

Insights

COVID-19: SINGAPORE INTRODUCES TEMPORARY MEASURES TO GIVE RELIEF FROM CONTRACTUAL OBLIGATIONS

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SUMMARY

The Ministry of Law (“MinLaw”) in Singapore announced on 1 April 2020 that the COVID-19 (Temporary Measures) Bill will be introduced in Parliament next week and is expected to take effect in mid-April 2020. According to MinLaw, the impact of the pandemic has had unprecedented and unforeseeable economic and social impact, which has undermined the ability of individuals and businesses to fulfil contractual obligations.

The Bill seeks to offer temporary relief to those entities and also complements the financial measures announced in the Resilience Budget on 26 March 2020, which help enterprises overcome immediate challenges and preserve jobs and livelihoods.

Introduction of the COVID-19 (Temporary Measures) Bill

The Ministry of Law (“MinLaw”) in Singapore announced on 1 April 2020 that the COVID-19 (Temporary Measures) Bill will be introduced in Parliament next week and is expected to take effect in mid-April 2020. According to MinLaw, the impact of the pandemic has had unprecedented and unforeseeable economic and social impact, which has undermined the ability of individuals and businesses to fulfil contractual obligations. The Bill seeks to offer temporary relief to those entities.

This Bill also complements the financial measures announced in the Resilience Budget on 26 March 2020 which help enterprises overcome immediate challenges and preserve jobs and livelihoods.

The measures in this Bill will cover relevant contractual obligations to be performed on or after 1 February 2020, for contracts entered into or renewed before 25 March 2020. The measures will be in place for a prescribed period, which will initially be six months from the commencement of the Act. While its duration may be extended for an additional period it is not intended to last beyond a year.

Relief Measures

The Bill will apply to the following categories of contracts:

- Leases or licences for non-residential immovable property (e.g. lease for factory premises, retail, office);
- Construction or supply contract (e.g. contract for the supply of materials);
- Contracts for the provision of goods and services (e.g. venue, catering) for events (e.g. weddings, business meetings);
- Certain contracts for goods or services for visitors to Singapore, domestic tourists or outbound tourists, or promotion of tourism (e.g. cruises, hotel accommodation bookings);
- Certain loan facilities granted by a bank or a finance company to small and medium enterprises. In Singapore, this refers to businesses with a turnover of not more than S\$100 million in their latest financial year; and
- Certain hire-purchase agreements (e.g. where a good hired is a commercial vehicle).

The Bill will prohibit a contracting party from taking the *following legal actions against the non-performing party during the prescribed period*:

- Court and insolvency proceedings;
- Enforcement of security over immovable and movable property that is used for the purposes of business or trade;
- Call on a performance bond given pursuant to a construction contract; and
- Termination of leases for non-residential purpose due to non-payment of rent.

It is also important to note that proceedings related to a prohibited action which has already commenced must be stayed.

In addition, other relief measures to be implemented are:

- No forfeiture of deposits for events and tourism-related contracts where the non-performing party postpones an event, unless an assessor determines otherwise (this process will be further elaborated on below);
- In relation to construction and supply contracts, a contractor will be relieved from liability for liquidated damages or delays / non-supply of goods if non-performance was caused to a material extent by COVID-19;

- In relation to the monetary thresholds for bankruptcy (individuals) and insolvency (companies / partnerships), the thresholds are to be raised from S\$15,000 to S\$60,000 and S\$10,000 to S\$100,000 respectively. The statutory period to respond to creditor demands and for setting aside a statutory demand will also be lengthened; and
- Directors will be temporarily relieved from the obligations to prevent their companies trading while insolvent if the debts are incurred in the company's ordinary course of business. Directors will remain criminally liable if the debts are incurred fraudulently.

Illustrations of the Relief Measures

- Leases or licences for non-residential property:
 - A restaurant tenant is unable to pay rent for February and March 2020 and the landlord issues a letter of demand for unpaid rent and threatens eviction. The tenant can seek relief from the assessors. If relief is given, it will be a criminal offence during the 6-month prescribed period for the landlord to:
 - terminate the restaurant's lease;
 - repossess the restaurant's premises; and/or
 - start or continue court or insolvency proceedings against the restaurant.
- Events and tourism-related contracts:
 - Venue providers such as hotels are not permitted to forfeit deposits. For example, if a person booked a hotel for an event and has to postpone the event because of the COVID-19 situation, the non-performing party can apply for relief if the hotel proceeds to forfeit the deposit. The assessor will make a determination which can include the following:
 - the hotel may be required to return the deposit while setting off expenses reasonably incurred by the hotel;
 - the hotel may be required to hold the deposit e.g. if the event is postponed; or
 - the hotel may proceed to forfeit the deposit e.g. if the person decides to cancel the booking and go to another hotel.

Process

To guard against unfair outcomes, a body of assessors will be appointed by the Minister of Law to resolve disputes arising from the application of the Act. The assessor has the power to grant relief

that is “just and equitable in the circumstances” and determine whether the ability to perform contractual obligations was due to COVID-19. The assessors’ decisions will be final and not appealable.

As part of the process to obtaining relief, the individual or business requiring relief (“**Party A**”) first has to serve a notice of relief on the other contractual party (“**Party B**”). Upon receiving the notice, Party B cannot take legal or enforcement actions against Party A and non-compliance with the Act is an offence. If the parties dispute this, an assessor will then be appointed. The assessor will decide on a just and equitable outcome based on the facts of each case. The process will take no more than 5 days and at no cost to either party. At the end of the relief period, Party A must fulfil the original contractual obligations.

Moving forward

The impact of the Bill is wide-ranging and will have ripple effects through the affected industries. Further questions that arise and which we may need some clarity on, are:

- What projects will this Act apply to? Ostensibly this should be applied to contracts / projects where the main part of the contractual obligations are to be fulfilled in Singapore and/or the contractual parties are Singapore incorporated companies and individuals.
- Generally, the scope of relief. In relation to construction contracts for example, a contractor will be relieved from non-performance if this was caused to a material extent by the outbreak. This would depend on the threshold of “material” and whether other concurrent factors play a part in determining the extent of the relief. In relation to performance bonds, can the bond-holder make a claim during the prescribed period for a non-COVID-19 related breach?
- Does this apply to all dispute resolution proceedings? Court proceedings are listed currently but what about commencing arbitration or the impact on adjudication proceedings for construction and supply contracts?
- What are the penalties for non-compliance if (a) Party B accepts the letter of notice or relief from Party A but subsequently fails to comply with the Act and (b) if there is non-compliance with the assessor’s decision?
- In the event of non-compliance with the assessor’s decision, will this, similar to an expert determination, be enforceable through the courts?

Ultimately, the Singapore government is applying the overarching principle of fairness to support businesses and individuals – an effort which hopefully, also achieve fair outcomes for all the contractual parties involved.

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