



Singapore's COVID-19 (Temporary Measures) Act 2020

8 April 2020

Highlights and Commentary on Key Provisions for Temporary Relief for Inability to Perform Contracts

The COVID-19 pandemic has led to a severe contraction in economic activity on a global scale, as a result of supply chain disruptions, manpower shortages, travel restrictions and a swift decline in demand. Singapore is likewise grappling with the economic symptoms of these ongoing waves of COVID-19 outbreaks, which will continue to dampen global economic growth.

To complement the S\$48 billion Resilience Budget, Parliament has passed the COVID-19 (Temporary Measures) Act 2020 (the "Act") on 7 April 2020. The Act seeks to offer temporary relief to businesses and individuals who are unable to fulfill their contractual obligations because of COVID-19.

In this article, we provide our views on the key Sections concerning temporary relief for parties' inability to perform contracts (ie, Part 2 of the Act) and the implications it may have on the parties' legal positions.

Applicable contracts

The temporary relief will apply to what are referred to in the Act as "Scheduled Contracts". The Schedule of the Act provides an exhaustive list of categories of such contracts:

- a contract for the grant of a loan facility by a licensed bank or finance company to

an enterprise, where the facility is secured against any commercial or industrial immoveable property in Singapore

- a contract for the grant of a loan facility by a licensed bank or finance company to an enterprise:
 - where such facility is secured against any plant, machinery or fixed asset located in Singapore, and
 - where the plant, machinery or fixed asset is used for manufacturing, production or other business purposes
- a performance bond or equivalent granted pursuant to a construction or supply contract
- a hire-purchase agreement or conditional sales agreement where the good hired or conditionally sold is any plant, machinery or fixed asset is used for manufacturing, production or other business purposes or a commercial vehicle
- an event contract¹
- a tourism-related contract²

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1. Defined in the Act as a contract for the provision of a venue, accommodation, amenities, transport, entertainment, catering or other goods or services for events such as business meetings, conferences, exhibitions and concerts, or for the event's participants, attendees or guests.

- a construction contract³ or supply contract⁴, and
- a lease or licence of non-residential immovable property.

In a rare instance of retroactive legislation, the measures under the Act will cover contractual obligations in Scheduled Contracts that have to be **performed on or after 1 February 2020**⁵, where the Scheduled Contract was **signed on or before 24 March 2020**⁶.

Inability to perform contractual obligations

Where a party is unable to perform its contractual obligation(s) under a Scheduled Contract, it will only be entitled to temporary relief where this inability is “to a material extent caused by a COVID-19 event”.⁷

The term “to a material extent” indicates that the COVID-19 event must be a considerable factor in a party’s inability to perform its contractual obligations. It is likely that the purpose of this threshold is to prevent potential abuse by parties attempting to rely on tenuous or superficial connections to the COVID-19 pandemic to escape from their contractual obligations.

Whether a party’s inability to perform its contractual obligations was to a material extent caused by a COVID-19 event will naturally be a question of fact to be determined on a case-by-case basis. For example, where there is evidence that a party would not have been able to perform its obligation regardless of whether the COVID-19 pandemic took place, it is doubtful as to whether the party would be entitled to temporary relief.

Temporary relief afforded

Where a party to a Scheduled Contract is unable to perform its contractual obligations and this inability is to a material extent caused by a COVID-19 event, the Act provides a list of legal actions which a counterparty **may not take against the party for its inability to perform the said contractual obligations**. Such legal actions include: (i) commencing or continuing

any court and insolvency proceedings; (ii) enforcing any security over property that is used for the purposes of business or trade; (iii) calling on a performance bond given pursuant to a construction contract; and (iv) termination of leases of non-residential premises.⁸

There is additional relief for parties who are unable to perform their contractual obligations under construction contracts or supply contracts, as well as event contracts or tourism-related contracts.⁹ For construction contracts or supply contracts, the Act places restrictions on the counterparty’s rights to make a call on a performance bond and claims for liquidated damages and breach of contract.¹⁰ With regard to event contracts or tourism-related contracts, the Act prohibits the counterparty from forfeiting any deposit taken under the Scheduled Contract on the basis of the contractual obligation in question.¹¹

A party which contravenes these temporary relief provisions under the Act is guilty of an offence and shall be liable on conviction to a fine not exceeding S\$1,000.¹²

It is noteworthy that the Act expressly provides that the temporary relief will be afforded to a party “despite any law or anything in the contract”.¹³ The Act therefore supersedes the legal rights a party may otherwise have when faced with a counterparty unable to fulfil its obligations under the Act. For instance, where the tenant of a commercial property is unable to fulfil its obligation to pay rent due to the COVID-19 pandemic, the landlord is prohibited from terminating the tenancy agreement or exercising any right of re-entry, even though the terms of the tenancy agreement would entitle the landlord to do so.

It should be highlighted that the Act merely suspends the parties’ contractual obligations in Scheduled Contracts for six months, though this duration may be extended by the Minister.¹⁴ In other words, **the Act does not release the parties from their performance of contractual obligations**.

