



Singapore proposes Temporary Measures to support Businesses and Individuals in

Managing Contract Obligations and Insolvency Risk arising from the COVID-19 Outbreak

6 April 2020. Singapore's Ministry of Law is spearheading a legislative effort in the form of the *COVID-19 (Temporary Measures) Bill* (the "**Bill**") to offer temporary relief to businesses and individuals facing financial distress in these difficult and uncertain circumstances brought on by the Coronavirus Disease, known as COVID-19. A draft of the Bill was released on 2 April 2020 and is accessible [here](#). If the Bill is approved in Parliament this week, these measures will offer eligible businesses and individuals urgent 'breathing space' to better manage cash flow and their creditors.



WHAT ARE THESE PROPOSED MEASURES?

The Bill proposes 4 areas of temporary measures.

1. Relief from contract obligations for certain scheduled contracts

First, Part 2 of the Bill proposes a suspension of contractual obligations for 5 categories of contracts specified in a schedule to the Bill (“scheduled contracts”), where non-performance of those obligations is materially affected by COVID-19.

The **5 categories** of scheduled contracts are:

- non-residential leases and licences,
- construction and supply contracts,¹
- contracts for the provision of goods and services for events (i.e. event contracts)
- tourism-related contracts, and
- certain secured loan facilities granted to SMEs (with less than \$100m turnover in the last financial year) and certain hire-purchase commercial agreements (e.g. private-hire car drivers).

To be eligible to seek relief, a scheduled contract must have been either entered into or renewed **before 25 March 2020** and give rise to obligations to be performed **on or after 1 February 2020**. Scheduled contracts between commercial parties and the Government will also qualify.

¹ as defined in the Building and Construction Industry Security of Payment Act

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To obtain temporary relief in relation to a scheduled contract, a party will need to serve a Notification for Relief on their counterpart. The inability to perform such obligation will need to be caused, to a material extent, by a COVID-19 event, e.g. where a commercial tenant's failure to pay rent arises from a reduction of foot traffic and revenue on account of the COVID-19 risk.

The Bill proposes for such contractual obligations to be suspended for an initial period of 6 months once the Act commences (and for this 6-month period to be either extended or shortened by the Minister). The Bill also proposes to prohibit certain types of legal action against a non-performing party if non-performance is due to a COVID-19 event. These prohibited types of legal action against the non-performing party (e.g. a debtor or his guarantor) are:

- court and insolvency proceedings against the debtor,
- domestic arbitration proceedings against the debtor,
- enforcement of security over commercial immovable property and movable property used for business,
- calls on a performance bond arising from a construction contract, and
- termination of non-residential leases, including the exercise of rights of re-entry or forfeiture.

Once in place, a moratorium against specified legal action will lapse only upon the earliest of **3 events**:

- when the initial period of 6 months (or any extension thereof) expires,
- when the debtor withdraws its Notification for Relief, or
- when an Assessor has made a determination that the debtor is not eligible for such temporary relief under the Bill. The prejudicial effect of a moratorium to creditors is mitigated by the extension of the limitation periods for causes of action and the insolvency look-back periods by a period equivalent to the applicable moratorium period in each case.

If there is a dispute as to whether the inability to perform a contractual obligation was due to a COVID-19 event, an Assessor can be appointed to resolve the dispute. Assessors will be empowered to grant relief to achieve a just and equitable outcome.

Additional relief is proposed for parties to event and tourism-related scheduled contracts. Deposits retained for such contracts are not to be forfeited unless an appointed Assessor determines that the forfeiture is just and equitable. As for construction and supply contracts, a period of delay arising from a COVID-19 event will be excluded from the calculation of liquidated damages, while a COVID-19 event can be raised as a defence to a claim for breach of contract in relation to a non-supply.



