

COVID-19: SINGAPORE'S COVID-19 (TEMPORARY MEASURES) BILL: WHAT IS IT? HOW DOES IT IMPACT YOU?

Date: 3 April 2020

Asia-Pacific Regulatory & Policy Alert

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COVID-19 has had impacts on contracts relating to commercial undertakings (e.g., construction projects), commercial and industrial tenancies, and individual consumer transactions (e.g. bookings for events). Individuals or companies who are unable to meet their obligations may have to pay damages or forfeit deposits. Otherwise stable businesses may be sued and face lengthy litigation or possible insolvency.

On 1 April 2020, the Ministry of Law Singapore announced that it intends to introduce the COVID-19 (Temporary Measures) Bill (Bill) in Parliament next week [1]. The Bill aims to provide temporary and targeted protection for individuals and companies who are unable to fulfil their contractual obligations because of COVID-19. This is expected to provide temporary cash-flow relief for these businesses and individuals who may otherwise have to pay damages or risk having their deposits or assets forfeited.

The Ministry has said it intends to expedite the process of passing the Bill through a Certificate of Urgency signed by the President, which would allow all three readings of the Bill to be taken in one Parliament sitting. As such, the Bill is expected to be passed by mid-April 2020.

The key measures of the Bill are summarized below.

TEMPORARY RELIEF FROM LEGAL ACTION

What are the Categories of Contracts Covered by the Bill?

The categories of contracts covered by the Bill are:

- Leases or licences for non-residential immovable property (e.g., factory premises);
- Construction or supply contracts (e.g., contract for the supply of materials);
- Contracts for the provision of goods and services for events (e.g., venue or catering for weddings, business meetings);
- Tourism-related contracts (e.g., cruises, hotel accommodation bookings); and

- Certain secured loan facilities granted by a bank or a finance company to small- to medium-sized enterprises.

What is the Proposed Relief Period?

The Bill will apply retroactively and cover contractual obligations to be performed on or after 1 February 2020. However, the Bill excludes contracts entered into on or after 25 March 2020.

The Bill will not absolve or remove parties' contractual obligation but will only suspend them temporarily for a prescribed period, which is six months from the commencement of the Act. However, the prescribed period may be extended for up to a year from the commencement of the Act.

What is the Effect of the Bill?

To receive the relief, the party that cannot perform the obligation due to COVID-19 has to serve a notification of relief to the other contracting party. For example, this could be as simple as a tenant writing a letter or email to their landlord, explaining that they cannot pay rent due to lower footfall amid the virus outbreak.

Within the prescribed period, the Bill will prohibit the notified party from taking the following legal actions against a non-performing party:

- Court and insolvency proceedings;
- Enforcement of security over immovable property, as well as 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 of non-residential premises.

There will also be additional relief in respect of forfeiture of deposits for events and tourism-related contracts. For example, a hotel cannot forfeit a deposit for a wedding dinner if it is postponed to a later date and must restore the deposit if it was forfeited earlier. However, this protection does not apply if the wedding couple cancels the event entirely or switches hotels.

In the case of construction and supply contracts, a contractor will be relieved from liability for non-performance if this was caused to a material extent by COVID-19.

What if There are Disputes Arising From the Application of This Act?

As a safeguard against unfair outcomes, assessors will be appointed by the Minister for Law to resolve disputes arising from the application of the Act. They will decide if the inability to perform contractual obligations was due to COVID-19 and will have the powers to decide on a just and equitable outcome based on the facts of each case.

The process will take no more than five days at no cost to either party. Parties will not be allowed to be represented by lawyers. Assessors' decisions will be final and no appeals can be made by the parties.

Details of the application process will be released in due course.

What Happens After the Relief Period?

At the end of the relief period, the individual or business must fulfil the original contractual obligations.

MEASURES RELATING TO BANKRUPTCY AND INSOLVENCY

The Bill will also introduce temporary relief for individuals and businesses in financial distress by temporarily:

- For individuals: Increasing the monetary threshold for bankruptcy from S\$15,000 to S\$60,000.
- For businesses (companies/partnerships): Increasing the monetary threshold for insolvency from S\$10,000 to S\$100,000.

The statutory period to respond to demands from creditors will be temporarily lengthened from 21 days usually to six months [2].

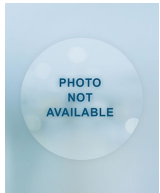
Directors of companies will also be temporarily relieved from their obligations to prevent their companies' trading while insolvent if the debts are incurred in the company's ordinary course of business. However, Directors remain criminally liable if the debts are incurred fraudulently.

NOTES

[1] <https://www.mlaw.gov.sg/news/press-releases/temporary-relief-for-inability-to-perform-contractual-obligations-due-to-coronavirus-disease-2019-covid-19-situation#fn1>

[2] <https://www.businesstimes.com.sg/government-economy/covid-19-new-bill-to-give-temporary-relief-from-contractual-obligations>

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