2. Defined in the Act as a contract for the international carriage of passengers by sea or land; a contract for the provision of tourism-related goods or services such as transport, entertainment or short-term accommodation; or a contract for the promotion of tourism in Singapore (or the distribution for the trade or retail of products related to such tourism).
3. Defined in the Act as having the meaning given by Section 2 of the Building and Construction Industry Security of Payment Act (Cap. 30B).
4. Defined in the Act as having the meaning given by Section 2 of the Building and Construction Industry Security of Payment Act (Cap. 30B).
5. Section 5(1) of the Act.
6. Section 4(1) of the Act.
7. Section 5(1)(b) of the Act.
A “COVID-19 event” is defined as:
(a) the epidemic or pandemic that is COVID-19; or (b) the operation of or compliance with any law, order or direction made by Singapore or another country/territory by reason of or in connection with COVID-19.
8. Section 5(3) and 6(2) of the Act.
9. Section 6 and 7 of the Act.
10. Section 6 of the Act.
11. Section 7 of the Act.
12. Section 8(1) of the Act.
13. Section 5(2) of the Act.
14. Section 3 of the Act.

While the Act sets out a comprehensive list of prohibited legal actions against a party entitled to temporary relief¹⁵, **it appears that the Act does not prohibit any international arbitration proceedings from being commenced against such a party**. Indeed, the Act only expressly prohibits the commencement or continuation of domestic arbitrations and the enforcement of any domestic arbitral award against such a party¹⁶. **It would be prudent for parties to check their dispute resolution Sections in their Scheduled Contracts to confirm whether they would fall within the ambit of the Act, especially where one of the contracting parties is based outside of Singapore.**

Process of applying for temporary relief and how to contest a party's attempt to seek such relief

A party intending to seek temporary relief under the Act is required to serve a "notification of relief" on the other party (or parties) to the Scheduled Contract, any guarantor or surety for the party's obligation in the contract and any other person as may be prescribed by the Act. **The service of the notification of relief is a necessary step in the process of seeking temporary relief under the Act** and must be done whether or not the counterparty has previously demanded performance of the contractual obligation in question.¹⁷

Any counterparty seeking to contest a party's attempt to seek temporary relief is to file an application to the Registrar of Assessors to appoint an assessor within a prescribed period of time.¹⁸ The application must similarly be served on the other parties to the contract and the said guarantor or surety.¹⁹ Around 100 assessors will be appointed by the Ministry of Law to resolve disputes arising from the application of measures in the Act.

Determining whether a party should be entitled to temporary relief

Where an assessor has been appointed in light of a counterparty seeking to contest a party's entitlement to temporary relief, the assessor must determine:

- whether the contract in question is a Scheduled Contract
- whether the party's inability to perform a contractual obligation under the Scheduled Contract is to a material extent caused by a COVID-19 event, and
- where the Scheduled Contract in question is an event contract or tourism-related contract, whether it is just and reasonable in the circumstances of the case for a deposit or any part of a deposit to be forfeited.²⁰

Where the assessor has determined sub-paragraphs (1) and (2) in favour of the party seeking temporary relief, the assessor may make "further determinations" to achieve a fair and equitable outcome. This includes requiring a contracting party "to anything or pay any sum of money to discharge any obligation under the contract" or in cases where goods have been repossessed or the right of re-entry or forfeiture has been exercised, "requiring the party to return the goods or give possession of the immovable property to the other party."²¹ Failure to comply with further determinations by an assessor without reasonable excuse is an offence and a party shall be liable on conviction to a fine not exceeding S\$1,000.²²

The dispute resolution process in the Act is designed to be affordable, fast and simple. Parties will not be allowed to engage lawyers at proceedings before the assessor²³ and each party is to bear its own costs for such proceedings.²⁴ The assessors' decisions will also be non-appealable.²⁵

It is noteworthy that the assessor, in determining whether a party is entitled to temporary relief, may consider factors such as this party's ability and financial capability to perform the contractual obligation in question.²⁶ Parties appearing before the assessor should be prepared to address him or her on such factors.

15. Section 5(3) of the Act.

16. Section 5(3)(b) and 5(3)(n) of the Act.

17. Section 9(1) of the Act.

18. While the Act remains silent on this point, it would be logical to infer that if no application is filed to contest a party's attempt to seek temporary relief, the party filing the notification of relief would by default be entitled to the temporary relief.

19. Section 9(2) and 12 of the Act.

20. Section 13 of the Act.

21. Section 13(3) of the Act.

22. Section 13(11) of the Act.

Section 13(12) of the Act also provides that any person who without reasonable excuse fails to restore an amount of deposit determined by an assessor to be restored shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$1,000.

23. Section 14 of the Act.

24. Section 15 of the Act.

25. Section 13(10) of the Act.

26. Section 13(2)(a) of the Act.

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- Shortlisted – Best Copyright Team – Managing IP Awards 2019
- Shortlisted – Insurance Team of the Year – Legal Business Awards 2018
- Winner – Best Employer – Bristol Pride Gala Awards 2018
- Winner – Client Service Innovation Award – The Lawyer Awards 2017
- Shortlisted – Corporate Team of the Year – The Lawyer Awards 2017
- Winner – Adviser of the Year – Insurance Day (London Market Awards) 2017
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