2. Qualified relief from insolvency proceedings during the prescribed period of the Act

Second, Part 3 of the Bill proposes a temporary revision to the monetary thresholds which creditors must meet before commencing individual bankruptcy and corporate liquidation proceedings for debts which do not arise from scheduled contracts which are afforded the Bill's temporary relief. During the effective period of the Act, individuals will not be subjected to bankruptcy proceedings for a debt that is less than \$60,000 (up from the current \$15,000 requirement) while the Debt Repayment Scheme will apply for qualifying debts below \$250,000 (up from the current \$100,000 threshold).

In the event a creditor intends to rely on an unsatisfied statutory demand to invoke a presumption of insolvency against an individual or corporate debtor, the statutory demand must offer that debtor a 6-month response time (up from the current 21-day period). A debtor's right to challenge and seek a setting aside of such a demand will also increase from 21 days to 6 months.

Further, the Bill proposes temporary relief from the risk of insolvent trading. The Bill proposes that an officer of a company or an individual bankrupt will not be treated as having no reasonable ground of expectation of being able to pay a debt if the debt is incurred.

- in the ordinary course of business during the prescribed period of the Act and
- before the appointment of a judicial manager or liquidator (for a company) or the application for voluntary arrangement or bankruptcy (for an individual bankrupt).

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3. Measures in relation to statutory meetings

Third, Part 4 of the Bill proposes measures to enable statutory meetings which require personal attendance to be deferred or to proceed in a manner that complies with the Ministry of Health's mandatory safe distancing measures, and allows for alternative arrangements to be prescribed, including the holding of meetings via video conferencing, tele-conferencing and other electronic means. These measures affect meetings provided for in any written law or legal instrument, e.g. Annual General Meetings, creditor meetings and MCST meetings, and will apply retrospectively from 27 March 2020.

4. Measures in relation to court proceedings

Fourth, Part 5 of the Bill proposes measures to facilitate more flexible court proceedings to better meet the COVID-19 risk, e.g. by allowing hearings to be conducted remotely and by allowing certain types of witness evidence to be taken remotely or via video-link.

SOME KEY OBSERVATIONS

■ Debts and obligations are deferred; not extinguished

While these temporary measures are a well-timed effort to support COVID-19-affected businesses and individuals in staying above the waterline, there remains a long swim to shore as the water inevitably deepens. Part 2 of the Bill clarifies that debts and contractual liabilities are not extinguished but merely deferred. It is therefore not enough to simply tread water.

Once the temporary measures proposed by the Bill are lifted at the end of the prescribed period of 6 months to a year, distressed businesses and individuals will potentially face a cascade of debt. It may be too late to plan then and put impatient creditors to the test. Businesses will need to be well into their rehabilitation efforts in tandem with their financial recovery. The effort is likely to take months, or even years, beyond COVID-19.

■ Rehabilitation plans beyond COVID-19 are essential

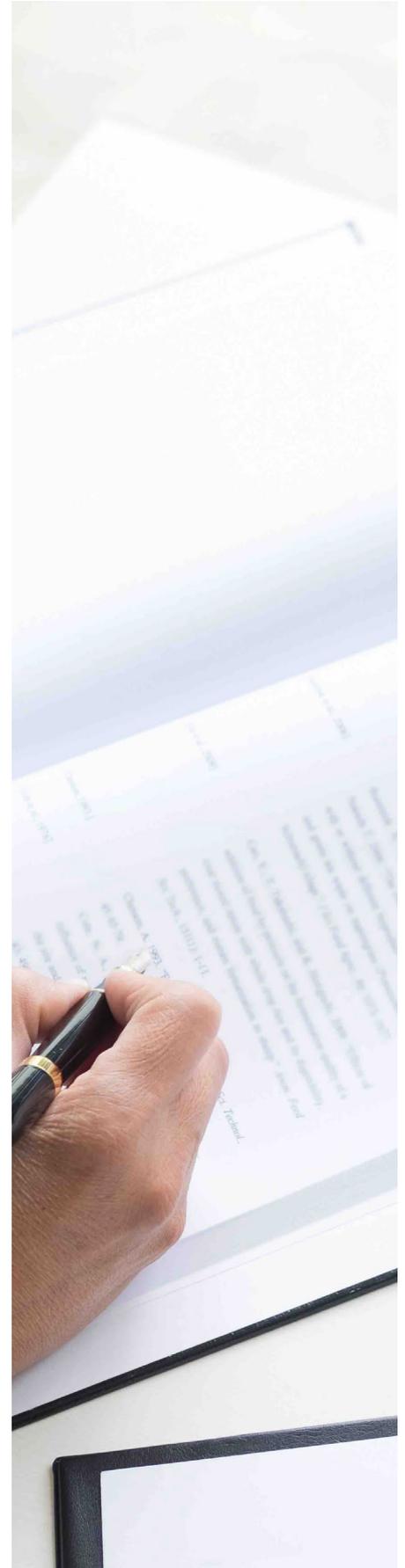
Businesses should use this additional time to expedite efforts to innovate, find ways to recover receivables, develop alternate cash flow streams and widen existing revenue channels. Businesses which would have ordinarily collapsed from failure in the marketplace can treat this second lease of life as an opportunity to reinvent. This is also an opportunity to better manage creditors' expectations and renegotiate repayment arrangements with timeframes beyond COVID-19. Plan the swim to shore.

