is prohibited from:

1. Commencing or continuing any court or arbitral proceedings against the party or their guarantor or surety.
2. Enforcing any security over any immovable property or over any movable property being used for the purpose of trade, business or profession.
3. Taking bankruptcy or insolvency action against the party or their guarantor or surety.
4. Seeking to repossess goods under a leasing, hire-purchase agreement or retention of title agreement.
5. Terminating a lease or licence of immovable property for the non-payment of rent or money.
6. Any action to enforce a court judgement, arbitral award or adjudication under the Security of Payment Act

Additional relief applies for the following contracts:

1. For event and tourism-related contracts, any non-refundable deposit must be refunded, unless determined otherwise by an assessor
2. For construction and supply contracts, contractors will not be liable for breach of contract or liquidated damages. Calling on a performance bond is prohibited as well.

Resolution of Disputes

A panel of Assessors will be appointed to resolve disputes arising from the application of the law. These Assessors are intended to be professionals from the legal, accountancy, financial and other industries. No party may be represented by a lawyer at a proceeding before an Assessor.

Assessors may take into account the ability and financial capacity of the Defaulting Party to perform the obligation and other prescribed factors and will adjudicate fairly and equitably in the circumstances. The decisions of the Assessors will be final and non-appealable; failure to comply with the Assessor's determination is a criminal offence and a contravening party will liable on conviction to a fine not exceeding S\$1000.

The procedure for determination by an Assessor is as follows:

1. An application for an Assessor's determination must be made in the form and manner prescribed by the regulations and must be accompanied by the prescribed fee.
2. The application must be served as prescribed
3. The Registrar will serve a notice of appointment of the Assessor to all parties.

Should you have any queries as to how this update may affect you or your organisation or require further information, please do not hesitate to email us.



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This article is intended to discuss the effects of the COVID-19 (Temporary Measures) Act 2020 on commercial contracts, and it is not intended to be comprehensive nor should it be construed as legal advice. This article is updated as of 22 April 2020.

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