

COVID-19: SINGAPORE'S COVID-19 (TEMPORARY MEASURES) BILL: FURTHER ANALYSIS ON WHAT IT IS AND HOW IT MAY IMPACT YOU

Date: 6 April 2020

Asia-Pacific Regulatory & Policy Alert

By: Muralli Rajaram, Valerie Ang

This publication is issued by K&L Gates Straits Law LLC, a Singapore law firm with full Singapore law and representation capacity, and to whom any Singapore law queries should be addressed. K&L Gates Straits Law is the Singapore office of K&L Gates, a fully integrated global law firm with lawyers located in five continents.

This publication/newsletter is for informational purpose and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Our last update on this matter was published at a time when only the Press Release relating to the Bill was publicly available. This update is published after the Bill itself has been made public. Given the breadth of the Bill, this update does not seek to be a comprehensive coverage of the Bill, but highlights salient aspects.

On 1 April 2020, the Ministry of Law **announced** that it intended to introduce the COVID-19 (Temporary Measures) Bill ("Bill") in Parliament within one week. The Bill aims to provide temporary relief and protection for individuals and companies who are unable to fulfil their contractual obligations because of COVID-19-related issues. This is expected to allow businesses and individuals to tide over the economic impact of COVID-19 and provide temporary cash-flow relief for these businesses and individuals.

Earlier this week, Parliament sat to consider the Bill under a Certificate of Urgency signed by the President. The Bill has recently been passed into Law on an expedited basis. This update is based on the Bill, as published. We will be circulating a further update if the finally passed Law is different in any material aspect from the published Bill.

The key measures of the Bill are summarized below.

A. Temporary relief from legal action

1. What are the categories of contracts covered by the Bill?

The categories of contracts covered by the Bill are referred to as Scheduled Contracts and are set out in a Schedule to the Bill. These contracts 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);

Performance bonds or equivalent that are granted pursuant to construction or supply contracts;

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.

2. 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 or renewed (other than automatically) on or after 25 March 2020.

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

3. When and how to obtain relief? What is the relief?

To receive the relief, the party which cannot perform the obligation due to COVID-19-related reasons has to serve a notification of relief (within a period to be specified in regulations to be promulgated) to the other contracting party, and, where applicable, their former party's guarantor or surety. For example, this could be as simple as a tenant writing a letter or email to their landlord, explaining that they are unable to make payment of the rent due to lower footfall amid the virus outbreak.

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

Court and insolvency proceedings (including the making of an application for a meeting of creditors to be summoned to approve a compromise or arrangement under Section 210(1) of the Companies Act, application for a judicial management order, winding up, bankruptcy, appointment of a receiver or manager over any property or undertaking, commencement or levying of execution, distress, or other legal process against any property) against the party seeking relief or the party's guarantor or surety, where applicable;

Commencement of arbitration under the Arbitration Act (and not one under the International Arbitration Act) against the party seeking relief or the party's guarantor or surety, where applicable;

Enforcement of security over immovable property as well as movable property that is used for the purposes of business or trade;

Exercise of a right of re-entry or forfeiture under a Scheduled Contract or any other right that has a similar outcome;

Enforcement of a judgment of court, award of an arbitral tribunal in arbitrations under the Arbitration Act (and not the International Arbitration Act), or determination by an adjudicator under the Building and Construction Industry Security of Payment Act;

Call on a performance bond given pursuant to a construction contract;

Termination of leases of non-residential premises; and

Such other action as may be prescribed.

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-related reasons.

If they do not comply and still take the prohibited actions, this will be an offence. Details of the penalty for non-compliance will be released in due course. The Bill also envisages the voiding of certain prohibited actions and the dismissal of proceedings brought in breach.

4. 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, including requiring a party to the contract to do anything, pay any money to discharge an obligation under the contract, or requiring goods subject to repossession or immovable property subject to a lease or licence with a right of forfeiture of re-entry be returned. A failure to comply is an offence.

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.

5. What happens after the relief period?

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

B. 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 the usual 21 days to six months.

These measures kick-in in relation to bankruptcy applications and winding up applications made after the relevant provisions become effective. Parties wishing to commence such proceedings on the basis of statutory demands already issued and not complied with should make the relevant applications before the relevant provisions become effective. Given that the Bill is to be passed into law on an expedited basis, an immediate or very imminent effective date should be expected.

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.

C. Measures relating to the conduct or meeting and Court proceedings

1. What meetings are affected?

Certain meetings required under written laws or legal instruments (such as constitutions of companies, trust deeds, or various other forms of constituting documents) may be affected by measures put in place to control the spread of COVID-19. For example, a statute may require companies to hold a physical meeting when more than 10 participants must attend a meeting; however, measures may be put in place to prevent such meetings of 10 or more people. Such meetings fall within the proposed Bill.

2. What are the measures that may be put in place to deal with such meetings?

The Minister has a wide discretion as to the measures that can be introduced. Some of the measures that may be ordered are as follows:

provision for a meeting to be convened, held or conducted, whether wholly or partly, by electronic communication, video conferencing, tele-conferencing, or other electronic means;

provision of a period of notice for a meeting;

number for quorum;

provision for question and answers to be tabled at meetings to be done electronically;

any other measures as the Minister considers necessary or desirable.

3. How are Court proceedings affected?

The Court may order that an accused person or a witness in any Court proceedings give evidence through the use of remote communication technology. In the case of an accused person, such accused person must give evidence within a court or prison in Singapore. In the case of other witnesses, they can testify from such place as specified by the Court.

In relation to witnesses, the use of remote communication technology can only be resorted to in the case of factual witnesses if all parties to the proceedings consent to the same. Such a restriction is not in place for expert witnesses.

Ultimately, the Court must be satisfied of the availability and sufficiency of facilities and be satisfied that the interests of justice weighs in favour of the use of remote communication technology.

D. Measures relating to property tax

1. What are the measures?

In response to the COVID-19 pandemic, certain remissions of property tax may be given by way of order under the Property Tax Act. Where such property is leased or licenced by the owner of the property to another, the measures dictate that the benefits be passed to the other in such manner and time as may be prescribed. Such manner may be by way of a lump sum or instalment payment of monies from the owner of the property to the

leasee or licensee of the property or an off-set or reduction in rent or licence fee payable. No conditions may be imposed by the owner for the passing of such benefit. A failure to comply is an offence.

2. What if there is a dispute?

In the event of a dispute, the matter can be resolved by submitting the same to a Valuation Review Panel ("Panel"). The Panel has certain powers of a District Court. If a party is dissatisfied by the decision of the Panel, that party may appeal to the High Court within 21 days of the determination on any question of law or mixed law and fact. A Panel's determination may, with the leave of court, be enforced in the same manner as a judgment or an order of court to the same effect.

Conclusion

The Bill is a creative and quick response that immediately addresses many of the problems caused by the current pandemic. The measures put in place seek to spread the "pain" of some of the harder hit in an equitable and sustainable manner. We continue to monitor how the Bill, after it is passed into Law, will be implemented in practice. Should you have any queries on these issues, please do not hesitate to contact us.

KEY CONTACTS



MURALLI RAJARAM
PARTNER
K&L GATES STRAITS LAW LLC
SINGAPORE
+65.6713.0216
MURALLI.RAJARAM@KLGATES.COM



VALERIE ANG
PARTNER
K&L GATES STRAITS LAW LLC
SINGAPORE
+65.6713.0228
VALERIE.ANG@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.