WHAT THE BILL MEANS FOR BUSINESSES

Individuals, guarantors and **businesses** with performance and payment obligations arising from the 5 types of scheduled contracts can seek relief, and may also receive notifications for relief from their counterparts. In particular, these will include commercial tenants in heavily-impacted sectors and locations, contractors, sub-contractors and materials-suppliers, private-hire drivers with commercial hire-purchase agreements, and SMEs with certain secured loan facilities.

As obligations are deferred and not extinguished, individuals, guarantors and businesses should be ready to:

- Weigh options and determine if a notification for relief should be issued in relation to a particular contract, e.g. should a tenant seek relief from payment of rent, or a supplier seek relief from delivery obligations, or a buyer seek relief from payment obligations.
- If a notification for relief is received, weigh options and determine if the non-performance of a contract is materially due to a COVID-19 event as alleged.
- Plan for future obligations and the potential tsunami of debt which may arise when a notification is withdrawn, or when an Assessor denies relief, or when either the suspension period is lifted or the Act expires.



THINKING AND PREPARING AHEAD

Beyond the Bill, businesses are encouraged to take this additional time to:

- **Assess strengths.**

The temporary relief measures can assist in appropriate cases. Consider the consequences down the line when identifying the best means for managing eligible contracts, whether relief should be pursued, and whether post-COVID-19 plans are sound.

- **Assess cash flow.**

There are steps which can be taken during this time to innovate, develop alternate revenue streams and improve cash flow. Options for urgent short-term borrowing or other cash injections and the servicing of such facilities during this time should be considered with care, especially when there are cash flow and insolvency risks.

- **Persuade debtors.**

There are steps which can be taken now to negotiate the recovery of receivables during this time and in the post-COVID-19 period. Questions of whether to challenge notifications for relief and pursue determination by an Assessor may arise.

- **Make sound and defensible decisions.**

There may be measures that are necessary for directors and senior management to take to in order to meet their obligations, including in areas of governance and compliance, while adhering to law and the Ministries' directives and guidelines. There are also options available to fulfil these requirements through innovative cost-efficient means.

- **Understand personal liabilities.**

The efforts which can be taken now to keep a business afloat in these difficult times should not offend the law, risk giving rise to allegations of fraudulent trading, or fail to fulfil statutory or fiduciary duties and other legal obligations.

- **Partner with creditors.**

There are steps which can be taken to better manage creditors, landlords and other counterparts, both now and in the post-COVID-19 period. In this regard, businesses will need to carefully consider and negotiate a rehabilitation plan for survival into the many months (or years) beyond COVID-19.

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[RHTLaw Asia COVID-19 Response Team](#) will continue to bring you further updates following developments in Parliament.

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