



## Temporary Measures to Support Businesses and Individuals in Managing Contract Obligations and Insolvency Risk arising from The Covid-19 Outbreak

On 20 April 2020, Singapore's Ministry of Law announced the commencement of Parts 1, 2 and 3 of the COVID-19 (Temporary Measures) Act (the "**Act**")<sup>1</sup> and the regulations for businesses and individuals to comply with<sup>2</sup> (the "**Regulations**") in order to seek a temporary suspension of eligible contractual obligations for an initial relief period between 20 April 2020 and 19 October 2020 (referred to as the "**Relief Period**"). These temporary measures will offer some 'breathing space' to some businesses and individuals affected by the control measures and economic slowdown due to the Coronavirus Disease, known as COVID-19.

It is important for businesses, individuals and guarantors to understand what is covered by the Act and the extent of relief, as a wide range of obligations are *not* affected by the Act.

The Act is accessible [here](#) and the new COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 are accessible [here](#).

<sup>1</sup> COVID-19 (Temporary Measures) (Prescribed Period) Order 2020

<sup>2</sup> COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (the "**Regulations**")



## RELIEF PERIOD IS FROM 20 APRIL 2020 TO 19 OCTOBER 2020

From 20 April 2020 to 19 October 2020, businesses and individuals which are unable to perform their contractual obligations under 5 types of contracts will be able to seek temporary protection from legal action and certain rights of enforcement which might otherwise be exercised against them. We summarise the procedures and some of the considerations which parties will need to take into account when determining if they are eligible for relief, or if relief is unwarranted.

## CONTRACTS AFFECTED BY THE ACT

In order for a party to seek relief under the Act, that party must meet a few conditions:

- First, that party must be unable to perform an obligation which arises from one of the 5 types of scheduled contracts;
- Second, the scheduled contract must have been entered into (or renewed) **before 25 March 2020**;
- Third, the obligation is one which has to be performed **on or after 1 February 2020**; and
- Fourth, inability to perform the obligation must be due, to a material extent, by a COVID-19 event.

## THE 5 TYPES OF SCHEDULED CONTRACTS ARE:

- *Non-residential leases and licences*, where a tenant is unable to perform a particular obligation under such contract, such as the obligation to pay rent, which might otherwise entitle the landlord to exercise a right of forfeiture or re-entry onto the premises, or commence legal action to distrain for rent, or for judgment and repossession. A tenant may seek relief to suspend its obligation to pay rent for up to 6 months during the Relief Period. For more, click [here](#).
- *Construction and supply contracts*,<sup>3</sup> where a party is unable to meet a delivery deadline or completion date, which might otherwise entitle the innocent party to commence legal action for judgment against the defaulting party and any subsequent enforcement action. A party may seek relief to suspend its payment and performance obligations for up to 6 months during the Relief Period. For more, click [here](#).
- *Contracts for the provision of goods and services for events (i.e. event contracts)*, where a party is unable to proceed with its booking of a venue or with the supply of goods or services for an event (e.g. a wedding or conference), which might otherwise entitle the innocent party to forfeit a deposit or commence legal action for judgment against the defaulting party and any subsequent enforcement action. A party may seek relief to suspend its payment and performance obligations for up to 6 months during the Relief Period.
- *Contracts for the provision of goods and services for tourism-related contracts*, where a party faces non-performance as with event contracts (see (c) above). A party may seek similar relief as with event contracts.
- *Certain secured loan facilities granted to Small and Medium Enterprises* (with 30% of its shareholders being Singapore Citizens or Permanent Residents, and with a turnover not exceeding \$100 million), where the borrower is unable to repay the secured loan, which might otherwise entitle the lender to enforce its rights against the security, or commence legal action for judgment and any subsequent enforcement action, including any insolvency proceedings. A party may seek relief to suspend its payment obligations for up to 6 months during the Relief Period.

In addition, a party to *certain hire-purchase commercial agreements* (e.g. private-hire car drivers) may also seek relief to prevent the repossession of such goods.



<sup>3</sup> as defined in the Building and Construction Industry Security of Payment Act



## WHAT IF A PARTY HAS DEBTS INCURRED PRIOR TO 1 FEBRUARY 2020?

## WHAT IF A PARTY DEFAULTS ON A CONTRACT ENTERED INTO ON OR AFTER 25 MARCH 2020?

In the event a party has failed to perform a contractual obligation **prior to 1 February 2020**, or has failed to pay a debt incurred prior to 1 February 2020, or defaults on a contract made **on or after 25 March 2020**, that party will not be able to seek relief under the Act.

However, such a party may be able to benefit under the following amendments to the Bankruptcy Act and Companies Act pursuant to Part 3 of the Act:

- First, bankruptcy applications for debts which are less than \$60,000 and winding-up applications for debts which are less than \$100,000 cannot be filed during the Relief Period. During the Relief Period, in respect of individuals, the threshold for the presumption of inability to pay debts to arise is increased from \$15,000 to \$60,000 in respect of the minimum amount to be stated in the statutory demand. In respect of companies and limited liability partnerships, the respective threshold amounts and deadlines for the demand is increased from \$10,000 to \$100,000.
- Second, during the Relief Period, creditors who issue statutory demands against individuals pursuant to the Bankruptcy Act and against companies and limited liability partners pursuant to the Companies Act and Limited Liability Partnerships Act, during the period when the Act is in force, will need to offer such individuals and companies 6 months to pay, secure or compound for it to the reasonable satisfaction of that creditor (up from 21 days or 3 weeks).
- Third, during the Relief Period, if an individual or officer of a company or limited liability partnership contracts a debt in the ordinary course of trade or business, during the Relief Period and prior to an application for voluntary arrangement or bankruptcy (for the individual) or judicial management or liquidation (for the company), or liquidator (for the limited liability partnership), that individual or officer will not be treated as having committed insolvent trading, as he will not be deemed to have had no reasonable or probable ground of expectation of the individual or company being able to pay that debt.



## HOW DOES A PARTY OBTAIN RELIEF?

A party who seeks relief under the Act will need to comply with the Regulations:

1. First, having considered its eligibility for relief under the Act and after negotiations have been attempted between the defaulting and innocent parties, the defaulting party will need to file a **Notification for Relief (in Form 1)**<sup>4</sup> during the Relief Period. The following are required:
  - Full names, addresses, email addresses and contact numbers of each party to the contract, including guarantors and issuers of performance bonds (if any);
  - Details about the contract, including the date, identity and description of the contract, the date and nature of the obligation that is to be performed, the date on which the default arose, the type of default and how the default was materially caused by a COVID-19 event, together with supporting documents;
  - Details of the defaulting party's proposal where possible, e.g. to request a reduction of the payable sum, or to postpone a delivery date; and
  - A declaration that the information in Form 1 is true and correct.

The Notification for Relief is to be filed electronically via the Ministry of Law's portal, with a SingPass (for individuals) or a CorpPass (for businesses).

2. Second, the Notification for Relief must be served on all parties to the contract within 1 working day using the Ministry's electronic system. If this is not possible, service may be effected by a prescribed alternative method, i.e. by email, via a blog or social media, or by prepaid registered post. Proof of service will need to be documented.
3. Third, the defaulting party has a right to submit a **Memorandum of Notification for Relief** to court (or the arbitral tribunal) if there are ongoing court or domestic arbitration proceedings, in order to seek a stay or dismissal of those proceedings.

<sup>4</sup> <http://www.mlaw.gov.sg/covid19-relief>



## WHAT IF A PARTY OBJECTS TO A NOTIFICATION FOR RELIEF?

If the recipient of a Notification for Relief does not agree with the request therein, the recipient will need to make an application (the “**Applicant**”) to proceed before an Assessor. The deadline to make such an application, if the scheduled contract is an event contract, a tourism-related contract, a construction contract or a supply contract, is the period starting at the beginning of the Relief Period and ending at the end of 2 months after the end of the Relief Period. In respect of any other scheduled contract, the deadline to make such application is before the end of the Relief Period.

An Assessor is a qualified lawyer, or public accountant, or chartered accountant and with at least 3 years of working experience in their professions or any individual in law, accountancy, finance, business management, building and construction or architecture and with 3 years of working experience in such fields.

A party who wishes to apply for an assessment by an Assessor under the Act will need to comply with the Regulations:

1. First, the **Application for an Assessor’s Determination** must be submitted electronically with a SingPass or CorpPass and the Applicant must attach copies of the Notification for Relief, the relevant contract and all supporting documents. If the Registrar is satisfied that the application has been properly filed, the Registry will issue an **Acknowledgment of Application** and will provide the defaulting party (as the “**Respondent**”) with a link to a **Response** form for completion and submission.
2. Second, the Applicant must then serve the Application for Assessor’s Determination together with all relevant documents on the Respondent within 2 working days. Service must be effected electronically, or via the approved methods such as email or prepaid registered post. The Applicant must also submit a **Declaration of Service** within 1 working day after effecting service.

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3. Third, the Respondent will then submit a **Response** within 5 working days of receiving the link to the Response form and all the relevant documents, electronically with a SingPass or CorpPass, as the case may be. The Response must be served via the electronic system or via the approved alternative methods.
4. Fourth, the Registrar will appoint an Assessor and will issue a **Notice of Appointment of Assessor** together with a notice of the date and time of hearing.
5. Fifth, the Assessor will carry out the hearing, either by an exchange of emails or in person at the State Courts. An Assessor may:
  - Request clarifications or further documents by email;
  - Extend time for parties to serve or submit any form or document if requested;
  - Allow an interpreter to be used at the hearing;
  - Allow the withdrawal of the application, if sought by the Applicant;
  - Dismiss the Application if a party is absent; and/or
  - Make a Determination, which will be notified to the parties by the Registrar.
6. Sixth, if court or arbitration proceedings is ongoing, the Applicant must update the court or tribunal by filing a Notification of Status of Application for Determination within 2 working days after the conclusion of the Application for an Assessor's Determination as to whether the Determination is given, or the Assessor dismisses the application, or the Application is withdrawn.





## WHAT IF?

- **What if the contract is not in an executed form, but is made via an exchange of emails?**

A party seeking relief will need to provide evidence of the contract and its terms.

- **What if a party did not receive communications from the Assessor or Registrar?**

It is important for parties to ensure all incoming email is regularly checked, and that all incoming post at the registered address is collected.

- **What if a party does not comply with the Regulations or its timelines?**

Such a failure is an irregularity and will not nullify the proceedings, or any step taken in the proceeding, or any direction or order given by the Registrar or Assessor. However the Registrar or Assessor may give directions in relation to such non-compliance.

- **What if a party needs to amend the Application?**

In such a case, a party may write in to the Registrar to request permission to make the amendment, provided that the Determination has not been made yet.

- **What if a party wants to withdraw the Notification for Relief?**

In such a case, the party making the application for withdrawal will need to serve a Notice of Withdrawal on all other parties to the contract, with a SingPass or CorpPass. A Declaration of Service must then be submitted electronically, with a SingPass or CorpPass within 2 working days. If an application for an Assessor's Determination has already been submitted to the Registrar, the Applicant must also submit a copy of the Notice of Withdrawal to the Registrar, together with a declaration in Form 4 after service of the Notice of Withdrawal on the other parties to the contract. This must be submitted within 2 working days after the date of service of the Notice of Withdrawal on the other parties.

If a **Memorandum of Notification for Relief** has been given to the court or arbitral tribunal, the party seeking to withdraw the Notification for Relief will need to also file with the court or submit to the arbitral tribunal a **Memorandum of Service of Withdrawal of Notification for Relief** using a SingPass or CorpPass. The Memorandum must be served on all parties within 2 working days of service of the Notice of Withdrawal on the other parties to the contract.



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### ■ What if a party needs more time?

A party in need of time may email the Registrar and ask for an extension.

### ■ What if a party misses the hearing?

There are no appeals from Determinations. Instead, a party may apply to set aside a dismissal or Determination using the electronic system. The responding party may then file a **Reply**.

### ■ What if there's an error in the Determination?

A party in need may file an **Application to Correct Error in Determination** using the SingPass or CorpPass, for errors which are clerical mistakes, accidental slips or omissions.



## WHAT HAPPENS AFTER THE RELIEF PERIOD ENDS ON 19 OCTOBER 2020?

Once the Relief Period concludes (or a Notification for Relief is withdrawn or a Determination is made to dismiss relief), creditors will be at liberty to enforce their rights against the individuals and companies in default. There are no transition provisions to step down the relief available under the Act following the Relief Period, although the Relief Period may be extended or shortened by the Minister, and the period may be extended or shortened more than once.

While these temporary measures will help businesses and individuals with cashflow management during the Relief Period, they must also consider the potential cascade of debt and obligations which can confront them after the Relief Period ends. Financially distressed businesses, guarantors and individuals will need to go beyond mere reliance on the available relief, and pursue early negotiations to ensure a post-COVID-19 repayment, performance or rehabilitation plan is in place. There is a countdown to 19 October 2020.



## THINKING AND PREPARING AHEAD

Business owners and guarantors 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 manage cash flow more effectively. 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. It is important for businesses to assess if their contracts are affected by force majeure or frustration. For more, click [here](#).

- **Make sound and defensible decisions.**

There may be measures that are necessary for directors and senior management to take on 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. Businesses are at increased risk of online fraud, cyberattack and poor (or weak) controls, especially when training is lacking and internal audit staff are re-deployed to pursue receivables. Directors must remain vigilant in their discharge of duties, in their approval of payments and in their efforts to protect the business from insolvency and fraud. For more, click [here](#).

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### ■ **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 and stakeholders.**

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. At the same time, businesses must consider how best to manage its talent pool during the Relief Period. For more in relation to employee-relations, click [here](#).

## QUICK LINKS

- Infographic: <https://www.mlaw.gov.sg/files/Infographic-COVID-19Act-18Apr20.pdf>
- Notification for Relief Form 1.: <https://www.mlaw.gov.sg/files/Form-1.pdf>
- [COVID-19 \(Temporary Measures\) \(Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders\) Order 2020](#)
- [COVID-19 \(Temporary Measures\) \(Control Order\) Regulations 2020](#)
- [COVID-19 \(Temporary Measures\) \(Prescribed Period\) Order 2020](#)
- [COVID-19 \(Temporary Measures\) \(Temporary Relief for Inability to Perform Contracts\) Regulations 2020](#)
- [COVID-19 \(Temporary Measures\) Act 2020 \(Commencement\) \(No. 2\) Notification 2020](#)

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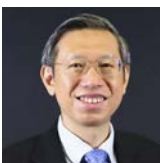
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We collaborate closely with the RHT Group of Companies to provide an all-rounded integrated business solution. We believe in pushing the boundaries of what can be achieved for our clients in this evolving marketplace.

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

**Join us for an upcoming webinar on:**

“COVID-19 (Temporary Measures) Act  
– Its Legal and Practical Implications”

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